

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2092**

As Agreed to April 6, 2017

**Brief\***

HB 2092 would amend law related to probation revocation, public disclosure of probable cause affidavits, mandatory minimum sentences, sentencing for capital crimes for intellectually disabled persons, decay of juvenile adjudications, and appeal of petitions for grand juries, as follows.

***Probation Revocation***

The bill would allow a court to revoke probation, assignment to a community corrections program, suspension of a sentence, or nonprison sanction of an offender without having previously imposed an intermediate sanction if such probation, assignment, suspension, or sanction was originally granted as a result of a dispositional departure.

***Disclosure of Probable Cause Affidavits***

The bill would amend law regarding the disclosure to the public of affidavits or sworn testimony underlying an arrest warrant to clarify the timing of notification to the defendant of a request for disclosure. Specifically, the bill would prescribe that such notice shall be provided upon entry of appearance by an attorney on behalf of the defendant or upon indication by the defendant to the court that the defendant will represent

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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>

the defendant's self. Existing law requires notification of the defendant upon the filing of the request for disclosure.

### ***Mandatory Minimum Sentences***

The bill would amend law concerning mandatory minimum terms of imprisonment (mandatory minimum sentences) for persons who receive life sentences. In the statutes imposing the mandatory minimum sentence, the bill would specify those provisions would not apply if, based on the defendant's criminal history classification, the defendant would be subject to presumptive imprisonment and the sentencing range for a severity level 1 crime is greater than the mandatory minimum sentence. The bill would clarify further that, in such case, the defendant would be required to serve a mandatory minimum sentence equal to the sentence established for a severity level 1 crime. Additionally, in such case, the bill would state the defendant would not be eligible for parole prior to serving such mandatory minimum sentence and would prohibit such mandatory minimum sentence from being reduced by the application of good time credits. No other sentence would be permitted.

### ***Sentencing for Persons with Intellectual Disability***

The bill would amend the statute governing sentencing for a person with an intellectual disability who is convicted of the crime of capital murder or first degree premeditated murder. Specifically, the bill would clarify that the existing prohibition in this statute against sentencing such person to a "mandatory term of imprisonment" means imposing a sentence under the "Hard 50" statute and the accompanying statutes setting forth the aggravating and mitigating factors used in imposing this sentence.

### ***Juvenile Adjudication Decay***

The bill would amend statutes governing the determination of criminal history by adding that no juvenile adjudication for an offense that would be a non-drug severity level 5 through level 10 felony, drug felony, nongrid felony, or misdemeanor if committed by an adult would be considered and scored if the current crime was committed at least five years after the date of the prior adjudication and the offender has no new adjudications or convictions during that period.

### ***Appeal of Grand Jury Petitions***

The bill would amend the law concerning grand juries summoned by petition. The bill would provide that, if a grand jury is not summoned because of a finding the petition, which is substantially in the form required by law on its face, is not in proper form, the person who filed the petition and whose name, address, and phone number appear on the face of each petition would have the right to appeal the decision to not summon a grand jury as a final judgment to the Kansas Court of Appeals. The bill would also amend the statute governing sufficiency of petitions for elections to provide it does not apply to grand jury petitions.

### **Conference Committee Action**

The Conference Committee agreed to the Senate version of HB 2092. It further agreed to add the provisions of:

- SB 42, as introduced and passed by the Senate, regarding mandatory minimum sentences;
- HB 2271, as recommended by the House Committee on Corrections and Juvenile Justice, regarding sentencing of persons with intellectual disabilities;

- HB 2093, as amended by the House Committee of the Whole, regarding decay of juvenile adjudications, with technical and clarifying changes; and
- SB 62, as amended by the Senate Committee on Judiciary, regarding appeal of grand jury petitions.

## **Background**

### ***HB 2092***

HB 2092 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission (KSC). As introduced, passed by the House on final action on February 9, and heard by the Senate Committee on Judiciary, the bill contained provisions amending the severity level of various criminal penalties that are based on monetary value.

The Senate Committee amended the bill by adding the contents of HB 2260, regarding probation revocation, and HB 2320, as amended by the House Committee, regarding disclosure of probable cause affidavits. Further background information regarding HB 2260 and HB 2320 is provided below.

The Senate Committee of the Whole amended the bill to remove the provisions of HB 2092, as introduced, regarding the severity level of various criminal penalties.

The fiscal note prepared by the Division of the Budget on HB 2092, as introduced, contains no information regarding the provisions of HB 2092, as amended by the Senate Committee of the Whole. Fiscal note information for HB 2260 and HB 2320 is provided below.

### *HB 2260—Probation Revocation*

HB 2170 (2013), known as the Justice Reinvestment Act, established a series of graduated, intermediate sanctions for persons violating conditions of probation, assignment to community corrections, suspension of sentence, or nonprison sanction, including two-day or three-day confinement in jail and 120-day or 180-day confinement in the custody of the Kansas Department of Corrections (DOC).

HB 2260 was introduced by the House Committee on Judiciary at the request of the Kansas County and District Attorneys Association (KCDAA). In the House and Senate Committees on Judiciary hearings, KCDAA presented testimony in support of the bill. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget on HB 2260, the Office of Judicial Administration indicates enactment of the bill could result in an increase of probation revocations but could not determine a precise fiscal effect. According to the prison bed impact assessment prepared by the KSC on the bill, enactment of the bill would reduce adult prison admissions by 47 in FY 2018 and FY 2019, but would increase adult prison beds needed by 13 in FY 2018 and 16 in FY 2019. Based on a contract rate of \$40 per day, it may cost the DOC an additional \$89,206 in FY 2018 and \$109,792 in FY 2019 for contract jail beds in the case of an anticipated bedspace shortfall. DOC indicates it would avoid costs of \$322,514 in FY 2018 and FY 2019 due to the estimated reduction in prison admissions.

