

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 228**

As Agreed to April 6, 2023

Brief*

SB 228 would update language in Article 19 of Chapter 19 of the *Kansas Statutes Annotated* concerning county jails. In addition to changes made to modernize language throughout the Article, the bill would amend provisions relating to jails and prisoners. The bill would also create law concerning reimbursement of costs when a person is confined in a county jail awaiting examination, evaluation, or treatment for competency to stand trial under the Kansas Code of Criminal Procedure.

Reimbursement of Costs Related to Determining Competency

The bill would require, whenever a person is in the custody of a county jail awaiting examination, evaluation, or treatment pursuant to the Kansas Code of Criminal Code of Procedure, the Secretary for Aging and Disability Services (Secretary) to reimburse such county for costs related to the custody at the rate of \$100 per day.

The bill would define “county jail” to mean a jail operated by a county or a consolidated law enforcement agency.

Calculation of Compensation

The bill would specify the time period that applies for the purpose of calculating the required compensation to a county as follows:

- If a person is awaiting examination or evaluation:
 - From the date the request for examination or evaluation is made until the date the person is taken from confinement in the county jail for such examination or evaluation or until the evaluation is completed at the county jail; and
- If a person is awaiting treatment:
 - From the date of return for confinement in the county jail from examination or evaluation or the same is completed at the county jail until the date the person is

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taken from confinement in the county jail or until treatment is completed at the county jail.

Procedure for Reimbursement

The bill would specify that, on and after July 1, 2022, if a county has a claim for reimbursement of costs pursuant to the bill, the county would be required to notify and provide documentation of such costs to the Secretary on a quarterly basis.

The bill would require the amount of moneys attributable to the costs to be certified by the Secretary. Upon certification, moneys would be transferred from the State General Fund to the County Competency Expense Fund, which would be created by the bill.

The bill would also specify the Secretary would be required to develop and implement a procedure to provide reimbursement payments to counties on a quarterly basis.

County Competency Expense Fund

The bill would establish in the State Treasury a County Competency Expense Fund, to be administered by the Secretary for the purpose of reimbursing counties for costs as provided by the bill. The bill would specify if no moneys are available in the Fund, a county could file a claim against the State to seek reimbursement.

Jails in Every County

The bill would amend a provision requiring every county to have a jail at the county seat and instead would require every county to provide jail services at the expense of the county.

Keeping and Managing Prisoners

The bill would amend a provision governing the manner in which the sheriff would keep the jail and manage prisoners to clarify each sex, female and male, should always be kept in separate rooms, and would define the term “sex” for the purpose of the section to mean an individual’s biological sex, either male or female, at birth. The bill would further define a “female” as an individual whose biological reproductive system is developed to produce ova, and a “male” as an individual whose biological reproductive system is developed to fertilize the ova of a female.

The bill would also clarify the sheriff is required to supply food, drink, and medical care for prisoners.

Calendar of Prisoners

The bill would amend provisions governing the requirement of a county sheriff to keep a true and exact calendar of all prisoners committed to the county by modernizing the language to reflect release or escape from the jail. The bill also would add a requirement that the sheriff

provide a physical or electronic copy of the calendar or otherwise allow the court to access an electronic record of the calendar.

Prisoner Sent to Jail in Nearest County

The bill would amend a provision which authorizes a district court judge in a county where there is not a sufficient jail in which to house a prisoner to clarify such authorization would be to commit such prisoner to a jail of the nearest county that has sufficient space and the means to care for the inmate as determined by the sheriff or keeper of that jail. The bill also provides that the sheriff of the county that has ordered the commitment is responsible for transportation of the prisoner.

Demolition or Repurposing of County Jails

In a provision governing what a board of county commissioners may do with a jail in its county that is no longer needed for jail purposes, the bill would authorize the board to demolish or repurpose the jail or site as the board deems to be in the best interests of the county.

Commitment of Prisoners in City Jails

The bill would amend a provision authorizing a county without a sufficient jail to contract with any city in the county for the use of housing county prisoners to allow a county to contract with any city or county in the state that has an adequate jail. The bill would also require the sheriff of the county that has ordered commitment is responsible for transportation of the prisoner.

