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MEMORANDUM

To: Senate Committee on Judiciary

From: Jason Thompson, Senior Assistant Revisor of Statutes

Date: February 19, 2019

Subject: Bill Brief for SB 108

Senate Bill 108 increases criminal penalties for abuse of a child and involuntary manslaughter when the victim is under 6 years of age and creates a presumption of unfitness against any parent convicted of either crime.

Section 1 amends K.S.A. 21-5405, the crime of involuntary manslaughter. The bill increases the penalty for most violations of this crime from a severity level 5, person felony, to a severity level 3, person felony, if the victim is under the age of six years.

Section 2 amends K.S.A. 21-5602, the crime of abuse of a child. The bill increases the penalty for violations of this crime from a severity level 5, person felony, to a severity level 3, person felony, if the victim is under the age of six years.

Finally, section 3 amends K.S.A. 38-2271, part of the revised code for care of children relating to a presumption of unfitness. Under current law in subsection (a)(2), there is a presumption that a parent is unfit by reason of conduct or condition which renders the parent unable to fully care for a child, if the state establishes, by clear and convincing evidence, that a parent has twice before been convicted of any crime in articles 54, 55 or 56 of the criminal code. The bill adds a new provision to create the same presumption of unfitness for a parent who has been convicted of involuntary manslaughter, abuse of a child, or a comparable offense under the laws of another jurisdiction, or an attempt to commit such crime, and the victim was under the age of six years. The presumption operates in the manner provided in K.S.A. 60-414, which is attached for reference.

60-414. Effect of presumptions. Subject to K.S.A. 60-416, and except for presumptions which are conclusive or irrefutable under the rules of law from which they arise, (a) if the facts from which the presumption is derived have any probative value as evidence of the existence of the presumed fact, the presumption continues to exist and the burden of establishing the nonexistence of the presumed fact is upon the party against whom the presumption operates; (b) if the facts from which the presumption arises have no probative value as evidence of the presumed fact, the presumption does not exist when evidence is introduced which would support a finding of the nonexistence of the presumed fact, and the fact which would otherwise be presumed shall be determined from the evidence exactly as if no presumption was or had ever been involved.

History: L. 1963, ch. 303, 60-414; Jan. 1, 1964.