

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2088

As Amended by Senate Committee on Judiciary

Brief*

HB 2088, as amended, would expand eligibility for the nonprison sanction of placement in a certified drug abuse treatment program for offenders convicted of unlawful possession of a controlled substance. Eligibility would be expanded from offenders convicted of a drug severity level 5 possession offense who have not been convicted of certain other crimes, to include offenders convicted of a severity level 4 possession offense with a criminal history of E or lower who have not been convicted of certain other crimes.

Under continuing law, an offender is classified as criminal history level "E" if the offender has at least three nonperson felonies but no person felonies.

The bill would also amend the definition of "marijuana" in the Criminal Code and the Uniform Controlled Substances Act (Act) to replace a provision excluding from the definition any substance listed in schedules II through V of the Act with a provision excluding from the definition cannabidiol, when included in a non-intoxicating oil substance that does not include any controlled substance ingredients.

The Act would also be amended to remove from schedule IV cannabidiol, when comprising the sole active ingredient of a drug product approved by the U.S. Food and Drug Administration.

The bill would also make technical amendments to update statutory references and ensure consistent phrasing.

*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>

Background

SB 123 (2003) created a nonprison sanction of certified substance abuse treatment for certain drug offenders. Commonly referred to as the “Senate Bill 123 Program,” this program is administered by the Kansas Sentencing Commission.

HB 2088 was introduced by the 2017 House Committee on Corrections and Juvenile Justice at the request of the Kansas Sentencing Commission. As introduced, the bill would have expanded eligibility for the Senate Bill 123 Program to include all drug severity level 4 possession offenders who have not been convicted of other crimes.

In the 2017 House Committee hearing, a representative of the Kansas Sentencing Commission testified in support of the bill, stating it would target the possession offender that engages in small sales of controlled substances, mainly to support their addiction. A representative of the Kansas Association of Criminal Defense Lawyers submitted written-only proponent testimony. A representative of the Kansas Community Corrections Association testified as an opponent of the bill, stating expansion of the program only works well when accompanied by expanded funding to treat and supervise offenders.

The 2018 House Committee on Corrections and Juvenile Justice amended the bill by restricting the expansion to offenders with a criminal history of “E” or lower and making technical changes.

In the Senate Committee on Judiciary hearing, a representative of the Kansas Sentencing Commission testified in support of the bill. A representative of the Kansas Community Corrections Association testified as a neutral conferee on the bill. No other testimony was provided.

The Senate Committee amended the bill to remove cannabidiol oil (also referred to as “CBD oil”) from the definition of marijuana.

According to the fiscal note prepared by the Division of the Budget, dated January 31, 2017, on the bill, as introduced, the Kansas Sentencing Commission estimates the bill would result in a decrease of 41 to 110 adult prison beds needed in FY 2018 and a decrease of 71 to 195 adult prison beds needed in FY 2019. By FY 2027, 81 to 219 fewer beds would be needed. Based on the Department of Corrections’ plans to manage with contract beds the projected capacity shortfall of 139 male beds in FY 2017, 101 beds in 2018, and 164 beds in FY 2019, the bill would reduce the Department’s costs for contract beds, at \$40 a day, by \$281,342 to \$754,820 in FY 2018 and \$494,064 to \$1,338,090 in FY 2019.

The Kansas Sentencing Commission estimates the bill, as introduced, would increase the number of offenders sentenced to the Senate Bill 123 Program by 299 to 445 persons in FY 2018, increasing the reimbursement costs by \$1,015,302 to \$1,516,825 from the State General Fund. This estimate is expected to increase in FY 2019.

[*Note:* See below for the Kansas Sentencing Commission’s updated prison bed impact assessment following the House Committee amendment.]

The Office of Judicial Administration indicates the bill would increase costs due to increased staff time to determine that public safety would not be jeopardized by placing the additional offenders in the program. Any fiscal effect associated with the bill was not reflected in *The FY 2018 Governor’s Budget Report*.

According to the Kansas Sentencing Commission’s prison bed impact assessment updated in 2018 to reflect the House Committee amendment, the bill would reduce prison beds by 23 to 62 beds by FY 2019 and by 36 to 99 beds in

FY 2028. The amended bill would increase the Senate Bill 123 Program cost by \$1,022,552 to \$1,314,709 in FY 2019, based on an average cost of \$3,598 per SB 123 treatment offender in FY 2017.