

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 408**

As Agreed to March 29, 2022

Brief*

SB 408 would amend the definition of the crime of theft, amend the definition of the crime of burglary, provide guidance for the consolidation of supervision into one supervision entity or agency for an offender under the supervision of two or more supervision entities or agencies, amend law concerning criminal history calculation and correction of an illegal sentence or clerical error, and transfer provider certification duties for certified drug abuse treatment programs (SB 123 programs) for drug offenders or divertees from the Kansas Department of Corrections to the Kansas Sentencing Commission.

Crime of Theft of Mail

The bill would amend the definition of the crime of theft to make theft of property that is mail of the value of less than \$1,500 from three separate locations within a period of 72 hours as part of the same act or transaction, or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct, a severity level 9 nonperson felony. [Note: Under continuing law, theft of property or services of the value of less than \$1,500 is a class A nonperson misdemeanor, unless an exception, such as the one that would be created by the bill, applies.]

The bill would define "mail" as a letter, postal card, package, or bag sent through the U.S. Postal Service or other delivery service, or any other article or thing contained therein, or a sealed article or thing addressed to a person.

Crime of Burglary

The bill would amend the definition of the crime of burglary by expanding the locations in which a person may not, without authority, enter or remain within to include any locked or secured portion of any dwelling or building, manufactured home, mobile home, tent, or other structure which is not a dwelling, with intent to commit a felony, theft, or sexually motivated crime therein. The bill would also amend the definition of the crime of aggravated burglary to prohibit the same conduct when there is a human being present in the locations specified by the bill.

*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/kIRD>

Consolidation of Supervision

The bill would provide guidance for the consolidation of supervision into one supervision entity or agency for an offender under the supervision of two or more supervision entities or agencies.

The bill would amend the statute governing transfer of supervision of persons on parole, on probation, assigned to a community correctional services program, or under suspended sentence to allow the district court where the defendant is currently being supervised to use the guidelines to determine whether it is appropriate to transfer jurisdiction of the defendant to a different district court or retain the jurisdiction.

District Court Transferring Supervised Offenders to Another District Court

If the defendant is being sentenced and is already being supervised on parole, on probation, assigned to a community corrections program, or under suspended sentence, then the district court where the defendant is currently being supervised would be authorized to use the guidelines to determine whether it is appropriate to transfer jurisdiction of the defendant to different district court.

Two Supervision Entities or Agencies. If a new sentence would place the defendant under the supervision of two supervision entities or agencies, the bill would authorize the court to consider:

- Granting jurisdiction to the court with jurisdiction over the offense that has the longest underlying sentence of imprisonment; and
- Whether the severity of the new offense requires a higher level of supervision.
- If a higher level of supervision is not required, the bill would state there may be a preference for maintaining supervision of the defendant by the current supervising entity or agency for the duration of supervision.
- If a higher level of supervision is required, the bill would state there may be a preference for transferring supervision responsibility of the defendant to the appropriate supervision entity or agency for the duration of the supervision.

Two or More Supervision Entities or Agencies and Equal Sentences. If two or more supervision entities or agencies are supervising the defendant for equal sentences, the bill would authorize the court to consider:

- Residency of the defendant;
- Ability of the defendant to travel to the supervision office from the defendant's residence, place of employment, and school;
- Resources for residential and nonresidential sanctions or rehabilitative treatment available from each supervision entity or agency; and
- Level of supervision available to the defendant by each supervision entity or agency.

District Court Retaining Jurisdiction

Under continuing law moved within the section by the bill, the district court from which the defendant is on parole, probation, assignment to a community correctional services program, or suspended sentence may retain jurisdiction of the defendant. The bill would add language providing that if this happens, the defendant would be supervised by one supervision entity or agency.

Memorandum of Understanding. The bill would require the Kansas Department of Corrections (KDOC) and the Office of Judicial Administration (OJA) to enter into a memorandum of understanding (MOU) providing that a defendant on parole, probation, assignment to a community correctional services program, or suspended sentence would be supervised by one supervision agency or entity. The MOU would be required to include, but not be limited to, provisions related to:

- Criteria for determining the most appropriate supervision agency or entity;
- How the financial obligations of supervision will be managed;
- Conditions of supervision;
- Sanctions for violations of supervision;
- Standards for seeking revocation of parole, probation, assignment to a community correctional services program, or suspended sentence;
- Termination of supervision; and
- Information sharing between supervision entities or agencies.

Criminal History Calculation and Correction of Illegal Sentence or Clerical Error

The bill would amend law concerning criminal history calculation and correction of an illegal sentence or clerical error.

Criminal History Calculation

The bill would amend law related to criminal history calculation by providing that if an offender raises a challenge to their criminal history for the first time on appeal, the offender would have the burden of designating a record that shows prejudicial error in the calculation of criminal history. The bill would further provide that if the offender fails to provide such a record, the appellate court would be required to dismiss the claim.

