

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 4

As Amended by House Committee on Judiciary

Brief*

SB 4, as amended, would amend law to change penalties for crimes involving riot in a correctional facility and unlawfully tampering with an electronic monitoring device. It also would amend various provisions related to supervision of offenders and the administration of certified drug abuse treatment programs.

Certification of Identification for Offenders on Probation

The bill would expand the list of proof of identity documents accepted by the Division of Vehicles, Kansas Department of Revenue (KDOR), for the issuance of a replacement driver's license to include a certification of identification issued by a court services officer. The bill would specify such certification could be issued by a supervising agency to offenders under probation supervision of such agency.

Riot and Incitement to Riot in a Correctional Facility

The bill would increase the criminal penalties for riot and incitement to riot when the crime occurs in a correctional facility. The bill would define "correctional facility" for this purpose as a jail, or a correctional institution as defined by continuing law.

*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>

Riot

Continuing law defines “riot” to mean five or more persons acting together and without lawful authority engaging in any:

- Use of force or violence that produces a breach of the public peace; or
- Threat to use such force or violence against any person or property if accompanied by power, or apparent power, of immediate execution.

Current law classifies the crime of riot as a class A person misdemeanor. The bill would increase the penalty for riot, when it occurs in a correctional facility, to a severity level 8 person felony.

Incitement to Riot

Continuing law defines “incitement to riot” to mean, by words or conduct, knowingly urging others to engage in a riot, under circumstances that produce a clear and present danger of injury to persons or property or a breach of the public peace.

Current law classifies the crime of incitement to riot as a severity level 8 person felony. The bill would increase the penalty for incitement to riot, when it occurs in a correctional facility, to a severity level 6 person felony.

Unlawfully Tampering with Electronic Monitoring Equipment

The bill would lower the criminal penalty for unlawfully tampering with electronic monitoring equipment. (The penalty contained in current law is a severity level 6 nonperson felony in all cases.)

The bill would lower the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a severity level 8 nonperson felony when the equipment is used for court-ordered supervision, post-release supervision, or parole in relation to felony or misdemeanor violations of:

- Interference with parental custody;
- Criminal restraint;
- Domestic battery;
- Stalking;
- Intimidation of a witness; or
- Violation of a protective order.

The bill also would lower the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a class A nonperson misdemeanor when the equipment is used for court-ordered supervision, post-release supervision, or parole in relation to a misdemeanor (other than those listed above) or for court-ordered supervision in a civil case.

Certified Drug Abuse Treatment Programs

The bill would amend law related to jurisdiction of, supervision of participants in, and eligibility for the nonprison sanction of placement in a certified drug abuse treatment program (2003 SB 123 Program).

Jurisdiction and Supervision

The bill would provide that, when a defendant is sentenced to the nonprison sanction of placement in a certified drug abuse treatment program, the district court from

which the defendant is on parole, on probation, assigned to a community correctional services program, or under a suspended sentence, may transfer jurisdiction of the defendant with the concurrence of the receiving district court and all parties.

The bill would specify that, if an offender is permitted to leave the judicial district of the sentencing court, the court may:

- Transfer supervision over the offender from that judicial district to another; and
- Either transfer or retain jurisdiction of the offender.

Eligibility

The bill would amend a provision related to the assignment of a risk status by a criminal risk-need assessment to remove a requirement that the assessment assign either a high or low risk status.

The bill would also remove a requirement that an offender be assigned a high risk status on the drug abuse assessment and a moderate or high risk status on the criminal risk-need assessment in order to participate in the 2003 SB 123 Program. The bill would require the Kansas Sentencing Commission (Commission) to determine the criteria for participation in the 2003 SB 123 Program.

Community Corrections Services Program

Continuing law allows for assessment of certain felony offenders by a standardized risk assessment tool specified by the Commission, and for placement of certain felony offenders in a community corrections services program that provides supervision, treatment, and other services to offenders.

The bill would allow the Commission to determine an appropriate risk level for placement in the program, and would remove the requirement that offenders be assigned certain risk levels in order to participate.

