

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUB. FOR SENATE BILL NO. 414**

As Agreed to April 4, 2008

Brief*

House Sub. for SB 414 would amend the crime of stalking to include the parts for the following actions:

- Intentionally or recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family, and the targeted person is actually placed in such fear;
- Intentionally engaging in a course of conduct targeted at a specific person which the individual knows will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or
- After being served with, or otherwise provided notice of, any protective order that prohibits contact with a targeted person, intentionally or recklessly engaging in at least one act that violates the provisions of the order and would cause a reasonable person to fear for safety, or the safety of a member of the person's immediate family, and the targeted person is actually placed in such fear.

The severity levels for stalking would be increased as follows:

*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>

- Upon a first conviction, stalking as described in the first part would be a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in the first part would be a severity level 7, person felony;
- Upon a first conviction, stalking as described in the second part would be a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in the second part would be a severity level 5, person felony; and
- Upon a first conviction, stalking as described in the third part would be a severity level 9, person felony. Upon a second or subsequent conviction, stalking as described in the third part would be a severity level 5, person felony.

A person served with a protective order or a person who engaged in stalking after having been advised against the stalking activities by uniformed law enforcement officers would be presumed to have acted intentionally.

The bill would define “course of conduct” to mean two or more acts over a period of time, however short, which evidence a continuity of purpose.

A course of conduct would not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct would include, but not be limited to, any of the following acts or a combination thereof:

- Threatening the safety of the targeted person or a member of such person’s immediate family;
- Following, approaching or confronting the targeted person or a member of such person’s immediate family;
- Appearing in close proximity to, or entering the targeted person’s residence, place of employment, school or other

place where such person can be found, or the residence, place of employment or school of a member of such person's immediate family;

- Causing damage to the targeted person's residence or property or that of a member of such person's immediate family;
- Placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;
- Causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family; and
- Any act of communication.

No protective order would be construed to prohibit an attorney, or person acting on behalf of an attorney, who is representing the defendant in a civil or criminal proceeding from contacting the protected party for a legitimate purpose within the scope of a civil or criminal proceeding.

Further, the bill would do the following:

- Insert the provision that, in a criminal proceeding, a person who claims an exemption, exception, or exclusion would have the burden of going forward with the asserted claim;
- Add the provision that present incarceration of a person who violates stalking elements would not be a bar to prosecution;
- Require all law enforcement agencies and prosecutors to adopt written policies regarding the protocol to be used when investigating or prosecuting an allegation of stalking;

- Authorize, but not require, a law enforcement training course on the procedures to follow when responding to an allegation of stalking; and
- Authorize, but not require, continuing education or training on procedures to follow when responding to an allegation of stalking.

Conference Committee Action

The Conference Committee adopted the House amendments to the bill with the addition of language that would:

- Require all law enforcement agencies and prosecutors to adopt written policies regarding the protocol to be used when investigating or prosecuting an allegation of stalking;
- Authorize, but not require, a law enforcement training course on the procedures to follow when responding to an allegation of stalking; and
- Authorize, but not require, continuing education or training on procedures to follow when responding to an allegation of stalking.

Background

The original contents of SB 414 dealt with the procedure to determine whether a district attorney's office should be established in a county. Those provisions have not been inserted into any other bill.

The stalking provisions were originally contained in HB 2850.

Representative Kasha Kelley, sponsor of the 2008 HB 2850, appeared in support of the measure in the House. Brian Sanderholm, father of victim Jodi Sanderholm, spoke in support

of the bill. Others who testified in favor of the bill included Debra Wilson, Kansas Judicial Council; Chris Smith, Cowley County Attorney; and Sam Wallace, Arkansas City Police Department.

In addition, support for the bill was offered by Eileen Doran, YWCA Battered Women Task Force in Topeka; Judy Davis, Executive Director, The Crisis Center Inc. for Clay, Geary, Marshall, Pottawatomie, and Riley counties; Dorothy Stucky Halley, Attorney General's Office; Laura Patzner, Executive Director, Family Crisis Center, Inc., and for ten counties in central and south central Kansas; and Sandra Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence.

The House Committee amended the bill to do the following:

- Insert the provision that requires a person in a criminal proceeding, who claims an exemption, exception, or exclusion would have the burden of going forward with the claim; and
- Add the provision that present incarceration of a person who violates the stalking elements would not be a bar to prosecution.

The House passed the bill as amended on a vote of 123 yeas to 0 nays. The Senate Judiciary Committee received the bill but did not have a hearing on the bill. The House Judiciary Committee struck the original provisions of SB 414 and inserted the original provisions of HB 2850 into House Sub. for SB 414. The House passed the substitute bill on a vote of 123 yeas to 0 nays.

The Senate nonconcurred to the amendments made by the House and requested a Conference Committee. The House acceded to the request to conference. The Conference Committee agreed to the amendments made by the House with

the addition of the language on written policies, education, and training for law enforcement and prosecutors.

The fiscal note indicates that, if the bill does not contribute to the need for capacity expansion, additional annual costs of approximately \$2,000 per inmate for basic support, including food service, would be needed. Additional expenditures for health care also could be incurred, if the increase in the inmate population required adjustments in the medical contract. The health care contract provides that whenever the inmate count at a facility changes by more than a specified percentage, an adjustment in contract payments is made. The amount of any adjustment would depend on the specific facility involved. Any fiscal effect resulting from this bill has not been included in the Governor's Budget.