The bill would further specify that in designating a record that shows prejudicial error, the offender may provide the appellate court with journal entries of the challenged criminal history that were not originally attached to the criminal history worksheet, and the State may provide the appellate court with journal entries establishing a lack of prejudicial error.

The bill would allow the court to take judicial notice of such journal entries, complaints, plea agreements, jury instructions, and verdict forms for Kansas convictions when determining whether prejudicial error exists. The bill would also allow the court to remand the case if there is a reasonable question as to whether prejudicial error exists.

Correction of an Illegal Sentence or Clerical Error

The bill would amend law concerning appellate review of certain sentencing matters, to specify that in addition to a departure sentence, as provided in continuing law, a ruling on a motion for correction of an illegal sentence is subject to appeal by the defendant or the State. Continuing law provides that such appeal shall be to the appellate courts in accordance with rules adopted by the Kansas Supreme Court.

The bill would also specify that the sentencing court shall retain authority irrespective of any appeal to correct an illegal sentence or clerical error pursuant to continuing law. Further the bill would specify that, notwithstanding provisions in continuing law, if a motion to correct an illegal sentence is filed while a direct appeal is pending, any change in the law that occurs during the pending direct appeal shall apply.

The bill would also amend this section of the bill to maintain the current applicability of a retroactivity clause to previous amendments made to the section.

Transfer of SB 123 Provider Certification to Kansas Sentencing Commission

The bill would transfer provider certification duties for certified drug abuse treatment programs for drug offenders or divertees from the KDOC to the Kansas Sentencing Commission (Commission), by replacing all references to the Secretary of Corrections with the Commission in the relevant definitions and provisions. The bill also would remove community correction officers from those who may conduct criminal risk-needs assessments for purposes of such programs and would allow the Commission to establish a process for revoking certification of programs that do not meet the Commission's qualifications for certification.

Conference Committee Action

The Conference Committee agreed to the provisions of SB 408, as passed by the Senate, amending the crime of theft.

The Conference Committee further agreed to:

- Add the contents of SB 366, as passed by the Senate, amending the crime of burglary;
- Add the contents of HB 2654, as passed by the House, regarding consolidation of supervision;
- Add the contents of HB 2516, as amended by the Senate Committee on Judiciary, regarding criminal history calculation and correction of illegal sentence; and

- Add the contents of HB 2517, as passed by the House, transferring SB 123 provider certification.

Background

As it entered conference, SB 408 contained provisions amending the crime of theft. The Conference Committee agreed to the Senate version of SB 408, removing House amendments. The Conference Committee also agreed to add the contents of the Senate version of SB 366 (removing House amendments), HB 2654, the Senate version of HB 2516, and the House version of HB 2517 (removing Senate amendments).

SB 408 (Crime of Theft of Mail)

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Warren.

Senate Committee on Judiciary

In the Senate Committee hearing on February 8, 2022, a representative of the Kansas Association of Chiefs of Police, Kansas Association of Peace Officers, and Kansas Sheriffs Association (law enforcement organizations) and representatives of the Johnson County Sheriff's Office and Kansas Chamber of Commerce provided **proponent** testimony, stating enactment of the bill is necessary to address an increase in "porch piracy" cases throughout the state. No other testimony was provided.

House Committee on Corrections and Juvenile Justice

House Committee on Corrections and Juvenile Justice In the House Committee hearing on March 7, 2022, representatives of the Kansas Chamber of Commerce and the law enforcement organizations provided **proponent** testimony. A representative of the Johnson County Sheriff's Office provided written-only proponent testimony. No other testimony was provided.

The House Committee amended the bill to remove the words "or a sealed article or thing addressed to a person" from the definition of the term "mail." [*Note: The Conference Committee did not retain this amendment.*]

SB 366 (Crime of Burglary)

The bill was introduced in the Senate Committee on Judiciary at the request of a representative of the law enforcement organizations.

Senate Committee on Judiciary

In the Senate Committee hearing on January 31, 2022, a representative of the law enforcement organizations referenced above provided **proponent** testimony, stating the

purpose of the bill is to address a gap in the burglary statute identified in *State v. Glover*, 56 Kan. App. 2d 1234 (2019). A representative of the Kansas County and District Attorneys Association (KCDAA) provided written-only proponent testimony. No other testimony was provided.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on March 7, 2022, a representative of the KCDAA and a representative of the law enforcement organizations referenced above provided **proponent** testimony. A representative of the Kansas Association of Criminal Defense Attorneys (KACDL) provided written only opponent testimony. No other testimony was provided.

The House Committee amended the bill to make it effective upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

HB 2654 (Consolidation of Supervision)

The bill was introduced in the House Committee on Corrections and Juvenile Justice by a representative of Riley County Community Corrections on behalf of the Kansas Criminal Justice Reform Commission (KCJRC).