Medical Clearance of Persons Before Detention

The bill would amend a provision governing requirements related to a sheriff or keeper of a jail receipt of prisoners by proper authority with respect to requirements relating to medical care.

The bill would state that the sheriff or keeper of the jail would not be required to receive or detain a prisoner who is in the custody of an arresting agency until the prisoner has been examined by a medical care facility or health care provider if the prisoner appears to be:

- Unconscious or having been unconscious at any time during custody or during the events leading to the person's custody;
- Suffering from a serious illness, as defined by the bill;
- Suffering from a serious injury, as defined by the bill; or
- Seriously impaired by alcohol or drugs or combination thereof.

The bill would clarify the definition of "arresting agency" does not include a surety, bail agent, or bail enforcement agent who arrests a person who was released on an appearance bond.

The bill would clarify the prisoner receiving an examination would remain in the custody of the arresting agency during such examination.

The bill would provide the cost of the examination and resulting treatment would be the financial responsibility of the prisoner receiving the examination or treatment in accordance with continuing law governing the payment of, and reimbursement for, medical costs of prisoners.

Conference Committee Action

The second Conference Committee agreed to the provisions of SB 228, as passed by the House, regarding updates to county jail statutes, and further agreed to add definitions of “sex,” “female,” and “male” to law governing the keeping and managing of prisoners.

Background

SB 228 (Updates to County Jail Statutes)

The bill was introduced by the Senate Committee on Judiciary at the request of a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association.

Senate Committee on Judiciary

In the Senate Committee hearing on February 16, 2023, representatives of the Kansas Association of Chiefs of Police and Kansas Peace Officers Association testified as **proponents** of the bill, generally stating the bill’s modernizing language and clarification of procedure would provide clearer guidance for sheriffs and jailers and improve outcomes for prisoners and staff. No other testimony was provided.

The Senate Committee adopted amendments to:

- Define “sex” in the section governing the sheriff’s keeping of prisoners [*Note*: The Conference Committee modified this amendment]; and
- Further clarify the procedure to be followed when a prisoner to be detained needs a medical examination prior to detention. [*Note*: The Conference Committee retained this amendment.]

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to create a new section of law requiring the Secretary reimburse counties for costs related to confining persons awaiting evaluation or treatment for competency to stand trial. [*Note*: The Conference Committee retained this amendment.]

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on March 8, 2023, representatives of the Kansas Association of Chiefs of Police and Kansas Peace Officers Association testified as **proponents** of the bill. Written proponent testimony was provided by a representative of the Kansas Association of Counties. A representative of the Kansas Hospital Association provided neutral testimony, and written **opponent** testimony was provided by a representative of the American Civil Liberties Union of Kansas.

The House Committee on Corrections and Juvenile Justice amended the bill to:

- Clarify when reimbursement under the bill is triggered [*Note*: The Conference Committee retained this amendment];
- Remove the definition of “sex” in the section governing the sheriff’s keeping of prisoners [*Note*: The Conference Committee did not retain this amendment, but further amended the definition and added definitions of “female” and “male” to the section];
- Remove the terms “female and male” when describing the sexes [*Note*: The Conference Committee did not retain this amendment];
- Clarify the prisoner’s financial responsibility with respect to the cost of the examination and resulting treatment [*Note*: The Conference Committee retained this amendment];
- Add a definition of “arresting agency” [*Note*: The Conference Committee retained this amendment]; and
- Add a definition of “county jail” [*Note*: The Conference Committee retained this amendment].

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on SB 228, as introduced, the Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on Judicial Branch operations.

The Department of Corrections states the bill would not have a fiscal effect on agency operations. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor’s Budget Report*.

The Kansas Association of Counties states that enactment of the bill could increase expenditures for counties to provide transportation and jail services. However, a precise fiscal effect cannot be estimated.

The League of Kansas Municipalities indicates enactment of the bill would not have a fiscal effect on cities.

County jails; medical care; Kansas Department for Aging and Disability Services; reimbursement of costs; competency evaluation and treatment

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