

Senate Judiciary Committee
March 14, 2017
House Bill 2092

Testimony of the Kansas Association of Criminal Defense Lawyers
Proponent
(written only)

Dear Chairman Wilborn and Members of the Committee:

Last year, the Legislature passed HB 2462, which increased the felony threshold for theft from \$1,000 to \$1,500. This bill would increase the threshold for 12 additional property crimes from \$1,000 to \$1,500. Currently, 11 out of 12 of these crimes are Class A misdemeanors if the value is under \$1,000. 11 out of 12 of these crimes are severity level nine felonies if the value exceeds \$1,000.¹ KACDL supported HB 2462 last year, and we support HB 2092 this year.

At the time HB 2462 was being considered, the Pew Charitable Trusts came out with a report called *The Effects of Changing State Theft Penalties*.² Pew examined crime trends in the 23 states that raised their felony theft thresholds between 2001 and 2011. Pew also compared trends in states that raised their thresholds during this period with states that did not. The report illustrated three important conclusions: 1) Raising the felony theft threshold has no impact on overall property crime or larceny rates; 2) states that increased their thresholds reported roughly the same average decrease in crime as the 27 states that did not change their theft laws; and 3) the amount of a state's felony theft threshold—whether it is \$500, \$1,000, \$2,000, or more—is not correlated with its property crime and larceny rates. Granted, this study looked at theft and not all property crimes. Nevertheless, this data is relevant to the policy question presented to the Committee by this bill.

Notably, last year's threshold increase was not met with resistance from prosecutors because most defendants (ones in criminal history categories C-I for certain) can be incarcerated longer for these misdemeanor property crimes than for the low-level felony version. For example, misdemeanor giving a worthless check is a Class A misdemeanor, which carries a maximum jail sentence of 12 months. Misdemeanants do not earn good time nor program credits (although a court can, upon a motion, parole a misdemeanant at any time). Felony giving a worthless check (currently from \$1,000-\$24,999) is a severity level nine felony, which carries a sentence of 5-17 months, depending on the criminal history score. (See non-drug sentencing grid on reverse side.) Offenders imprisoned for a SL 9 felony can earn 20% good time and up to 120 days of program credit. If an offender with a criminal history score of A got the maximum sentence of 17 months, she could earn up to 3.4 months of good time plus four months of program credit, which could bring her sentence down to 9.6 months.

¹ The exceptions are criminal damage to property, the misdemeanor version of which is a Class B, and mistreatment of a dependent adult, the low-level felony version of which is a SL 7.

² <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/02/the-effects-of-changing-state-theft-penalties>.

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	658 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 208	208 195 184	186 176 166	165 155 147
II	498 467 442	460 438 416	216 206 194	200 190 181	184 174 165	168 160 162	164 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	88 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	16 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	16 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:

36 months recommended for felonies classified in Severity Levels 1-5
 24 months recommended for felonies classified in Severity Levels 6-7
 18 months (up to) for felonies classified in Severity Level 8
 12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:

36 months for felonies classified in Severity Levels 1-4
 24 months for felonies classified in Severity Levels 5-6
 12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:

24 months for felonies classified in Severity Levels 1-6
 12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

In addition, HB 2092 produces overall savings to the limited time and resources in our criminal justice system. When felony cases are prosecuted, then felony resources are consumed, including: district court time, district/county attorney resources, state public defender resources, felony probation staff, law enforcement officers coming to court for felony proceedings, and prison beds. (Not to mention the long-lasting impacts of a felony conviction on an offender and his/her family and/or community.) HB 2092 is good public policy, striking a balance between use of resources and public safety.

Thank you for your consideration,

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