

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2077**

As Agreed to April 8, 2021

Brief*

HB 2077 would amend law related to the Kansas Criminal Justice Reform Commission, Kansas Closed Case Task Force, and the Kansas Crime Victims Compensation Board.

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

Kansas Criminal Justice Reform Commission

Study Topics

Current law requires the Kansas Criminal Justice Reform Commission (Commission) to address certain listed topics. The bill would amend some listed topics and would create new topics.

Diversion programs. The bill would amend the requirement related to analysis of diversion programs to require the Commission to analyze diversion programs utilized throughout the state and make recommendations for legislation that:

- Requires pre-filing and post-filing diversion to be an option in all counties;

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- Establishes minimum statewide standards for diversion; and
- Provides a method for sealing or otherwise removing diversion records from criminal records.

Supervision. The bill would also amend the requirement related to review of supervision levels and programming for offenders on community supervision for felony offenses by requiring the Commission to:

- Review the supervision practices for offenders who serve sentences for felony offenses on supervision, to include:
 - Supervision by court services;
 - Community corrections; and
 - Parole; and
- Discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:
 - Provide for incentives for compliant offenders to earn early discharge from supervision;
 - Create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;
 - Create standardized effective responses to behavior through a system of incentives and graduated sanctions; and
 - Provide for a means to consolidate concurrent supervision into one supervision agency.

Monitor implementation of recommendations. The bill would require the Commission to monitor the implementation of previously endorsed Commission

recommendations, including those developed through justice reinvestment, and receive updates, review data, and identify opportunities for coordination, collaboration, or legislation as needed.

Removed study topics. The bill would remove statutory requirements relating to specialty courts, evidence-based programming, specialty correctional facilities, and information management data systems. The bill would also remove the requirement that the Commission study other matters it determines to be necessary.

Commission Membership

The bill would add a public defender member to the Commission, to be appointed by the Executive Director of the Board of Indigents' Defense Services.

Final Report

Current law requires the Commission to submit its final report and recommendations by December 1, 2020. The bill would require the final report and recommendations to be submitted by December 1, 2021.

Technical Amendments

The bill would make technical amendments to remove outdated language requiring members be appointed before August 1, 2019, and language related to calling the first meeting of the Commission during August 2019.

Kansas Closed Case Task Force

The bill would modify law concerning the Kansas Closed Case Task Force (Task Force) by renaming it the Alvin Sykes Cold Case DNA Task Force. The bill would extend the

deadline, from October 1, 2020, to October 1, 2021, for completion of the protocol implementation plan relating to closed cases. Similarly, the bill would extend the deadline, from December 1, 2020, to December 1, 2021, for the Task Force's report containing a plan for uniform implementation of the protocol. The bill would extend the sunset date for the Task Force from December 30, 2020, to December 30, 2021. The bill would also require the Office of the Revisor of Statutes, the Kansas Legislative Research Department, and the Division of Legislative Administrative Services to aid the Task Force as requested by the co-chairpersons.

The bill would amend the membership of the Task Force to allow a designee to serve in place of the state combined DNA index system (CODIS) administrator, but would otherwise continue the Task Force as it existed on December 29, 2020, with all other members appointed prior to that date continuing as members of the Task Force.

Kansas Crime Victims Compensation Board

The bill would amend the definition of "victim" for purposes of the Kansas Crime Victims Compensation Board (Board) compensation award process to include a person who suffers personal injury or death as a result of witnessing a violent crime when the person was 16 years of age or younger at the time the crime was committed.

Under continuing law, the general rule is a claim for compensation must be filed within two years after the injury or death upon which the claim is based.

Current law provides an extended deadline for filing an application for compensation by persons under the age of 16 who are victims of certain crimes. The bill would expand the listing of these crimes by adding a reference to a separate listing of "sexually violent crimes" in continuing law. The bill would accordingly remove references to specific crimes already incorporated in the listing of sexually violent crimes.

The bill would also broaden exceptions providing an extended deadline for compensation for mental health counseling to be awarded.

Current law allows mental health counseling compensation to be awarded if a claim is filed within two years of:

- Testimony, to a claimant who is or will be required to testify in a sexually violent predator commitment of an offender who victimized the claimant or the victim on whose behalf the claim is made; or
- Notification, to a claimant who is notified that DNA testing of a sexual assault kit or other evidence has revealed a DNA profile of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made or is notified of the identification of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, whichever occurs later.

The bill would replace these specific exceptions with a provision allowing the Board to award compensation for mental health counseling to:

- A victim, under the bill's amended definition pertaining to witnesses of violent crimes, if the Board finds there was good cause for the failure to file within the required time periods and the claim is filed before the victim turns 19 years of age; or
- A victim of a sexually violent crime, if the Board finds there was good cause for the failure to file within the required time periods and the claim is filed within 10 years of the date such crime was committed, or, if the victim was less than 18 years of age at the time such crime was committed, the claim is filed within 10 years of the date the victim turns 18 years of age.

The bill would make technical amendments to ensure consistency in statutory phrasing and references.

Conference Committee Action

The Conference Committee agreed to the provisions of HB 2077, as passed by the Senate, and added the contents of HB 2082, as amended by Senate Committee on Judiciary.

