

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF  
SUBSTITUTE FOR HOUSE BILL NO. 2151**

As Agreed to April 28, 2016

**Brief\***

Sub. for HB 2151 would create law relating to eyewitness identification and community parenting release and would amend law relating to grand juries.

*Eyewitness Identification*

The bill would require all law enforcement agencies in Kansas to adopt a detailed, written policy regarding citizen identification of persons during a criminal investigation. The agencies would be required to collaborate with the county or district attorney to adopt written policies regarding eyewitness procedures and make such policies available to all agency officers. The policies would be required to include identification of the procedures the agency should employ when asking a citizen to identify a person during a criminal investigation. The bill would direct that these procedures should include use of blind and blinded procedures, instructions to the witness regarding the perpetrator's presence, use of non-suspect fillers who do not make the suspect stand out, and eliciting a confidence statement regarding the level of certainty in the selection.

The bill would require the policies to be implemented by agencies within two years of the effective date of the act and

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

to make the policies available for public inspection during normal business hours.

### *Community Parenting Release*

The bill would create law authorizing the Secretary of Corrections (Secretary) to transfer certain offenders to house arrest pursuant to a community parenting release if the following conditions are met:

- The offender is serving a current sentence for a nondrug severity level 4 through 10 felony or a drug severity level 3 through 5 felony and is determined to be low, low-moderate, or moderate risk on a standardized risk assessment;
- The offender has no prior or current conviction for a sex offense or inherently dangerous felony (not to include a drug severity level 3 through 5 felony);
- The offender has not been found by the U.S. Attorney General to be subject to a deportation detainer or order;
- The offender signs any release of information waivers relating to any current or prior child in need of care (CINC) cases involving the offender;
- The offender had physical custody of such offender's minor child or was a legal guardian or custodian with physical custody of a minor child at the time the offense for which the offender is serving a sentence was committed;
- The offender has 12 months or less remaining of the offender's sentence; and
- The Secretary determines that such placement is in the best interests of the child.

The duties of the Secretary under the community parenting release would include:

- Obtaining and reviewing any CINC records involving the offender to determine the best interests of the child prior to making a transfer;
- Approving the offender's residence and living arrangement prior to making a transfer;
- Requiring the offender to comply with all provisions of house arrest;
- Requiring the offender to participate in programming and treatment as needed; and
- Assigning a parole officer to monitor the offender's compliance with the conditions of the release.

The Secretary would have the authority to return any offender to a correctional facility to serve the remainder of the offender's sentence if the offender fails to comply with the requirements of the release.

#### *Grand Juries*

The bill would amend the law concerning grand juries summoned by petition, commonly referred to as citizens grand juries. The bill would allow the person who filed the petition and that person's attorney to witness the instructions given to the grand jury, after it is summoned but prior to beginning deliberations, regarding its conduct and deliberations.

#### **Conference Committee Action**

The Conference Committee agreed to the Senate version of the bill but changed the effective date to publication

in the statute book. The Conference Committee further agreed to add the contents of:

- Sub. for SB 428, as amended by the House Committee, regarding eyewitness identification; and
- SB 453, as amended by the Senate Committee of the Whole, regarding community parenting release.

### **Background**

HB 2151, as introduced, would have added new sections to the law concerning workplace bullying in State agencies. After a hearing on the original bill, the House Judiciary Committee agreed to strike the contents and replace them with the contents of 2015 HB 2221, regarding grand juries, in a substitute bill.

In the Senate Judiciary Committee hearing on Sub. for HB 2151, representatives of American Family Action of Kansas and Missouri and Kansans for Life appeared in support of the bill. A representative of the Kansas County and District Attorneys Association offered written testimony opposing the bill. No neutral testimony was provided.

The Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*. [Note: the Conference Committee changed the effective date to publication in the statute book.]

The Senate Committee of the Whole updated references to the 2014 supplement to read KSA 2015 Supp. 22-3301.

### ***Background of HB 2221***

In the House Judiciary Committee, a representative of the American Family Association appeared in support of the bill. No opponent or neutral testimony was provided.

The fiscal note prepared by the Division of the Budget indicates the bill would have no fiscal effect on the revenues or expenditures of the Judicial Branch.

### ***Background of Sub. for SB 428***

As introduced by Senator Haley, the bill contained detailed definitions and requirements for eyewitness identification procedures that would have been added to the Kansas Code of Criminal Procedure.

In the hearing before the Senate Committee on Judiciary, Senator Haley and a representative of the Midwest Innocence Project testified in support of the legislation. A representative of the Kansas Association of Criminal Defense Lawyers submitted written testimony supporting the bill. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified as an opponent. The director of the Kansas Bureau of Investigation and a representative of the Kansas County and District Attorneys Association (KCDAA) submitted written opposition testimony.

The Senate Committee recommended a substitute bill containing language proposed in the KCDAA testimony.

The Senate Committee of the Whole adopted an amendment specifying certain procedural topics to be addressed in the policies.

In the hearing before the House Committee on Judiciary, a representative of the Innocence Project and a representative of the Kansas Association of Chiefs of Police,

Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in support of the bill. Senator Haley and a representative of the Kansas Association of Criminal Defense Lawyers submitted written testimony supporting the bill. There was no neutral or opponent testimony.

The House Committee adopted a technical amendment recommended by the Office of the Revisor of Statutes. [Note: all Senate and House amendments are retained in the Conference Committee report.]

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates the bill would have a fiscal effect on the court system if litigation increased due to the new requirements in the bill. However, a fiscal effect cannot be estimated.

The Kansas Association of Counties and the League of Kansas Municipalities indicate the bill could increase costs to local governments by requiring time for local law enforcement agencies to develop rules and train law enforcement officers on the new rules. Any fiscal effect is not reflected in *The FY 2017 Governor's Budget Report*.

No fiscal note was available for the substitute bill at the time of Conference Committee consideration.

### ***Background of SB 453***

SB 453 was introduced in the Senate Committee on Corrections and Juvenile Justice at the request of Senator King. At the hearing before the Senate Committee on Judiciary, Senator King, a representative of the Kansas Association of Criminal Defense Lawyers, and a representative of the Kansas Department of Corrections (KDOC) testified in support of the bill. No neutral or opposing testimony was presented. The proponents were in agreement that enactment of the bill would help to improve incarcerated

individuals' parenting skills and would lead to reduced recidivism rates.

The Senate Committee on Judiciary amended the bill to incorporate KDOC's suggestion to strike a requirement for offenders participating in the release to wear GPS-monitoring devices and to assign parole officers, rather than community corrections officers, to supervise offenders participating in the release.

The Senate Committee on the Whole amended the bill to exclude offenders serving a current sentence for a drug severity level 1 or 2 felony from participating in the parenting release. The amendment also would allow offenders with prior or current convictions for drug severity level 3 through 5 inherently dangerous felonies to participate in the parenting release. [Note: all Senate amendments are retained in the Conference Committee report.]

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, enactment of the bill has the potential to create savings for KDOC and to reduce prison beds. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

eyewitness identification; law enforcement agencies; policies and procedures; Secretary of Corrections; community parenting release; grand juries; instructions

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