

MEMORANDUM

To: Leyton Gunn, Division of the Budget
From: Scott M. Schultz, Executive Director
Date: February 8, 2021
Re: Prison Bed Impact Assessment, **HB 2191 - Increasing criminal penalties for the crimes of riot and incitement to riot when the crime occurs in a correctional facility.**

IMPACT ASSESSMENT

- **Impact on Prison Admissions:** This bill would result in **0 to 2 additional prison admissions each year** during the forecast period.
- **Impact on Prison Beds:** This bill would result in **0 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 **0 to 3 additional journal entries each year** for the workload of the Commission.

SUMMARY OF THE BILL

K.S.A. 2020 Supp. 21-6201 is amended to make the crime of **riot a severity level 8, person felony**, if the riot occurs in a correctional facility. The current severity level is a class A, person misdemeanor. Additionally, the crime of **incitement to riot is a severity level 6, person felony**, if the incitement to riot occurs in a correctional facility. The current severity level is **severity level 8, person felony**.

This bill also defines "correctional facility" to mean a "correctional institution" as defined in K.S.A. 75-5202, and amendments thereto, or a jail.

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 **one** offender will be convicted of the crime as defined in either subsections (c)(1)(A) or (c)(1)(B) each year with **one** sentenced to probation.
- **Scenario Two:** It is assumed that **two** offenders will be convicted of the crime as defined in either subsections (c)(1)(A) or (c)(1)(B) each year with **one** sentenced to probation and **one** sentenced to prison.
- **Scenario Three:** It is assumed that **three** offenders will be convicted of the crime as defined in subsection (c)(1)(A) or (c)(1)(B) each year with **one** sentenced to probation and **two** sentenced to prison.
- The average length of sentence is assumed to be **39 months** for **severity level six** crimes.
- The average length of sentence is assumed to be **18 months** for **severity level eight** crimes.
- It is assumed that the effective date is on July 1, 2021.

FINDINGS

- In FY 2019, **0** offenders were **convicted** of the inciting a riot under K.S.A. 21-6201.
- In FY 2019, **0** offenders were **admitted** to prison for inciting a riot under K.S.A. 21-6201.

IMPACT ASSESSMENT

- **Scenario One:** If **one** offender is convicted of the crime as defined in (c)(1)(A) or (c)(1)(B) each year with **one** sentenced to probation:
 - FY 2022, **0** prison beds would be needed; and
 - FY 2031, **0** prison bed would be needed.
- **Scenario Two:** If **two** offenders are convicted of the crime as defined in subsection (c)(1)(A) or (c)(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 Three:** If **three** offenders are convicted of the crime as defined in subsection (c)(1)(A) or (c)(1)(B) each year with **one** sentenced to probation and **two** sentenced to prison, by:
 - FY 2022, **2** prison bed would be needed; and
 - FY 2031, **3** prison beds would be needed.

SUMMARY

- **Impact on Prison Admissions:** This bill would result in **0 to 2** additional prison admissions each year during the forecast period.

- **Impact on Prison Beds:** This bill would result in **0 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 **0 to 3** additional journal entries each year for the workload of the Commission.

HB 2191 Impact Assessments

Fiscal Year	Additional Prison Admissions			Additional Prison Beds		
	Scenario #1: Zero to Prison One to Probation	Scenario #2: One to Prison One to Probation	Scenario #3: Two to Prison One to Probation	Scenario #1: One to Prison One to Probation	Scenario #2: One to Prison One to Probation	Scenario #3: Two to Prison One to Probation
2022	0	1	2	0	1	2
2023	0	1	2	0	1	3
2024	0	1	2	0	1	3
2025	0	1	2	0	1	3
2026	0	1	2	0	1	3
2027	0	1	2	0	1	3
2028	0	1	2	0	1	3
2029	0	1	2	0	1	3
2030	0	1	2	0	1	3
2031	0	1	2	0	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	
21-6203(a)(2)	(b)		Disorderly Conduct; Disturbing a lawful assembly, meeting, or procession	C	C	C	~	Nonperson
21-5819(a)(1)	(b)(1)		Throwing or Casting Rocks; Recklessly throw/push/pitch or cast any rock, stone or other objects onto street, road, highway or railroad right-of-	B	C	C	~	Nonperson

			way or upon any vehicle, train or any other conveyance thereon- no damage results					
HB 2191-21-6201(a(1)-a(2))	(c)(1)(A)		Riot is five or more persons acting together and without lawful authority engaging in any: Use of force or violence which produces a breach of the public peace; or threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution.	A	B	C	~	Person
HB 2191-21-6201(a)(3)	(C)(2)(B)		(In a correctional facility) Incitement to riot is by words or conduct knowingly urging others to engage in riot under circumstances which produce a clear and present danger of injury to persons or property or a branch breach of the public peace.	6	8	8	9	Person
21-5914(a)(6)	(b)(1)		Trafficking in Contraband in Correctional Institution or Care and Treatment Facility; Introduce into an institution in which a person is confined any object or thing adapted or designed for use in making an escape	6	8	8	9	Nonperson
21-6205(a)(2)(C)	(b)(1)(A)		Criminal Desecration; Recklessly, by means other than by fire or explosive; damage, deface or destroy any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; damage \$25,000 or more	7	9	9	10	Nonperson
HB 2191-21-6201(a(1)-a(2))	(c)(2)(A)		(In a correctional facility) Riot is five or more persons acting together and without lawful authority engaging in any: Use of force or violence which produces a breach of the public peace; or threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution. Incitement to riot is by	8	10	10	~	Person

			words or conduct knowingly urging others to engage in riot under circumstances which produce a clear and present danger of injury to persons or property or a breach of the public peace.					
21-5911(b)(1)(A)	(c)(2)(A)		Aggravated Escape From Custody; While held on charge, conviction of or arrest for a felony	8	10	10	10	Nonperson
21-5904(a)(3)	(b)(5)(A)		Interference with Law Enforcement; In the case of a felony; Knowingly obstruct, resist or oppose any person authorized by law to serve process in service or attempt to serve any writ, warrant, process or order of court or in discharge of any official duty	9	10	10	10	Nonperson