Technical Amendments

The bill would make technical amendments to ensure consistency in statutory phrasing.

Background

SB 4 was prefiled for introduction by the Joint Committee on Corrections and Juvenile Justice Oversight on December 31, 2020.

[*Note:* As introduced, SB 4 contained provisions identical to 2021 HB 2027, as introduced, regarding unlawful tampering with electronic monitoring equipment.]

Senate Committee on Judiciary

In the Senate Committee hearing on January 27, 2021, a representative of the Commission testified as a **proponent** of the bill, indicating the bill is a proportionality measure to align the penalties with the underlying offense. Written-only **proponent** testimony was provided by a representative of the Kansas Association of Criminal Defense Lawyers.

Neutral testimony was provided by a representative of the Kansas Association of Chiefs of Police, the Kansas Sheriffs Association, and the Kansas Peace Officers Association (law enforcement organizations).

On February 3, 2021, the Senate Committee recommended the bill be placed on the Consent Calendar.

House Committee on Judiciary

In the House Committee hearing on March 16, 2021, the same proponent and neutral conferees provided testimony.

On March 24, 2021, the House Committee amended the bill to:

- Include certain misdemeanor violations in the severity level 8 nonperson felony provision for unlawful tampering with electronic monitoring equipment (as suggested by the law enforcement organizations);
- Add the contents of HB 2192, regarding certification of identification for offenders on probation;
- Add the contents of HB 2191, regarding riot and incitement to riot in a correctional facility;
- Add the contents of HB 2128, regarding jurisdiction and supervision of offenders in the 2003 SB 123 Program; and
- Add the contents of HB 2374, regarding eligibility for the 2003 SB 123 Program and community corrections services programs.

HB 2192 (Certification of Identification)

HB 2192 was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Jennings.

[*Note:* HB 2192 contains provisions similar to those of 2020 HB 2496, as recommended by the House Committee on Corrections and Juvenile Justice.]

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 8, 2021, **proponent** testimony was presented by the Douglas County Sheriff and representatives of the American Civil Liberties Union of Kansas and the Bert Nash Community Mental Health Center. Proponents stated the issuance of certifications of identification would help probationers access employment, treatment, housing, and other benefits, which would lower the rate of recidivism.

Written-only **proponent** testimony was provided by representatives of the Douglas County Administrator, Douglas County Criminal Justice Services, the Greater Kansas City Chamber of Commerce, the Kansas Association of Court Services Officers, the Kansas Department of Corrections (KDOC), the Office of Judicial Administration (OJA), and United Way of Douglas County.

No other testimony was provided.

HB 2191 (Riot and Incitement to Riot in a Correctional Facility)

HB 2191 was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Jennings on behalf of the Pawnee County Attorney.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 11, 2021, **proponent** testimony was presented by representatives of the Johnson County Sheriff's Office and the Kansas Sheriffs Association and by the Leavenworth County Attorney.

No other testimony was provided.

HB 2128 (Jurisdiction and Supervision for 2003 SB 123 Program)

SB 123 (2003) created a nonprison sanction of certified substance abuse treatment for certain drug offenders. Commonly referred to as the “Senate Bill 123 Program,” this program is administered by the Commission.

HB 2128 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Commission.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 1, 2021, a representative of the Commission testified as a **proponent** of the bill. A representative of the Kansas Community Corrections Association submitted written **proponent** testimony. No other testimony was provided.

The House Committee amended the bill to remove provisions related to participation in the certified drug abuse treatment program by nondrug offenders.

HB 2374 (Eligibility for 2003 SB 123 Program and Community Corrections Supervision Programs)

HB 2374 was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the Commission.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 23, 2021, a representative of the Commission provided **proponent** testimony, stating the Commission is in the process of implementing new probation assessments and the change would help facilitate implementation of the new assessments.

No other testimony was provided.

