

SESSION OF 2010

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2469

As Amended by Senate Committee on
Judiciary

Brief*

HB 2469, as amended, would amend current law with respect to criminal history category to delete the language in the statute regarding applicable penalties so that there is no ambiguity that prior convictions can be counted in determining the criminal history category of a defendant.

The bill would become effective upon publication in the *Kansas Register*.

Background

Under current law, prior convictions of any crime shall not be counted in determining the criminal history category if the prior convictions enhance the severity level or applicable penalties, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored. [KSA 21-4710(d)(11)].

KSA 21-3710 is the criminal statute on forgery. Subsection (b)(4) requires that on a third or subsequent conviction for forgery, the defendant is required to serve a minimum of 45 days in jail, as a condition of probation, and a fine in the amount of either the forged instrument or \$2,500, whichever is the lesser amount.

*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 Kansas Supreme Court, in *State v. Luttig*, Docket No. 100,290, January 9, 2009, held that because the statute for a third or subsequent conviction for forgery requires an enhancement of a sentence, *i.e.*, 45-day jail term, the defendant's prior forgery convictions cannot be counted in determining the defendant's criminal history score. The holding in *Luttig* was reaffirmed in the decision filed in *State v. Gilley*, Docket No. 99,156, January 22, 2010.

The proponent of the bill, as introduced, who testified in the House Committee, was Helen Pedigo, Executive Director of the Kansas Sentencing Commission. She testified that the Kansas Sentencing Commission did not believe the holdings in *Luttig* and *Gilley* was the intent of the Legislature in drafting the Kansas Sentencing Guidelines. She said that HB 2469 would serve justice by providing a more accurate criminal history of the defendant for presentence investigations and sentencing.

There were no opponents of the bill who testified in the House Committee.

The proponent of the bill, as recommended by the House Committee, who testified in the House Committee, was Helen Pedigo, Executive Director of the Kansas Sentencing Commission.

There were no opponents of the bill who testified in the Senate Committee.

The Senate Committee amended the bill to change the effective date from the publication in the statute book to publication in the *Kansas Register*.

According to the fiscal note on the bill, as introduced, the Kansas Sentencing Commission indicates that the bill would have a negligible effect on the prison population.