

SESSION OF 2020

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2468**

As Amended by House Committee on Judiciary

**Brief\***

HB 2468, as amended, would amend the elements of and severity levels for the crime of abuse of a child.

The bill would replace the current elements of the crime of abuse of a child with language stating abuse of a child is committing any of the following acts against a child under 18 years of age:

- Knowingly torturing, cruelly beating, cruelly striking, or cruelly kicking (this conduct would be a severity level 5 person felony if the child is at least 6 years of age but less than 18 years of age and a severity level 3 person felony if the child is under 6 years of age);
- Knowingly inflicting cruel and inhuman corporal punishment or knowingly using cruel and inhuman physical restraint, including caging or confining the child in a space not designated for human habitation or binding the child in a way that is not medically necessary (this conduct would be a severity level 5 person felony if the child is at least 6 years of age but less than 18 years of age and a severity level 3 person felony if the child is under 6 years of age);
- Recklessly causing great bodily harm, abusive head trauma, permanent disability, or disfigurement

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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>

(this conduct would be a severity level 4 person felony);

- Knowingly causing great bodily harm, abusive head trauma, permanent disability, or disfigurement (this conduct would be a severity level 3 person felony);
- Knowingly inflicting cruel and inhuman corporal punishment with a deadly weapon (this conduct would be a severity level 3 person felony); or
- Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck, or chest of the child or by blocking the nose or mouth of the child in a manner whereby death or great bodily harm could be inflicted (this conduct would be a severity level 3 person felony).

## **Background**

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Kansas County and District Attorneys Association (KCDAA). [Note: 2019 HB 2394 contains the same contents as HB 2468, as introduced, but with outdated statutory references.] As introduced, the bill would have amended the elements of the crime of abuse of a child and created the crime of aggravated abuse of a child.

In the House Committee hearing, a representative of KCDAA provided proponent testimony, stating the need for prosecutors to be able to appropriately charge child abuse based on the level of harm inflicted and the offender's culpability, as well as allow for a more accurate statistical picture of the extent of child abuse in Kansas. The Leavenworth County Attorney provided written-only proponent testimony.

A representative of the Kansas Association of Criminal Defense Lawyers provided opponent testimony, stating concerns over disproportionality in sentencing that would be caused by the proposed changes in the bill.

The House Committee amended the bill to:

- Remove certain elements of the crime of abuse of a child and add new elements of the crime;
- Add a reference to “abusive head trauma” in certain elements;
- Incorporate elements under aggravated abuse of a child into the elements of the crime of abuse of a child under 18 years of age;
- Remove the other provisions creating the crime of aggravated abuse of a child; and
- Clarify the applicability of the term “cruelly” to certain elements and the requirement that the conduct prohibited by the bill be committed against a child under 18 years of age.

According to the Prison Bed Impact Assessment prepared by the Kansas Sentencing Commission on the bill as introduced, enactment of the bill would reduce prison admissions by 6 in FY 2021 and by 7 in FY 2030; save 6 prison beds in FY 2021 and save 10, 13, or 17 beds under various scenarios in FY 2030; and would result in no additional workload of the Commission.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of the Attorney General (Office) indicates enactment of the bill could increase expenditures of counties if the Office is asked to prosecute crimes described by the bill; however, a fiscal effect cannot be estimated.

The Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district courts, and would consequently increase judicial branch expenditures for time spent by judicial and nonjudicial personnel in processing, researching, and hearing cases. Enactment of the bill would also increase the amount of supervision of offenders required by court services officers. Additional revenues could be remitted to the court for docket fees and fines in any additional cases filed; however, a fiscal effect cannot be estimated.

Any fiscal effect associated with the enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.