

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2085

As Amended by Senate Committee on Judiciary

Brief*

HB 2085, as amended, would amend provisions regarding postrelease supervision for persons convicted of sexually violent crimes and law governing the correction of an illegal sentence.

The bill would clarify that lifetime postrelease supervision is to be imposed on offenders sentenced to imprisonment for a sexually violent crime committed on or after July 1, 2006, if the offender was 18 years of age or older when the crime was committed. It would further establish a mandatory period of 60 months postrelease supervision, plus good time and program credit earned and retained, for offenders sentenced to imprisonment for a sexually violent crime committed on or after the effective date of the bill, if the offender was under 18 years of age when the crime was committed. Current statute provides for lifetime postrelease supervision for all persons convicted of a sexually violent crime committed on or after July 1, 2006, regardless of the offender's age.

The bill would also clarify that a separate provision regarding postrelease supervision for persons sentenced to a term of imprisonment for a sexually violent crime applies only to such crimes committed on or after July 1, 1993, but prior to July 1, 2006.

The existing right to a hearing regarding an illegal sentence would be made inapplicable if the motion, files, and records of the case conclusively show that the defendant is

*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>

entitled to no relief. The bill also would define “illegal sentence” and specify that a sentence would not fall within that definition due to a change in the law occurring after the sentence is pronounced.

The bill would be in effect upon publication in the *Kansas Register*.

Background

HB 2085—Postrelease Supervision

HB 2085 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission. As introduced, the bill contained the provisions regarding postrelease supervision for persons convicted of sexually violent crimes.

In the House Committee hearing, representatives of the Kansas Sentencing Commission and the Department of Corrections (KDOC) testified in support of the bill, stating the bill was intended to establish a postrelease supervision period for juveniles convicted of a sexually violent offense, in light of the Kansas Supreme Court’s decision in *State v. Dull*, 302 Kan. 32 (2015), which held mandatory lifetime postrelease supervision for juveniles to be unconstitutional. A representative of the Office of the Attorney General (AG’s Office) also testified in support of the bill and offered a proposed amendment to clarify the application of a separate provision regarding postrelease supervision for persons convicted of sexually violent crimes, following the rationale of the Kansas Court of Appeals in *State v. Herrmann*, ___ Kan. App. 2nd ___, 384 P.3d 1019 (2016).

The House Committee adopted the amendment proposed by the AG’s Office.

In the Senate Committee on Judiciary hearing, representatives of the Kansas Sentencing Commission and the KDOC testified in support of the bill. The Senate Committee amended the bill to add the provisions of HB 2035, regarding illegal sentences. Further background information regarding HB 2035 is provided below.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration states HB 2085, as introduced, would not have a fiscal effect on the Judicial Branch, and the Sentencing Commission estimates the bill would not affect prison admissions or beds. Fiscal note information for HB 2035 is provided below.

HB 2035—Illegal Sentences

HB 2035 was introduced by the House Committee on Judiciary at the request of the Attorney General. In the House and Senate Committees on Judiciary hearings, a representative of the Attorney General testified in support of the bill, stating that the changes proposed by the bill, with the exception of the provision regarding a change in the law, reflected case law established by the Kansas Supreme Court. No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget on HB 2035, the Office of Judicial Administration indicates the bill could decrease expenditures by reducing the number of motions to correct illegal sentences, but a precise estimate cannot be provided.