

SESSION OF 2010

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2517**

As Amended by Senate Committee of the Whole

Brief*

Sub. for HB 2517, as amended, would create new law to require, on or after July 1, 2011, a domestic violence designation in a criminal case by the court if the trier of fact determines that a defendant committed a domestic violence offense. Only if the court finds, on the record, that the defendant has not previously committed a domestic violence offense or participated in a diversion agreement on a complaint alleging a domestic violence offense, and the domestic violence offense was not used to coerce, control, punish, intimidate, or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member, would the court be authorized to not place a domestic violence designation on the criminal case or the defendant.

The bill would allow, but not require, a court to place a "DV" designation on the criminal case number uniquely identifying the case.

The Attorney General would be required to promulgate rules and regulations, on or before July 1, 2011, to carry out the provision providing for disposition of a criminal case with a domestic violence designation.

The bill would provide that the court, at disposition, for any criminal offense with a domestic violence designation, would be:

*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>

- Required to order the defendant to undergo, and pay for, a domestic violence offender assessment and follow all recommendations, unless otherwise ordered by the court or the Kansas Department of Corrections;
- Authorized, but not required, to order a defendant to undergo, and pay for, a domestic violence offender assessment and any other evaluation prior to sentencing if the assessment or evaluation would assist the court in determining an appropriate sentence; and
- Required to provide the domestic violence assessment and any other evaluation to any entity responsible for supervising the defendant.

The bill also would:

- Define domestic violence;
- Define dating relationship;
- Define family or household member to exclude siblings from the definition and to add persons who are presently residing together or have resided together in the past;
- Define domestic violence offense to delete the crime of stalking and a violation of any order issued pursuant to the Protection from Stalking Act;
- Amend the law requiring all law enforcement agencies to adopt written policies regarding domestic violence calls to clarify that the law enforcement officer would be required to arrest the person who the officer has probable cause to believe committed a crime or offense involving domestic violence;
- Amend the provision regarding written policies of law enforcement to require the law enforcement officer to consider defense of person or property when determining

whether to arrest a person for a crime or offense involving domestic violence;

- Add the appropriate statutory citations for defense of a person or property;
- Further clarify that a law enforcement officer would not be required to arrest any party if no probable cause exists to believe that a crime or offense involving domestic violence has been committed;
- Require a statement in the written policies to direct a law enforcement officer to evaluate each complaint separately, when two or more parties are alleging domestic violence, to determine if probable cause exists that a crime was committed and whether a defense of self defense of person or property exists;
- Amend the crime of domestic battery, on or after July 1, 2011, to prohibit a county or district attorney from entering into a diversion agreement if the complaint alleges a domestic violence offense, and the defendant has participated in two or more diversions on complaints alleging a domestic violence offense in the previous five-year period;
- Authorize a diversion agreement on a complaint alleging a domestic violence offense, unless prohibited, and require a defendant undergo, and pay for, a domestic violence offender assessment and follow all recommendations unless otherwise ordered by the court;
- Clarify that diversion agreements on a complaint alleging a domestic violence offense would require the agreement of the prosecutor, not the court, to relieve the defendant of the requirement to undergo a domestic violence offender assessment and follow all recommendations; or relieve the defendant of the requirement to pay for such assessment, for completion of all recommendations; and

- Require the Kansas Bureau of Investigation to make available to the Governor's Domestic Violence Fatality Review Board crime record information related to domestic violence. The information would be required to be transmitted in a manner that does not identify individual offenders or victims.

Background

The House Committee on Corrections and Juvenile Justice requested the Judicial Council Criminal Law Advisory Committee to study 2009 HB 2335, a bill that would have repealed the crime of domestic battery and incorporated the crime into the battery statute. The bill also would have provided for a domestic violence designation on criminal offense documentation, beginning with arrest and continuing through disposition, imposition of fees, assessment and behavioral management as part of the sentence for crimes designated as domestic violence crimes. Numerous concerns and suggested amendments made a referral to the Judicial Council a reasonable disposition of the bill. HB 2517, as introduced, was a product of the recommendations made by the Judicial Council.

