

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2321

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2321 would make several amendments to the Kansas Criminal Code as recodified in 2010 Session Laws ch. 136, which will go into effect July 1, 2011.

First, it would add the crime of "endangerment," defined as recklessly exposing another person to the danger of great bodily harm or death. Endangerment would be a class A person misdemeanor.

The bill also would amend KSA 21-4012 to provide that a culpable mental state is not required for the crime of smoking in an enclosed area, or at a public meeting, and in any area where smoking is prohibited. Further, it would change "acquiesces to the" to "recklessly permits" in the section making it unlawful for owners, managers, and operators of an area where smoking is prohibited to allow smoking to occur. Finally, in KSA 21-4012(f), which prohibits an employer's negative treatment of an employee who reports or attempts to prosecute a violation of smoking-related crimes, the bill would replace "retaliate" with "take any adverse action" and "because" with "with the intent to retaliate against."

It would amend 2010 Session Laws ch. 136, sec. 9 by adding a new section (e), which would provide that a defendant cannot be convicted of identical offenses based upon the same conduct, and would allow the prosecution to choose which offense to charge.

*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>

In 2010 Session Laws ch. 136, sec. 37, first degree murder, the bill would add abandonment of a child to the list of “inherently dangerous felonies.”

In 2010 Session Laws ch. 136, sec. 9, human trafficking, the bill would provide that the current subsection (b)(2) would no longer be a stand-alone means of committing aggravated human trafficking. Rather, the act also must fall under the definition of human trafficking.

The crime of incest, 2010 Session Laws ch. 136, sec. 81, would be increased from a severity level 5 to a severity level 3, person felony when the victim is the offender's biological, step, or adoptive child.

In 2010 Session Laws ch. 136, sec. 92, unlawful use of recordings, the bill would criminalize possession of recordings by a person knowing or having reasonable grounds to know the article was produced by violation of law. Possession would be a class B, nonperson misdemeanor.

In 2010 Session Laws ch. 136, sec. 129, the definition of “interference with law enforcement” would be expanded to include a false report to law enforcement that a particular person committed a crime or a false report with information intended to influence, impede, or obstruct an officer or agency's duty. Additionally, concealing, destroying, or materially altering evidence would be added to the definition.

Similarly, in 2010 Session Laws ch 136, sec. 130, the definition of “interference with the judicial process” would be expanded to include concealing, destroying, or materially altering evidence and accepting or agreeing to accept anything of value as consideration for a promise to materially alter evidence.

The bill also would amend 2010 Session Laws ch 136, sec. 132 to change the definition of “simulating legal process,” making it unlawful for a person to distribute a document that simulates legal process, rather than judicial

process, with the intent to mislead the recipient and cause the recipient to take action in reliance on the document. The current language requires intent to induce payment of a claim.

The bill would amend the definition of bribery in 2010 Session Laws ch. 136, sec. 165, by striking the current definition and replacing it with a definition that requires consideration to be offered in exchange for the performance or omission of performance of the public official's powers or duties. The property that can be offered or accepted would be limited to that which the public official is not permitted by law to accept.

In 2010 Session Law ch. 136, sec. 197 the bill would amend the definition of "criminal disposal of explosives" to clarify that the distribution of an explosive or detonating substance must be without lawful authority, and that for persons under age 21, it is unlawful regardless, of whether the seller, donor, or transferor knows the person's age. Also, the severity level of the crime would be increased from a class C to a class A, person misdemeanor.

In 2010 Session Laws ch. 136, sec 223, cruelty to animals, the bill would delete provisions requiring a county or district attorney to determine the validity of a sworn complaint and file charges if the complaint appears valid.

For the unlawful disposition of animals, 2010 Session Laws ch. 136, sec. 224, the bill would strike language prohibiting the use of live rabbits, chickens, ducklings, or goslings as an advertising device or promotional display.

2010 Session Laws ch. 136, sec. 300 would be amended 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. Further, the bill would give a judge discretion to impose an entire consecutive sentence or a part of such sentence.

The bill also would adopt the federal definition of a firearm, which excludes antique firearms.

Background

HB 2321 contains the policy recommendations of the Criminal Recodification Committee. In the House Committee on Corrections and Juvenile Justice, a representative of the Kansas Judicial Council appeared in support of the bill. No opponents offered testimony.

The House Committee on Corrections and Juvenile Justice amended the bill by striking section 1, creating the crime of armed criminal action; section 7, adopting the unilateral theory of conspiracy; sections 10 and 11, repealing provisions criminalizing sodomy; section 14, replacing sexual battery with “sexually motivated crime” in the definition of burglary; and section 18, amending the crimes of escape from custody and aggravated escape from custody. The Committee also amended the definition of firearm to conform to federal law.

After the removal of the sections above, the Kansas Sentencing Commission estimates an increase in annual convictions pursuant to HB 2321 of 2-4 prison beds in FY 2012 and 9-15 beds in FY 2021. As the number of male inmates already exceeds capacity, the bed impact of this bill in addition to the impact of other possible legislation is likely to require additional expenditures. *The FY 2012 Governor's Budget Report* includes \$2.5 million for contract prison beds and if construction is necessary, the Department of Corrections has identified 2 expansion projects: 2 high medium housing units at El Dorado Correctional Facility, with 512 beds and a cost of \$22.7 million for construction and \$9.3 million for operation, and 1 minimum security housing unit at Ellsworth Correctional Facility, with 100 beds and a cost of \$5.9 million for construction and \$1.8 million for operation.

The fiscal note for the bill as introduced indicates that it is likely to increase litigation, but that the fiscal effect likely would be accommodated within existing resources.