

## **Criminal Discharge of a Firearm; Special Sentencing Rules; SB 123 Program Eligibility; Postrelease Supervision Time; Senate Sub. for HB 2010**

**Senate Sub. for HB 2010** updates certain cross references to statutes that have been repealed; amends the definition of criminal discharge of a firearm; creates special sentencing rules related to the use of firearms; amends law concerning eligibility for certain offenders for the nonprison sanction of placement in a certified drug abuse treatment (SB 123) program; and amends law concerning the tolling of postrelease supervision time.

### ***Statutory Cross References (Sections 1, 5, and 6)***

The bill updates statutory cross references in statutes concerning:

- Jury instructions for persons who lack the required mental state to commit a crime;
- Annual hearings on the continued commitment of persons who were found to lack the required mental state to commit a crime; and
- Municipal zoning of group homes.

### ***Definition of Criminal Discharge of a Firearm (Section 2)***

The bill amends the definition of criminal discharge of a firearm to include the reckless and unauthorized discharge of any firearm at a motor vehicle in which there is a human being, regardless of whether the offender knows or has reason to know that a human being is present.

### ***Special Sentencing Rules (Section 3)***

#### ***Violation of Criminal Possession of a Weapon by a Convicted Felon***

The bill creates a special sentencing rule stating that, notwithstanding statutory provisions regarding lesser and included crimes or any other provisions of law to the contrary, the sentence for a violation of criminal possession of a weapon by a convicted felon is a presumptive term of imprisonment, required to be served consecutively to any other term(s) of imprisonment imposed. The rule is triggered if the trier of fact finds beyond a reasonable doubt that:

- The weapon the offender possessed during such violation was a firearm; and
- Such firearm was used by the offender during the commission of any violent felony, as defined by the bill.

The bill specifies that this sentencing rule does not apply to an offender who is prohibited from possessing a weapon as a result of a juvenile adjudication.

The bill defines “violent felony” to mean the following crimes as defined in statute:

- Capital murder or first- or second-degree murder;
- Voluntary manslaughter;
- Kidnapping, when the crime involves holding a person for ransom or as a shield or hostage, or aggravated kidnapping;
- Aggravated assault, when committed with a deadly weapon, or aggravated assault of a law enforcement officer, when committed with a deadly weapon;
- Aggravated battery, when the conduct causes great bodily harm or disfigurement, or when the conduct causes bodily harm that could cause great bodily harm, disfigurement or death or aggravated battery against a law enforcement officer, unless the conduct involves bodily harm caused with a motor vehicle;
- Mistreatment of a dependent adult or mistreatment of an elder person, when the conduct involves infliction of physical injury or unreasonable confinement or punishment;
- Rape;
- Aggravated criminal sodomy;
- Abuse of a child, unless the acts constituting the crime are committed recklessly;
- Any felony offense under statutes prohibiting the unlawful manufacturing, cultivation, or distribution of controlled substances;
- Treason;
- Criminal discharge of a firearm, when the acts constituting the crime are committed in the presence of another human being;
- Fleeing or attempting to elude a police officer;
- Any felony that includes the domestic violence designation, as determined by the trier of fact under the relevant statutory procedure; or
- Any attempt, conspiracy, or criminal solicitation of any felony offense described above.

A whereas clause designates amendments made in this section as the “Reduce Armed Violence Act.”

#### *Violation of Criminal Discharge of a Firearm*

The bill creates a special sentencing rule for a violation of criminal discharge of a firearm involving the reckless and unauthorized discharge of a firearm at a dwelling, building, structure, or motor vehicle.

The rule is triggered if the trier of fact makes a finding beyond a reasonable doubt that the offender discharged a firearm and that the offender knew or reasonably should have known a person was present at the above-mentioned locations.

When the person present is 14 years of age or older, the sentence is a presumptive term of imprisonment per the Kansas Sentencing Guidelines, plus 60 months of additional imprisonment, to be served consecutively to any other term(s) of imprisonment.

When the person present is less than 14 years of age, the sentence is a presumptive term of imprisonment per the Kansas Sentencing Guidelines plus 120 months of additional imprisonment, to be served consecutively to any other term(s) of imprisonment.

The bill provides that a sentence imposed under both special rules is not to be considered a departure sentence and is not subject to appeal and, for a sentence imposed for a violation of criminal possession of a weapon by a convicted felon, no other sentence may be permitted.

#### ***SB 123 Program Eligibility (Section 4)***

The bill amends law to expand eligibility for certain offenders for the nonprison sanction of placement in a certified drug abuse treatment (SB 123) program. [*Note:* SB 123 (2003) created mandatory community-based supervision and substance abuse treatment for certain nonviolent offenders convicted of drug possession.]

The bill amends law to allow a defendant convicted of a nonperson severity level 7, 8, 9, or 10 felony with a criminal history score of C through I to participate in a certified drug abuse treatment program if the defendant has no prior convictions for manufacturing a controlled substance, cultivating or distributing a controlled substance, or unlawful acts involving proceeds from drug crimes.

The bill amends law to allow a defendant convicted of a nonperson severity level 7, 8, 9, or 10 felony with a criminal history score of A or B to be able to participate in a certified drug abuse treatment program if the defendant has no prior convictions for manufacturing a controlled substance, cultivating or distributing a controlled substance, or unlawful acts involving proceeds from drug crimes, and:

- The person felonies in the defendant’s history are nondrug severity level 8 or lower, and

- The court finds that the safety of the members of the public will not be jeopardized by the placement of the defendant in a certified drug abuse treatment program.

***Tolling of Postrelease Supervision Time (Section 7)***

The bill amends a statute governing parole, conditional release, and postrelease supervision to specify that the service of postrelease supervision time shall not toll, except as provided in the statute governing violations of conditions of release.