

SESSION OF 2014

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2448**

As Agreed to April 3, 2014

Brief*

Senate Sub. for HB 2448 would amend portions of the law concerning DNA collection; interference with judicial process; provisions related to 2013 HB 2170, known as the Justice Reinvestment Act; driving under the influence (DUI) and test refusal expungement; and jury conduct.

DNA Collection—Katie's Law

The bill would amend the criminal code concerning the Kansas Bureau of Investigation's (KBI's) collection of DNA samples. This section would be known as Katie's Law.

The bill would remove references to drawing blood and require the specified persons to submit biological samples to the KBI when a person is fingerprinted as part of the booking procedure, or as soon as practicable. The KBI would provide the necessary kits and supplies for collection, and no profile records would be accepted for admission or comparison unless obtained in substantial compliance with the provisions of the bill by an accredited forensic laboratory meeting the national DNA index guidelines established by the Federal Bureau of Investigation. If the person's DNA sample was not properly obtained, the person would be required to provide another sample. Additionally, a sample collected by a law enforcement agency or juvenile justice agency in substantial

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compliance with the provisions of the bill, or any evidence based upon or derived from such sample, could not be excluded as evidence in any criminal proceeding on the basis that the sample was not validly obtained.

The bill also would amend provisions outlining who is required to submit such a sample. Any person required to register as an offender pursuant to the Kansas Offender Registration Act would be required to submit a sample. The bill would clarify that a person would be required to submit a sample when arrested for or charged with lewd and lascivious behavior only if the crime was committed in the presence of a person 16 or more years of age. A person arrested for or charged with buying sexual relations would be required to submit a sample only if such person is less than 18 years of age. Further, the bill would specify that persons who were incarcerated on May 2, 1991, for a crime committed prior to that date would be required to submit a sample prior to final discharge or conditional release.

The bill would make it a class A nonperson misdemeanor for a person who has possession of or access to samples or profile records maintained by the KBI due to such person's employment or official position to disseminate such samples or records except in strict accordance with applicable laws, or for a criminal justice agency to request profile records without a legitimate need for such records. A conviction under these provisions would constitute good cause for termination or licensure revocation or suspension.

Finally, the bill would strike provisions that are outdated, make other technical amendments, and define key terms.

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."

Justice Reinvestment Act

The bill 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.

DUI and Test Refusal Expungement

The bill would reduce the period before which a person with a conviction of or diversion for DUI may petition for expungement of the conviction or diversion from ten years to seven years. The bill also would raise the expungement period for a conviction of or diversion for refusal to submit to a test to determine the presence of alcohol or drugs (test refusal) from three years to seven years.

Jury Conduct

If the jury is permitted to separate either during the trial or after the case is submitted to them, the bill would require the court to admonish them to immediately report any attempt by another person to converse with them on any subject of the trial. The bill would strike language requiring the court to admonish the jury it is their duty not to “form or express an opinion” on any subject of the trial until it is finally submitted to them. Instead, the bill would require the court to admonish the jury it is their duty not to make any final determinations or express any opinion on any subject of the trial until the case is finally submitted to them.

The bill would strike language allowing the jury to request the officer to conduct them to the court to receive information on a point of law or to have the evidence read or exhibited to them in the presence of the defendant, unless the defendant voluntarily absents himself, and his counsel and after notice to the prosecuting attorney. In lieu of this

procedure, subject to the court's discretion, the bill would allow the jury, upon retiring for deliberation, to take any admitted exhibits into the jury room to review them without further permission from the court. The court could provide equipment to facilitate review. Further, the bill would provide that the jury would be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated, and submitted in writing to the bailiff. The court would be required to notify the parties of the contents of the questions and provide them an opportunity to discuss an appropriate response. The bill would require the court to respond to all questions from a deliberating jury in open court or in writing and would allow the court to grant a jury's request to rehear testimony. The bill also would require the defendant to be present during the discussion of such written questions and during response given in open court, unless such presence is waived. Written questions from the jury, the court's response, and any objections thereto would be made a part of the record.

Finally, the bill would provide that the amendments would establish a procedural rule and, as such, would be construed and applied retroactively.

