

SESSION OF 2018

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2458**

As Agreed to April 26, 2018

**Brief\***

HB 2458 would amend law related to counterfeit currency, assault and battery of a law enforcement officer, mistreatment of a dependent adult, mistreatment of an elder person, possession of tetrahydrocannabinol (THC), escape from custody, and expanded eligibility for SB 123 program as follows.

***Counterfeiting Currency***

The bill would create the crime of counterfeiting currency, which would be defined as doing any of the following with the intent to defraud:

- Making, forging, or altering any note, obligation, or security of the United States, which would be a severity level 7 nonperson felony if the total face value is \$25,000 or more and a severity level 8 nonperson felony if the total face value is less than \$25,000;
- Distributing, or possessing with the intent to distribute, any obligation or security of the United States knowing the obligation or security has been so made, forged, or altered, with the same penalties as above; or

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\*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/kldr>

- Possessing any paper, ink, printer, press, currency plate, or other item with the intent to produce any counterfeit note, currency, obligation, or security of the United States, which would be a severity level 9 nonperson felony.

### ***Assault and Battery of a Law Enforcement Officer***

The bill would amend the definition of a law enforcement officer for purposes of the crimes of assault and battery of a law enforcement officer by including uniformed or properly identified federal law enforcement officers while such officers are engaged in the performance of their duty. "Federal law enforcement officer" would be defined as a law enforcement officer employed by the U.S. federal government who, as part of such officer's duties, is permitted to make arrests and to be armed.

### ***Mistreatment of a Dependent Adult and Mistreatment of an Elder Person***

The bill would amend law related to the crimes of mistreatment of a dependent adult and mistreatment of an elder person, as follows.

The bill would merge the two crimes into a single crime of mistreatment of a dependent adult or an elder person. Under current law, the two crimes include the same list of acts against their victims, with the exception of the act of committing mistreatment of a dependent adult by infliction of physical injury, unreasonable confinement, or unreasonable punishment of the adult. Thus, under the bill, this act would also become a crime when committed against an elder person. The bill would also add an additional act applicable to all victims: taking the personal property or financial resources of a victim for the benefit of the defendant or another person by taking control, title, use, or management of the personal

property or financial resources of a victim through a violation of the Act for Obtaining a Guardian or Conservator.

The bill would also amend the penalty provisions of the crime where the penalty level depends on the monetary value of the personal property or financial resources to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floor for the lowest felony penalty (severity level 7) and ceiling for an exception for multiple previous offenses would be changed to \$1,500.

The definition of “elder person” for purposes of the crime would be changed from 70 years of age or older to 60 years of age or older.

In the first degree murder statute, the bill would add the crime to the list of inherently dangerous felonies for purposes of the felony murder rule. (Under the felony murder rule, first degree murder includes the killing of a human being committed in the commission of, attempt to commit, or flight from any inherently dangerous felony.)

### ***Possession of THC***

The bill would amend penalties for possession of THC so that a first offense would be a class B nonperson misdemeanor, a second offense would be a class A nonperson misdemeanor, and a third or subsequent offense would be a drug severity level 5 felony.

### ***Escape from Custody***

The bill would amend the definition of “escape” to include failure to return to custody following temporary leave lawfully granted by a custodial official authorized to grant such leave.

### ***Expanded Eligibility for SB 123 Program***

The bill would expand eligibility for the nonprison sanction of placement in a certified drug abuse treatment program for offenders convicted of unlawful possession of a controlled substance. Eligibility would be expanded from offenders convicted of a drug severity level 5 possession offense who have not been convicted of certain other crimes, to include offenders convicted of a severity level 4 possession offense with a criminal history of E or lower who have not been convicted of certain other crimes.

Under continuing law, an offender is classified as criminal history level E if the offender has at least three nonperson felonies but no person felonies.

### **Conference Committee Action**

The Conference Committee agreed to the Senate version of HB 2458. It further agreed to add the provisions of:

- SB 310, as amended by the House Committee on Judiciary, regarding escape from custody;
- HB 2088, as amended by the House Committee on Corrections and Juvenile Justice, regarding certified drug abuse treatment programs; and
- HB 2566, as recommended by the House Committee on Corrections and Juvenile Justice, regarding possession of THC.

### **Background**

#### ***HB 2458 (Mistreatment of a Dependent Adult and Mistreatment of an Elder Person)***

HB 2458 was introduced by the House Committee on Judiciary at the request of the Office of the Attorney General.

As introduced, HB 2458 contained amendments to the crimes of mistreatment of a dependent adult and mistreatment of an elder person.

