

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2435**

As Agreed to March 26, 2010

Brief*

HB 2435, as amended, would amend several criminal and sentencing statutes. The bill would be effective upon publication in the *Kansas Register*.

Attempt, Conspiracy, or Criminal
Solicitation (HB 2435, as introduced)

The bill would amend current law to clarify that the penalty for an attempt, conspiracy, or criminal solicitation to commit certain sex crimes where the victim is a child less than 14 years of age would be an off-grid offense. The sex crimes that would require the imposition of a penalty for an off-grid offense would be the attempt, conspiracy, or criminal solicitation to commit aggravated trafficking, rape, aggravated indecent liberties with a child, aggravated criminal sodomy, promoting prostitution if the prostitute is less than 14 years of age, and sexual exploitation of a child.

The bill would clarify that a downward durational departure from a mandatory minimum sentence of 25 years for certain sex offenses would be limited. A judge would not be authorized to impose a downward durational departure for any crime of extreme sexual violence to less than 50 percent of the center of the range of the sentence for such crime.

The bill also would amend the statute on terrorism and illegal use of weapons of mass destruction to provide that an

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attempt, conspiracy, or criminal solicitation to commit the crime would be an off-grid felony.

Aggravated Habitual Sex Offender
(HB 2435, as introduced)

The bill would delete the definition of “prior conviction event” in the aggravated habitual sex offender statute to clarify that any person convicted of two or more sexually violent crimes, despite the fact that the convictions occur on the same day, is a habitual sex offender subject to a mandatory life sentence without the possibility of parole.

Aggravated Endangering a Child
(Modified from 2010 SB 399)

The bill would amend current law to require the sentence for a violation of aggravated endangering a child to be served consecutively to any other term or terms of imprisonment imposed by the court. The bill would clarify the sentence is not a departure and would not be subject to appeal.

Sentence Enhancement of Certain
Drug Crimes (Modified from 2010 SB 399)

The bill would:

- Add a definition of “minor” to mean a person under 18 years of age;
- Make the crime of cultivation, distribution, or possession with intent to distribute certain drugs a drug severity level 2 felony, if the trier of fact finds that the offender is 18 years of age or more and the drug was distributed or possessed with the intent to distribute to a minor, or on or within 1,000 feet of any school property;

- Make the knowing distribution or possession with the intent to distribute any drug paraphernalia used for a violation of any crimes involving controlled substances, except for those listed in subsection (b) of KSA 21-36a06 (certain depressant drugs, stimulant drugs, and hallucinogenic drugs; any material, compound, mixture, or preparation which contains any quantity of certain substances, their optical isomers, salts, or salts of isomers; and anabolic steroids), a drug severity level 4 if the trier of fact finds that the offender is 18 years of age or more and the drug paraphernalia was distributed or caused to be distributed to a minor, or on or within 1,000 feet of any school property;
- Make the knowing distribution or possession with the intent to distribute any drug paraphernalia used for a violation of subsection (b) of KSA 21-36a06 (certain depressant drugs, stimulant drugs, and hallucinogenic drugs; any material, compound, mixture, or preparation which contains any quantity of certain substances, their optical isomers, salts, or salts of isomers; and anabolic steroids), a severity level 9, nonperson felony if the trier of fact finds that the offender is 18 years of age or more and the drug paraphernalia was distributed or caused to be distributed to a minor or on or within 1,000 feet of any school property; and
- Make the distribution, possession with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substances a severity level 7, nonperson felony if the trier of fact finds that the offender is 18 years of age or more and the violation occurred on or within 1,000 feet of any school property.

Sentence Enhancement for Ballistic
Resistant Material (2010 SB 2454, as introduced)

The bill would create a special rule in sentencing to add 30 months imprisonment to the sentence of any defendant

convicted of a felony when the trier of fact finds beyond a reasonable doubt that the defendant wore or used ballistic resistant material during the commission of, attempt to commit, or flight from such felony. The sentence would be presumptive prison and would be required to be served consecutively to any other sentence imposed.

Conference Committee Action

The Conference Committee agreed to the Senate amendments with the addition of HB 2454, as introduced, regarding a special rule in sentencing providing an enhancement to the sentence of any defendant convicted of a felony when the trier of fact finds beyond a reasonable doubt that the defendant wore or used ballistic resistant material during the commission of, attempt to commit, or flight from such felony.

Background

The Kansas Supreme Court, in *State v. Horn*, 288 Kan. 690, 206 P.3d 526 (2009), determined that there was a conflict between the general statutes on attempt (KSA 21-3301), conspiracy (KSA 21-3302), and conspiracy to commit an offense (KSA 21-3303) and the specific statute known as Jessica's Law (KSA 21-4643(a)(1)(G)), which provides that attempts, conspiracies, and solicitations of off-grid offenses would remain off-grid offenses. The general statutes provide that an attempt to commit an off-grid offense is a severity level 1 offense, conspiracy is a severity level 2 offense, and criminal solicitation is a severity level 3 offense.

This bill clarifies that the Legislature intended the specific statute be applied in cases involving sexual crimes committed against children under the age of 14, which effectively reverses the finding of the Kansas Supreme Court in *Horn* for future cases.

Additionally, the Kansas Supreme Court, in *State v. Trautloff*, 289 Kan. 793,217 P.3d 15 (2009), invalidated the life without the possibility of parole sentence the defendant received from the trial court. The Kansas Supreme Court reasoned that because the defendant's convictions for the rape, aggravated sodomy, aggravated indecent liberties with a child, and sexual exploitation of a child had been adjudicated on the same day, the convictions were not separate conviction events. This bill effectively reverses the finding of the Kansas Supreme Court in *Trautloff* for future cases.

The proponents of the bill, as introduced, who testified in the House Committee were Representative Lance Kinzer, sponsor of the bill, and a representative of the Kansas County and District Attorneys Association.

The opponents of the bill, as introduced, who testified in the House Committee were several attorneys who practice criminal defense.

The proponents of the bill who testified in the Senate Committee were Representative Lance Kinzer, sponsor of the bill, and a representative of the Kansas County and District Attorneys Association.

The Senate Committee received written testimony in opposition of the bill from several attorneys who practice criminal defense.

The Senate Committee amended the bill to clarify that a downward durational departure from a mandatory minimum sentence of 25 years for certain sex offenses would be limited. A judge would not be authorized to impose a downward durational departure for any crime of extreme sexual violence to less than 50 percent of the center of the range of the sentence for such crime.

The Senate Committee of the Whole amended the bill to insert modified provisions from 2010 SB 399 regarding aggravated endangering a child and sentence enhancement of certain drug crimes.

According to the fiscal note on the bill, as introduced, the Kansas Sentencing Commission and the Kansas Judicial Council both indicate that HB 2435 would have no fiscal effect.

Attempt, Conspiracy, or Criminal Solicitation; Aggravated Habitual Sex Offender; Endangering a Child; Sentence Enhancement drug crimes; ballistic resistant material