

SESSION OF 2006

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2576**

As Agreed to May 5, 2006

Brief*

HB 2576 would establish mandatory minimum sentences for first time sex offenders, make a number of other changes regarding sex offenders, and limit diversions for the crime of domestic battery.

The bill would establish a mandatory minimum sentence of 25 years without parole (Hard 25) on first-time sex offenders where the victim is a child; a minimum 40-year sentence (Hard 40) for second-time sex offenders; and a life sentence without the possibility of parole for third-time and subsequent sex offenders *i.e.* aggravated habitual sex offenders. The bill also would establish life-time supervision for the sex offenders noted above who are released from prison by the Kansas Parole Board and life-time electronic monitoring of those offenders.

Sex Offender Issues

Hard 25-First Time Offenders

A mandatory minimum sentence of 25 years would be created for first-time sex offenders who are 18 years of age or older, and when the victim is less than 14 years of age for the following crimes: aggravated trafficking (slavery); rape; aggravated indecent liberties with a child; aggravated criminal sodomy; promoting prostitution; sexual exploitation of a child; and an attempt, conspiracy or criminal solicitation to commit the above crimes. No good-time credits would apply. If the sentencing guidelines grid for non-drug crimes due to the defendant's prior criminal history would exceed 300 months (25 years) the mandatory minimum term would be the minimum sentence under the grid.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org>

Downward Departures For Compelling Reasons-First Offense

A sentencing judge would be able to depart downward from the 25-year minimum sentence if the judge finds substantial and compelling mitigating reasons which must be stated on-the-record following a review of mitigating circumstances. The departure sentence in such cases would be the sentence pursuant to the Kansas Sentencing Guidelines Act.

Mitigating circumstances would include:

- The defendant has no significant history of prior criminal activity.
- The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.
- The victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.
- The defendant acted under extreme distress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of laws was substantially impaired.
- The age of the defendant at the time of the crime.

Hard 40-Second Offense

A mandatory minimum sentence of 40 years would be created for second-time offenders who already have been convicted of any of the crimes listed above. The Hard 40 would not apply if the defendant's prior criminal history under the sentencing guideline's law would provide for a prison term longer than 40 years. In this case, the minimum term would be a longer prison term under the sentencing guidelines grid.

Life: No Parole-Third and Subsequent Offense

A life sentence without the possibility of parole for aggravated habitual sex offenders would be created. Habitual sex offender is defined as a person who after July 1, 2006 has committed a sexually

violent crime and who has two prior convictions of any sexually violent offense.

Sexually violent offenses would include, among others, rape; indecent liberties with a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; indecent solicitation of a child; aggravated indecent solicitation of a child; sexual exploitation of a child; aggravated sexual exploitation of a child; aggravated sexual battery; and aggravated incest.

Victim's Rights and Prosecutor Duties

The bill would amend KSA 22-3436 dealing with victims rights in regard to person, sex and family crimes and prosecutor duties to require a prosecutor to notify the victim or victim's family of any proposed plea agreement and the right to attend any hearing where a plea agreement is reviewed or accepted and the right to make written arguments prior to the hearing.

Kansas Parole Board: Lifetime Supervision and Electronic Monitoring

Lifetime supervision by the Kansas Parole Board would be imposed on first-time or second-time sex offenders who are required to serve either a mandatory minimum sentence of either 25 years or 40 years. Sex offenders on post-release supervision would be required to participate in a treatment program.

Parole shall include electronic monitoring for the duration of the offender's life.

Annual Reporting to Sheriff-New Photo

_____A registered sex offender would be required to report to the local sheriff's office annually during the offender's birth month and pay a \$20 registration fee each year to the sheriff. At this time, the sheriff would take an updated photograph of the offender. The offender would then report for the next six months on days and times determined by the local sheriff's office.

New Crimes Created and More Severe Penalties For Existing Crimes

The bill would create the new crime of unlawfully tampering with electronic monitoring equipment as a level 6, nonperson felony.

The bill would create the new crime of electronic solicitation defined to include communication conducted through the telephone, internet or by other electronic means which involves enticing or soliciting a person whom the offender believes to be a child to commit or submit to an unlawful sexual act. If the child is believed to be under 14 years of age, the penalty would be a level 1, person felony. If the child is believed to be 14 or 15 years of age, the penalty would be a level 3, person felony.

The bill also would amend the so-called Hard 50 law to provide that if the sentencing guideline grid due to the defendant's prior criminal history would exceed 50 years, the mandatory minimum term would be the term under the sentencing grid and not the Hard 50.

