

SESSION OF 2006

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 431**

As Amended by House Committee of the Whole

Brief*

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

DUI Expungements Prohibited-Other Changes

The bill would prohibit the expungement of driving under the influence convictions and expand the entities which would have access to the arrest, conviction and drivers' records that have been expunged to include the Kansas Sentencing Commission, the Kansas Law Enforcement Training Center and law enforcement agencies in regard to employment.

See Sections 1 and 7.

Inherently Dangerous Felonies Expanded-Aggravated Endangering a Child

The crime of aggravated endangering a child is added to the list of inherently dangerous felonies.

See Section 2.

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.

See Section 3.

*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>

Arson Law Changes

The definition of the crime of arson is expanded to include fires or explosions caused while in the commission of a felony. 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.

See Section 5.

Criminal Use of Explosives

The crime of criminal use of explosives is expanded to cover the possession of a combination of chemicals, compounds or materials, including, but not limited to, the presence of an acid, a base, dry ice or aluminum foil, that are placed in a container for the purpose of generating a gas or gases to cause a mechanical failure, rupture or bursting of the container.

The crime does not cover consumer fireworks, unless the consumer fireworks are modified or assembled as a device that deflagrates or explodes when used for a purpose not intended by the manufacturer; or possession, creation or construction of a hoax explosive.

The penalty for criminal use of explosives depending on the factors involved would be raised from a level 8 to a level 6 person felony and from a level 6 to a level 5 person felony.

See Section 6.

Presentence Investigation Reports

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

See Sections 8 and 9.

Bottle Rocket Crime Clarification

Clarifications are made to the crime of possession of a bottle rocket.

See Section 10.

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, Habitual Violator Third and Subsequent Offenses

The bill would amend the crimes of driving when the person's driving privileges have been canceled, suspended or revoked, and the habitual violator law, to provide that third and subsequent convictions shall be off-grid nonperson felonies.

A person convicted of a third or subsequent offense of driving while suspended or revoked and for violation of the habitual violation law shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500. 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.

See Sections 12-14.

New Crime-Counterfeiting

A new crime of counterfeiting United States currency is created and made a level 5, nonperson felony.

Kansas Offender Registration Violations

Violations of the Kansas Offender Registration Act would

constitute a separate offense upon the 31st consecutive day of the offense and every 30 days thereafter.

See Section 16.

High Crime Rate Neighborhoods-Grants

The bill would establish a grant program, subject to appropriations, for high crime rate neighborhoods to develop crime control and prevention strategies.

See Section 17.

Battery Against a Law Enforcement Officer

The crime 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 to uniformed campus police. Battery to a uniformed officer while in the course of their duties would be made a level 5 person felony with a presumption of prison. Aggravated battery of a law enforcement officer would be raised from a level 5 to a level 4 person felony.

See Sections 18-20.

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 5 person felony.

Background

SB 431 as it passed the Senate would establish 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, the high crime neighborhood grants program provision, the counterfeiting provision, violations of the Kansas Offender Registration Act provisions, the battery against a law enforcement officer provision and the battery against a mental health employee provision.