Fiscal Information

SB 4 (Unlawful Tampering with Electronic Monitoring Equipment)

According to the fiscal note prepared by the Division of the Budget on SB 4 as introduced, OJA indicates enactment of the bill could result in additional offenders being supervised by court services officers, but the fiscal effect could be absorbed within existing resources.

The Commission estimates enactment of the bill would save nine prison beds in FY 2022 and ten prison beds in FY 2031. The Commission states the current estimated available bed capacity is 9,420 for males, and 948 for females. Based upon the Commission's most recent ten-year projection contained in its FY 2020 Adult Inmate Prison Population Projections report, it is estimated that the year-end population for available male capacity will be under capacity by 1,287 inmates in FY 2021 and 1,241 inmates in FY 2022.

The KDOC indicates a reduction in the prison population is beneficial toward avoiding future costs, but is not sufficient to reduce current prison expenditures. The KDOC also indicates the reduction would improve the ability to socially distance inmates to help mitigate the spread of the coronavirus in the facility, staff working at the facility, and inmates released into the community.

Any fiscal effect associated with enactment of SB 4 is not reflected in the *The FY 2022 Governor's Budget Report*.

HB 2192 (Certification of Identification)

According to the fiscal note prepared by the Division of the Budget on HB 2192, OJA indicates enactment of the bill

would require court services officers to complete a form for their probationers, which would require additional staff time; however, the fiscal effect would be negligible. KDOC and KDOR indicate enactment of the bill would have no fiscal effect.

Any fiscal effect associated with HB 2192 is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2191 (Riot and Incitement to Riot in a Correctional Facility)

According to the Prison Bed Impact Assessment prepared by the Commission, HB 2191 would result in zero to two additional prison admissions each year during the forecasting period, and an increase of zero to two adult prison beds in FY 2022, and an increase of one to three adult prison beds in FY 2031. The Commission also estimates the bill would result in zero to three additional journal entries each year for the workload of the Commission.

According to the fiscal note prepared by the Division of the Budget on the bill, KDOC indicates the increase in prison population would have a detrimental effect on its ability to provide for social distancing among its offender population. KDOC indicates the increase could contribute to the spread of the coronavirus among residents of the facility, staff working at the facility, and offenders released into the community. KDOC indicates the bill would have no fiscal effect.

OJA indicates enactment of the bill would have a negligible fiscal effect that could be absorbed within existing resources.

Any fiscal effect associated with HB 2191 is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2128 (Jurisdiction and Supervision for 2003 SB 123 Program)

According to the fiscal note prepared by the Division of Budget on HB 2128 as introduced, OJA indicates enactment of the bill could affect the amount of time spent by court services officers in supervision of offenders but would have a negligible fiscal effect.

The Commission indicates enactment of the bill may reduce prison admissions and beds, but an estimate could not be determined. The Commission also estimates enactment of the bill could increase the number of SB 123 Program drug treatment offenders by either 238, 476, or 713 persons for FY 2022. The Commission estimates additional State General Fund expenditures of \$748,034; \$1,492,925; or \$2,239,952 for FY 2022 depending on which scenario occurs. The Commission states the average cost of treatment in the SB 123 Program is \$3,143 per offender in FY 2019.

KDOC indicates enactment of the bill would have no fiscal effect.

Any fiscal effect associated with enactment of HB 2128 is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2374 (Eligibility for 2003 SB 123 Program and Community Corrections Supervision Programs)

According to the fiscal note prepared by the Division of the Budget, the Commission indicates enactment of HB 2374 could impact prison admissions, prison beds, or the workload of the Commission, but a fiscal effect cannot be estimated.

OJA indicates enactment of the bill could change the number of people going to community corrections or court services. However, a fiscal effect cannot be estimated.

Any fiscal effect associated with HB 2374 is not reflected in *The FY 2022 Governor's Budget Report*.

Crimes; supervision; parole, probation; community corrections; court services; driver's license; identification certificate; sentencing; riot; incitement to riot; electronic monitoring equipment; tampering; drug abuse treatment program; SB 123 program; Kansas Sentencing Commission; risk level