The penalty for the crime of failure to register or otherwise comply with the Kansas Offender Registration Act would be increased from a severity level 10 nonperson felony to a severity level 5 person felony and a new violation would occur after 31 days has elapsed.

The crime of aiding a felon would be amended to provide a more severe penalty, a level 5 person felony, for anyone who aids a person required to register under the Kansas Offender Registration Act. The crime would involve knowingly harboring, concealing, or otherwise aiding a person in avoiding compliance with the Kansas Offender Registration Act.

The sentence for an offender who commits the crimes related to the Registration Act and aiding a felon in regard to registration would be presumptive imprisonment unless the court finds on the record that an appropriate treatment program exists which would be more effective than prison or the nonprison sentence will serve community safety.

The bill would amend the crime of rape, aggravated criminal sodomy, aggravated trafficking; aggravated indecent liberties with a child; promoting prostitution; and sexual exploitation of a child to provide the penalty for such crimes when the victim is under 14 years of age would be an off-grid person felony thus facilitating the 25 year sentence, the 40 year sentence, and life without parole sentences for these crimes.

Kansas Sentencing Commission-New Duties

The duties of the Kansas Sentencing Commission would be amended to add a new responsibility for developing information

relating to the number of offenders on post-release supervision and subject to electronic monitoring for the duration of the person's natural life; and determining the effect the mandatory sentencing established under the bill would have on the number of offenders civilly committed to a treatment facility as a sexually violent predator.

Department of Corrections Report on Sex Offenses/Sex Offenders

The Department of Corrections would be required to review and report on various serious offenses committed by sex offenders while in the custody of the Secretary of Corrections. This report would be submitted to the Speaker of the House of Representatives and the President of the Senate each year, beginning January 1, 2007. The Department of Corrections would be required to identify, assess, and monitor high-risk sex offenders in the custody of the Secretary of Corrections. The Department would be directed to develop a graduated risk assessment that would identify, assess, and monitor high-risk sex offenders who are placed on post-release supervision.

State Board of Education Task Force

The State Board of Education would be required to appoint a task force to study the feasibility of requiring all Kansas school districts to adopt policies mandating that schools conduct a check of the Internet site maintained by the Kansas Bureau of Investigation (KBI) concerning registered sex offenders. The check of the Internet site would be required when permitting any unescorted, non-teaching personnel to be on school grounds while students are present. The study would need to be completed, with a report containing its findings and recommendations to the State Board of Education, the Speaker of the House of Representatives, and the President of the Senate on or before January 1, 2007.

Domestic Battery-Other Changes

The crime of domestic battery would be amended to limit diversions to two during a five-year period. The bill also would require mandatory treatment for person convicted of three or subsequent domestic battery crimes and would require a person who does not enter into a treatment program to serve not less than 180 days nor more than a year of imprisonment.

Conflict Cures

The bill also would cure several conflicts in regard to statutes amended by this bill which have already been amended this year and enacted into law.

Conference Committee Action

The Conference Committee agreed to the Senate amendments with the following changes or additions:

- Deletion of the provisions which would have enacted the Private Contract Prison Act.
- Kansas Registration Act violations continued for 31 days would be a new crime;
- The sentence for registration violations and aiding a felon would be presumptive prison;
- DOC would report on sex offenses by sex offenders;
- The State Board of Education would be required to appoint a Task Force;
- Internet solicitation of a child as a crime would be clarified; and

A table is attached to this report showing the House version, the Senate version, and the Conference Committee version of HB 2576.

Background

The Senate Committee deleted provisions of HB 2576 as it passed the House and inserted the provisions of SB 334 (sex offenders) and SB 243 (private prisons) as these bills passed the Senate. In addition, the Senate added one provision to the private prison legislation that is contained in HB 2688 dealing with reimbursement of costs to state agencies or political subdivisions for defense and other costs associated with crimes committed by inmates while in the custody of private prisons.

The Senate Committee of the Whole added the amendment to the crime of domestic battery.

The bill was supported by the Kansas Attorney General, the Kansas Bureau of Investigation, the Kansas Department of

Corrections, the Kansas Coalition Against Sexual and Domestic Violence, and Representative Patricia Kilpatrick. Proponents said the bill was patterned after the Florida law named after the Jessica Marie Lunsford Act, more commonly known as "Jessica's Law."

