

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 108

As Amended by Senate Committee of the Whole

Brief*

SB 108, as amended, would amend the penalties for the crimes of involuntary manslaughter and abuse of a child and a mitigating factor for sentencing when a victim is an aggressor or participant in the criminal conduct associated with a crime of conviction, as follows.

Penalties for Involuntary Manslaughter and Abuse of a Child

The bill would amend the penalty for the crime of involuntary manslaughter to raise it from a severity level 5 to a severity level 3 person felony if the victim is under six years of age.

The bill would amend the penalty for the crime of abuse of a child to raise it from a severity level 5 to a severity level 4 person felony if the victim is under six years of age.

The bill would state these provisions would be known as "Mireya's Law."

Mitigating Factor when Victim is an Aggressor or Participant in Criminal Conduct

The bill would amend the statute setting forth a nonexclusive list of mitigating factors that may be considered by a sentencing court in determining whether substantial and

*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>

compelling reasons for a departure sentence exist. Specifically, the bill would amend a mitigating factor that may be applied when the victim was an aggressor or participant in the criminal conduct associated with the crime of conviction, to prohibit the application of this factor to a sexually violent crime or to electronic solicitation, when:

- The victim is less than 14 years of age and the offender is at least 18 years of age; or
- The offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act.

Continuing law defines “sexually violent crime” to include the following offenses:

- Rape;
- Indecent liberties with a child and aggravated indecent liberties with a child;
- Criminal sodomy and aggravated criminal sodomy;
- Indecent solicitation of a child and aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Aggravated sexual battery;
- Aggravated incest;
- Aggravated human trafficking, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- Internet trading in child pornography or aggravated internet trading in child pornography;
- Commercial sexual exploitation of a child; or

- An attempt, conspiracy, or criminal solicitation of the above offenses.

Background

As amended by the Senate Committee of the Whole, SB 108 contains the contents of SB 108, as amended by the Senate Committee on Judiciary, regarding the penalties for involuntary manslaughter and child abuse, and HB 2283, as introduced, regarding the mitigating factor when the victim is an aggressor or participant.

SB 108 (Penalties for Involuntary Manslaughter and Child Abuse)

SB 108 was introduced by the Senate Committee on Judiciary at the request of Senator Rucker. As introduced, the bill would have raised the penalty for both crimes to a severity level 3 person felony and would have added a presumption of parental unfitness to the Revised Code for Care of Children (CINC Code) upon the first conviction of either crime if the victim was under six years of age.

In the Senate Committee hearing, a private citizen testified in support of the bill. A representative of the Department for Children and Families provided neutral testimony regarding the CINC Code amendment. No opponent testimony was provided.

The Senate Committee amended the bill to raise the child abuse penalty to severity level 4 instead of severity level 3, remove the CINC Code provision, and name the bill "Mireya's Law."

The Senate Committee of the Whole amended the bill to add language taken from HB 2283, regarding a mitigating factor.

According to the fiscal note prepared by the Division of the Budget on SB 108 as introduced, the Kansas Sentencing Commission indicates enactment of the bill would increase prison bed needs by between 2 and 10 beds by the end of FY 2020 and by between 6 and 35 beds by the end of FY 2029. Based upon the Commission's most recent 10-year projections, it is estimated the year-end population for available male capacity will be exceeded by 264 inmates in FY 2019 and 581 inmates in FY 2020. The Department of Corrections indicates an additional two beds in FY 2020 would require State General Fund expenditures of \$3,624, an additional five beds would require \$9,060, and an additional ten beds would require \$18,120. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.

HB 2283 (Mitigating Factor when Victim is an Aggressor or Participant)

HB 2283 was introduced by the House Committee on Corrections and Juvenile Justice at the request of the Office of the Attorney General.

The House Committee held a joint hearing on HB 2283 and HB 2299, which would have made similar changes to the same mitigating factor. Representative Holscher and representatives of the Metropolitan Organization to Counter Sexual Assault and the Office of the Attorney General testified as proponents. A social worker and a citizen submitted written-only proponent testimony. A representative of the Kansas Association of Criminal Defense Lawyers testified as an opponent.

At the time of Senate Committee of the Whole action on SB 108, HB 2283 had been tabled by the House Committee, and the House Committee had not taken further action on HB 2299.

According to the fiscal note prepared by the Division of the Budget on HB 2283, the Kansas Sentencing Commission indicates enactment of the bill would result in additional prison beds and admissions, but an effect cannot be estimated. The Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on Judicial Branch operations. Any fiscal effect associated with enactment of HB 2283 is not reflected in *The FY 2020 Governor's Budget Report*.