

SESSION OF 2016

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2501

As Amended by Senate Committee on
Corrections and Juvenile Justice

Brief*

HB 2501, as amended, would amend the crimes of breach of privacy and blackmail. The bill also would amend the definition of a crime committed with an electronic monitoring device.

Breach of Privacy

The bill would amend the crime of breach of privacy to include disseminating or permitting the dissemination of any videotape, photograph, film, or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity and under circumstances in which the other person had a reasonable expectation of privacy, with the intent to harass, threaten, or intimidate the other person, and the other person did not consent to its dissemination. This offense would be a severity level 8, person felony or a level 5, person felony upon a second or subsequent conviction within the previous five years.

The breach of privacy provisions of this bill would not apply to interactive computer service providers for content provided by another person, radio common carriers, and local exchange carriers. The provisions also would not apply to persons acting with a *bona fide* and lawful scientific, educational, governmental, news, or other similar public purpose.

*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>

Blackmail

The bill also would amend the crime of blackmail to include disseminating any videotape, photograph, film, or image obtained in violation of these new provisions, which would be a level 4, person felony.

Crime Committed with an Electronic Device

The bill would amend the definition of a crime committed with an electronic device to add the words “including but not limited to” before the list of crimes in the statute, making the list non-exhaustive. The crimes currently listed in the statute are criminal use of a financial card, unlawful acts concerning computers, identity theft and identity fraud, and electronic solicitation.

Background

The House Committee on Corrections and Juvenile Justice introduced the bill at the request of the Kansas Attorney General. As introduced, the bill amended the definition of a crime committed with an electronic device.

In the House Committee hearing, proponent testimony was provided by a representative of the Office of the Attorney General. Written proponent testimony was provided by a representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs' Association, and Kansas Peace Officers Association. There was no neutral or opponent testimony. The House Committee recommended the bill be placed on the Consent Calendar.

The House Committee of the Whole amended the bill to include provisions amending the crimes of breach of privacy and blackmail. This amendment was modified from language originally included in 2015 HB 2080. Further information regarding HB 2080 is provided later.

In the hearing before the Senate Committee on Corrections and Juvenile Justice, Representative Carlin and representatives of the Office of the Attorney General and the Kansas Coalition Against Sexual and Domestic Violence testified in support of HB 2501. Written proponent testimony was provided by a citizen and by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association. A representative of the Motion Picture Association of America testified in opposition to the bill, requesting the addition of an intent to harass element.

The Senate Committee adopted an amendment removing "state of undress" from the breach of privacy provision and replacing it with language regarding sexual activity, reasonable expectation of privacy, and an intent to harass, threaten, or intimidate.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicated HB 2501, as introduced, could result in additional filings or criminal charges in existing cases. Additionally, the Office states there could be a fiscal effect on both docket fees and fine revenue if additional cases are filed. Until the courts have had an opportunity to operate under the provisions of the bill, an accurate estimate of the fiscal effect upon the Judicial Branch cannot be given.

The Kansas Sentencing Commission estimates passage of the bill could result in an increase of adult prison beds needed in FY 2017. As of January 15, 2016, the available bed capacity is 9,636. Based upon the Commission's most recent ten-year projection contained in its FY 2016 Adult Inmate Prison Population Projections report, it is estimated the year-end population will exceed available male capacity by 326 inmates in FY 2016 and 516 inmates in FY 2017.

In an updated prison bed impact assessment reflecting the amendments by the House Committee of the Whole (adding the provisions of HB 2080), the Sentencing

Commission indicates the bill would require one additional prison bed in FY 2017 and four additional prison beds in FY 2026.

Any fiscal effect associated with HB 2501 is not reflected in *The FY 2017 Governor's Budget Report*.

Background of 2015 HB 2080

HB 2080 was introduced in the House Committee on Judiciary at the request of Representative Clayton. In the House Committee on Judiciary hearing, proponent testimony was provided by Representative Carlin, a representative of the Kansas Coalition Against Sexual and Domestic Violence, and a private citizen. Written proponent testimony was provided by Representative Clayton. Written opponent testimony was provided by a representative of the American Civil Liberties Union.

[Note: the language used in the House Committee of the Whole amendment to HB 2501 differs from the language of HB 2080 in that the amendment removes language regarding clothing and simplifies language regarding consent. The amendment also removes other conditions required for the offense that were in the original bill.]

According to the 2015 fiscal note prepared by the Division of the Budget on HB 2080, the Office of Judicial Administration indicated the bill could have a fiscal effect on the Judicial Branch by allowing prosecutors to file new cases, increasing staff time and effort required but also resulting in added docket fee revenue. However, the fiscal effect on the courts was not expected to be large.

In an updated 2016 bed impact assessment by the Kansas Sentencing Commission, the Commission estimated the bill would result in one additional prison bed needed in FY 2017 and four additional prison beds needed by FY 2026. (Note: this impact was included in the updated assessment)

for HB 2501, as amended by the House Committee of the Whole, discussed in the previous section.) The bill would increase the Commission's journal entry workload by six to eight additional journal entries per year.

Any fiscal effect of HB 2080 was not reflected in *The FY 2016 Governor's Budget Report*.