

SESSION OF 2008

SUPPLEMENTAL NOTE ON SENATE BILL NO. 476

As Amended by House Committee of the Whole

Brief*

SB 476 would amend the procedures for arresting and detaining probation and parole condition violators. The bill would amend current law to authorize court services officers, community corrections officers, and parole officers to deputize other law enforcement officers to arrest a probationer or parolee through a verbal order, if in the supervising officer's judgment the probationer or parolee has violated the conditions of his or her release. The bill also would require that a written statement, or arrest and detain order, be delivered to the place where the probationer or parolee is being detained.

In addition, the bill would change current law by including the term post-incarceration supervision to clarify post-incarceration supervision for certain offenders. Offenders with a life sentence or an indeterminate sentence for an offense committed prior to July 1, 1993, who subsequently commit and are convicted of a crime after July 1, 1993, would remain on post-incarceration supervision based on the longest term of post-incarceration imposed for all crimes upon which sentence was imposed, or until discharged from supervision by the Kansas Parole Board. The term of post-incarceration supervision would apply retroactively to crimes committed prior to the effective date of this act. The term post-incarceration supervision would include parole and postrelease supervision.

Further, the bill also would provide an exclusive list of mitigating factors for considerations of whether substantial and compelling reasons for a departure exists in the sentencing of

*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>

a person found guilty of a nonperson felony ranked in severity levels one through four of the nondrug sentencing grid.

The exclusive list of mitigating factors would include the following:

- The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction;
- The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor is not sufficient as a complete defense;
- The offender, because of physical or mental impairment, lacked substantial capacity for judgement when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor;
- The defendant, or the defendant's children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse; and
- The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

Further, the bill would provide that a sentencing judge could not impose a downward dispositional departure sentence for any crime of extreme sexual violence.

In addition, a sentencing judge could not impose a downward durational departure to less than 50 percent of the center of the range of the sentence for a crime.

The bill would take effect upon publication in the *Kansas Register*.

Background

Under current law, the order for arrest by the court services officer, community corrections officer, or parole officer to another law enforcement officer must be in writing. Additionally, current law requires the written statement, or arrest and detain order, be delivered to the detention facility contemporaneously with the probationer or parolee.

The proponents of the bill included Travis Harrod, Ford County Assistant District Attorney on behalf of the Ford County District Attorney's Office and the Kansas County and District Attorneys Association; and Roger Werholtz, Secretary, Kansas Department of Corrections.

There was no testimony in opposition to the bill.

The House Committee inserted the provisions relating to post-incarceration supervision which were taken from SB 479.

The House Committee of the Whole amended SB476 by inserting the provisions of HB 2732 dealing with restrictions in sentencing.

The fiscal note from the Division of Budget states the passage of this bill would have no effect on prison admissions or prison beds and would have no fiscal effect on the Kansas Department of Corrections.