In the House Committee hearing, representatives of the Office of the Attorney General, AARP Kansas, and Kansas County and District Attorneys Association (KCDAA), as well as the Johnson County District Attorney, testified in support of HB . A representative of the Kansas Health Care Association and Kansas Center for Assisted Living submitted written-only testimony supporting the bill. No neutral or opponent testimony was provided.

The House Committee amended the bill to merge the crimes, because the bill, as introduced, would have made the means of committing each crime identical. [*Note:* The Conference Committee retained this amendment.]

In the Senate Committee on Judiciary, representatives of the Office of the Attorney General and KCDAA, the Johnson County District Attorney, and a private citizen testified in support of the bill. Representatives of AARP Kansas, LeadingAge Kansas, and the Department for Aging and Disability Services submitted written-only testimony supporting the bill. No neutral or opponent testimony was provided.

The Senate Committee amended the bill to add the contents of SB 378, creating the crime of counterfeiting currency, and HB 2648, as passed by the House, regarding assault and battery of a law enforcement officer. [*Note:* The Conference Committee retained these amendments.] Further background regarding SB 378 and HB 2648 is provided below.

According to the fiscal note prepared by the Division of the Budget on HB 2458, as introduced, enactment of HB 2458 could increase litigation in the courts because of the new violations created by the bill. If it does, the Office of Judicial Administration (OJA) indicates there would be a fiscal

effect on court system operations. However, a fiscal effect cannot be determined, and any fiscal effect would likely be accommodated within the existing schedule of cases and would not require additional resources.

The Kansas Sentencing Commission estimates enactment of HB 2458 would result in an increase of one or two adult prison beds needed in FY 2019 and one, two, or three beds needed by FY 2028. Based on the most recent projections by the Kansas Sentencing Commission, the Kansas Department of Corrections could absorb the additional prison beds within existing capacity in FY 2019, but could require additional expenditures if an increase in prison beds exceeds the capacity limit in future fiscal years. Any fiscal effect associated with enactment of HB 2458 is not reflected in The FY 2019 Governor's Budget Report.

*SB 378 (Counterfeiting Currency)*

SB 378 was introduced by Senator Berger. In the Senate Committee on Judiciary hearing, representatives of the Reno County District Attorney's Office; U.S. Secret Service; and the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in support of SB 378, stating limited federal resources prevent the federal investigation and prosecution of counterfeiting crimes involving lesser amounts. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget, enactment of SB 378 has the potential for increasing litigation in the courts because of the new crimes created, which could have a fiscal effect on the operations of the court system. However, it is not possible to estimate the number or complexity of additional court cases, and the fiscal effect would likely be negligible and could be accommodated within existing budget resources. The Kansas Sentencing Commission indicates enactment of SB 378 could have an

effect on prison admissions and bed space, but the Commission cannot estimate an effect.

*HB 2648 (Assault and Battery of a Law Enforcement Officer)*

HB 2648 was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Finch on behalf of federal law enforcement officers. In the House Committee on Corrections and Juvenile Justice and Senate Committee on Judiciary hearings, proponent testimony was presented by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association and representatives of the Federal Law Enforcement Officers Association. Proponents indicated federal agents frequently collaborate with state and local law enforcement in the course of criminal investigations and service of warrants. No neutral or opponent testimony was provided.

The House Committee amended the bill to add language regarding the federal officer being "uniformed or properly identified" to make the new provisions consistent with provisions in current law. [Note: The Conference Committee retained this amendment.]

According to the fiscal note prepared by the Division of the Budget on HB 2648, as introduced, the OJA estimates there is a potential for increased litigation with a corresponding fiscal effect on the operations of the court system. A fiscal effect could not be determined; however, the OJA estimates any effect would not require additional resources.

The Kansas Sentencing Commission estimates HB 2648 could have an effect on prison admission and bed space; however, the effect could not be estimated. Any fiscal effect associated with enactment of the bill is not reflected in The FY 2019 Governor's Budget Report.

### ***SB 310 (Escape from Custody)***

SB 310 was introduced by the Senate Committee on Judiciary at the request of the Kansas County and District Attorneys Association (KCDAA). In the Senate and House Committees on Judiciary hearings, a representative of the KCDAA appeared in support of SB 310 and explained SB 310 would accommodate the multiple instances in which individuals held in custody are released to attend work programs or medical, dental, or counseling appointments or to accommodate other special needs or circumstances.

The House Committee amended SB 310 to non-substantively modify the structure of the definition of escape. [Note: The Conference Committee retained this amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 310, as introduced, the OJA indicates enactment of SB 310 could increase the number of individuals who are charged with escape from custody because of the expanded definition; however, any fiscal effect upon the Judicial Branch would be negligible.

According to the prison bed impact assessment provided by the Kansas Sentencing Commission, enactment of SB 310 would have no impact on prison admissions or bed space and no impact on the workload of the Commission.

