

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2048

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2048, as amended, would amend a statute in the Kansas Criminal Code governing criminal history classification to make current provisions for classification of an out-of-state crime as person or nonperson applicable only to misdemeanors. The bill would then add the following provisions applicable to out-of-state felony crimes.

Out-of-State Felony Crimes

The bill would require an out-of-state conviction or adjudication for the commission of a felony offense or an attempt, conspiracy, or criminal solicitation to commit a felony offense (out-of-state felony) be classified as a person felony if one or more of the following circumstances is present, as defined by the convicting jurisdiction in the elements of the out-of-state offense:

- Death or killing of any human being;
- Threatening or causing fear of bodily or physical harm or violence, causing terror, physically intimidating, or harassing any person;
- Bodily harm or injury, physical neglect or abuse, restraint, confinement, or touching of any person, without regard to degree;

*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 presence of a person, other than the defendant, a charged accomplice, or another person with whom the defendant is engaged in the sale, distribution, or transfer of a controlled substance or non-controlled substance;
- Possessing, viewing, depicting, distributing, recording, or transmitting an image of any person;
- Lewd fondling or touching, sexual intercourse, or sodomy with or by any person, or an unlawful sexual act involving a child under the age of consent;
- Being armed with, using, displaying, or brandishing a firearm or other weapon, excluding crimes of mere unlawful possession; or
- Entering or remaining within any residence, dwelling, or habitation.

Additionally, the bill would require an out-of-state felony be classified as a person felony if the elements of the out-of-state felony necessarily prove a person was present during the commission of the offense resulting in conviction, if the person present was someone other than the defendant, a charged accomplice, or another person with whom the defendant is engaged in the sale, distribution, or transfer of a controlled substance or non-controlled substance. "Presence of a person" would include physical presence and presence by electronic or telephonic communication.

An out-of-state felony would be classified as nonperson if the elements of the offense resulting in conviction do not require proof of any of the above circumstances.

(*Note:* The bill appears to make additional amendments by adding statutory references. However, these amendments are made to reconcile conflicting versions of the statute and are non-substantive.)

The bill would state the amendments made by it are procedural in nature and shall be construed and applied retroactively.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission (KSC). As introduced, the bill would have added provisions requiring consideration of the name and elements of the out-of-state offense and whether it prohibits similar conduct to that prohibited by the closest approximate Kansas offense. The bill also would have added a statement of legislative intent.

In the House Committee hearing, the KSC executive director testified in support of the bill, stating it was intended to respond to the Kansas Supreme Court decision in *State v. Wetrich*, 307 Kan. 552 (2018). Representatives of the Kansas County and District Attorneys Association and Johnson County and Sedgwick County District Attorneys' Offices offered neutral testimony supporting the intent of the bill but offering alternative language to address the *Wetrich* decision. A representative of the Office of the Attorney General provided written-only neutral testimony supporting consideration of alternative approaches. A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill, stating it is unnecessary and unconstitutional.

The House Committee amended the bill with language based upon the neutral conferees' suggestions and added a retroactivity provision.

According to the KSC's prison bed impact assessment on the bill, as introduced, in FY 2018 there were 536 out-of-

state felony convictions recorded in offenders' five most recent and severe felony convictions.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KSC indicates enactment of the bill may affect prison admissions, bed space, and the KSC's workload, but the KSC cannot determine what the effects would be. The Office of Judicial Administration indicates enactment of the bill would have no fiscal effect on the Judicial Branch.