See the *2006 Kansas Legislator Briefing Book*, "Judiciary M-5 Sex Offenders/Sex Predators" for more information on the current Kansas law, laws of other states and federal law on this topic.

A fiscal note for the bill as amended by the Senate Judiciary Committee is not available.

The Kansas Sentencing Commission has prepared a revised prison bed space impact statement based on Senate Committee amendments which states the prison bed impact would require between 969 to 1013 additional beds by FY 2016.

The fiscal note on SB 334, as introduced, stated:

According to the Kansas Sentencing Commission, passage of SB 334 would result in the need for five additional prison beds by the end of FY 2007 and 259 additional prison beds by the end of FY 2016. In order to gather the additional information required on offender lifetime electronic monitoring, the agency would require an additional 3.00 FTE research analyst positions at a cost of \$160,730, computer and office equipment totaling \$42,930, and ongoing other operating expenditures, such as rent, computer services, and telephone costs, of \$14,882. In total, additional expenditures of \$218,542 would be required during FY 2007.

According to the Department of Corrections, there could be a cost for the lifetime electronic monitoring of inmates if an inmate is unable to reimburse the state for the costs of the monitoring. It is very unlikely that offenders would be able to support the entire cost of electronic monitoring, in addition to all other financial obligations. However, the Department is unable to estimate the amount that would be collected by the state for offender electronic reimbursement because that would depend on the financial circumstances of each offender.

When considered by custody level, the Department of Corrections has been operating at near or excess capacity for medium and maximum custody male inmates. Nearly all of the current available capacity for male inmates is at the minimum custody level. If the bill contributes to an increase in the inmate population sufficient

to require additional facility capacity, one-time construction and equipment costs would be needed. In addition, annual costs to staff and operate the additional capacity would be required.

A fiscal note request has been submitted to the Kansas Parole Board. However, the agency has not responded to this request.

**Comparison of Major Provisions of HB 2576
As Passed by the House and the Senate**

	House Committee of the Whole	Senate Committee of the Whole	Conference Committee Report
Private Contract Prison Act	No Provisions	Yes	No
First Time Aggravated Habitual Sex Offender—Hard 25	Yes	Yes	Yes
Bifurcated Trial—	Yes	No Provision	No Provision
Waiver of Jury Trial Provision—Bifurcated Trial	Yes	No Provision	No Provision
Downward Departure Procedure—First Time Offender	No Provision	Yes	Yes
2 nd Time Offender—Hard 40	No Provision	Yes	Yes
3 rd Time and Subsequent Offender Life—No Parole	No Provision	Yes	Yes
Lifetime Parole for Offender After Hard 25	Yes	Yes	Yes
New Aggravating Factor—Capital Murder	Yes	No Provision	No Provision
No Good Time Credit	Yes	Yes	Yes
Electronic Monitoring as Part of Parole	No Provision	Yes	Yes
New Crime of Tampering with Electronic Device	No Provision	Yes	Yes
Aiding a Felon Crime Expanded to Cover Registration	Yes	Yes	Yes
Kansas Registration Act Violations Increased to a Level 5 Person Felony	Yes	Yes	Yes
Violation for More Than 31 Days a New Offender—Failure to Register	Yes	No Provision	Yes
Border Box—Prison Presumption For Registration and Aiding a Felon Violations	Yes	No Provision	Yes

Require Prosecuting Attorney to Provide Added Information to Victim/Family	Yes	No Provision	Yes
DOC Report on Sex Offenders Committed by Sex Offenders in Prison	Yes	No Provision	Yes
State Board of Education Task Force	Yes	No Provision	Yes
Kansas Criminal Justice Coordinating Council to Appoint a Sex Offender Policy Board	Yes	No Provision	No Provision
Kansas Criminal Justice Coordinating Council to Appoint 11-member Task Force	No Provision	Yes	No Provision
Third and Subsequent Domestic Battery—Mandatory Treatment	Yes	No Provision	Yes
Domestic Battery One Lifetime Diversion	No Provision	Yes	2 in 5 years
Prohibit Certain Juvenile Sex Offenders from Attending Same School as Victim	Yes	No Provision	Put in SB 261
Indecent Solicitation of a Child Expanded to Include Internet	Yes	No Provision	Yes, But new crime created
Sex Offender Reporting during Month of Birthday to Sheriff's Office for Update Picture	Yes	No Provision	Yes
Kansas Sentencing Commission to Monitor Post-Release Suspension, Electronic Monitoring, Civil Commitment	No Provision	Yes	Yes