

SESSION OF 2010

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2518

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2518, as amended, would merge the nondrug and drug grids, create special sentencing rules for drug offenses, make amendments to the drug code regarding minors, make amendments to the securities code, make an amendment to the statute on probation, and make amendments to property crimes.

Merge Nondrug and Drug Grids

The bill would repeal the drug grid and eliminate references to the drug grid in the statutes. The bill would assign drug sentences severity levels onto the existing nondrug grid as follows:

- Drug severity level 1 felony to severity level 2, nonperson felony;
- Drug severity level 2 felony to severity level 4, nonperson felony;
- Drug severity level 3 felony to severity level 6, nonperson felony; and
- Drug severity level 4 felony to severity level 7, nonperson felony.

Special Sentencing Rules for Drug Offenses

The bill would:

- Place a cap on drug offense sentences at 204 months;

*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>

- Provide that convictions for medium, large, or super felony distribution, with a criminal history of one prior medium, large, or super felony distribution, may result in a sentence up to double the maximum sentence in the applicable grid box, subject to the cap; and
- Provide that convictions for medium, large, or super felony distribution, with a criminal history of two or more prior medium, large, or super felony distribution, may result in a sentence up to triple the maximum sentence in the applicable grid box, subject to the cap.

Drug Code

The bill would amend current law so that:

- Manufacturing methamphetamine is a severity level 1, nonperson felony and the manufacture of any other drug would be a severity level 3, nonperson felony;
- Penalties for a conviction of a distribution or possession with intent to distribute offense is set at 4 levels based on the quantity of the controlled substance, i.e., small, medium, large, or super, with the weight to be determined by the product as packaged for distribution;
- “To a minor” and “in the presence of a minor” is added to the sentence enhancements for distribution, possession with intent to distribute, or manufacture with intent to distribute drug offenses; and
- The penalties for a conviction of the crime of receiving or acquiring proceeds from drugs would be as follows:
 - Proceeds less than \$5,000 is a severity level 9, nonperson felony;
 - Proceeds greater than \$5,000 but less than \$100,000, is a severity level 6, nonperson felony;
 - Proceeds greater than \$100,000 but less than \$500,000, is a severity level 5, nonperson felony;
 - Proceeds of \$500,000 or more is a severity level 4, nonperson felony.

Securities Code

The bill would amend the securities code to:

- Make an intentional securities violation pursuant to KSA 17-12a508 a severity level 8, nonperson felony;
- Make an intentional securities violation pursuant to KSA 17-12a501 or 17-12a502 a felony, as follows:
 - Loss of less than \$25,000 is a severity level 8, nonperson felony;
 - Loss of \$25,000 but less than \$50,000 is a severity level 7, nonperson felony;
 - Loss of \$50,000 but less than \$75,000 is a severity level 6, nonperson felony;
 - Loss of \$75,000 but less than \$100,000 is a severity level 5, nonperson felony;
 - Loss of \$100,000 but less than \$250,000 is a severity level 4, nonperson felony;
 - Loss of \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony;
 - Loss of \$1,000,000 or more is a severity level 2, nonperson felony; and
- Make an intentional violation of a cease and desist order pursuant to KSA 17-12a508 a severity level 6, nonperson felony.

Probation

The bill amends current law by adding a new requirement that Court Services supervise all class A misdemeanants placed on probation. This includes all offenders convicted of a crime pursuant to Chapter 21 (Crimes and Punishment) or a second conviction of driving under the influence pursuant to KSA 8-1567.

Property Crimes

The bill would amend the penalty on numerous property crimes by differentiating the penalty levels based upon the amount of loss, as follows:

- Loss less than \$500 is a class B, nonperson misdemeanor;
- Loss of at least \$500 but less than \$1,000 is a class A, nonperson misdemeanor;
- Loss of at least \$1,000 but less than \$2,000 is a level 10, nonperson felony;
- Loss of at least \$2,000 but less than \$25,000 is a level 9, nonperson felony;
- Loss of at least \$25,000 but less than \$50,000 is a level 8, nonperson felony;
- Loss of at least \$50,000 but less than \$75,000 is a level 7, nonperson felony;
- Loss of at least \$75,000 but less than \$100,000 is a level 6, nonperson felony; and
- Loss of \$100,000 or more is a level 5, nonperson felony.

Background

Generally, the Joint Committee on Corrections and Juvenile Justice Oversight (JCCJJO) studied the Kansas Sentencing Commission's (KSC) recommendations regarding proportionality. JCCJJO approved of a bill encompassing the visions of the KSC. HB 2518 is the bill introduced by the JCCJJO.

The proponents of the bill, as introduced, who testified at the House Committee were representatives of the Kansas Sentencing Commission.

The opponents of the bill, as introduced, who testified at the House Committee were representatives of the Kansas County and District Attorneys Association, the Sedgwick County

District Attorneys Office, the Johnson County District Attorneys Office, and the Wyandotte County District Attorneys Office.

The House Committee amended the bill to strike the rebuttable presumption of intent to distribute a controlled substance or analog in certain quantities that would have been created in the bill, as introduced. The Committee struck the language to address one of the concerns raised by the prosecutors who testified at the hearing.

The House Committee also amended the bill to reinsert provisions that were inadvertently left out of the bill, as introduced. The addition of these provisions would preserve current law.

Finally, the House Committee amended the bill to make technical amendments.

According to the fiscal note on the bill, as introduced, if the present practice of departing from sentences is not taken into account, the Kansas Sentencing Commission estimates that passage of HB 2518 would require 17 additional adult prison beds by FY 2011 and 772 additional adult prison beds by FY 2020. 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 HB 2518 contributes to an increase in the inmate population beyond this new capacity, other expansion projects would need to be identified.

If the effect from HB 2518 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 also could 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.

If the present practice of departing from sentences is considered, the Kansas Sentencing Commission estimates that passage of HB 2518 would result in a decrease of 21 adult prison beds in FY 2011 and a decrease of 28 adult prison beds by FY 2020. The bill would result in a reduction of approximately \$2,400 per inmate for basic support, including food service. Expenditure reductions for health care also could be incurred if the decrease in the inmate population required adjustments in 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 in contract payments is made. The amount of any adjustment would depend on the specific facility involved. If the population decrease is sufficient to allow a portion of the current capacity to be taken off-line, then additional cost reductions for staff and operations could be incurred. Additionally, if the bill reduces the inmate population sufficient to negate the need for capacity expansion, costs for reopening previously closed facilities, construction of new facilities, and annual operations could be avoided.

The Commission also estimates that passage of the bill would result in 224 additional offenders participating in drug treatment programs under 2003 SB 123. This would require additional State General Fund expenditures totaling \$735,268 for agency operations, including \$22,500 to hire a part-time office assistant to process additional invoices and \$712,768 for additional offender treatment costs. Any fiscal effect associated with HB 2518 is not reflected in *The FY 2011 Governor's Budget Report*.