

SESSION OF 2012

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2533

As Amended by House Committee on Judiciary

Brief*

HB 2533 would amend the list of persons required to report suspected child abuse. Specifically, it would replace teachers, administrators, or other employees of an educational institution which the child is attending with any employee, contractor, or administrator of any public or private educational institution in the state who works in a position of authority over a child in an official capacity, if such child is a student enrolled in and attending, or participating in a program or event at such educational institution. "Educational institution" would be defined to include elementary schools, secondary schools, technical colleges, community colleges, municipal universities, and universities.

Further, the bill would add to the list of persons required to report suspected abuse any person licensed by the State of Kansas to provide child care services or foster family placement, in addition to employees of persons so licensed, at the place where child care services or foster family placement services are being provided to the child. Current law requires persons licensed by the Secretary of Health and Environment to provide child care services to report suspected child abuse. It also would clarify that the requirement for a person employed by or working as a volunteer of any organization that provides social services to pregnant teenagers applies to those who work in a position of authority over a child in an official capacity, when the pregnant teenager is receiving such services.

*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>

Additionally, the bill would require reporting by persons who work in a position of authority over a child in an official capacity and who:

- Are employed by or volunteer for any organization that provides recreational services to children, when the children are receiving such services from the organization;
- Are employed by or volunteer for a recognized church or religious organization, if the child, the child's parent or other person having lawful custody, or the child's siblings, are members of or attend services or events at such church or religious organization; or
- Are employed by any municipality or the State.

The bill also would amend the existing crime of willful and knowing failure to make a report, which is a class B misdemeanor, by creating two crimes. Failure to report abuse, a class B misdemeanor, would be defined as knowingly failing to report any suspected physical, mental, or emotional neglect of a child by a person required by statute to report suspected abuse. Failure to report sexual abuse, a severity level 10, nonperson felony, would be defined as knowingly failing to report any suspected sexual abuse of a child by a person required by statute to report suspected abuse.

The bill would change the penalty for intentionally preventing or interfering with the making of a report from a class B misdemeanor to a severity level 8, nonperson felony. The crime of making a false report, a class B misdemeanor, would be amended by replacing knowing lack of factual foundation with the intent to harm, harass, or defame any person.

The bill would provide it would not be a defense that one believes another person made a report, unless a report had

actually been made, or that a person did not make a report for fear of reprisal or any other consequence of making such report. Further, it would state that a duly ordained minister of religion would not be required to make a report if it would disclose any penitential communication under the protection of privilege. Similarly, no report would be required if it would disclose any communication under the protection of the attorney-client privilege, disclose any matter communicated in confidence by a client to such client's lawyer, or violate any constitutional right of assistance to counsel.

Background

In the House Committee on Judiciary, Speaker Mike O'Neal and representatives of the Kansas Department of Social and Rehabilitation Services Division of Children and Family Services, the Kansas Chapter of Child Abuse America, Kansas Children's Service League, and the Children's Advocacy Center offered testimony in support of HB 2533. Written opponent testimony was submitted by the Kansas National Education Association and written neutral testimony was submitted by the Kansas Coalition Against Sexual and Domestic Violence. The Committee amended the bill to require reporting by contractors of an educational institution and municipal employees; clarify that, in some circumstances, a person would only be required to report if in a position of authority over a child in an official capacity; and provide that a report would not be required if a communication is protected by penitential or attorney-client privilege.

The fiscal note indicates passage of HB 2533, as introduced, would have no fiscal effect for the Board of Regents or Department of Education.