

SESSION OF 2020

SUPPLEMENTAL NOTE ON SENATE BILL NO. 373

As Amended by House Committee on Judiciary

Brief*

SB 373, as amended, would create and amend law governing sex crimes, sexual relations, and registration under the Kansas Offender Registration Act, as follows.

Amendments to Terminology in Certain Crimes Involving Sexual Relations

The bill would replace the term “sexual relations” with “a sex act” in various statutes. Specifically, the crimes of selling sexual relations, promoting sexual relations, and buying sexual relations would be renamed selling a sex act, promoting a sex act, and buying a sex act. The bill also would amend other statutes to update the references to the names of these crimes.

Prohibition on Psychiatric or Psychological Examinations in Prosecutions for Sex Crimes

The bill would create a provision within the Kansas Criminal Code to prohibit a court from requiring or ordering a complaining witness to submit to or undergo a psychiatric or psychological examination in prosecutions for certain sex crimes specified by the bill. The bill would define “complaining witness” to mean an alleged victim of any crime specified by the bill, the prosecution of which is subject to the section.

*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>

Unlawful Voluntary Sexual Relations Between Minors

The bill would amend the elements of the crime of unlawful voluntary sexual relations to consolidate elements regarding voluntary sexual intercourse and voluntary sodomy, remove a separate element regarding the child and offender being members of the opposite sex, and restructure the applicable age categories. With regard to the age categories, under current law, the crime applies where the voluntary conduct is engaged in with a child who is 14 or 15 years of age by an offender who is less than 19 years of age and is less than 4 years of age older than the child. Under the bill, the crime would apply where the voluntary conduct is engaged in with a child older than 10 years of age and less than 16 years of age by an offender who is less than 13 years of age or an offender who is between 13 and 19 years of age with a difference of less than 48 months between the ages of the offender and child.

Criminal Penalties

The bill would also amend the penalty for the crime, when committed *via* voluntary sexual intercourse or voluntary sodomy, to be a Class A misdemeanor, except the crime would be a severity level 9 person felony when the age difference between the offender and child is 24 months or more but less than 48 months and the offender is 13 or more years in age.

The bill would amend the penalty for the crime, when committed *via* voluntary lewd fondling or touching, to be a Class A misdemeanor, except the crime would be a severity level 10 person felony when the age difference between the offender and child is 24 months or more but less than 48 months.

Current law makes the crime a severity level 8 person felony in the case of voluntary sexual intercourse, a severity level 9 person felony in the case of voluntary sodomy, and a

severity level 10 person felony in the case of voluntary lewd fondling or touching.

Offender Registration

The bill would remove the requirement for offender registration for a person convicted of unlawful voluntary sexual relations or adjudicated as a juvenile offender for an act which, if committed by an adult, would constitute unlawful voluntary sexual relations.

Technical Amendments

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

Background

As introduced and passed by the Senate, SB 373 contained the provisions relating to replacing references to “sexual relations” with “a sex act.” The House Committee on Judiciary (House Committee) inserted the contents of SB 355, as introduced, relating to psychological examinations in prosecutions for sex crimes, and HB 2473, as recommended by the House Committee on Corrections and Juvenile Justice, relating to unlawful sexual relations between minors and offender registration requirements. Background information for each bill is provided below.

SB 373 (Replacing Terms)

The bill was introduced by the Senate Committee on Judiciary (Senate Committee) at the request of the Office of the Attorney General (OAG). In the Senate Committee and House Committee hearings, representatives of the Human Trafficking Advisory Board within the OAG and Veronica’s Voice testified in support of the bill, stating the need to more

accurately reflect the non-consensual nature of crimes involving sexual relations. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget on SB 373 as introduced, the Office of Judicial Administration (OJA) indicates enactment of the bill could result in pretrial motions to dismiss and other additional hearings that could increase expenditures. During Senate Committee action on the bill, a Committee member stated OJA had indicated that it had made an error in the fiscal note and enactment of the bill would have no fiscal effect. [*Note:* At the time of publication, a revised fiscal note has not been issued.]

Any fiscal effect associated with enactment of SB 373 is not reflected in *The FY 2021 Governor's Budget Report*.

SB 355 (Examinations in Prosecutions for Sex Crimes)

The bill was introduced by the Senate Committee at the request of the Kansas County and District Attorneys Association (KCDAA). As introduced, the provisions of the bill would have applied only to prosecutions for certain sex offenses.

In the Senate Committee hearing, representatives of the Kansas Coalition Against Sexual and Domestic Violence and KCDAA testified in support of the bill, stating victims of sexual assault should be treated as any other victim of a crime in a court of law and should not be subject to such an intrusive examination. The Kansas Association of Criminal Defense Lawyers submitted written-only neutral testimony on the bill, requesting modified provisions allowing the continued use of psychological examinations in rare circumstances.

The Senate Committee amended the bill to remove language limiting application of the provisions to prosecutions for certain sex offenses, making the provisions apply equally

to all crimes in the Kansas Criminal Code. [Note: The House Committee did not retain this amendment when adding the language of SB 355 to SB 373.]

In the House Committee hearing, the same proponents who appeared before the Senate Committee testified in support of the bill. No neutral or opponent testimony was provided.

According to the fiscal note prepared by the Division of the Budget on SB 355 as introduced, the OJA indicates enactment of the bill would have a negligible fiscal effect that could be absorbed within existing resources. The Kansas Sentencing Commission (Commission) and the Department of Corrections indicate enactment of the bill would have no fiscal effect.

Any fiscal effect associated with enactment of SB 355 is not reflected in *The FY 2021 Governor's Budget Report*.

HB 2473 (Unlawful Voluntary Sexual Relations Between Minors)

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Kansas Judicial Council. The bill represents the recommendations from a Kansas Judicial Council advisory committee's study of 2018 HB 2738.

In the House Committee on Corrections and Juvenile Justice hearing, representatives of Equality Kansas, the Judicial Council, the Kansas Association of Criminal Defense Lawyers, and Kansas Appleseed testified in support of the bill. Proponents generally indicated the bill would amend Kansas' "Romeo and Juliet" statute to reduce penalties for voluntary sexual contact between minors while still allowing the state to intervene and provide services for juveniles in need and would eliminate discrimination based on the sex of the two children involved.

No other testimony was provided.

According to the fiscal note prepared by the Division of the Budget on HB 2473, the OAG indicates enactment of the bill could require that office to prosecute cases involving the crimes described in the bill, but any costs associated with litigating a criminal charge would be borne by local law enforcement agencies and prosecutors.

The OJA indicates HB 2473 could result in additional cases supervised by court services officers. However, the OJA does not anticipate the need to hire additional court services officers to take on any additional caseload. The OJA also indicates the bill could result in the collection of additional fines. The fiscal effect cannot be estimated because the number of additional cases and fines is unknown.

The Commission estimates enactment of HB 2473 would result in a negligible decrease of adult prison beds and would reduce the workload of the Commission by 10 to 15 journal entries each year. Based on the Commission's projections, a reduction in the prison population is beneficial toward avoiding future costs for the Department of Corrections, but any reduction as a result of the bill would not be sufficient to reduce current prison expenditures.

Any fiscal effect associated with HB 2473 is not reflected in *The FY 2021 Governor's Budget Report*.