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 16, 2022, a representative of Reno County Community Corrections presented **proponent** testimony on behalf of a representative of Riley County Community Corrections and the KCJRC. A representative of the Council of State Governments (CSG) Justice Center also presented proponent testimony.

Written-only opponent testimony was provided by a representative of the Kansas Association of Court Services Officers.

HB 2516 (Criminal History Calculation and Correction of Illegal Sentence or Clerical Error)

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the Office of the Attorney General (OAG). As introduced, the bill also would have amended requirements for presentence investigation reports.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 1, 2022, **proponent** testimony was presented by representatives of the OAG and the KACDL.

Neutral testimony was presented by a representative of the OJA.

No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on March 8, 2022, **proponent** testimony was provided by representatives of KACDL, KCDA, and the OAG. Neutral testimony was presented by representatives of the Kansas Association of Court Services Officers and OJA.

Representatives of the Judicial Branch and the Kansas District Judges Association testified as **opponents**. The Judicial Branch representative requested an amendment removing the changes the bill, as introduced, would have made to the contents of the presentence investigation report. The other opponent and neutral conferees and the representative of the KCDA expressed support for the proposed amendment.

On March 15, 2022, the Senate Committee adopted the amendment proposed by the Judicial Branch representative. [Note: The Conference Committee retained this amendment.]

HB 2517 (Transfer of SB 123 Provider Certification to Kansas Sentencing Commission)

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

[Note: 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. In 2021, HB 2026 established a similar treatment program for divertees.]

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 1, 2022, a representative of the Commission provided **proponent** testimony, stating the bill would enhance continuity and would provide a positive step in the evolution of the Senate Bill 123 Program. The Secretary of Corrections had no objections to the transfer of the position. A representative of the Behavioral Health Association of Kansas stated the association had no objection to the bill.

No other testimony was provided.

On February 9, 2022, the House Committee amended the bill at the request of the Commission to make the same transfer of duties for the divertee treatment program established by 2021 HB 2026. [Note: The Conference Committee retained this amendment.]

Senate Committee on Judiciary

In the Senate Committee hearing on March 16, 2022, a representative of the Commission provided **proponent** testimony. No other testimony was provided.

On March 17, 2022, the Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

Fiscal Information

SB 408 (Crime of Theft of Mail)

According to the fiscal note prepared by the Division of the Budget on the bill, the Commission estimates enactment of the bill could have an impact on prison admissions and bed space, but the effect cannot be determined at this time.

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

The OJA indicates enactment of the bill could have a fiscal effect on expenditures of the Judicial Branch because the bill increases the penalty for mail theft, which could require court services officers to supervise such offenders for a longer period of time. However, a fiscal effect cannot be estimated because the number of potential cases is unknown.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

SB 366 (Crime of Burglary)

According to the fiscal note prepared by the Division of the Budget on SB 366, the OJA states enactment of the bill could increase the number of cases filed in district court, which could result in more time spent by court employees and judges processing and deciding those cases. OJA indicates additional supervision of offenders could be required of court services officers, and could result in the collection of additional docket and supervision fees assessed. However, a fiscal effect cannot be estimated.

The Commission states enactment of the bill could have an effect on prison admissions and beds; however, the Commission does not have enough information to estimate what that effect could be.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

HB 2654 (Consolidation of Supervision)

According to the fiscal note prepared by the Division of Budget on HB 2654, the OJA indicates the bill could have a fiscal effect due to the effect of the number of cases supervised by court services officers. Additionally, the bill could affect supervision fees received by the courts. The fiscal effect could not be determined because the increase or decrease in cases could not be estimated.

The Commission and the KDOC indicate enactment of the bill would have no fiscal effect.

Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

HB 2516 (Criminal History Calculation and Correction of Illegal Sentence or Clerical Error)

According to the fiscal note prepared by the Division of Budget on HB 2516, as introduced, the Commission does not collect data on appellate court cases, but would change criminal history scores in its journal entry databases if a corrected journal entry is received. The Commission indicates there could be a minimal effect in the reduction of prison beds needed due to corrected sentences.

The OJA indicates enactment of the bill would have an unknown fiscal effect on its operations because the amount of additional work required by court services officers and district court clerks is unknown.

Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

HB 2517 (Transfer of SB 123 Provider Certification to Kansas Sentencing Commission)

According to the fiscal note prepared by the Division of the Budget on HB 2517, as introduced, the Commission indicates enactment of the bill would result in transferring one FTE position responsible for certifications, totaling \$74,628 for salaries and wages from the State General Fund, from the KDOC to the Commission; the KDOC estimates the same transfer at \$71,313.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Crimes; punishment; theft; mail; appellate court; criminal history; prejudicial error; illegal sentences; criminal procedure; supervision consolidation; Kansas Department of Corrections; Office of Judicial Administration; certified drug abuse treatment programs; sb 123 program; Kansas Sentencing Commission; community corrections; transfer of duties; burglary

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