

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 366**

As Agreed to May 1, 2006

Brief*

SB 366 would amend the law dealing with criminal related topics including: use of deadly force, criminal street gangs, dollar threshold amount for different criminal offenses to distinguish a misdemeanor from a felony; manufacturing of illegal drugs and drug paraphernalia; sentencing mitigating factors; commercial value of wildlife; and sentencing guidelines.

Use of Deadly Force

The bill would authorize a person who is not engaged in an unlawful activity and who is attacked in a place where the person has the right to be, to stand his or her ground and fight back with no duty to retreat.

The bill would amend the statutes on use of force in defense of a person, dwelling, or occupied vehicle by explicitly adding the authority for a person to use deadly force against another, if the person reasonably believes death or great bodily harm to the person or a third person is imminent. The bill contains statements that nothing in the bill should be construed to require that a person to retreat if the person is using force to protect themselves, a third person, their dwelling, or an occupied vehicle.

The bill would immunize a person from criminal prosecution and civil action for the use of force. If, however, the force is used against a law enforcement officer, the person using the force would not be immune from criminal prosecution and civil action. The law enforcement officer would have to be in the act of performing his or her official duties and the officer would have to identify himself or herself in accordance with the law, or the person using force knew or reasonably should have known the person was an officer.

*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. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

A law enforcement agency would be permitted to use standard procedures to investigate the use of force. However, the agency would not be permitted to arrest a person for using force unless it determines there is probable cause to arrest.

Criminal Street Gangs

The bill also would establish the Criminal Street Gang Prevention Act. The bill would define a criminal street gang and street gang activities, membership, and association. The bill would further define recruiting criminal street gang membership as causing, encouraging, soliciting, or recruiting another person to join a criminal street gang. Recruiting members would be considered a severity level 6, person felony.

In addition, the bill would define criminal street gang intimidation as communicating, directly or indirectly, with another, any threat of person injury to another; or damage to property with the intent to deter a person from withdrawing from the gang or retaliation against an individual from having withdrawn from a criminal street gang. Criminal street gang intimidation would be a severity level 5, person felony.

The bill also would clarify the definition of criminal street gang now contained in the criminal common nuisance law.

Dollar Threshold-Misdemeanor Felony

The bill would raise the dollar threshold level from \$500 to \$1,000 for 20 different criminal offenses to distinguish a misdemeanor from a felony. In 2004, this same threshold level distinction was made for the crime of theft.

Illegal Drug Manufacturing-Drug Paraphernalia

The bill also would amend the definition of "drug paraphernalia" in KSA 65-4510 to exclude "products" from this definition. The amendment would address a court ruling in *State v. Frazier* 30 KA 2d 398 (2002), which is a drug severity level 1 crime, which held that persons convicted of possession of ephedrine or pseudoephedrine, ingredients used in the manufacture of methamphetamine which is a drug severity level 1 crime, had to be sentenced under the crime of possession of drug paraphernalia which is a drug severity level 4 crime. The bill provides that such a crime would be considered a drug severity level 2 crime.

Sentencing Guidelines

The bill would amend the Kansas sentencing guidelines law dealing with upward departures to add a new aggravating factor when the crime involved two or more participants and the defendant played a major role in the crime as an organizer, leader, recruiter, manager or supervisor.

New Mitigating Factor Added

The sentencing guidelines law would be amended to add a new mitigating factor for defendants who have provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense. In considering this mitigating factor, the court may consider the following:

- The significance and usefulness of the defendant's assistance;
- The truthfulness, completeness and reliability of any information;
- The nature and extent of the defendant's assistance;
- Any injury suffered, or any danger or risk of injury to the defendant or the defendant's family; and
- The timeliness of the assistance.

Commercial Value of Eagles

The bill would amend the commercialization of wildlife statute to raise the statutory minimum value of eagles from \$500 to \$1,000.

Conference Committee Action

The Conference Committee agreed to the House amendments to the bill plus the following changes:

- Clarified the use of force provisions;
- Inserted provisions of HB 2122 raising the dollar threshold distinguishing misdemeanors from felony crimes in 20 criminal statutes and increased the statutory commercial value of eagles;

- Inserted the new mitigating factor in the sentencing guideline law; and
- Amended the definition of “drug paraphernalia” and amended the crime of possessing certain products used in the manufacture of drugs to reduce the penalty from a drug severity level 1 crime to a drug severity level 2 crime.

Background

SB 366 was supported by Senator Mike Petersen, the Kansas Attorney General’s Office and the Kansas Securities Commissioner.

The bill was viewed as a means to deal with gang activity and other organized criminal activity.

The Senate Committee amendment was clarifying.

The House Committee inserted the term participants for the term offenders.

The House Committee of the Whole amended the bill as follows:

- Inserted the provisions regarding deadly force. These were taken from HB 2577.
- Inserted the provisions regarding criminal street gangs. These were taken from SB 458.

The sponsor appeared in favor of the bill. Other support for the measure was expressed on behalf of the Johnson County District Attorney, the prosecutor for the City of Overland Park, the City of Lenexa and the Lenexa Police, and the Chief Legal Counsel for the Kansas Department of Wildlife and Parks. There was no opposition to the bill.

The crimes amended to change the felony threshold amount include the following:

- Misappropriation of funds in violation of an agreement;
- Fraudulent claims made to Water District No. 1 of Johnson County;
- Mistreatment of a dependent adult;

- Giving a worthless check;
- Criminal damage to property;
- Criminal use of a financial card;
- Impairing a security interest;
- counterfeiting;
- Making a false claim to the Medicaid program;
- Official misconduct of a public officer or employee;
- Presenting a false claim to a public officer or body;
- Presenting a false claim to the state or any political subdivision;
- Criminal desecration;
- Commercialization of wildlife;
- Selling or disposing of public assistance;
- Insurance agent or broker misuse of premiums;
- Engaging in fraudulent insurance acts;
- Violating the viatical settlement contract law;
- Violations of the workers compensation law;
- Damaging an animal facility or field crop.

The fiscal note indicates that the Kansas Sentencing Commission estimates that HB 2122, prior to Senate Committee amendments, would reduce the need for prison beds by between five and 11 beds by the end of FY 2006 and by seven to 14 beds by FY 2015. The Department of Corrections may experience fewer expenditures resulting from the passage of this bill. The reduction in the annual costs would be approximately \$2,000 per inmate for basic support, including food service. Reductions in expenditures for health care could be incurred, if the decrease would be necessary under terms of the medical contract. Provisions of the health care contract provide that whenever the inmate count at a facility changes by more than a specified percentage, an adjustment in contract payments is made. The amount of any adjustment would depend on the specific facility involved. Any fiscal effect resulting from this bill has not been accounted for in *The FY 2006 Governor's Budget Report*.

use of deadly force; criminal street gangs; dollar thresholds; manufacturing of illegal drugs