

January 30, 2012

The Honorable Tim Owens, Chairperson
Senate Committee on Judiciary
Statehouse, Room 559-S
Topeka, Kansas 66612

Dear Senator Owens:

SUBJECT: Fiscal Note for SB 308 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 308 is respectfully submitted to your committee.

SB 308 would create the new crime of armed criminal action, which would be defined as committing or attempting to commit a felony by use of a firearm. Armed criminal action would be a nonperson felony subject to a 12-month mandatory prison sentence unless the court finds that the sentence would result in manifest injustice. The sentence for the new crime would be consecutive to any other sentence imposed. In the event certain existing crimes are committed involving a firearm, the crime of armed criminal action would not be applicable.

The bill would also create the new crime of endangerment, which would be defined as recklessly exposing another person to a danger of great bodily harm or death. Endangerment would be a class A person misdemeanor.

SB 308 would make several changes to other areas of the Kansas Criminal Code including:

1. When a defendant is prosecuted for similar crimes, it would not be permissible to convict the defendant of identical offenses based on the same conduct. The prosecution may choose which offense to charge and, upon conviction, the defendant would be sentenced according to that offense;
2. It would be immaterial to the criminal liability of a defendant who has been charged with conspiracy if any other person with whom the defendant conspired lacked the actual intent to commit the underlying crime, provided that the defendant believed the other person did have the actual intent to commit the crime;
3. The definition of "inherently dangerous felony" for the crime of murder in the first degree would be expanded to include abandonment of a child and aggravated abandonment of a child;

4. The distinction of criminal sodomy between persons who are 16 or more years of age and members of the same sex would be removed from the definition of criminal sodomy;
5. A condition relating to the crime of unlawful sexual relations would be removed;
6. The crime of aggravated incest would be amended by increasing the penalty to a severity level three person felony if the victim is the offender's biological, step, or adoptive child;
7. The crime of unlawful use of recordings would be amended;
8. The phrase "sexual battery" would be replaced with "sexually motivated crime" under the crimes of burglary and aggravated burglary;
9. Under the crime of interference with law enforcement, offenders who falsely report that a particular person committed a crime or conceal or destroy evidence of a crime could be convicted of a severity level eight nonperson felony. Falsely reporting any information for the purposes of impeding an officer's duty would be a severity level nine person felony;
10. Materially altering evidence of a crime would be added to the crime of interference with judicial process. For felony cases the penalty would be a severity level eight nonperson felony;
11. The crime of simulating the legal process would be amended;
12. Escaping from custody would be expanded to include escaping upon arrest for certain crimes;
13. Elements of the crime of bribery would be amended;
14. Technical amendments would be made to certain violations of the Kansas Indoor Clean Air Act;
15. Criminal disposal of an explosive would be defined as distributing without lawful authority any explosive or detonating substance to a person under 21 years of age, regardless of whether the seller, donor, or transferor knows the age of the person;
16. Elements of the crimes of cruelty to animals and unlawful disposition of animals would be modified; and
17. Sentencing law would be amended to allow judges to consider proportionality when determining sentences and imposing consecutive terms of imprisonment.

The Kansas Sentencing Commission estimates that passage of SB 308 would result in an increase of 193 adult prison beds in FY 2013 and an increase of 231 adult prison beds by FY 2022. Currently, the number of male inmates exceeds the available bed capacity of 8,369, and based upon the Kansas Sentencing Commission projections, it is estimated that at the end of FY

2012 and FY 2013, the number of male inmates will exceed available capacity by 335 beds and 453 beds, respectively. To address capacity issues, the Governor's budget includes \$3,896,150 to renovate and operate existing facilities in Labette County and an additional \$1.5 million to contract for prison beds (\$2.5 million was added last year for contract beds). If it is determined that additional facility construction is essential in the near-term, the Department of Corrections has identified a capacity expansion project at El Dorado Correctional Facility that includes building two new medium security housing units, which would provide a total of 512 beds. It is estimated that the new units would have a construction cost of \$22,320,329 and operating costs of \$8,184,231 (or \$43.79 per inmate per day).

Any near-term or long-term capacity needed beyond the options outlined above would require additional contract or construction costs. The actual construction costs would depend upon the security level of the beds to be constructed and when construction is actually undertaken, while the actual operating costs would depend upon the base salary amounts, fringe benefit rates, per meal costs, per capita health care costs, and other cost factors applicable at the time the additional capacity is occupied. Likewise, any further prison commitments that result in additional parolees could require additional staff and resources so that the additional parolees can be effectively supervised.

The Office of Judicial Administration estimates that additional charges may be filed in district courts as a result of the new crimes and expanded violations of current crimes created under SB 308. The Office suggests that there would be a fiscal effect on the operations of the court system as a result of the additional time required for court cases. However, it is not possible to predict how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with SB 308 is not reflected in *The FY 2013 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Scott Schultz, Sentencing Commission
Mary Rinehart, Judiciary
Jeremy Barclay, Corrections
Pat Scalia, Indigents Defense