

Revised  
SESSION OF 2009

## **SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2098**

As Amended by Senate Committee on  
Judiciary

### **Brief\***

HB 2098, as amended, would amend what is commonly referred to as the "Rape Shield" law. The bill would add aggravated trafficking and electronic solicitation to the list of crimes in which evidence of the complaining witness' previous sexual conduct with any person, including the defendant, would not be admissible or referenced during the trial unless the defendant files a written motion to the court to admit the evidence and the court rules the evidence is relevant.

The bill also would amend current law concerning electronic solicitation. The bill would clarify that enticing a person whom the offender believes to be a child 14 or more years of age but less than 16 years of age for an unlawful sexual act would be a severity level 3 person felony.

The bill would be in effect upon the publication in the *Kansas Register*.

### **Background**

The provisions of HB 2096, as recommended by the House Committee on Corrections and Juvenile Justice relating to a technical amendment to the crime of electronic solicitation were inserted into this bill.

Under current law, electronic solicitation carries a different penalty for the two age groups of victims. The "under the age of 16" group is a level 3 person felony and the "under the age

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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>

of 14" group is a level 1 person felony. An offender who believes the victim is under 14 necessarily believes the victim is under the age of 16, therefore, offenders only can be convicted of the lesser crime, *i.e.*, the level 3 person felony. The technical amendment to the statute changing it from "under the age of 16" to "14 or more years of age but less than 16 years of age" would alleviate the ambiguity in the current statute and would allow for a conviction of the more severe crime, *i.e.*, the level 1 person felony.

The proponents of the provision regarding the Rape Shield law, as introduced, who testified at the House Committee on Corrections and Juvenile Justice were Mark Goodman, Lyon County Attorney; Christine Ladner, Chief Deputy of Major Felonies, Shawnee County District Attorney's Office on behalf of the Kansas County and District Attorneys Association; and Sandy Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence.

The proponent of the provision regarding the technical amendment to the crime of electronic solicitation, who testified at the House Committee on Corrections and Juvenile Justice was Mark Goodman, Lyon County Attorney on behalf of the Kansas County and District Attorneys Association.

There was no opponent of either provision of the bill, as introduced, who testified at the House Committee on Corrections and Juvenile Justice.

The proponents of the bill who testified in the Senate Committee on Judiciary on the Rape Shield provision were Christine Ladner, Chief Deputy, Shawnee County District Attorney's Office on behalf of the Kansas County and District Attorney's Association (KCDAA); and Sandy Barnett, Kansas Coalition Against Sexual and Domestic Violence.

The proponent of the bill who testified in the Senate Committee on Judiciary on the technical amendment to the crime of electronic solicitation was Christine Ladner, Chief

Deputy, Shawnee County District Attorney's Office on behalf of the KCDA.

The Senate Committee amended the bill by inserting the provisions of HB 2096, as recommended by the House Committee on Corrections and Juvenile Justice. The Senate Committee also made a technical amendment to "Jessica's Law" to change the word "count" to "court."

The fiscal note states that HB 2098 has the potential for increasing litigation in the courts because of the new violation created by the bill. [KLRD Staff Note: A new violation is not created. The Rape Shield law is a rule of evidence and is expanded to include two existing crimes within the protection from the introduction of evidence of the victims' sexual past.] The fiscal note states, however, that although it was not possible to predict the number of additional court cases that would arise, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources.

The Kansas Sentencing Commission estimates that passage of the bill would not require additional adult prison beds.

The fiscal note from the Division of Budget states that passage of the technical amendment to the crime of electronic solicitation would have no fiscal effect on the state budget.