

SESSION OF 2017

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 42**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

House Sub. for SB 42 would create and amend law related to the Kansas juvenile justice system and the changes made to the system by 2016 SB 367, as follows.

[*Note:* House Sub. for SB 42 amends several statutory provisions that, pursuant to amendments made or new statutes created by 2016 SB 367, have not yet taken effect. Such amendments to future versions of existing statutes or to new statutes that have not yet taken effect are noted in this brief.]

Absconding from Supervision

The bill would amend the Revised Kansas Juvenile Justice Code (Juvenile Code) statute requiring community-based graduated responses for technical violations of probation to state that absconding from supervision shall not be considered a technical violation of probation and to allow a court to issue a warrant after reasonable efforts to locate a juvenile who has absconded are unsuccessful. The statute governing overall case length limits (effective July 1, 2017) would be amended to provide that probation term limits and overall case length limits shall be tolled during any time that a juvenile has absconded from supervision while on probation.

The statute governing failure to obey conditions of conditional release (version effective July 1, 2017) would be

*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>

amended to add absconding from supervision as an event allowing the supervising officer to file a report with the court describing the alleged violation and the juvenile's history of violations. (The existing procedure in this version of the statute would then allow the court, following notice and hearing, to find a violation and modify or impose additional conditions of release.)

The statute governing when a juvenile may be taken into custody would be amended to add absconding from supervision as an event allowing a supervising officer to request a warrant, and the statute governing issuance of warrants (version effective July 1, 2017) would be amended to allow a court to issue a warrant commanding the juvenile be taken into custody if there is probable cause to believe the juvenile has absconded from supervision. The statute governing violation of conditions of probation or placement (version effective July 1, 2017) would be amended to add absconding from supervision to the findings enabling a court to extend or modify the terms of probation or placement or enter another sentence.

Immediate Intervention Programs

The bill would amend the statute regarding confidential data exchange for the juvenile justice system to require the Kansas Department of Corrections (KDOC) to establish and maintain a statewide searchable database containing information regarding juveniles who participate in an immediate intervention program. County and district attorneys, judges, community supervision officers, and juvenile intake and assessment workers would have access to the database and be required to submit necessary data to the database. KDOC would be required to, in consultation with the Office of Judicial Administration (OJA), adopt rules and regulations to implement the database.

The statute governing immediate intervention programs would be amended to exclude juveniles charged with a sex offense from a provision requiring the opportunity for

participation in an immediate intervention program be offered to juveniles charged with a misdemeanor. The bill would also specify that participation in an immediate intervention program would not have to be offered to a juvenile who has participated in such a program for a previous misdemeanor or to a juvenile who was originally charged with a felony but had the charge amended to a misdemeanor as a result of a plea agreement. The bill would clarify that nothing in this statute would require a juvenile to participate in an immediate intervention program when the county or district attorney has declined to continue with prosecution of an alleged offense.

Sentencing and Placement

The bill would amend the Juvenile Code statutes governing sentencing alternatives (version effective July 1, 2017) and the placement matrix (version effective July 1, 2017) to provide that, upon a finding by the trier of fact during adjudication that a firearm was used in the commission of a felony offense by the juvenile, the judge may commit the juvenile directly to the custody of the Secretary of Corrections for placement in a juvenile correctional facility (JCF) or a youth residential facility for a term of 6-18 months, regardless of the risk level of the juvenile. Additionally, the court could impose a period of conditional release of up to six months, subject to graduated responses. The Secretary or designee would be required to notify the court of the juvenile's anticipated release date 21 days prior to such date. (Under the existing sentencing alternatives and placement matrix enacted by 2016 SB 367, placement in a JCF may be made only where the judge finds and enters into the written record that the juvenile poses a significant risk of harm to another or damage to property and the juvenile has either been adjudicated for high-level felonies or has certain prior offenses and is assessed as high-risk on a risk and needs assessment.)

The bill would amend the sentencing alternatives statute (version effective July 1, 2017) to remove a three-month limit

on short-term alternative placement allowed when a juvenile is adjudicated of certain sex offenses and certain other conditions are met.

The bill would amend the placement matrix statute (version effective July 1, 2017) to consolidate the categories of serious offender III and serious offender IV, which carry the same risk-level requirements and JCF commitment terms, into a single serious offender III category.

The bill would amend the Juvenile Code statute governing jurisdiction to remove a provision requiring the Secretary for Children and Families to address issues of abuse and neglect by parents and to prepare parents for the child's return home in cases where a sentencing court orders the continued placement of the juvenile as a child in need of care.

Timing of Overall Case, Probation, and Detention Length Limits

The bill would establish that the provisions of the Juvenile Code statute governing overall case, probation, and detention length limits (effective July 1, 2017) would apply upon disposition or 15 days after adjudication, whichever is sooner.

Juvenile Justice Oversight Committee

The bill would amend the statute establishing the Kansas Juvenile Justice Oversight Committee (Oversight Committee) to add 2 members to the Oversight Committee, bringing its total membership to 21. The members added would be one youth member of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention appointed by the chair of that group and one director of a juvenile detention facility appointed by the Attorney General. The bill would also provide two additional duties for the Oversight Committee: 1)

study and create a plan to address the disparate treatment of and availability of resources for juveniles with mental health needs in the juvenile justice system, and 2) review portions of juvenile justice reform that require KDOC and OJA to cooperate and make recommendations when there is not consensus between the two agencies.

Required Findings Upon Removal

The bill would create new law requiring, when a juvenile is removed from the home for the first time pursuant to the Juvenile Code, the judge to consider and make, if appropriate, the following findings: the juvenile is likely to sustain harm if not immediately removed from the home, allowing the juvenile to remain in the home is contrary to the welfare of the juvenile, or immediate placement of the juvenile is in the juvenile's best interest; and reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or an emergency exists that threatens the safety of the juvenile.

