

SESSION OF 2006

SUPPLEMENTAL NOTE ON SENATE BILL NO. 334

As Amended by Senate Committee of the Whole

Brief*

SB 334 would establish a mandatory minimum sentence of 25 years without parole (Hard 25) on first-time sex offenders where the victim is a child; a minimum 40-year sentence (Hard 40) for second-time sex offenders; and a life sentence without the possibility of parole for third-time and subsequent sex offenders *i.e.* aggravated habitual sex offenders. The bill also would establish life-time supervision for the sex offenders noted above who are released from prison by the Kansas Parole Board and life-time electronic monitoring of those offenders.

The following are the major provisions of the bill:

- A mandatory minimum sentence of 25 years would be created for first-time sex offenders who are 18 years of age or older, and when the victim is less than 14 years of age for the following crimes: aggravated trafficking (slavery); rape; aggravated indecent liberties with a child; aggravated criminal sodomy; promoting prostitution; sexual exploitation of a child; and an attempt, conspiracy or criminal solicitation to commit the above crimes. No good-time credits would apply. If the sentencing guidelines grid for non-drug crimes due to the defendant's prior criminal history would exceed 300 months (25 years) the mandatory minimum term would be minimum sentence under the grid.
- A sentencing judge would be able to depart downward from the 25-year minimum sentence if the judge finds substantial and compelling mitigating reasons which must be stated on-the-record following a review of mitigating circumstances. The departure sentence in such cases would be the sentence pursuant to the Kansas Sentencing Guidelines Act.

*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>

Mitigating circumstances would include:

- The defendant has no significant history of prior criminal activity.
- The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.
- The victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.
- The defendant acted under extreme distress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of laws was substantially impaired.
- The age of the defendant at the time of the crime.
- A mandatory minimum sentence of 40 years would be created for second-time offenders who already have been convicted of any of the crimes listed above.
- A life sentence without the possibility of parole for aggravated habitual sex offenders would be created. Habitual sex offender is defined as a person who after July 1, 2006 has committed a sexually violent crime and who has two prior convictions of any sexually violent offense.
- Sexually violent offenses would include, among others, rape; indecent liberties with a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; indecent solicitation of a child; aggravated indecent solicitation of a child; sexual exploitation of a child; aggravated sexual exploitation of a child; aggravated sexual battery; and aggravated incest.
- Lifetime supervision by the Kansas Parole Board would be imposed on first-time or second-time sex offenders who are required to serve either a mandatory minimum sentence of either 25 years or 40 years.

- Parole shall include electronic monitoring for the duration of the offender's life.
- The bill would create the new crime of unlawfully tampering with electronic monitoring equipment as a level 6, nonperson felony.
- The bill would amend the crime of rape, aggravated criminal sodomy, aggravated trafficking; aggravated indecent liberties with a child; promoting prostitution; and sexual exploitation of a child to provide the penalty for such crimes when the victim is under 14 years of age in an off-grid person felony thus facilitating the 25 year sentence, the 40 year sentence, and life without parole sentences for these crimes.
- The penalty for the crime of failure to register or otherwise comply with the Kansas Offender Registration Act would be increased from a severity level 10 nonperson felony to a severity level 5 person felony.
- The crime of aiding a felon would be amended to provide a more severe penalty, a level 5 person felony, for anyone who aids a person required to register under the Kansas Offender Registration Act. The crime would involve knowingly harboring, concealing, or otherwise aiding a person in avoiding compliance with the Kansas Offender Registration Act.
- The bill would amend the good time credit provisions of the Kansas sentencing laws to prohibit such credit for persons sentenced under the bill.
- The duties of the Kansas Sentencing Commission would be amended to add a new responsibility for developing information relating to the number of offenders on post-release supervision and subject to electronic monitoring for the duration of the person's natural life; and determining the effect the mandatory sentencing established under the bill would have on the number of offenders civilly committed to a treatment facility as a sexually violent predator.
- The duties of the Kansas Criminal Justice Coordinating Council also would be expanded to include the formation of an 11-member task force which would have the responsibility to collect information and research concerning the potential utilization of electronic monitoring devices, specifically including devices capable of utilizing global positioning satellite (GPS) technology,

for the purposes of monitoring and tracking the locations of offenders placed on bond, probation, parole, postrelease supervision and individuals subject to civil commitment of sexually violent predators. On or before July 1, 2007, the task force would be required to submit its findings in writing to the Governor, the Attorney General, the Speaker of the House of Representatives, and th President of the Senate.

Background

The bill was supported by the Kansas Attorney General, the Kansas Bureau of Investigation, the Kansas Department of Corrections, the Kansas Coalition Against Sexual and Domestic Violence, and Representative Patricia Kilpatrick. Proponents said the bill was patterned after the Florida law named after the Jessica Marie Lunsford Act, more commonly known as “Jessica’s Law.”

See the *2006 Kansas Legislator Briefing Book*, “Judiciary M-5 Sex Offenders/Sex Predators” for more information on the current Kansas law, laws of other states and federal law on this topic.

A fiscal note for the bill as amended by the Senate Judiciary Committee is not available. The Senate Committee amendment to count on offenders’ sex crimes committed prior to the effective date of the bill (July 1, 2006) would increase the need for additional prison bed space.

The Kansas Sentencing Commission has prepared a revised prison bed space impact statement based on Senate Committee amendments which states the prison bed impact would require between 969 to 1013 additional beds by FY 2016.

The fiscal note on SB 334, as introduced, stated:

According to the Kansas Sentencing Commission, passage of SB 334 would result in the need for five additional prison beds by the end of FY 2007 and 259 additional prison beds by the end of FY 2016. In order to gather the additional information required on offender lifetime electronic monitoring, the agency would require an additional 3.00 FTE research analyst positions at a cost of \$160,730, computer and office equipment totaling \$42,930, and ongoing other operating expenditures, such as rent, computer services, and telephone costs, of \$14,882. In total, additional expenditures of \$218,542 would be required during FY 2007.

According to the Department of Corrections, there could be a cost for the lifetime electronic monitoring of inmates if an inmate is unable to reimburse the state for the costs of the monitoring. It is very unlikely that offenders would be able to support the entire cost of electronic monitoring, in addition to all other financial obligations. However, the Department is unable to estimate the amount that would be collected by the state for offender electronic reimbursement because that would depend on the financial circumstances of each offender.

When considered by custody level, the Department of Corrections has been operating at near or excess capacity for medium and maximum custody male inmates. Nearly all of the current available capacity for male inmates is at the minimum custody level. If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, one-time construction and equipment costs would be needed. In addition, annual costs to staff and operate the additional capacity would be required.

A fiscal note request has been submitted to the Kansas Parole Board. However, the agency has not responded to this request.

The Senate Committee added the crime of aggravated incest to the list of "sexually violent crimes"; added the downward departure for first time sex offenders provision; increased the criminal penalty for violations of the Kansas Offender Registration Act; and made a number of clarifying amendments. The Senate Committee of the Whole added the mitigating circumstances provision and made other clarifications.