

SESSION OF 2017

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 112**

As Amended by House Committee on Judiciary

**Brief\***

SB 112, as amended, would amend law regarding sentencing for burglary and possession of drug paraphernalia and expungement of arrest records. It would create the crime of aggravated domestic battery and amend the crime of domestic battery. Finally, it would create law regarding the electronic recording of certain custodial interrogations.

***Sentencing for Burglary and Possession of Drug Paraphernalia***

The bill would change burglary of a dwelling with intent to commit a felony, theft, or sexually motivated crime therein to a severity level 7 person felony, rather than a severity level 7 nonperson felony. Effective July 1, 2017, the bill would reduce the severity level for unlawful possession of drug paraphernalia from a Class A to a Class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

***Expungement of Arrest Records***

Effective July 1, 2017, if a person has been arrested as a result of mistaken identity or as a result of another person using identifying information of the named person and the charge against the named person is dismissed or not

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\*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>

prosecuted, the bill would require the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute to provide notice to the court of such action and petition the district court for the expungement of such arrest record. Further, the bill would require the court to order the arrest record and any subsequent court proceedings expunged and purged from all applicable state and federal systems.

The bill would define “mistaken identity” as the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of a person who committed the crime, misinformation provided to law enforcement as to the identity of a person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. Further, the bill would exclude from the definition of “mistaken identity” any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person’s identity.

The bill would allow any person who may have relevant information about the petitioner to testify at the hearing on such petition and would allow the court to inquire into the background of the petitioner. Such a petition would be required to include the same information required in other petitions for expungement of arrest records.

When a court orders expungement of arrest records as described above, the bill would require the order to state the information required in the petition and the grounds for expungement. Additionally, the bill would require the order to direct the Kansas Bureau of Investigation (KBI) to purge the arrest information from the Criminal Justice Information System central repository and all applicable state and federal databases. The clerk of the court would be required to send a certified copy of the order to the KBI, which would carry out the order and notify the Federal Bureau of Investigation, the

Secretary of Corrections, and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the bill would provide that the person eligible for mandatory expungement as described above would be treated as not having been arrested.

### ***Aggravated Domestic Battery***

Effective July 1, 2017, the bill would create the crime of aggravated domestic battery, which would be defined as:

- Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck, or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner; or
- Knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner.

This crime would be a severity level 7 person felony.

The bill would also amend the existing crime of domestic battery by adding “a person with whom the offender is involved or has been involved in a dating relationship” as a possible victim of the offense. The bill would add a definition of “dating relationship” to this section that is based on the existing definition used in the definitions section of the Criminal Code and in the Protection from Abuse Act.

### ***Policies for the Electronic Recording of Custodial Interrogations***

Effective July 1, 2017, the bill would require all Kansas law enforcement agencies to adopt a detailed, written policy concerning the electronic recording of custodial interrogations conducted at a place of detention and to implement such policy on or before July 1, 2018. In developing such policy, the bill would require local law enforcement agencies to collaborate with the county or district attorney in the appropriate jurisdiction regarding its contents. The policy would require electronic recording of the entirety of a custodial interrogation that concerns a homicide or felony sex offense, as well as the making and signing of a statement during the course of such interrogation. The policy would also include retention and storage requirements and a statement of exceptions in some circumstances, such as equipment malfunction or inadvertent failure to operate the recording equipment properly.

The bill would require the policy to be available to all officers and for public inspection during normal business hours. During trial, the bill would allow for officers to be questioned pursuant to the rules of evidence regarding any violation of such a policy. Finally, the bill would provide that every electronic recording of any statement shall be confidential and exempt from the Kansas Open Records Act.

Except as noted above, the bill would be in effect upon publication in the *Kansas Register*.

### **Background**

#### ***SB 112***

SB 112 was introduced at the request of the Kansas County and District Attorneys Association (KCDAA). In the Senate Committee on Judiciary hearing, representatives of

the KCDAA and the Kansas Association of Criminal Defense Lawyers provided testimony in support of the bill and explained the change would make the sentence proportional to the sentence for possession of marijuana, which was made a Class A misdemeanor during the 2016 Session. A private citizen was an opponent of the bill.

The Senate Committee agreed to amend the bill by adding the contents of SB 113, to make residential burglary a person felony. Further background information regarding 113 is provided below.

In the House Committee on Judiciary, a representative of the KCDAA testified in support of the bill. A private citizen testified as an opponent.

The House Committee amended the bill to make the burglary provision effective upon publication in the *Kansas Register*. The House Committee also adopted amendments adding the contents of SB 92, as amended by the Senate Committee, regarding electronic recording of custodial interrogations, and SB 136, as amended by the Senate Committee, regarding mandatory expungement of arrest records. Finally, the House Committee added language based upon HB 2034, regarding strangulation. Further background information regarding SB 91, SB 136, and HB 2034 is provided below.

