

SESSION OF 2002

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 521**

As Amended by Senate Committee on  
Judiciary

**Brief\***

SB 521 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, or upon the filing of a written notice by the court itself, shall conduct a separate departure sentence proceeding to determine whether the defendant might be subject to an upward durational departure sentence.

Before any departure proceeding may be held, notice 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 which shall determine all of the specific facts that may serve to enhance the maximum sentence. The jury at the upward durational departure sentence proceeding may be waived.

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\*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/cgi-bin/fulltext/bills.cgi>

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 Senate Committee made a clarifying amendment to one of the aggravating factors regarding enhanced departure sentences and made the bill effective on publication in the *Kansas Register*.

## **Background**

See the 2001 Interim Special Committee on Judiciary final report on this topic for more background on this issue.

The bill was supported by the Kansas Sentencing Commission as a way to address problems with imposing upward departure sentences as a result of the *State v. Gould*, 271 Kan, 23 P. 3d 801 (2001) case, which held the upward departure statute was unconstitutional. The *Gould* case applied the ruling of the U.S. Supreme Court in *Apprendi v. New Jersey*, 530 US 466 (2000), which held all facts must be found to exist beyond a reasonable doubt which can be used to impose enhanced sentences. The bill was supported by the Kansas Attorney General.

A representative of the Kansas Bar Association opposed the bill, arguing that a bifurcated trial system created by SB 521 would put added pressure on judicial resources which are already over extended. An alternative suggestion was made to allow judges a wider range of sentences within each grid box.

The fiscal note estimates \$53,724 would be needed for two additional senior judges to handle these cases – 208 additional trial days are predicted. The above amount is in addition to the *FY 2003 Governor's Budget Report*.