Any fiscal effect associated with enactment of HB 2260 is not reflected in *The FY 2018 Governor's Budget Report*.

### *HB 2320—Disclosure of Probable Cause Affidavits*

HB 2320 was introduced by the House Committee on Judiciary at the request of the Kansas District Judges

Association. In the House Committee hearing, a district court judge from the Eleventh Judicial District testified in support of the bill, stating the timing under existing law sometimes leads to the expiration of a defendant's time to respond to the request for disclosure before the court has had an opportunity to notify the defendant of the request. No neutral or opponent testimony was provided.

The House Committee adopted an amendment requested by the conferee to clarify the change in the law.

In the Senate Committee on Judiciary hearing, the same proponent testified as before the House Committee. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget on HB 2320, the Office of Judicial Administration indicates any fiscal effect would be negligible.

#### ***SB 42—Mandatory Minimum Sentences***

SB 42 was introduced at the request of the Office of the Attorney General. In the Senate Committee on Judiciary hearing, representatives of the Office of the Attorney General and the KCDAA provided testimony in support of the bill. Proponents explained the bill would clarify sentencing provisions so persons convicted of the most serious crimes are punished appropriately and consistently with their actions and criminal history. No other testimony was provided.

In the House Committee on Corrections and Juvenile Justice hearing, a representative of the Office of the Attorney General testified in support of the bill. No other testimony was provided.

The House Committee recommended a substitute bill for SB 42 containing provisions related to the juvenile justice system. [*Note:* The Conference Committee did not include these provisions in the report for HB 2092. They are included

in the conference committee report for House Substitute for SB 42.] The House Committee then placed the original contents of SB 42 into a substitute bill for HB 2264, which was below the line on General Orders on the House Calendar as of the date of conference committee action on HB 2092.

According to the fiscal note prepared by the Division of the Budget on SB 42, as introduced, the KSC indicates enactment of the bill would have no fiscal effect on prison admissions or bed space as the sentence lengths are beyond the ten-year forecasting period. Additionally, the Office of Judicial Administration indicates the bill would have no fiscal effect on the revenues or expenditures of the Judicial Branch.

***HB 2271—Sentencing For Persons With Intellectual Disability***

HB 2271 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Office of the Attorney General. In the House Committee hearing, a representative of the Office of the Attorney General testified in support of the bill, stating the bill is intended to clarify the sentences that may and may not be imposed on a person with an intellectual disability convicted of the specified crimes. Recent legislative amendments and a Kansas Supreme Court case may have made application of the existing law ambiguous. Written-only proponent testimony was received from the KCDAA. No opponent or neutral testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration, Kansas Association of Counties, and Board of Indigents' Defense Services indicate enactment of HB 2271 would have no fiscal effect. The Office of the Attorney General indicates enactment of the bill may affect current and future appeals but cannot estimate a fiscal effect. Any fiscal effect is not reflected in *The FY 2018 Governor's Budget Report*.

### ***HB 2093—Juvenile Adjudication Decay***

HB 2093 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the KSC. In the House Committee hearing, a representative of the KSC testified in favor of the bill, and the Kansas Association of Criminal Defense Lawyers provided written-only testimony in favor of the bill. A representative of the KCDAA testified in opposition to the bill. No neutral testimony was provided.

The House Committee made a technical amendment to the bill.

The House Committee of the Whole adopted an amendment that would clarify that a retroactivity provision within the statute applies only to amendments made by section 1 of chapter 5 of the 2015 Session Laws.

In the Senate Committee on Judiciary hearing, a representative of the KSC testified in favor of the bill, and a representative of the Kansas Association of Criminal Defense Lawyers submitted written-only proponent testimony. A representative of the KCDAA testified in opposition to the bill. A representative of the Kansas Association of Court Services Officers submitted written-only testimony requesting a clarifying amendment. [Note: The proposed change made by the requested amendment was adopted by the Conference Committee on HB 2092.]

According to the fiscal note prepared by the Division of the Budget, the KSC determined HB 2093, as introduced, may affect adult prison beds and the agency's workload, but the KSC could not provide a precise estimate.

### ***SB 62—Appeal of Grand Jury Petitions***

SB 62 was introduced at the request of American Family Action. In the Senate Committee on Judiciary hearing, a



representative of American Family Action appeared in support of the bill. The representative provided an excerpt from a district court journal entry of dismissal stating there is no statutory right to appeal in the grand jury statutes. A representative of Kansans for Life submitted written-only proponent testimony. No other testimony was provided.

The Senate Committee adopted an amendment to remove the right to appeal based on the required signatures and to clarify the person who filed the petition could appeal if the grand jury is not summoned because the petition, substantially in the form required on its face, is not in its proper form.

In the House Committee on Judiciary hearing, representatives of American Family Action and Kansans for Life testified in support of the bill. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates SB 62, as introduced, could increase Judicial Branch expenditures beginning in FY 2018 for additional staff time spent by appellate court employees and appellate court judges in processing and deciding cases, as well as additional revenues from docket fees for additional appellate cases filed. However, a fiscal effect cannot be estimated. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.

probation revocation; intermediate sanctions; dispositional departures; arrest warrants; probable cause affidavits; disclosure; mandatory minimum sentences; capital murder; first degree premeditated murder; sentencing for person with intellectual disability; criminal history; juvenile adjudications; decay; grand juries; petition; appeals

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