Background

HB 2077, as passed by the Senate, contained provisions related to the Kansas Criminal Justice Reform Commission and Kansas Closed Case Task Force (HB 2369). The Conference Committee added the contents of HB 2082, related to the Crime Victims Compensation Board. Background information for HB 2077, HB 2369, and HB 2082 is provided below.

HB 2077 (Kansas Criminal Justice Reform Commission)

[*Note:* The Commission was created with enactment of 2019 HB 2290. The bill designated the membership of the Commission and directed the Commission to study various topics related to criminal justice reform. The Commission was directed to submit a preliminary report, which was submitted to the 2020 Legislature on December 1, 2019; and the Commission was also directed to submit a final report, which was submitted to the 2021 Legislature on December 1, 2020.]

HB 2077 was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Jennings. As introduced and passed by the House, the bill contained provisions regarding the Commission.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing, **proponent** testimony was presented by a representative of the Kansas Criminal Justice Reform Commission and a private citizen. Written-only **proponent** testimony was submitted by the Kansas Association of Criminal Defense Lawyers and the Department of Corrections. No other testimony was provided.

House Committee of the Whole

The House Committee of the Whole amended the bill to make the bill effective upon publication in the *Kansas Register* and add a requirement that the Commission monitor the implementation of previously endorsed recommendations. [Note: The Conference Committee retained this amendment.]

Senate Committee on Judiciary

In the Senate Committee hearing, representatives of the Council of State Governments Justice Center and Kansas Department of Corrections testified as **proponents**. A private citizen testified as a neutral conferee. No other testimony was submitted.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to add provisions similar to those in HB 2369, regarding the Task Force. [Note: The Conference Committee retained this amendment.]

Fiscal Information

According to the fiscal note provided by the Division of Budget on HB 2077, as introduced, the Kansas Sentencing Commission indicates enactment of the bill may have an

impact on prison admissions and bed space, but that this effect cannot be estimated. The current estimated available bed capacity is 9,420 for males and 948 for females. Based upon the Commission's most recent ten-year projection contained in its FY 2020 Adult Inmate Prison Population Projections report, it is estimated that the year-end population for available male capacity will be under capacity by 1,287 inmates in FY 2021 and 1,241 inmates in FY 2022.

The Office of Judicial Administration and the Department of Corrections indicate enactment of the bill would have no fiscal effect.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2369 (Kansas Closed Case Task Force)

HB 2369 was introduced by the House Committee on Judiciary at the request of Representative Patton.

House Committee on Judiciary

In the House Committee hearing, no testimony was provided. Representative Patton (a co-chairperson of the Task Force) stated the Task Force was close to completing its work in 2020, but needed additional time to do so, and also needed assistance from legislative staff.

On February 23, 2021, the House Committee amended the bill to allow a designee to serve in the place of the CODIS administrator. [*Note: The Conference Committee retained this amendment.*]

On March 5, 2021, HB 2369 was stricken from the House Calendar pursuant to Rule 1507.

[*Note:* Provisions similar to the provisions of HB 2369 were added to HB 2077 by the Senate Committee of the Whole.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2369, as introduced, enactment of the bill would cost additional expenditures of \$10,879, all from the State General Fund, in FY 2022. This estimate is based upon the Task Force meeting four times between July 1, 2021, and December 30, 2021, for the cost of four legislators on the Task Force, including \$9,436 for salary, fringe benefits, subsistence, and mileage expenditures, and \$1,443 for a committee assistant. Existing staff time from the Revisor of Statutes, the Kansas Legislative Research Department, and Legislative Administrative Services would require no additional expenditures. The agencies serving on the Task Force (Kansas Bureau of Investigation, Office of Attorney General, Board of Indigents' Defense Services, and Department of Corrections) would require additional staff time. In addition, members appointed by the Kansas Sheriffs Association, Kansas Association of Chiefs of Police, Kansas County and District Attorneys Association, and Kansas Bar Association would be required to serve an additional calendar year on the Task Force; however, any fiscal effect would be negligible. Any fiscal effect associated with this bill is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2082 (Kansas Crime Victims Compensation Board)

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Office of the Attorney General.

House Committee on Judiciary

In the House Committee hearing on January 25, 2021, **proponent** testimony was provided by a representative of the Board. The representative stated the bill would allow the Board to award compensation for applicants filing outside the two-year deadline if there is good cause, while current law would require the Board to deny such a request. The representative also stated the amendment to the definition of “victim” would make child witnesses of violent crimes eligible to receive compensation for mental health counseling.

No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on March 19, 2021, **proponent** testimony was provided by a representative of the Board.

No other testimony was provided.

On March 29, 2021, the Senate Committee amended the bill to adjust provisions regarding compensation for mental health counseling. [*Note: The Conference Committee retained this amendment.*]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2082, as introduced, the Attorney General indicates enactment of the bill could increase the claims and payments made to victims of sexually violent crimes and child witnesses of violent crimes for mental health counseling. The agency is unable to provide an estimate of the number of additional claims that would be filed or paid. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor’s Budget Report*.

Kansas Criminal Justice Reform Commission; public defender; Kansas Closed Case Task Force; membership; deadlines; legislative staff; Crime Victims Compensation Board; child witnesses; child victims; claim filing deadline

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