

MEMORANDUM
(CORRECTED)

To: John Kirk, Division of the Budget
From: Scott M. Schultz, Executive Director
Date: February 4, 2021
Re: Prison Bed Impact Assessment, **HB 2153 - Increasing the criminal penalty for mistreatment of a dependent adult or elder person when the victim is a resident of an adult care home.**

IMPACT ASSESSMENT

- **Impact on Prison Admissions:** This bill would result in **1 to 2 additional prison admissions each year** during the forecast period.
- **Impact on Prison Beds:** This bill would result in **1 to 2 additional prison beds** in FY 2022 and **1 to 3 additional prison beds** in FY 2031.
- **Impact on the Workload of the Commission:** This bill would result in **2 to 4 additional journal entries each year** for the workload of the Commission.

SUMMARY OF THE BILL

Section 1. K.S.A. 2020 Supp. 21-5417(b)(1) is amended to include language that mistreatment (infliction of physical injury, unreasonable confinement, or unreasonable punishment) of a dependent adult or an elder person who is a resident of an adult care home is a **severity level 2, person felony**. Currently, the crime is a **severity level 5, person felony**.

Also, K.S.A. 2020 Supp. 21-5417(b)(3) is amended to add omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such dependent adult or elder person who is a resident of an adult care home is a **severity level 5, person felony**. Currently, the crime is a **severity level 8, person felony**.

KEY ASSUMPTIONS

- Projected admission to prison for the target offender is assumed to increase by an annual average of 1.0% in FY 2022 and 1.5% from FY 2023 to FY 2031, which is the same percentage used in relation to the baseline prison population forecast produced in August 2020 by the Kansas Sentencing Commission.

- **Scenario One:** It is assumed that **two additional offenders** will be convicted of the crime as defined in subsection (b)(1)(A) or (b)(1)(B) each year with **one** sentenced to probation and **one** sentenced to prison.
- **Scenario Two:** It is assumed that **three additional offenders** will be convicted of the crime as defined in subsection (b)(1)(A) or (b)(1)(B) each year with **two** sentenced to probation and **one** sentenced to prison.
- **Scenario Three:** It is assumed that **four additional offenders** will be convicted of the crime as defined in subsection (b)(1)(A) or (b)(1)(B) each year with **two** sentenced to probation and **two** sentenced to prison.
- The average length of sentence is assumed to be **102 months for severity level two crimes.**
- The average length of sentence is assumed to be **28 months for severity level five crimes.** This was the actual length of the prison sentence imposed for offenders admitted to prison for mistreatment of a dependent adult or an elder person at severity level 5 in FY 2020.
- It is assumed that the effective date is on July 1, 2021.

FINDINGS

- In FY 2019, **28** offenders were convicted of the crime of mistreatment of a dependent adult.
- **Two** were sentenced to prison and **26** were sentenced to probation. The following chart breaks down the specific conviction by severity level:

Breakdown of Offense by Severity Level

	SL 5	SL 7	SL 8	Total
Mistreat Dependent Adult; inflict physical injury, unreasonable confinement/punishment upon dependent adult	3	0	0	3
Mistreat Dependent Adult; take unfair advantage of dependent adult physic/finance. resources=>\$25k<\$100k	1	0	0	1
Mistreat Dependent Adult; take unfair advantage of dependent adult physic/finance. resources=>\$1k<\$25k	0	12	0	12
Mistreat Dependent Adult; take unfair advantage of dep adult physic/finance. resources;<\$1k, second convictions w/in 5 yrs.	0	1	0	1

Mistreat Dependent Adult; omit/deprive treatment, goods/service to maintain physical/mental health of dependent adult	0	0	3	3
Mistreatment of Elder Person; taking personal property/resources; amount of => \$25,000 < \$100,000	1	0	0	1
Mistreatment of Elder Person; taking personal property/resources; amount of => \$5000 < \$25,000	0	5	0	5
Mistreat Elder Person; taking personal property/resources; convicted two/more times in previous 5 years	0	2	0	2
	5	20	3	28

- In FY 2020, **five** offenders were **admitted to prison**.
 - **Two** new court commitments
 - **Three** probation condition violators.

IMPACT ASSESSMENT

- **Scenario One:** If **two offenders** are convicted of the crime as defined in subsection (b)(1)(A) or (b)(1)(B) each year with **one** sentenced to probation and **one** sentenced to prison, by:
 - FY 2022, 1 prison bed would be needed; and
 - FY 2031, 2 prison beds would be needed.
- **Scenario Two:** If **three offenders** are convicted of the crime as defined in subsection (b)(1)(A) or (b)(1)(B) each year with **two** sentenced to probation and **one** sentenced to prison, by:
 - FY 2022, 1 prison bed would be needed; and
 - FY 2031, 2 prison beds would be needed.
- **Scenario Three:** If **four offenders** are convicted of the crime as defined in subsection (b)(1)(A) or (b)(1)(B) each year with **two** sentenced to probation and **two** sentenced to prison, by:
 - FY 2022, 2 prison beds would be needed; and
 - FY 2031, 3 prison beds would be needed.

