

SESSION OF 2017

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 101**

As Agreed to April 5, 2017

Brief*

House Sub. for SB 101 would amend law concerning protective orders, notification of a sexual assault examination of a minor child, infectious disease testing, and claims for compensation through the Crime Victims Compensation Board, as follows.

Protective Orders

The bill would amend the law concerning protective orders to extend the provisions of the Protection from Abuse Act (PFAA) and Protection from Stalking Act (PFSA) to apply to victims of sexual assault. Specifically, the bill would amend the definition of “abuse” in the PFAA to include “engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent.”

The bill would also amend the PFSA, renaming it the Protection from Stalking and Sexual Assault Act (PFSSAA). For the purposes of the PFSSAA, “sexual assault” would be defined as:

- A nonconsensual sexual act; or

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- An attempted sexual act against another by force, threat of force, or duress, or when the person is incapable of giving consent.

The bill would add “sexual assault” throughout the PFSSAA and would allow the court to issue an order restraining the defendant from committing or attempting to commit a sexual assault upon the victim. The bill would specify the court could issue a protection from stalking or sexual assault order granting any one or more of the orders allowed by the PFSSAA, including orders restraining a defendant from harassing, abusing, or sexually assaulting a victim. The bill would require the order to include a statement that if such order is violated, the violation would constitute “violation of a protective order” and a “sex offense” as defined by the Kansas Criminal Code and the accused could be prosecuted for, convicted of, and punished for such sex offense.

The bill would amend the crime of violation of a protective order to include knowingly violating a protection from sexual assault order, which would be a class A person misdemeanor.

Notification of Sexual Assault Examination

The bill would add exceptions to the requirement under current law that mandates a medical facility to give a parent or guardian written notice when a sexual assault examination of a minor child has taken place. The exceptions would apply when a medical facility has information that a parent, guardian, or family or household member is the subject of a related criminal investigation, or when the physician, licensed physician assistant, or registered professional nurse, after consultation with law enforcement, reasonably believes the child will be harmed if such notice is given.

Infectious Disease Testing

The bill would amend a statute regarding infectious disease testing of certain alleged offenders or persons arrested and charged with a crime to require such testing occur within 48 hours after the alleged offender appears before a magistrate following arrest. The bill would also require the court to order the arrested person to submit to follow-up tests for infectious diseases as medically appropriate. Finally, the bill would clarify that the results of such tests are to be disclosed to the victim and parent or legal guardian of the victim.

Crime Victims Compensation

The bill would allow a claimant, or victim on whose behalf the claim is made, to be compensated for mental health counseling through the Crime Victims Compensation Board when a claim is filed within two years of notification to the claimant that DNA testing has revealed a suspected offender or when a claim is filed within two years of notification to the claimant the identification of a suspected offender.

Conference Committee Action

The Conference Committee agreed to the provisions of House Sub. for SB 101, as it entered conference, regarding protective orders and claims for compensation through the Crime Victims Compensation Board. The Conference Committee agreed to modify the provision of House Sub. for SB 101 regarding notification of a sexual assault examination of a minor child by changing the standard for the physician, licensed physician assistant, or registered professional nurse exception from best interests of the minor to reasonable belief the child will be harmed if notice is given. The Conference Committee also added consultation with law enforcement to this exception.

The Conference Committee further agreed to add the provisions of HB 2234, as amended by the House Committee on Judiciary, regarding infectious disease testing.

Background

House Sub. for SB 101—Protective Orders and Sexual Assault

SB 101 was introduced by 27 senators. As introduced, the bill contained provisions regarding protective orders and sexual assault. In the Senate Committee on Judiciary hearing, Senator Pettey; representatives of the Kansas City Police Department's Victim Services Unit, Kansas Coalition Against Sexual and Domestic Violence (KCSDV), Metropolitan Organization to Counter Sexual Assault (MOCSA), and Wichita Area Sexual Assault Center; survivors of sexual assault; and Washburn Law Clinic interns provided testimony in support of the bill. Representative Finney and a Johnson County deputy district attorney provided written-only proponent testimony. The proponents explained Kansas is 1 of 17 states that does not have a civil protective order for sexual assault victims. The PFAA applies to intimate partners and household members, and the PFSA applies to victims of stalking, which requires two or more separate acts over a period of time. Under this framework, proponents explained it is nearly impossible for a victim who does not know the attacker to obtain a protective order against a defendant.

A representative of 3Up of Kansas appeared as an opponent of the bill.

The Senate Committee adopted an amendment proposed by the KCSDV to reorganize subsections in the PFSSAA definitions section and clarify the court could issue a protection from stalking or sexual assault order granting any one or more of the orders currently allowed by law, including

orders restraining a defendant from harassing, abusing, or sexually assaulting a victim.