According to the fiscal note prepared by the Division of the Budget on SB 112, as introduced, the Office of Judicial Administration indicates the bill would have no fiscal effect on Judicial Branch operations. The Kansas Sentencing Commission (Commission) indicates the bill would have no fiscal effect on prison admissions or bed space or the Commission's journal entry workload. Fiscal note information regarding SB 113, SB 92, SB 136, and HB 2034 is provided below.

### **SB 113**

SB 113 was introduced at the request of the KCDA. In the Senate Committee on Judiciary hearing, representatives of the KCDA and the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association appeared in support of the bill. The proponents explained residential burglary was made a nonperson felony in the 2016 Session; however, because of the invasive and potentially dangerous nature of the crime, it is important to victims that it be a person felony. Additionally, the person felony classification would result in a longer sentence for a person convicted of subsequent crimes. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates SB 113 would have no fiscal effect on Judicial Branch operations. The Commission indicates the bill would have no fiscal effect on prison admissions or bed space or the Commission's journal entry workload.

### **SB 92**

SB 92 was introduced following a Judicial Council study of 2016 HB 2593. In the Senate Committee on Judiciary hearing, representatives of the Innocence Project; Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association; Kansas County and District Attorneys Association; and the Project for Innocence and Post-Conviction Remedies at the University of Kansas School of Law appeared in support of the bill. The proponents offered an amendment to clarify that recordings of written statements would only be required in cases involving a homicide or felony sex offense. Representatives of the Kansas Association of Criminal Defense Lawyers and the Kansas Judicial Council offered written-only testimony in support of the bill. A representative of the League of Kansas Municipalities gave opponent testimony but indicated the

League's concerns would be addressed by the proposed amendment.

The Senate Committee adopted the amendment offered by the proponents.

In the House Committee on Judiciary hearing, a citizen and representatives of the Innocence Project; Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association; Kansas County and District Attorneys Association; and League of Kansas Municipalities appeared in support of the bill. The Director of the KBI, Kansas Association of Criminal Defense Lawyers, and Kansas Judicial Council submitted written-only testimony supporting the bill.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates enactment of SB 92, as introduced, could increase Judicial Branch expenditures from prolonged court cases; however, an estimate of costs could not be determined. The Kansas Association of Counties and the League of Municipalities indicates county and city government could also incur additional costs; however, neither was able to provide a precise estimate of costs. The Kansas Highway Patrol indicates it would be required to purchase seven sets of recording equipment at a cost of \$13,000 and incur additional costs for labor, materials, and supplies. The KBI indicates any costs incurred would be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.

### **SB 136**

SB 136 was introduced at the request of Senator Haley. In the Senate Committee on Judiciary hearing, Senator Haley and a representative of Fitting the Description appeared in support of the bill. A representative of the KBI provided written-only neutral testimony. Proponents stated that an

arrest record can negatively impact a person's ability to get a job or secure a loan, and the bill would provide a swift process to ensure a mistaken arrest does not remain on a person's record.

The Senate Committee adopted an amendment with changes recommended by the KBI to exclude from the definition of "mistaken identity" any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person's identity. The amendment would also specify that the arrest record would be expunged and purged from all applicable state and federal systems and would explain the required procedure for such order.

Senator Haley testified in support of the bill in the House Committee on Judiciary hearing. A representative of Fitting the Description submitted written-only testimony supporting the bill.

According to the fiscal note prepared by the Division of the Budget on SB 136, as introduced, the Office of Judicial Administration indicates any fiscal effect resulting from enactment of the bill would be negligible.

### ***HB 2034***

HB 2034 was introduced by the House Committee on Judiciary at the request of the Attorney General. As introduced, the bill would have added elements involving strangulation to the crime of aggravated battery.

In the House Committee hearing, conferees testifying in support of the bill included a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association, and representatives of the Attorney General's Office, Kansas Coalition Against Sexual and Domestic Violence, Johnson County District Attorney's Office, Shawnee Mission Health

Forensic Assessment Consultation and Treatment Program, and Shawnee Mission Medical Center. Written-only testimony supporting the bill was submitted by a citizen.

According to the fiscal note prepared by the Division of the Budget on HB 2034, as introduced, the Office of Judicial Administration indicates enactment of the bill could result in more trials and appeals, requiring additional staff time. The bill could also generate additional docket fees. However, a precise fiscal effect cannot be determined. The Commission indicates enactment of the bill would require 5 additional prison beds in FY 2018 and 5-27 additional beds by FY 2027. Based on a contract rate of \$40 per day, the additional beds could cost the Department of Corrections an additional \$14,600 to \$73,000 in FY 2018 and an additional \$29,200 to \$146,000 in FY 2019. These amounts would be from the State General Fund. Any fiscal effect associated with HB 2034 is not reflected in *The FY 2018 Governor's Budget Report*. No fiscal note was available for the modified strangulation language placed in SB 112 at the time of the House Committee action.