

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 431**

As Agreed to May 5, 2006

**Brief\***

House Sub. for SB 431 would amend the law regarding crimes and criminal procedures to do the following:

**Inherently Dangerous Felonies Expanded-Aggravated Endangering a Child**

The crime of aggravated endangering a child when intentional (not reckless) is added to the list of inherently dangerous felonies.

The crime of aggravated endangering a child is clarified and broadened to cover either intentional or reckless conduct as well as causing or permitting a child to be in a dangerous environment.

**Arson Law Changes**

The crime of aggravated arson is expanded to cover arson which results in great bodily harm or disfigurement to a firefighter or law enforcement officer in the course of fighting or investigating a fire. The penalty for this type of aggravated arson would be made a severity level 3, person felony.

**Promoting Obscenity**

The crime of promoting obscenity would be amended to delete language "or sexually provocative aspect" which was found to be unconstitutionally overboard in a recent district court decision.

**Presentence Investigation Reports**

The bill would provide that a presentence investigation report for persons who would otherwise qualify for a nonprison sanction of

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certified drug abuse treatment would not be required for offenders from out of state returning to that state and for offenders not lawfully present in the United States. Other clarifications would be made.

#### **Drug Paraphernalia Factors**

A new factor would be added to the list in determining whether an object is drug paraphernalia, *i.e.* the quantity, form, packaging of the product, substance or material in relation to any legitimate use.

#### **Driving Without License, Second and Subsequent Offenses, Habitual Violator**

The bill would amend the crimes of driving when the person's driving privileges have been canceled, suspended or revoked, to provide that second and subsequent convictions shall be a nonperson class A misdemeanor.

A person convicted of a second or subsequent offense of driving while suspended or revoked and for any violation of the habitual violator law, also a class A nonperson misdemeanor, shall be sentenced to not less than 90 days and fined not less than \$1,500. The person shall not be eligible for release on probation, suspension, or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment may be served in a work release program only after the person has served 48 consecutive hours' imprisonment, provided the work release program requires the person to return to confinement at the end of each day. The court may place the person under a house arrest program to serve the remainder of the minimum sentence only after the person has served 48 consecutive hours imprisonment.

#### **Battery Against a Law Enforcement Officer**

The crimes of battery against a law enforcement officer and aggravated battery against a law enforcement officer would be expanded and penalties increased. The bill would expand coverage of both laws to uniformed campus police. Battery to a uniformed officer causing physical harm while in the course of the officer's duties would be made a level 7 person felony. Aggravated battery of a law enforcement officer causing bodily harm with a deadly weapon or in a manner in which great bodily harm or death can be inflicted would be raised from a level 6 to a level 5 person felony.

### **New Crime-Battery of a Mental Health Employee**

The bill would create a new crime of battery of a mental health employee by a person in custody of SRS at the Larned State Hospital or in the sex predator program at Larned, and make this crime a level 7 person felony.

### **Warrantless Searches**

The bill would reenact KSA 22-2501 dealing with warrantless searches which had been repealed by SB 366 with one change to the statute. The change would provide a warrantless search by a law enforcement officer, when other requirements of the law are met, to discover the fruits or evidence of “a” crime. Current law limits this to “the” crime.

### **Preliminary Breath Test-Suspicion**

The bill would amend KSA 8-1012 to clarify that an officer must have a reasonable “suspicion” rather than “grounds” to believe a person has been operating a motor vehicle under the influence of alcohol or drugs before requiring a person to submit a preliminary breath screening test.

### **Conference Committee Action**

The Conference Committee agreed to the House amendment to the bill with the following changes:

- Delete an amendment to the definition of arson which would have included fires or explosions caused while in the commission of a felony;
- Delete provisions of the bill dealing with the crime of criminal use of explosives;
- Reduce the penalty for the crimes of driving without a license and being a habitual violator from a nongrid nonperson felony to a class A nonperson misdemeanor with a mandatory sentence of 90 days and a mandatory fine of \$1,500;
- Delete provisions creating a new crime of counterfeiting;

- Delete provisions of changing the Kansas Offender Act violations which were placed in HB 2576;
- Delete provisions dealing with a new grant program for high crime neighborhoods;
- Add a provision from SB 479 dealing with preliminary breath tests; and
- Add provisions of HB 2912 dealing with promoting obscenity.

## **Background**

SB 431 as it passed the Senate would have established a 12-year decay for driving under the influence (DUI) convictions and diversions, *i.e.* DUI convictions and diversions after 12 years could no longer be counted for driver's license suspension and revocation or be counted as prior convictions under the DUI law. The bill also would expand the list of those agencies where the disclosure of municipal court arrests, convictions and diversion agreements is required to include the Kansas Sentencing Commission, the Kansas Law Enforcement Training Commission (when determining certification eligibility of a person) and law enforcement agencies (when determining eligibility of a person for employment).

The House Committee deleted the contents of the original bill and inserted the provisions of the substitute bill. Many items in the substitute bill were from HB 2699. The provision concerning drug paraphernalia were taken from HB 2701.

The House Committee of the Whole added habitual violator and driving without a license provisions (HB 2938), the high crime neighborhood grants program provision (HB 2885), the counterfeiting provision (HB 2214), violations of the Kansas Offender Registration Act provisions, the battery against a law enforcement officer provision (HB 2414) and the battery against a mental health employee provision (HB 2891).

Endangering a child; arson; obscenity; driving without a license; drug paraphernalia; battery against a law enforcement officer; breath tests; warrantless searches; battery of a mental health employee