

SESSION OF 2014

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 60**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 60 would amend sentencing provisions for a conviction of one of the following offenses when the defendant is 18 or older and the victim is less than 14: aggravated human trafficking; rape; aggravated indecent liberties with a child; aggravated criminal sodomy; commercial sexual exploitation of a child; sexual exploitation of a child; or an attempt, conspiracy, or criminal solicitation. Additionally, the bill would create a procedure to allow imposition of a mandatory minimum term of 35 years based on the existence of one or more aggravating circumstances, listed in the bill.

For a crime committed between July 1, 2006, and July 1, 2014, the bill would clarify a defendant would be required to serve a mandatory minimum term equal to the sentence established by the sentencing range, rather than the mandatory minimum term of 25 years, when because of the defendant's criminal history, the defendant's applicable sentencing range exceeds a mandatory minimum term of not less than 25 years or of not less than 35 years. For a crime committed on or after July 1, 2014, the defendant would be sentenced to a mandatory minimum of 25 years, unless the court finds the defendant is an aggravated habitual sex offender or, as explained above, the defendant's applicable sentencing range exceeds a mandatory minimum term of not less than 25 years or of not less than 35 years.

*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>

Additionally, upon reasonable notice by the prosecuting attorney, the bill would require the court to determine whether the defendant should be required to serve a mandatory minimum term of 35 years. Following a determination of the defendant's guilt, the court would be required to conduct a separate proceeding before a jury as soon as practicable. The jury can be waived according to a procedure set out in statute, and the court then would conduct the proceeding. In the proceeding, evidence could be presented concerning any matter relating to the aggravating circumstances; however, the evidence would not be admissible if the prosecuting attorney had not made the evidence known to the defendant prior to the proceeding or the evidence was secured in violation of the *Kansas Constitution* or *U.S. Constitution*. Additionally, the bill would specify the defendant's testimony at the time of the proceeding shall not be admissible against the defendant at any subsequent criminal proceeding.

At the conclusion of the evidentiary presentation, the parties would have a reasonable period of time in which to present oral argument. At the conclusion of the evidentiary portion of the proceeding, the court would provide oral and written instructions to the jury to guide its deliberations. The bill would specify any decision of the jury regarding the existence of an aggravating circumstance must be beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a unanimous sentencing decision, the court would be required to dismiss the jury and sentence the defendant to a mandatory minimum term of 25 years. If by unanimous vote the jury finds one or more of the aggravating circumstances exist, the defendant would be sentenced to a mandatory minimum term of 35 years. In nonjury cases, the court also would follow these requirements in determining the existence of one or more of the aggravating circumstances.

Background

SB 60 as introduced would have amended the Kansas Open Records Act by adding a provision concerning requests

for records submitted to the Kansas Bureau of Investigation. The contents of the bill were added to 2013 SB 81, which was enacted during the 2013 Legislative Session.

During the 2014 Legislative Session, the House Judiciary Committee replaced the contents of the bill with the contents of HB 2710. In the House Committee's hearing on the bill, Representative Whipple, who requested introduction of HB 2710, appeared as a proponent.

The fiscal note prepared by the Division of the Budget indicates passage of HB 2170 would not require additional prison beds over the next ten years, but would have a long-term effect on bed needs beyond the ten-year forecasting period the Kansas Sentencing Commission (KSC) uses. KSC reports 85 offenders were convicted of the crimes listed in the bill in FY 2013.

Additionally, the Office of Judicial Administration (OJA) estimates the separate proceedings would require \$24,254 from the State General Fund (SGF) in FY 2015 for additional senior judge contract costs, which assumes a total of 53 additional judge days at a cost of \$458 per day. Using KSC's figure of 85 offenders, OJA estimates each proceeding would take a minimum of 5 hours or a total of 425 hours of judge time, which would be equal to 53 judge days. OJA further indicates additional time may be needed from judicial and non-judicial personnel to process, research, and hear cases. However, a precise fiscal effect on this additional workload cannot be determined.

The Board of Indigents' Defense Services estimates the bill would result in additional expenditures of \$12,525 from the SGF in FY 2015 for increased public defender work. The Board expects the bill to increase the amount of time needed for public defenders by 5 hours for each case, which multiplied by \$29.47 per hour public defender cost would equal \$147.35 per case. The total fiscal effect uses KSC's figure of 85 offenders.