

SESSION OF 2018

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2458**

As Amended by Senate Committee on Judiciary

**Brief\***

HB 2458, as amended, would create the crime of counterfeiting currency, amend law related to the crimes of mistreatment of a dependent adult and mistreatment of an elder person, and amend law related to the crimes of assault and battery of a law enforcement officer.

***Counterfeiting Currency***

The bill would create the crime of counterfeiting currency, which would be defined as doing any of the following with the intent to defraud:

- Making, forging, or altering any note, obligation, or security of the United States, which would be a severity level 7 nonperson felony if the total face value is \$25,000 or more and a severity level 8 nonperson felony if the total face value is less than \$25,000;
- Distributing, or possessing with the intent to distribute, any obligation or security of the United States knowing the obligation or security has been so made, forged, or altered, with the same penalties as above; or
- Possessing any paper, ink, printer, press, currency plate, or other item with the intent to produce any counterfeit note, currency, obligation, or security of

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\*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>

the United States, which would be a severity level 9 nonperson felony.

***Mistreatment of a Dependent Adult and Mistreatment of an Elder Person***

The bill would amend law related to the crimes of mistreatment of a dependent adult and mistreatment of an elder person, as follows.

The bill would merge the two crimes into a single crime of mistreatment of a dependent adult or an elder person. Under current law, the two crimes include the same list of acts against their victims, with the exception of the act of committing mistreatment of a dependent adult by infliction of physical injury, unreasonable confinement, or unreasonable punishment of the adult. Thus, under the bill, this act also would become a crime when committed against an elder person. The bill also would add an additional act applicable to all victims: taking the personal property or financial resources of a victim for the benefit of the defendant or another person by taking control, title, use, or management of the personal property or financial resources of a victim through a violation of the Act for Obtaining a Guardian or Conservator.

The bill also would amend the penalty provisions of the crime where the penalty level depends on the monetary value of the personal property or financial resources to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floor for the lowest felony penalty (severity level 7) and ceiling for an exception for multiple previous offenses would be changed to \$1,500.

The definition of "elder person" for purposes of the crime would be changed from 70 years of age or older to 60 years of age or older.

In the first degree murder statute, the bill would add the crime to the list of inherently dangerous felonies for purposes

of the felony murder rule. (Under the felony murder rule, first degree murder includes the killing of a human being committed in the commission of, attempt to commit, or flight from any inherently dangerous felony.)

### ***Assault and Battery of a Law Enforcement Officer***

The bill would amend the definition of a law enforcement officer for purposes of the crimes of assault and battery of a law enforcement officer by including uniformed or properly identified federal law enforcement officers while such officers are engaged in the performance of their duty. "Federal law enforcement officer" would be defined as a law enforcement officer employed by the U.S. federal government who, as part of such officer's duties, is permitted to make arrests and to be armed.

### **Background**

As amended, the bill includes provisions of HB 2458, HB 2648, and SB 378, as described below.

### ***HB 2458 (Mistreatment of a Dependent Adult and Mistreatment of an Elder Person)***

HB 2458 was introduced by the House Committee on Judiciary at the request of the Office of the Attorney General. As introduced, HB 2458 contained amendments to the crimes of mistreatment of a dependent adult and mistreatment of an elder person.

In the House Committee hearing, representatives of the Office of the Attorney General, AARP Kansas, and Kansas County and District Attorneys Association (KCDAA), as well as the Johnson County District Attorney, testified in support of the bill. A representative of the Kansas Health Care Association and Kansas Center for Assisted Living submitted

written-only testimony supporting the bill. No neutral or opponent testimony was provided.

The House Committee amended the bill to merge the crimes, because the bill, as introduced, would have made the means of committing each crime identical.

In the Senate Committee on Judiciary, representatives of the Office of the Attorney General and KCDAA, the Johnson County District Attorney, and a citizen testified in support of the bill. Representatives of AARP Kansas, LeadingAge Kansas, and the Department for Aging and Disability Services submitted written-only testimony supporting the bill. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to add the contents of HB 2648, as passed by the House, regarding assault and battery of a law enforcement officer, and SB 378, creating the crime of counterfeiting currency. Further background regarding HB 2648 and SB 378 is provided below.

According to the fiscal note prepared by the Division of the Budget on HB 2458, as introduced, enactment of HB 2458 could increase litigation in the courts because of the new violations created by the bill. If it does, the Office of Judicial Administration indicates there would be a fiscal effect on court system operations. However, a fiscal effect cannot be determined, and any fiscal effect would likely be accommodated within the existing schedule of cases and would not require additional resources.

The Kansas Sentencing Commission (Commission) estimates enactment of HB 2458 would result in an increase of one or two adult prison beds needed in FY 2019 and one, two, or three beds needed by FY 2028. Based on the most recent projections by the Commission, the Kansas Department of Corrections could absorb the additional prison beds within existing capacity in FY 2019, but could require

additional expenditures if an increase in prison beds exceeds the capacity limit in future fiscal years. Any fiscal effect associated with enactment of HB 2458 is not reflected in *The FY 2019 Governor's Budget Report*.

***HB 2648 (Assault and Battery of a Law Enforcement Officer)***

HB 2648 was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Finch on behalf of federal law enforcement officers. In the House Committee on Corrections and Juvenile Justice and Senate Committee on Judiciary hearings, proponent testimony was presented by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association and representatives of the Federal Law Enforcement Officers Association. Proponents indicated federal agents frequently collaborate with state and local law enforcement in the course of criminal investigations and service of warrants. No neutral or opponent testimony was provided.

The House Committee amended the bill to add language regarding the federal officer being "uniformed or properly identified" to make the new provisions consistent with provisions in current law.

According to the fiscal note prepared by the Division of the Budget on HB 2648, as introduced, the Office of Judicial Administration (OJA) estimates there is a potential for increased litigation with a corresponding fiscal effect on the operations of the court system. A fiscal effect could not be determined; however, the OJA estimated any effect would not require additional resources.

The Kansas Sentencing Commission estimated HB 2648 could have an effect on prison admission and bed space; however, the effect could not be estimated. Any fiscal

effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.

***SB 378 (Counterfeiting Currency)***

SB 378 was introduced by Senator Berger. In the Senate Committee on Judiciary hearing, representatives of the Reno County District Attorney's Office; U.S. Secret Service; and the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in support of the bill, stating limited federal resources prevent the federal investigation and prosecution of counterfeiting crimes involving lesser amounts. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget, enactment of SB 378 has the potential for increasing litigation in the courts because of the new crimes created, which could have a fiscal effect on the operations of the court system. However, it is not possible to estimate the number or complexity of additional court cases, and the fiscal effect would likely be negligible and could be accommodated within existing budget resources. The Kansas Sentencing Commission indicates enactment of SB 378 could have an effect on prison admissions and bed space, but the Commission cannot estimate an effect.