In the House Committee on Judiciary hearing, two citizens and representatives of MOCSA and KCSDV testified in support of the bill. Senator Pettey and Washburn Law Clinic interns submitted written-only testimony supporting the bill. A family law attorney submitted written-only neutral testimony.

The House Committee recommended a substitute bill be adopted containing the provisions of SB 101 but adjusting the definition of "sexual assault." The House Committee also added provisions from HB 2033, regarding victims compensation. Finally, the House Committee added provisions modified from HB 2176, regarding sexual assault examination notification. The House Committee modified these provisions by adding "family or household member" to the exception created by the bill when there is information regarding a related criminal investigation and by removing an exception that would have been added by the original bill where the physician, licensed physician assistant, or registered professional nurse believes it is in the best interests of the minor to not provide notification. Further background information regarding HB 2033 and 2176 is provided below.

The House Committee of the Whole amended the bill by restoring the best interests of the minor exception (removed by the House Committee on Judiciary) in the sexual assault examination notification provision. [*Note*: The Conference Committee further modified this amendment.]

According to the fiscal note prepared by the Division of the Budget on SB 101, as introduced, the Office of Judicial Administration indicates enactment of the bill could increase the number of protection from abuse and protection from stalking petitions filed in the district courts, which could cause judicial and nonjudicial staff to spend more time processing, researching, and hearing cases. Further, if additional crimes

are filed there could be additional docket fee revenue. It is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a fiscal effect cannot be determined. The Office of the Attorney General (AG's Office) states any fiscal effect resulting from the enactment of the bill would be negligible. The Kansas Sentencing Commission states the bill could have an effect on prison admissions and bed space; however, any effect would be negligible. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.

HB 2033—Crime Victims Compensation

HB 2033 was introduced by the House Committee on Judiciary at the request of the Attorney General. In the House Committee hearing, representatives of the AG's Office and the Kansas Bureau of Investigation (KBI) provided testimony in support of the bill. KCSDV submitted written-only testimony in support of the bill. No other testimony was provided.

The House Committee recommended HB 2033 favorably for passage on January 30. The bill was withdrawn from the House Calendar and referred to the House Committee on Appropriations on February 23, then rereferred to the House Committee on Judiciary on March 10.

According to the fiscal note provided by the Division of the Budget, the AG's Office indicates enactment of HB 2033 would result in additional claims being paid by the Crime Victims Compensation Board but it could not estimate the precise fiscal effect; however, the AG's Office states federal grants would help fund any additional claims. Under current law, the AG's Office anticipates it will pay approximately \$4.0 million in compensation claims in FY 2018. Any fiscal effect associated with the bill is not reflected in *The FY 2018 Governor's Budget Report*.

HB 2176—Notification of Sexual Assault Examination

HB 2176 was introduced by the House Committee on Judiciary at the request of the Attorney General. In the House Committee hearing, a representative of the AG's Office testified in support of the bill, and KCSDV provided written-only testimony in support of the bill. No opponent or neutral testimony was provided.

The House Committee recommended the bill favorably for passage on February 13 and the House passed the bill on final action on February 22.

According to the fiscal note prepared by the Division of the Budget, the KBI, Kansas Department of Health and Environment, and Attorney General indicate enactment of HB 2176 would have no fiscal effect.

HB 2234—Infectious Disease Testing

HB 2234 was introduced by the House Committee on Judiciary at the request of the Governor's Grants Program. In the House Committee, the attorney for the Governor's Grants Program testified in support of the bill, stating the federal administrators of the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program has indicated Kansas could lose \$45,000 in grant funding unless the bill is enacted. The attorney also requested an amendment regarding notification of the victim and parent or legal guardian of the victim, to fully comply with the federal requirements. Written-only testimony supporting the bill was received from the administrator of the Governor's Grants Program, the Kansas County and District Attorneys Association, the Kansas Coalition Against Sexual and Domestic Violence, and the Kansas Department of Health and Environment. No opponent or neutral testimony was provided.

The House Committee adopted the amendment requested by the Governor's Grants Program. [Note: This amendment was retained by the Conference Committee.]

According to the fiscal note prepared by the Division of the Budget on HB 2234, as introduced, any fiscal effect for the Department of Health and Environment and for the Judicial Branch would be negligible, and is not reflected in *The FY 2018 Governor's Budget Report*.

protective orders; Protection from Abuse Act; Protection from Stalking Act; sexual assault; notification of sexual assault examination of a minor child; Crime Victims Compensation Board; claims for victim compensation; infectious disease testing

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