SUMMARY

- **Impact on Prison Admissions:** This bill would result in **1 to 2 additional prison admissions each year** during the forecast period.
- **Impact on Prison Beds:** This bill would result in **1 to 2 additional prison beds** in FY 2022 and **1 to 3 additional prison beds** in FY 2031.
- **Impact on the Workload of the Commission:** This bill would result in **2 to 4 additional journal entries each year** for the workload of the Commission.

HB 2153 Impact Assessments

Fiscal Year	Additional Prison Admissions			Additional Prison Beds		
	Scenario #1: One to Prison One to Probation	Scenario #2: One to Prison Two to Probation	Scenario #3: Two to Prison Two to Probation	Scenario #1: One to Prison One to Probation	Scenario #2: One to Prison Two to Probation	Scenario #3: Two to Prison Two to Probation
2022	1	1	2	1	1	2
2023	1	1	2	1	1	3
2024	1	1	2	1	1	3
2025	1	1	2	1	1	3
2026	1	1	2	1	1	3
2027	1	1	2	1	1	3
2028	1	1	2	1	1	3
2029	1	1	2	1	1	3
2030	1	1	2	1	1	3
2031	1	1	2	1	1	3

PROPORTIONALITY COMPARISON (PROPOSED BILL LANGUAGE WITH PENALTIES ARE BOLDED)

Statute Number Violated	Statutory Penalty Section	Registration Required "R"	Statute Description	Severity Level / Class	Attempt, Conspiracy & Solicitation			Person Nonperson/ Select
					A	C	S	
21-5403(a)(1)	(b)(1)	R	Murder; 2nd Degree; intentional killing	1	3	3	4	Person
21-5408(b)	(c)(2)	R	Aggravated Kidnapping; Bodily harm inflicted upon the person kidnapped	1	3	3	4	Person

21-5503(a)(4)	(b)(1)(C)	R	Rape; Sexual intercourse; Consent obtained through knowing misrepresentation that sexual intercourse is medically or therapeutically necessary	2	4	4	5	Person
HB 2053 21-5417(a)(1)	(b)(1)(B)		Mistreatment of a dependent adult or an elder person is knowingly committing one or more of the following acts: Infliction of physical injury, unreasonable confinement, unreasonable punishment upon a dependent adult when the victim is a dependent adult who is a resident of an adult care home.	2	4	4	5	Person
21-5403(a)(2)	(b)(2)	R	Murder; 2nd Degree; unintentionally but recklessly, under circumstances manifesting extreme indifference to human life	2	4	4	5	Person
21-5506(b)(1)	(c)(2)(A)	R	Aggravated Indecent Liberties with a Child; Sexual intercourse; child 14 or more but less than 16	3	5	5	6	Person
21-5420(b)	(c)(2)		Aggravated Robbery; Armed with a dangerous weapon or inflicts bodily harm upon a person during robbery	3	5	5	6	Person
21-5413(b)(1)(A)	(g)(2)(A)		Aggravated Battery; Knowingly causing great bodily harm or disfigurement	4	6	6	7	Person
21-5417(a)(2)	(b)(2)(C)		Mistreatment of Dependent Adult or Elder Person; Knowingly taking the personal property or financial resources of a dependent adult or elder person by taking control, title, use or management of such property or resources; amount is at least \$100,000 but less than \$250,000	4	6	6	7	Person
21-5506(a)(1)	(c)(1)	R	Indecent Liberties with a Child; Lewd fondling/touching; child 14 or more but less than 16	5	7	7	8	Person
HB 2053 21-5417(a)(3)	(b)(3)(B)		Omission or deprivation of treatment, goods, or services that are necessary to maintain physical or mental health of such dependent adult or elder person when the victim is a dependent	5	7	7	8	Person

			adult who is a resident of an adult care home.					
21-5602(a)(1)&(a)(2)	(b)(1)		Abuse of a Child; Knowingly torture or cruelly beating or shaking any child under the age of 18 years which results in great bodily harm to the child	5	7	7	8	Person
21-5412(d)(1)	(e)(4)		Aggravated Assault; On a federal, state, county, city, university, or campus law enforcement officer with a deadly weapon	6	8	8	9	Person
21-5812(b)(1)	(c)(2)(A)(ii)		Aggravated Arson; Arson to building or property in which there is a human being; resulting in no substantial risk of bodily harm	6	8	8	9	Person
21-5807(a)(1)	(c)(1)(A)(i)		Burglary; Without authority, enter into or remain within a dwelling with intent to commit a felony, theft or sexually motivated crime therein	7	9	9	10	Person
21-5412(b)(1)	(e)(2)		Aggravated Assault; With a deadly weapon	7	9	9	10	Person