Conference Committee Action

The Conference Committee agreed to the Senate amendments to Senate Sub. for HB 2448, and further agreed to delete the provisions related to the Kansas Racketeer Influenced and Corrupt Organization (RICO) Act added by the Senate Judiciary Committee (SB 404). Further, the Conference Committee agreed to make a technical amendment restoring language inadvertently removed by HB 2252, which the Governor signed April 1, 2013, and to add the amended contents of HB 2490, concerning jury conduct and DNA collection, and HB 2662, concerning expungement of DUI and test refusal convictions and diversions.

The Conference Committee agreed to amend the DNA

collection provisions by adding an amendment suggested by the KBI clarifying when expungement may occur and defining additional terms. Additionally, the Conference Committee agreed to an amendment that would make it a class A nonperson misdemeanor for a person who has possession of or access to samples or profile records maintained by the KBI due to such person's employment or official position to disseminate such samples or records except in strict accordance with applicable laws, or for a criminal justice agency to request profile records without a legitimate need for such records. A conviction under these provisions would constitute good cause for termination or licensure revocation or suspension.

Finally, the Conference Committee agreed to establish seven years as the time for expungement of DUI and test refusal convictions and diversions.

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 HB 2448, concerning interference with the judicial process.

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 Senate 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 Senate Committee recommended the bill be passed as a substitute bill.

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.

Background—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—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.

Background—HB 2490

In the House Judiciary Committee, a representative of the Office of the Attorney General appeared in support of the HB 2490 and stated the bill was intended to conform the law to the actual practice of district courts and juries and was patterned after other states' laws regarding similar subject matter. A representative of the Leavenworth County Attorney Office also appeared in support of the bill, and a representative of the Kansas Association of Criminal Defense Lawyers offered neutral testimony.

The House Committee amended the bill to remove language that would have allowed jurors to assimilate and evaluate the evidence as it accumulates during the trial and prohibit deliberation before the case is finally submitted to them. Additionally, the Committee added language to clarify that the jury's ability to take any admitted exhibits into the jury room would be at the court's discretion.

The same proponents appeared in support of the bill in the Senate Judiciary Committee.

The Senate Judiciary Committee amended the bill to add the DNA provisions of 2013 HB 2120, which was vetoed due to concerns about the constitutionality of language regarding raffles that had been added to HB 2120.

The Senate Committee of the Whole amended the bill to state the provisions of the bill concerning DNA collection would be known as Katie's Law.

The fiscal note prepared by the Division of the Budget states HB 2490, as introduced, would have no fiscal effect on the revenues or expenditures of the Judicial Branch.

Background—2013 HB 2120

In the House Committee on Corrections and Juvenile Justice, a representative of the KBI appeared in support of HB 2120 and explained that these revisions are recommended as saliva, rather than blood, is used more often for DNA samples, and other technical changes are necessary to remove conflicts and clean up the language.

The House Committee amended the bill to strike language that would have allowed a court to order a person to submit a sample upon conviction or adjudication for any crime and to clarify language concerning the validity of these samples as evidence.

A representative of the KBI also offered testimony in support of the bill in the Senate Committee on Judiciary.

The fiscal note prepared by the Division of the Budget for HB 2120, as introduced, indicates passage of the bill could have an effect on the Judicial Branch, but the precise impact is unknown. Passage of the bill would have no effect on the KBI or the Juvenile Justice Authority.

Background—HB 2662

The bill was introduced by the House Committee on Federal and State Affairs. As introduced, the bill would have reduced the expungement period for DUI to three years.

In the House Committee on Corrections and Juvenile Justice, Representative Thimesch spoke in support of the bill. Several citizens submitted written testimony supporting the bill. A representative of the Division of Vehicles within the Department of Revenue provided neutral testimony suggesting the bill be amended to provide a five-year expungement period for DUI to match the expungement period for other habitual violator offenses. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association testified in opposition to the bill.

The House Committee adopted the amendment proposed by the Division of Vehicles and added the test refusal provision.

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

DNA collection; interference with judicial process; Justice Reinvestment Act; DUI and test refusal expungement; jury conduct

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