

SESSION OF 2017

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2092**

As Amended by Senate Committee on Judiciary

**Brief\***

HB 2092 would amend the penalty provisions of various crimes related to monetary value, law related to probation revocation, and law related to public disclosure of probable cause affidavits, as follows.

***Penalty Provisions Based on Monetary Value***

The bill would amend the penalty provisions of various crimes where the penalty level depends on monetary value to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floors for the lowest felony penalties and floors or ceilings for applicable exceptions would be changed to \$1,500.

The crimes, along with the penalty levels that would be divided by the \$1,500 threshold, are as follows:

- Mistreatment of a dependent adult: class A person misdemeanor and severity level 7 person felony;
- Theft of property lost, mislaid, or delivered by mistake: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Criminal damage to property: class B nonperson misdemeanor and severity level 9 nonperson felony;

---

\*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>

- Giving a worthless check: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Counterfeiting: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Criminal use of a financial card: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Impairing a security interest: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Medicaid fraud: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Official misconduct: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Presenting or permitting a false claim: class A nonperson misdemeanor and severity level 9 nonperson felony;
- Misuse of public funds: class A nonperson misdemeanor and severity level 9 nonperson felony; and
- Criminal desecration: class A nonperson misdemeanor and severity level 9 nonperson felony.

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

## **Background**

### ***HB 2092—Penalty Provisions***

HB 2092 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 amending penalties based on monetary value. In the House Committee on Corrections and Juvenile Justice and Senate Committee on Judiciary hearings, a representative of the Kansas Sentencing Commission testified in support of the bill. The Kansas Association of Criminal Defense Lawyers provided written-only testimony supporting the bill. No neutral or opponent testimony was provided.

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

According to the fiscal note prepared by the Division of the Budget on HB 2092 as introduced, the Office of Judicial Administration (OJA) indicates the bill would result in additional offenders being supervised by court services, but any additional expenditures could be absorbed within existing resources. OJA estimates the bill would decrease revenues to the Correctional Supervision Fund by approximately \$560 and to the State General Fund by approximately \$400.

The Kansas Sentencing Commission estimates the bill would reduce prison bed needs by up to three beds each year over the next ten years. Based on these estimates, the Kansas Department of Corrections estimates expenditures could be reduced by up to \$20,586 each year.

The Attorney General's Office states the agency prosecutes certain crimes affected by the bill and there could be a fiscal effect, but the Office cannot estimate an amount. Any fiscal effect associated with the enactment of the bill is not reflected in *The FY 2018 Governor's Budget Report*.

Fiscal note information for HB 2260 and HB 2320 is provided below.

#### ***HB 2260—Probation Revocation***

2013 HB 2170, 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.

HB 2260 was introduced by the House Committee on Judiciary at the request of the Kansas County and District Attorneys Association (KCDAA). At the House and Senate Committees on Judiciary hearings, KCDAA presented

testimony in support of the bill. No other testimony was presented.

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 Kansas Sentencing Commission 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 Department of Corrections 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. The Department of Corrections 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 that 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.