

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2448**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2448 would amend the crime of interference with the judicial process; adjust or clarify several provisions created or amended by or otherwise related to 2013 HB 2170, known as the Justice Reinvestment Act; and amend the Kansas Racketeer Influenced and Corrupt Organization (RICO) Act.

Interference with the Judicial Process

The bill would provide it would be a class A misdemeanor for a person to knowingly make available personal information about a judge or the judge's immediate family member, if dissemination of such information poses an imminent and serious threat to the judge's safety or the safety of such judge's immediate family member, and the person making the information available knows or reasonably should know of the imminent and serious threat. Upon a second or subsequent conviction, this crime would be a severity level nine, person felony. "Personal information" would be defined as a judge's home address or telephone number; personal mobile telephone or pager number; personal e-mail address; a photo of the judge, an immediate family member, or the judge's home or motor vehicle; or an immediate family member's motor vehicle, place of employment, child care or day care facility, or public or private K-12 school. The bill also would define "immediate family member" and "judge."

*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>

Justice Reinvestment Act

The bill also would adjust or clarify several provisions created or amended by or otherwise related to the Justice Reinvestment Act, which made numerous changes to sentencing, probation, and postrelease supervision statutes. Specifically, the bill would:

- Move the provision allowing a judge in most felony cases to impose up to 60 days in a county jail upon revocation of a probation sentence or community corrections placement from the authorized dispositions for sentencing statute to the statute governing probation, community corrections, suspended sentence, and nonprison sanction violations, and clarify that this provision is separate and distinct from other sanctions provided for violation of release conditions, shall not be imposed at the same time as the other sanctions, and shall be served concurrently if the offender is serving concurrent probation terms;
- Add a similar “up to 60 day” sanction provision for misdemeanor violators, and specify that such sanctions shall be served concurrently if the offender is serving concurrent probation terms;
- Clarify that the intermediate sanctions established in HB 2170 that may be imposed by a court services officer or community corrections officer are applicable only if the original crime of conviction was a felony, with the exception of felony DUI, test refusal, domestic battery, forgery, and cruelty to animals convictions;
- Provide that for felony DUI, test refusal, domestic battery, forgery, and cruelty to animals convictions, the sanctions for misdemeanor violators would be imposed;

- Add a two- to three-day confinement provision for misdemeanor violators, similar to that allowed for felony violators;
- Clarify that the 120-day and 180-day incarceration intermediate sanctions shall not be served by prior confinement credit;
- Specify that intermediate sanctions are to be imposed concurrently if the offender is serving multiple probation terms concurrently;
- Add a retroactivity provision to clarify that the violation sanctions shall apply to any violation occurring on or after July 1, 2013, regardless of the date the underlying crime was committed or the offender was sentenced for the underlying crime;
- Amend a provision implemented by HB 2170 allowing early discharge of low-risk offenders from supervision to change the standard for denial by the court of such discharge from “substantial and compelling reasons for denial” to “clear and convincing evidence that denial . . . will serve community safety interests”; and
- Make non-substantive amendments and add statutory references to provide clarity and ensure consistency.

RICO

Finally, the bill would amend statutes in the Kansas RICO Act to clarify the culpability requirement for a violation of the RICO Act is the culpability required for the underlying offense of racketeering activity or unlawful debt, with no additional culpability requirement. It would not be unlawful for a person covered by the RICO Act to violate the Act through the collection of an unlawful debt if the person did not participate in the illegal activity creating the debt.

The bill also would amend the RICO Act definitions statute to update the names of certain crimes listed under “racketeering activity” and to add the crime of commercial sexual exploitation of a child to this list.

Background

In the House Judiciary Committee, representatives of the Kansas District Judges Association and the Office of Judicial Administration (OJA) offered testimony in support of the bill.

In the Senate Judiciary Committee, the Kansas District Judges Association submitted written testimony in support of the bill.

The Senate Judiciary Committee amended the bill by adding the contents of S. Sub for HB 2182, concerning the Kansas RICO Act, and the amended contents of HB 2495, a follow-up bill to 2013 HB 2170, also known as the Justice Reinvestment Act. The Committee amended provisions from HB 2495 to clarify the intermediate sanctions provisions would not be applicable to felony DUI, test refusal, domestic battery, forgery, and cruelty to animals convictions. Instead, the sanctions for misdemeanor violators would be imposed. Additionally, the Committee amended provisions from HB 2495 to add a two- to three-day confinement for a misdemeanor violator, similar to that already allowed for persons convicted of a felony.

The fiscal note prepared by the Division of the Budget states that, according to the Kansas Sentencing Commission (KSC), HB 2448 may have an effect on prison admissions, prison bed space, the probation population, and the workload of the commission; however the precise effect is unknown. OJA predicts the bill could increase the number of cases filed relating to interference with the judicial process, as well as added revenue from docket fees. The precise effect of the increased filings and docket fees cannot be determined,

however. Additional information concerning the fiscal impact of the bills added to HB 2448 can be found in the following sections.

Senate Sub for HB 2182

As passed by the House in 2013, HB 2182 would have amended grand jury provisions. These provisions were passed by the 2013 Legislature as part of the Conference Committee report on HB 2164.

The 2014 Senate Judiciary Committee recommended a substitute bill for HB 2182 containing the provisions of SB 404 with added language to update the definition of “racketeering activity.” The Committee also added the crime of commercial sexual exploitation of a child to this definition.

Background of SB 404

SB 404 was introduced by the Senate Judiciary Committee at the request of Senator Petersen. In the Senate Committee, Senator Petersen testified in support of the bill, explaining it was a follow-up bill to 2013 SB 16, which created the Kansas RICO Act. There was no opponent testimony.

The fiscal note prepared by the Division of the Budget indicates the bill would have no fiscal effect.

HB 2495

2013 HB 2170 represented the recommendation of the Justice Reinvestment Working Group, a statutorily created body charged with analyzing the Kansas criminal justice system and providing evidence-based policy options that would reduce recidivism and, thereby, the increasing prison population.

HB 2495 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the KSC. The House Committee held a joint hearing on HB 2495 and HB 2425, which was introduced by the Joint Committee on Corrections and Juvenile Justice Oversight and represented the Joint Committee's recommendations for follow-up to HB 2170. Specifically, the Joint Committee recommended provisions similar to those contained in HB 2495 clarifying retroactivity and the application of intermediate sanctions in felony cases only.

At the House Committee hearing, a representative of the Kansas Department of Corrections and the director of the KSC testified in support of HB 2495. Representatives of the Kansas Association of Court Services Officers and OJA provided neutral testimony requesting an amendment to allow intermediate sanctions to be used in misdemeanor cases. A representative of the Kansas Association of Counties testified as an opponent. The Johnson County District Attorney also testified as an opponent, requesting an amendment removing various sex offenses and drug-related crimes from eligibility for early discharge from supervision. Written testimony supporting the Johnson County District Attorney's proposed amendment was received from the Kansas County and District Attorneys Association.

The House Committee adopted suggestions for clarifications from the KSC and further amended the bill by changing the standard for denial of early discharge and by making the bill effective upon publication in the *Kansas Register*.

The fiscal note prepared by the Division of the Budget indicates HB 2495 would have no fiscal effect on the Judicial Branch and no effect on prison admissions, prison bed space, or the workload of the KSC.