

SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 308

As Amended by Senate Committee on Judiciary

Brief*

SB 308 would amend various sections of the Kansas Criminal Code, as recodified by 2010 Session Laws ch. 136. The bill would:

- Create the crime of "endangerment," defined as recklessly exposing another person to a danger of great bodily harm or death. Endangerment would be a class A person misdemeanor;
- Amend the statute governing multiple prosecutions for the same act and lesser included crimes to add language establishing that a defendant may not be convicted of identical offenses based upon the same conduct, the prosecution may choose which such offense to charge, and, upon conviction, the defendant shall be sentenced according to the charged offense;
- Amend the conspiracy statute to allow the unilateral theory of conspiracy, which does not require the other person(s) with whom the defendant conspired to have the actual intent to commit the underlying crime, provided the defendant believed the other person(s) to have such intent;
- Add abandonment of a child and aggravated abandonment of a child to the list of inherently

*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>

dangerous felonies in the statute governing first degree murder.

- Amend KSA 2011 Supp. 21-5425, governing human trafficking, so current subsection (b)(2) would no longer be a stand-alone means of committing aggravated human trafficking. Instead, the act would have to first meet the definition of human trafficking;
- Amend the criminal sodomy statute to remove sodomy between persons who are 16 or more years of age and members of the same sex;
- Amend the unlawful voluntary sexual relations statute to remove a provision limiting the crime to situations involving a child and offender of the opposite sex;
- Increase the severity level for the crime of incest from a severity level 5, person felony to a severity level 3, person felony if the victim is the offender's biological, step, or adoptive child;
- Expand the crime of unlawful use of recordings to include possession of recordings by a person knowing or having reasonable grounds to know the article was produced in violation of law, which would be a class B nonperson misdemeanor;
- Replace "sexual battery" with "sexually motivated crime" in the burglary statute;
- Expand the crime of interference with law enforcement to include falsely reporting to a law enforcement officer or state investigative agency any known false information with intent to influence, impede, or obstruct an officer or agency's duty, or concealing, destroying, or materially altering evidence with intent to prevent

or hinder the apprehension or prosecution of any person;

- Expand the crime of interference with the judicial process to include materially altering evidence of a crime or concealing, destroying, or materially altering evidence with the intent to influence, impede, or obstruct any proceeding, civil or criminal;
- Clarify the culpability standard for the crime of simulating legal process;
- Amend the crime of escape from custody to include escaping while held under arrest without a written charge;
- Amend the bribery statute to add a *quid pro quo* requirement, include the omission of performance of a public duty, and clarify that a public official may accept some gifts consistent with state ethics laws;
- Amend the statute prohibiting smoking in enclosed areas or at public meetings to make it a "strict liability" infraction. Because the current statute has no explicit culpability standard, the general recodification culpability standard of recklessness would apply.

Similarly, the bill would amend other smoking provisions to clarify the culpability requirements for smoking where prohibited (strict liability), allowing smoking where prohibited (recklessness), and taking adverse action for reporting or attempting to prosecute a violation of the smoking prohibition (intent to retaliate);

- Amend the criminal disposal of explosives statute to clarify that the action must be taken without lawful authority and that ignorance of the age of the recipient is irrelevant. The severity level of carrying

concealed explosives is increased from a class C to a class A person misdemeanor;

- Amend the cruelty to animals statute to eliminate a requirement that a county or district attorney file charges when a valid complaint is filed;
- Remove the use of living rabbits or chickens, ducklings, or goslings as an advertising device or promotion display from the definition of unlawful disposition of animals; and
- Amend the statute governing sentencing in multiple conviction cases to allow a judge to consider the need to impose an overall sentence that is proportionate to the harm and culpability in determining whether sentences should be served concurrently or consecutively. It also would give a judge discretion to impose an entire consecutive sentence or a part of such sentence.

Background

SB 308 was introduced by the Senate Judiciary Committee at the request of the Kansas Judicial Council. It represents policy recommendations of the Criminal Recodification Commission that the Commission separated from the 2010 Criminal Code recodification so the Legislature could consider the policy issues separately.

In the Senate Judiciary Committee, representatives of the Kansas Judicial Council and the Kansas Equality Coalition testified in support of the bill. No opponents testified. The Committee amended the bill to remove a section creating a new crime of armed criminal action. The Committee recommended the bill be passed as amended.

The bed impact statement prepared by the Kansas Sentencing Commission on the bill, as introduced, indicated it would result in 193 additional prison admissions by the end of

FY 2013 and 231 additional prison admissions by the end of FY 2022, requiring 193 additional prison beds by the end of FY 2013 and 231 additional prison beds by the end of FY 2022. However, this impact was attributed to the section creating the crime of armed criminal action, which was removed by the Senate Judiciary Committee.

The fiscal note on the bill, as introduced, included information on the prison capacity issues and expenses created by the projected bed space impact. However, as indicated above, the section of the bill driving the bed space impact was removed by the Senate Judiciary Committee. The fiscal note further indicates additional charges may be filed in district courts as a result of the new crimes and expanded violations of current crimes, which would create a fiscal effect due to additional time required for court cases. However, it is not possible to predict how complex and time-consuming these issues would be, and a precise fiscal effect cannot be determined. Any fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect is not reflected in *The FY 2013 Governor's Budget Report*.