### ***HB 2088 (Expanded Eligibility for SB 123 Program)***

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 Kansas Sentencing Commission.

HB 2088 was introduced by the 2017 House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission. As introduced, HB 2088

would have expanded eligibility for the Senate Bill 123 Program to include all drug severity level 4 possession offenders who have not been convicted of other crimes.

In the 2017 House Committee hearing, a representative of the Kansas Sentencing Commission testified in support of HB 2088, stating it would target the possession offender that engages in small sales of controlled substances, mainly to support their addiction. A representative of the Kansas Association of Criminal Defense Lawyers submitted written-only proponent testimony. A representative of the Kansas Community Corrections Association testified as an opponent of HB 2088, stating expansion of the program only works well when accompanied by expanded funding to treat and supervise offenders. No other testimony was provided.

The 2018 House Committee on Corrections and Juvenile Justice amended HB 2088 by restricting the expansion to offenders with a criminal history of E or lower and making technical changes. [*Note:* The Conference Committee retained this amendment.]

In the Senate Committee on Judiciary hearing, a representative of the Kansas Sentencing Commission testified in support of HB 2088. A representative of the Kansas Community Corrections Association testified as a neutral conferee on HB 2088. No other testimony was provided.

The Senate Committee amended HB 2088 to remove cannibidiol oil (also referred to as “CBD oil”) from the definition of marijuana. [*Note:* The Conference Committee did not retain this amendment.]

According to the fiscal note prepared by the Division of the Budget, dated January 31, 2017, on HB 2088, as introduced, the Kansas Sentencing Commission estimates HB 2088 would result in a decrease of 41 to 110 adult prison beds needed in FY 2018 and a decrease of 71 to 195 adult prison beds needed in FY 2019. By FY 2027, 81 to 219 fewer

beds would be needed. Based on the Department of Corrections' plans to manage with contract beds the projected capacity shortfall of 139 male beds in FY 2017, 101 beds in 2018, and 164 beds in FY 2019, HB 2088 would reduce the Department's costs for contract beds, at \$40 a day, by \$281,342 to \$754,820 in FY 2018 and \$494,064 to \$1,338,090 in FY 2019.

The Kansas Sentencing Commission estimates HB 2088, as introduced, would increase the number of offenders sentenced to the Senate Bill 123 Program by 299 to 445 persons in FY 2018, increasing the reimbursement costs by \$1,015,302 to \$1,516,825 from the State General Fund. This estimate is expected to increase in FY 2019.

[*Note:* See below for the Kansas Sentencing Commission's updated prison bed impact assessment following the House Committee amendment.]

The OJA indicates HB 2088 would increase costs due to increased staff time to determine that public safety would not be jeopardized by placing the additional offenders in the program. Any fiscal effect associated with HB 2088 was not reflected in *The FY 2018 Governor's Budget Report*.

According to the Kansas Sentencing Commission's prison bed impact assessment updated in 2018 to reflect the House Committee amendment, HB 2088 would reduce prison beds by 23 to 62 beds by FY 2019 and by 36 to 99 beds in FY 2028. The amended bill would increase the Senate Bill 123 Program cost by \$1,022,552 to \$1,314,709 in FY 2019, based on an average cost of \$3,598 per SB 123 treatment offender in FY 2017.

### ***HB 2566 (Possession of THC)***

HB 2566 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission. In the House Committee hearing, a

representative of the Kansas Sentencing Commission testified in support of HB 2566. The proponent indicated HB 2566 would align penalties for possession of THC with penalties for possession of marijuana.

A representative of the American Civil Liberties Union of Kansas and a private citizen provided opponent testimony. Written-only opponent testimony was provided by private citizens. The opponents expressed support for legalization of marijuana and related substances for medical purposes. No other testimony was presented.

According to the fiscal note prepared by the Division of the Budget on HB 2566, the OOJA estimates HB 2566 would increase its expenditures in FY 2019 because the number of offenders required to be supervised by court services officers would increase.

The OJA indicates HB 2566 could also increase revenues from fines. However, a precise estimate of additional expenditures and revenues that could be incurred by the Judicial Branch could not be determined.

The Kansas Sentencing Commission indicates HB 2566 would have no fiscal effect on prison admissions, bed space, or the workload of the Commission.

The League of Kansas Municipalities indicates HB 2566 could increase costs for municipalities for recordkeeping and legal fees resulting from additional arrests and court cases related to the possession of THC, but the number of additional cases would vary by city.

counterfeit currency; mistreatment of a dependent adult; mistreatment of an elder person; assault and battery of a law enforcement officer; fugitive; escape from custody; possession of THC; possession of marijuana; drug abuse treatment program; possession of a controlled substance

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