

SESSION OF 2018

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2739**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

Sub. for HB 2739 would amend the crime of unlawful sexual relations, which prohibits persons in certain positions of authority from engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with certain persons under their authority, to include law enforcement officers, when the person with whom the offender is engaging in such conduct is 16 years of age or older and is interacting with the officer during the course of a traffic stop, a custodial interrogation, or an interview in connection with an investigation, or while the officer has such person detained. Such conduct would constitute a severity level 5 person felony.

The bill also would amend the crime of lewd and lascivious behavior to increase the penalty for publicly exposing a sex organ or exposing a sex organ in the presence of a non-consenting person who is not the spouse of the offender, with intent to arouse or gratify the sexual desires of the offender or another, if committed in the presence of a person 16 or more years of age, from a class B nonperson misdemeanor to a severity level 10 person felony. [Note: Such conduct committed in the presence of a person under 16 years of age would continue to be a severity level 9 person felony.]

*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>

Background

As introduced and heard by the House Committee on Corrections and Juvenile Justice, HB 2739 would have amended offender registration requirements for juveniles adjudicated of a sex offense. In March 2018, the Chairperson of the House Committee, Representative Jennings, requested the Judicial Council study the issue raised by HB 2739, as introduced, and provide a recommendation to the 2019 Legislature. The House Committee subsequently recommended a substitute bill for HB 2739, replacing its contents with language modified from HB 2709, regarding lewd and lascivious behavior, and HB 2621, regarding unlawful sexual relations. Further background regarding HB 2709 and HB 2621 is provided below.

HB 2709 (Lewd and Lascivious Behavior)

HB 2709 was introduced by the House Committee on Judiciary at the request of Representative Jennings on behalf of Representative Rafie. In the House Committee on Corrections and Juvenile Justice hearing, a representative of the Kansas County and District Attorneys Association and a citizen testified in support of the bill. Representative Rafie submitted written testimony supporting the bill. No other testimony was provided.

The House Committee adjusted the structure of the language taken from HB 2709 when adding it to Sub. for HB 2739, but made no substantive changes.

According to the fiscal note prepared by the Division of the Budget on HB 2709, as introduced, the Office of Judicial Administration indicates enactment of HB 2709 would have a negligible fiscal effect upon the Judicial Branch. The Kansas Sentencing Commission indicates enactment of HB 2709 would have no immediate effect on prison admissions and bed space.

HB 2621 (Unlawful Sexual Relations)

HB 2621 was introduced by Representative Holscher. As introduced, the bill would have prohibited such conduct in the course of the law enforcement officer's duties.

In the House Committee on Corrections and Juvenile Justice hearing, Representative Holscher testified in support of the bill. Written-only testimony supporting the bill was submitted by a representative of the Kansas Coalition Against Sexual and Domestic Violence and an attorney. No other testimony was provided.

The House Committee modified the language taken from HB 2621 to specify the duties during which such conduct would be prohibited.

According to the fiscal note prepared by the Division of the Budget on HB 2621, as introduced, enactment of HB 2621 has the potential to increase litigation in the courts, which would have a fiscal effect on the operations of the court system. However, the Office of Judicial Administration indicates it is not possible to estimate the number of additional court cases or their complexity, so a fiscal effect cannot be determined. Any fiscal effect would likely be accommodated within the existing schedule of court cases and would not require additional budget resources.

The Kansas Sentencing Commission indicates enactment of HB 2621 could have an effect on prison admission and bed space, but the Commission cannot estimate an effect. Any fiscal effect associated with enactment of HB 2621 is not reflected in *The FY 2019 Governor's Budget Report*.