Fund Provisions

The bill would amend the statute creating the Kansas Juvenile Justice Improvement Fund to replace references to the Fund with references to the "Evidence-Based Program Account of the State General Fund." A provision requiring the Secretary of Corrections to determine and certify cost savings "annually, on or before June 30," would be amended to require such determination and certification "at least annually, throughout the year." A provision requiring transfer of the certified amount by the Director of Accounts and Reports "annually, on July 1 or as soon thereafter as moneys are available," would be amended to require such transfer "upon receipt of a certification pursuant to" the certification provision.

The statute governing percentage reductions by the Governor would be amended to update a provision exempting the Fund from the statute's provisions to refer to the Evidence-Based Programs Appropriation of the State General Fund instead.

Technical Amendments

The bill would make numerous technical amendments updating statutory references, ensuring consistent phrasing, and removing an effective date that would be made redundant by the bill.

Background

As introduced, recommended by the Senate Committee on Judiciary, and passed by the Senate on February 23, SB 42 would have amended law concerning mandatory minimum sentences for persons who receive life sentences.

The House Committee on Judiciary recommended a substitute bill replacing the original language of SB 42 with language modified from HB 2264, regarding various aspects of the juvenile justice system. Further background regarding HB 2264 is provided below.

No fiscal note was available for the substitute bill as of the House Committee action.

Background of HB 2264

The 2016 Legislature enacted 2016 SB 367, which created new law and made extensive changes to existing law related to the Kansas juvenile justice system. The bill was based on the work of the 2015 Kansas Juvenile Justice Workgroup, which was appointed by leaders of all three branches of Kansas government and charged with developing policy recommendations to advance three goals:

- Promote public safety and hold juvenile offenders accountable;
- Control taxpayer costs; and
- Improve outcomes for youth, families, and communities in Kansas.

The topics addressed by SB 367 included: case, probation, and detention length limits; graduated responses for technical probation violations; immediate intervention programs; youth residential facilities; creation of the Oversight Committee; training; funding; community integration programs; earned time and earned discharge; juvenile offender information; criteria for detention; taking a juvenile into custody; extended detention; prosecution as an adult and extended juvenile jurisdiction prosecution; sentencing alternatives; the placement matrix; commitment to a JCF; referral of school-based behaviors to law enforcement or the juvenile justice system; juvenile intake and assessment; and juvenile corrections advisory boards. The provisions of SB 367 are to be implemented by various deadlines between July 1, 2016, and July 1, 2019.

HB 2264 was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Jennings. As introduced, the bill contained provisions amending the statute governing sentencing alternatives for juvenile offenders and the placement matrix statute to allow commitment to a JCF when a firearm is used in the commission of a felony and the provision consolidating the serious offender III and serious offender IV categories into a single serious offender III category.

At the House Committee hearing, Chairperson Jennings announced the bill would serve as the “trailer bill” for 2016 SB 367. The chairperson distributed proposed amendments to the Committee and conferees, and requested Committee members and conferees present any additional proposed amendments regarding provisions of SB 367 for consideration for inclusion in HB 2264.

The chairperson stated conferees would not be designated as “proponent,” “opponent,” or “neutral” unless they specifically requested such designation. [Note: conferees who identified as proponent, opponent, or neutral in their written testimony are so identified in this supplemental note. Many conferees provided support, opposition, or suggestions related to one or more specific provisions of 2016 SB 367, HB 2264, or the proposed amendments to HB 2264, and they may or may not have indicated support of or opposition to the bills in their entirety.]

Conferees testifying before the House Committee were representatives of Kansas Appleseed Center for Law and Justice (with proposed amendments), Douglas County Legal Aid Society, National Alliance on Mental Illness of Kansas (with proposed amendments), Office of Judicial Administration (neutral with proposed amendments), Kansas Association of Court Services Officers (proponent with proposed amendments), and Kansas County and District Attorneys Association (with proposed amendments), as well as a former warden of Lansing Correctional Facility (with proposed amendments) and a district judge from Johnson County. Written-only testimony was submitted by the Secretary of Corrections (neutral), American Civil Liberties Union of Kansas, Disability Rights Center of Kansas, Johnson County Court Services (with proposed amendments), Kansans United for Youth Justice (with a proposed amendment), Kansas Association of Community Action Programs, Kansas Association of School Boards, Kansas Bureau of Investigation, Kansas Center for Economic Growth, Kansas District Magistrate Judges Association (proponent), and Kansas District Judges Association (opponent).

The House Committee adopted an amendment clarifying the application of the new special sentencing rule regarding use of a firearm in committing a felony offense. The House Committee also adopted amendments regarding absconding from supervision; an immediate intervention program database; when case length limits begin to run; limits on commitment of juveniles who commit certain sex offenses;

immediate intervention programs; composition of the Oversight Committee; required findings when a juvenile is removed from the home for the first time; and funding. The House Committee then recommended the amended language of HB 2264 be incorporated into a substitute bill for SB 42.

According to the fiscal note prepared by the Division of the Budget on HB 2264, as introduced, the Kansas Sentencing Commission indicates enactment of the bill would have an effect on JCF admissions and bed space, but the effect cannot be estimated. KDOC indicates enactment of the bill would reduce available juvenile reinvestment funds through an increased use of confinement in a JCF or youth residential facility, but a precise effect cannot be estimated. Any fiscal effect associated with HB 2264 is not reflected in *They FY 2018 Governor's Budget Report*.

No fiscal note was available for the amendments adopted by the House Committee, as of the House Committee action.