

SESSION OF 2002

**CONFERENCE COMMITTEE REPORT  
HOUSE BILL NO. 2154**

As Agreed to May 9, 2002

**Brief \***

HB 2154 deals with sentencing upward departure procedure. Specifically the bill amends the Kansas sentencing laws to require that any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. The bill provides that whenever a person is convicted of a felony, the court, upon motion of the prosecutor, shall determine whether evidence presented warrants an increased penalty beyond the statutory maximum. If the court finds it is in the best interest of justice, the court will conduct a separate departure sentence proceeding before the trial jury to determine whether the defendant might be subject to an upward durational departure sentence.

Before any departure proceeding may be held, a motion must be filed by the court not less than 30 days prior to the date of trial or if the trial date is to take place in less than 30 days then within five days from the date of the arraignment and allow reasonable time for either party to respond if requested and shall state the specifics of the departure intended by the court and the reasons and factors relied upon. Similar notice is required if the prosecutor seeks an upward durational departure sentence.

The departure proceeding shall be conducted by the court before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the upward durational departure sentence proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors, the court may summon a special jury of 12 persons or less, but no less than 6 jurors, who shall determine all of the specific facts that may serve to enhance the maximum sentence. The jury at

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the upward durational departure sentence proceeding may be waived. An upward departure sentence may be imposed only if the jury, by a unanimous vote, or the judge in non-jury cases, finds beyond a reasonable doubt that one or more specific facts exists to enhance the maximum sentence.

The jury must designate in writing, signed by the foreman of the jury, the specific factor or factors which the jury found beyond a reasonable doubt. In non-jury cases, the court must also meet this requirement.

The bill will become effective upon publication in the *Kansas Register*.

## **Background**

2001 Senate Sub. for HB 2154 amended the law concerning the employment of persons by adult care homes and home health agencies, concerning procedures regarding the location of certain state corrections facilities within a local government, and concerning the establishment of domestic violence fees and a fund for such programs in judicial districts.

**Conference Committee Action.** The Conference Committee in 2001, agreed to strike all but new Section 3—the provisions regarding the siting of certain DOC facilities within communities. Note the siting issued was enacted in 2001 as part of an appropriations bill proviso, *i.e.*, SB 57 (Section 148(g)). The 2002 Conference Committee subsequently agreed to delete the contents of HB 2154 and insert the provisions of SB 521 dealing with sentencing upward departure procedure.