

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2049**

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for HB 2049, as amended, would amend the 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 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.

*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 bill would 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 makes technical amendments to statutory references.

Background

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 Kansas Association of Criminal Defense Lawyers 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 representative of the Kansas Association of

Criminal Defense Lawyers and a private citizen. Representatives of the Office of Judicial Administration 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. [Please see below for an updated bed impact assessment.]

The Office of Judicial Administration 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

The bill 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 Office of Judicial Administration 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 have been updated in the January 2016 bed impact assessment prepared for Senate Sub. for 2049, as summarized in the previous section. The 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*.