

SESSION OF 2007

**SECOND CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2062**

As Agreed to April 4, 2007

**Brief\***

HB 2062 would amend the statute on criminal use of explosives; create a special application in sentencing for a third or subsequent conviction of burglary; enact Alexa's Law dealing with crimes against unborn children; and amend the statute on immunity from prosecution or liability for use of force. In addition, the bill enacts new criminal provisions regarding controlled substances and paraphernalia, authorize creation of the Controlled Substances Monitoring Task Force, and expand the law regarding battery against a mental health employee.

**Criminal Use of Explosives**

The bill would amend the statute on criminal use of explosives by expanding the definition of explosive to explicitly include materials that, when combined, cause a chemical reaction and explode. Violation of this section of the statute would be a level 8, person felony. The penalty for a violation of this section is a level 6, person felony if the explosive is intended to be used for a crime, a public safety officer is placed at risk to defuse the explosive, or the explosive is placed in a building in which there is another person.

The bill also would make the possession, creation, or construction of a simulated explosive device illegal. Violation of this section of the statute would be a level 8, person felony.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

The bill would exclude consumer fireworks, as defined in federal law, from the definition of explosive, except for when the consumer fireworks are modified or assembled in a manner not intended by the manufacturer. The bill would not prohibit the construction or use of explosives or simulated explosive devices by authorized personnel for legitimate public safety training, demonstration, or exhibition.

### **Third or Subsequent Burglary Conviction**

The bill also would create a special application in sentencing which would make the sentence for a third or subsequent conviction for burglary a presumptive prison sentence. Additionally, a defendant convicted of burglary, with a prior criminal history of a burglary and an aggravated burglary, also would be presumptive prison. The sentence would not be considered a departure sentence and would not be subject to an appeal.

### **Alexa's Law**

The bill would enact Alexa's Law dealing with crimes against unborn children. "Unborn child" would be defined to mean a living individual organism of the species *homo sapiens*, *in utero*, at any stage of gestation from fertilization to birth. Enumerated crimes against persons, which also would mean an unborn child, and include the following:

- Battery at KSA 21-3412;
- Aggravated battery at KSA 21-3414;
- Murder in the first degree KSA 21-3401;
- Murder in the second degree KSA 21-3402;
- Voluntary manslaughter KSA 21-3403;
- Involuntary manslaughter KSA 21-3404;
- Vehicular homicide KSA 21-3405;
- Capital murder KSA 21-3439 and
- Involuntary manslaughter DUI KSA 21-3442.

Attempt, conspiracy, and solicitation to commit the above mentioned crimes would be incorporated in the bill.

The bill would not apply to:

- Any act committed by the mother of the unborn child;
- Any medical procedure, including abortion; and
- The lawful dispensation or administration of lawfully prescribed medication.

### **Immunity From Prosecution or Liability for Use of Force**

The bill would amend the law on immunity from prosecution or liability for use of force by adding a provision which authorizes a prosecutor to commence a criminal prosecution upon a determination of probable cause that the use of force was not justified.

### **Controlled Substances and Paraphernalia**

The bill would change the law regarding controlled substances and drug paraphernalia to do the following:

- Clarify and adopt certain federal definitions of drug paraphernalia;
- Allow the courts to consider whether the drug paraphernalia items were advertised to encourage, glorify, or advocate participation in illegal use, manufacture, sale, or cultivation of controlled substances;
- Provide that, although an item has not been used or did not contain a controlled substance, this would not be a defense to a charge of drug paraphernalia possession; and

- Increase certain penalties for certain offenses regarding the sale, offering for sale, possession with intent to sell, delivering and possession with intent to deliver, manufacture with intent to deliver, or cause to be delivered controlled substances within 1,000 feet of a school.

### **Controlled Substances Monitoring Task Force**

The bill would establish an 11-member Controlled Substances Monitoring Task Force to develop a plan for the creation and implementation of a controlled substances prescription monitoring program and an electronic purchase log. The electronic purchase log would be required to have the capability of, in real-time, checking compliance with all state, federal and local laws concerning the sale of ephedrine and pseudoephedrine. The bill states that it is not the intent of the prescription monitoring program to discourage or interfere with the prescribing of controlled substances by physicians and other practitioners for legitimate medical purposes.

The plan developed by the Task Force would be required to include suggestions for future action by the Legislature with regard to the monitoring program and purchase log. The Task Force also would be required to report its findings and conclusions to the Legislature on or before January 14, 2008.

Members of the Task Force would include:

- The Attorney General, or the Attorney General's designee;
- One member appointed by the Kansas Health Policy Authority;
- One member appointed by the Director of the Kansas Bureau of Investigation;
- Two members appointed by the Board of Pharmacy;

- One member appointed by the Board of Healing Arts;
- One member appointed by the Kansas Medical Society;
- One member appointed by the Kansas Association of Osteopathic Medicine;
- One member appointed by the Kansas Pharmacists' Association;
- One member appointed by the Kansas State Dental Association; and
- One member appointed by the Kansas Hospital Association.

### **Amendments Concerning Controlled Substances**

The bill would amend current law by:

- Requiring the address of the person purchasing, receiving or otherwise acquiring ephedrine or pseudoephedrine be properly recorded by the seller in the log;
- Requiring that the seller verify that the name entered in the log corresponds to the name provided on the identification of the person purchasing, receiving or otherwise acquiring ephedrine or pseudoephedrine;
- Requiring the purchaser or the seller to record the date and time of the sale;
- Requiring the seller to enter the name and quantity of the controlled substance sold;
- Adding a provision making it unlawful for any pharmacy to allow customers to have direct access to any ephedrine or pseudoephedrine and requiring the controlled substance be placed behind the counter or stored in a locked cabinet;

- Making all forms of ephedrine, pseudoephedrine and phenylpropanolamine scheduled as a controlled substance;
- Providing civil immunity to a seller who, in good faith, releases information in a log to any law enforcement officer; and
- Adding a provision making it a class A, nonperson misdemeanor for any person to purchase, receive or otherwise acquire more than 3.6 grams in a single transaction or more than nine grams within any thirty-day period of a controlled substance, which would include any compound, mixture or preparation containing the designated amount (either 3.6 grams or 9 grams) of pseudoephedrine base or ephedrine base.

### **Battery Against a Mental Health Employee**

The bill also would expand the law regarding battery against a mental health employee to include employees at Osawatomie State Hospital, Rainbow Mental Health Facility, Kansas Neurological Institute and Parsons State Hospital and Training Center.

### **Conference Committee Action**

The Conference Committee agreed to HB 2062 as amended by the Senate and agreed further to include in the bill portions of the following bills: HB 2006 as passed by the House; HB 2359 regarding drug crimes; and HB 2001 regarding battery against mental health employees.

## **Background**

The original HB 2062 dealt with the expansion of the definition on criminal use of explosives. The Senate Committee on Judiciary amended the bill to clarify the definition of consumer fireworks; return the bill to the original penalties for a violation of criminal use of explosives; and added the provisions of SB 97, third or subsequent conviction of burglary.

The Senate Committee of the Whole added the provisions of HB 2006, Alexa's Law, and added a provision to allow a prosecutor to commence a criminal prosecution upon a determination of probable cause that the force used was not justified.

Crimes