The proponents of the bill, as introduced, who provided testimony to the House Committee were the Governor's Domestic Violence Fatality Review Board; a district court judge of the Tenth Judicial District Court (Johnson); a retired Colorado District Attorney; the Johnson County District Attorney; representatives of the Crime Victim Services of the Kansas Department of Corrections, the Kansas Association of Chiefs of Police, the Kansas Sheriff's Association, the Kansas Peace Officers Association, the Kansas Attorney General's Office, the Kansas National Organization for Women, the Kansas Coalition Against Sexual and Domestic Violence; and several private citizens.

The opponents of the bill, as introduced, who provided testimony to the House Committee were the Office of Judicial Administration and the Ellis County Attorney.

A number of amendments were discussed and several of the amendments were adopted by the House Committee on HB 2517, as introduced. It was determined that a substitute bill was necessary to incorporate the amendments in a coherent manner.

The proponents of the substitute bill, who provided testimony to the Senate Committee, were Representative Jan Pauls; representatives of the Governor's Domestic Violence Fatality Review Board, the Kansas Coalition Against Sexual and Domestic Violence, the Kansas Attorney General's Office, the Crime Victim's Services Division of the Kansas Department of Corrections, the Kansas Association of Chiefs of Police, the Kansas Sheriff's Association, the Kansas Peace Officers Association, and the National Organization for Women of Kansas; and private citizens.

The opponent of the substitute bill, who provided testimony to the Senate Committee, was a representative of the Office of Judicial Administration (OJA). He stated the opposition of OJA is centered on the court's ability to implement the requirement that a domestic violence designation be placed on the criminal case and the potential for increased risk to victims by implementing the domestic violence assessment provisions.

The Senate Committee amended the bill to:

- Amend the definition of "family or household member" to add the word "persons" to the phrase "who are presently residing together or have resided together in the past";
- Amend the definition of "family or household member" to delete siblings from the definition;
- Amend the provision regarding written policies of law enforcement to require the law enforcement officer to

consider defense of person or property when determining whether to arrest a person for a crime or offense involving domestic violence;

- Add the appropriate statutory citations for defense of a person or property;
- Amend the definition of “domestic violence offense” to delete the crime of stalking and a violation of any order issued pursuant to the Protection from Stalking Act;
- Add a provision which authorizes a person to enter a diversion agreement on a domestic battery only twice during any five year period;
- Clarify that diversion agreements on a complaint alleging a domestic violence offense would require the agreement of the prosecutor, not the court, to relieve the defendant of the requirement to undergo a domestic violence offender assessment and follow all recommendations; or relieve the defendant of the requirement to pay for such assessment, for completion of all recommendations; and
- Add a provision which provides that only if the court finds, on the record, that the defendant has not previously committed a domestic violence offense or participated in a diversion agreement on a complaint alleging a domestic violence offense, and the domestic violence offense was not used to coerce, control, punish, intimidate, or take revenge against a person with whom the offender is involved or has been involved in a dating relationship or against a family or household member, would the court be authorized to not place a domestic violence designation on the criminal case or the defendant.

The Senate Committee of the Whole made a technical amendment to the bill to clarify the crime of domestic battery would be amended, in accord with the bill, on or after July 1, 2011.

The fiscal note on the bill, as introduced, may not be applicable since the substitute bill is different from the bill, as introduced. However, according to the fiscal note on the bill, as introduced, the KBI states passage of this bill would not significantly increase the number of records submitted to the Central Repository of Criminal History Records at the agency. However, the agency would be required to update code tables for its Incident Based Reporting (IBR) database to support the definitions of domestic violence and intimate relationships. The agency estimates the programming changes would cost \$2,100 in FY 2010 from the State General Fund. The KBI also states that local law enforcement agencies would have to modify their IBR programs to meet the standards of HB 2517. However, there are no data on which to estimate the cost to all affected law enforcement agencies.

The Kansas Sentencing Commission states that enactment of the bill would increase the agency's workload. The agency would have to re-program its sentencing database to collect domestic violence information. The agency also would have to change other reports that would include domestic violence information under HB 2517. However, the agency would be able to manage the increased workload within its existing resources.

Judicial districts that choose to establish funds could experience increased revenues. However, there is no information to create an accurate estimate because the number of cases and the amount of each case fee is unknown. In addition, it is unclear who would be responsible for paying for the assessments in the event an offender is unable to pay. Courts could be required to absorb this cost; however, the additional costs for unpaid assessments is unknown. Any fiscal effect associated with HB 2517 is not reflected in *The FY 2011 Governor's Budget Report*.