

SESSION OF 2007

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 166**

As Amended by House Committee of the Whole

**Brief\***

SB 166, as amended, would expand the list of sex offenses that would qualify a second-time sex offender for a life sentence with a mandatory minimum term of imprisonment of not less than 40 years ("Hard 40"). The list would be expanded by adding crimes that were in effect at any time prior to the effective date of this act which are substantially the same as the following crimes:

- Aggravated trafficking, if the victim is less than 14 years of age;
- Rape of a child who is under 14 years of age;
- Aggravated indecent liberties with a child under 14 years of age;
- Aggravated criminal sodomy with a child who is under 14 years of age;
- Promoting prostitution, if the prostitute is less than 14 years of age;
- Sexual exploitation of a child who is under 14 years of age; or
- An attempt, conspiracy or criminal solicitation of any of the above crimes.

The "Hard 40" provision of the bill would not apply to unlawful voluntary sexual relations.

The bill also would clarify that sexual exploitation of a child is a severity level 5 person felony, unless the child is under 14 years of age and the offender is 18 years of age or older. The latter is an off-grid personal felony.

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\*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>

In addition, the bill would include a juvenile incarcerated in a juvenile correctional facility who commits an offense which, if committed by an adult, would constitute commission of a felony, to be subject to a new sentence imposed as a consecutive sentence or as a new conviction subject to the discretion of the court, even when the new crime otherwise presumes a nonprison sentence.

The bill would be effective upon publication in the *Kansas Register*.

## **Background**

The proponent of the bill was Rick Guinn, Chief Counsel with the Attorney General's Office. He testified that the bill makes two clarifications to 2006 HB 2576, also known as "Jessica's Law." The first clarification closes a potential loophole for second-time offenders who would otherwise be sentenced to a "Hard 40." The current language of the law does not take into account that the elements of the crime of aggravated indecent liberties with a child were different prior to the implementation of the 1993 Sentencing Guidelines Act. Without the clarifying change in the bill that includes crimes which are substantially the same, offenders convicted of aggravated indecent liberties with a child prior to 1993 would be treated as first-time offenders and would not be sentenced to the "Hard 40." The second clarification makes it clear an offender who is convicted of sexual exploitation of a child who is under 14 years of age by an offender who is over 18 years of age is guilty of an off-grid felony.

Roger Werholtz, Secretary of the Kansas Department of Corrections, provided written testimony in support of the bill.

There was no testimony in opposition to the bill.

The Senate Committee amended the bill to strike the phrase, "that is comparable to an offense defined" because it is

not as precise as the phrase that was inserted by the Committee, *i.e.*, “which is substantially the same as crimes listed.” Additionally, the Committee added language that made it clear that the “Hard 40” provision does not apply to “Romeo and Juliet” scenarios.

The House Committee of the Whole inserted the provision regarding juveniles.

The fiscal note from the Division of Budget states that, according to the Kansas Sentencing Commission, the bill would have an effect on the number of prison beds needed, but not until after the current ten-year forecasting period. The agency estimates an effect would occur after *FY 2032*.