

SESSION OF 2010

SUPPLEMENTAL NOTE ON SENATE BILL NO. 523

As Amended by Senate Committee on
Judiciary

Brief*

SB 523, as amended, would create the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act). The bill would:

- Define “racketeering activity” to mean to commit, attempt to commit, conspire to commit or to solicit, coerce, or intimidate another person to commit certain crimes enumerated in the bill;
- Define “pattern of racketeering activity” to mean engaging in at least two incidents of racketeering activity with the same or similar intents, results, accomplices, victims, or methods of commission where at least one incident occurs after the effective date of this Act and the last incident occurred within 5 years, excluding any period of imprisonment, after a prior incident of racketeering activity;
- Make it a crime to receive proceeds from a pattern of racketeering activity with criminal intent, acquire or maintain control of any enterprise or real property through a pattern of racketeering activity, or be employed by or associated with an enterprise to conduct or participate in a pattern of racketeering activity;
- Make this crime, as well as the conspiracy to commit this crime, a severity level 2, person felony and provide that it may subject the defendant to a fine not more than three

*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>

times the gross value gained or loss caused, whichever is greater;

- Require a \$50,000 cash or surety bond for persons arrested and charged with this crime, unless the court finds the defendant is not likely to re-offend, an appropriate intensive pretrial supervision program is available, and the defendant agrees to comply with the mandate of such pretrial supervision;
- Provide authority for the district court to issue certain orders regarding crimes committed in violation of the Kansas RICO Act;
- Provide authority for the Attorney General, assistant attorney general, county attorney or the county attorney's designee, or district attorney or district attorney's designee to administer oaths or affirmations, subpoena witnesses or material, collect evidence relating to activities in violation of the Kansas RICO Act, and to request *ex parte* orders to not disclose the subpoena for a period of time; and
- Add the violation of the Kansas RICO Act as a crime subject to the civil forfeiture statute which would allow the seizure of proceeds of the unlawful activity, whether or not there is a prosecution or conviction.

Background

The sponsors of the bill are Senator Mike Petersen and Senator Jean Schodorf. The proponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were Senator Mike Petersen, and representatives from the Wichita Police Department, the Kansas City Police Department, and the Kansas County and District Attorneys Association.

There was no testimony in opposition to the bill in the Senate Committee hearing.

The Senate Committee amended the bill to:

- Change the definition of “pattern of racketeering activity” to the word “conduct” with the word “activity”;
- Clarify that, for calculating the duration of time between the incidences used to show a pattern of racketeering activity, any period of imprisonment would be excluded;
- Add a provision to make conspiracy to commit a violation of the Kansas RICO Act a severity level 2, person felony and make a corresponding amendment to the conspiracy statute to clarify that conspiracy to commit a violation of the Act also is a severity level 2, person felony;
- Add a provision to require a \$50,000 cash or surety bond for persons arrested and charged with a crime of racketeering activity, unless the court finds the defendant is not likely to re-offend, an appropriate intensive pretrial supervision program is available, and the defendant agrees to comply with the mandate of such pretrial supervision; and
- Amend the title of the bill.

According to the fiscal note on the bill, as introduced, the Kansas Association of Counties states that if a defendant is found not guilty, counties would bear the case costs. However, the precise fiscal effect is unknown because there are no data, such as potential new case numbers, on which to base an estimate.

SB 523 has the potential for increasing litigation in the courts because of the new crime created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect

cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Kansas Sentencing Commission estimates that passage of SB 523 would result in an increase of two adult prison beds in FY 2011. In the original fiscal effect statement, the Commission reported it was unable to make an estimate. The current capacity for male inmates is 8,123 and projections indicate that this capacity will be exceeded by the end of FY 2011. If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, previously closed units would need to be reopened, which would require annual costs to staff, operate, and maintain the units. If it is necessary to increase capacity beyond reopening the closed units, one-time construction and equipment costs would be needed for new units. Likewise, annual costs to staff, operate, and maintain the new units would be incurred. The 2007 Legislature authorized a construction package that included projects at El Dorado, Yates Center, Ellsworth, and Stockton in the event population estimates indicate new units are needed. If one or more of these projects are necessary, the estimated total costs would range from \$7.0 million for one project at Ellsworth to \$66.4 million for all four projects. The actual construction costs would depend on when construction is undertaken. The actual operating costs incurred would depend on the base salary amounts, fringe benefit rates, food service costs, and inmate health care costs applicable at the time the new units are occupied. If SB 523 contributes to an increase in the inmate population beyond this new capacity, other expansion projects would need to be identified.

If the effect from SB 523 does not require expansion of capacity, the additional annual costs would be approximately \$2,400 per inmate for basic support, including food services. Additional expenditures for health care could also be incurred if the increase in the inmate population requires adjustments to the medical contract. The health care contract provides that whenever the inmate count at a facility changes by more than a specified percentage, an adjustment to contract payments is

made. The amount of any adjustment would depend on the specific facility involved. Any fiscal effect associated with SB 523 is not reflected in *The FY 2011 Governor's Budget Report*.