

SESSION OF 2008

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2732

As Amended by House Committee on
Judiciary

Brief*

HB 2732 would provide an exclusive list of mitigating factors for considerations of whether substantial and compelling reasons for a departure in the sentencing of 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.

*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>

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 dispositional departure for any crime of extreme sexual violence.

Background

Representative Joe Patton appeared in support of the bill. Helen Pedigo, Executive Director, Kansas Sentencing Commission, provided information regarding the prison bed impact of the bill.

The House Committee amendment provided that the sentencing judge could not impose a downward dispositional departure sentence for any crime of extreme sexual violence.

The fiscal note on the original bill indicates that if the bill does not contribute to the need for capacity expansion, additional annual costs of approximately \$2,400 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.