

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 434**

As Agreed to May 4, 2010

Brief*

SB 434, as amended, would amend current law regarding unlawful sexual relations, traffic in contraband in a correctional institution or care and treatment facility, the Kansas Offender Registration Act, parole board hearings, and a special rule in sentencing regarding burglary.

Unlawful Sexual Relations

The bill would increase the penalty for the crime of unlawful sexual relations from a severity level 10, person felony to a severity level 5, person felony for all unlawful sexual relations; except for where the offender is an employee of the Juvenile Justice Authority or an employee of a contractor who provides services in a juvenile correctional facility and the person with whom the offender is engaging in the unlawful sexual relations is a person 16 years of age or older who is confined by lawful custody to such facility. Such violation would be a severity level 4, person felony. Further, the bill would create a special rule in sentencing to make the sentence for the crime of unlawful sexual relations a presumptive imprisonment sentence. Such sentence would not be considered a departure and would not be subject to appeal.

The bill also would amend current law to clarify that in order to commit the crime of unlawful sexual relations where:

- The offender is a parole officer, volunteer for the Kansas Department of Corrections, or a volunteer of a contractor

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contracted to provide supervision services of a person placed on parole, conditional release, or postrelease supervision, the offender would have to have knowledge that the person with whom the offender commits the proscribed sexual act is currently on parole, conditional release, or postrelease supervision;

- The offender is a court services officer or a contractor contracted to provide supervision services of a person placed under supervision and control of court services, the offender would have to have knowledge that the person with whom the offender commits the proscribed sexual act is currently under supervision of court services; and
- The offender is a community corrections services officer or a contractor contracted to provide supervision services of a person placed under supervision and control of community corrections, the offender would have to have knowledge that the person with whom the offender commits the proscribed sexual act is currently under supervision of community corrections.

The bill would delete the provision which would have required where the offender is a teacher or a person in a position of authority, the offender would have to have knowledge that the person is a student enrolled at the school where the offender is employed.

Traffic in Contraband in a Correctional Institution or Care and Treatment Facility

The bill would amend the crime of traffic in contraband in a correctional institution or care and treatment facility to increase the severity level of the crime to a severity level 4, nonperson felony if the contraband are firearms, ammunition, or explosives introduced or attempted to be introduced by an employee of the correctional institution or care and treatment facility.

The bill would clarify that traffic in contraband in a correctional institution or care and treatment facility is a severity level 5, nonperson felony if such items are firearms, ammunition, explosives, controlled substances introduced by a nonemployee; or items defined as contraband by the rules and regulations adopted by the Secretary of Corrections, the Secretary of Social and Rehabilitation Services, or the Commissioner of the Juvenile Justice Authority and introduced by an employee. All other traffic in contraband would be a severity level 6, nonperson felony.

The bill would provide a limited exception to the traffic in contraband in a correctional or care and treatment facility for a person licensed under the Personal and Family Protection Act. Such person would not be subject to the crime if the firearm or ammunition is carried on the person while in a vehicle or while securing the firearm or ammunition in the vehicle, or stored out of plain view in a locked but unoccupied vehicle in a parking lot open to the public.

Kansas Offender Registration Act

The bill would amend the Kansas Offender Registration Act to add the crime of unlawful sexual relations to the list of crimes that require registration under the Act. The bill also amends the Act to insert the actual effective dates pertinent to the subsection.

Parole Board Hearings (formerly HB 2508, as amended by House Corrections and Juvenile Justice)

The bill would require the Kansas Parole Board (KPB) to review inmates sentenced for a class A or class B felony who have not had a parole board hearing in the five years prior to July 1, 2010 if the review can be done within the Agency's existing resources or with funding subject to appropriation. The review by the KPB would be required to be conducted on or before July 1, 2012. The bill also would maintain current law with ten years as the maximum deferral period between parole hearings for non-parole suitable candidates.

The bill also would create the Department of Corrections Forensic Psychologist Fund to be used by the Department of Corrections to contract for the services of forensic psychologists. The municipal fees collected pursuant to KSA 12-4117 would be increased from \$19 to \$20, with the \$1 increase to be remitted to the Department of Corrections Forensic Psychologist Fund.

Special Rule in Sentencing Regarding Burglary

The bill would amend the special rule in sentencing to require a sentence of presumptive imprisonment for an offender convicted of a burglary or the attempt or conspiracy to commit a burglary, when such offender has a prior conviction for a burglary, an aggravated burglary, or an attempt or conspiracy to commit a burglary or an aggravated burglary.

The special rule in sentencing regarding burglary would not become effective until July 1, 2011.

Conference Committee Action

The Conference Committee agreed to the House position with the following changes:

- Change the effective date of the provision on the special sentencing rule for burglary to July 1, 2011;
- Clarify the inmates who are subject to review by the parole board pursuant to the bill are inmates sentenced for a class A or class B felony and who have not had a parole board hearing in the five years prior to July 1, 2010 if the review can be done within the agency's existing resources or with funding subject to appropriation; and
- Create the Department of Corrections Forensic Psychologist Fund to be used by the Department of Corrections to contract for the services of forensic psychologists. The municipal fees collected pursuant to

KSA 12-4117 would be increased from \$19 to \$20, with the \$1 increase to be remitted to the Department of Corrections Forensic Psychologist Fund.

Background

The proponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were Senator Jean Schodorf, the Commissioner of the Kansas Juvenile Justice Authority, and the Secretary of the Kansas Department of Corrections. There was no testimony in opposition to the bill in the Senate Committee hearing. A representative of the Kansas Legislative Division of Post Audit presented neutral testimony in the Senate Committee hearing.

The Senate Committee amended the bill to clarify that in order to commit the crime of unlawful sexual relations where:

- The offender is a teacher or a person in a position of authority, the offender would have to have knowledge that the person is a student enrolled at the school where the offender is employed;
- The offender is a court services officer or a contractor contracted to provide supervision services of a person placed on supervision, the offender would have to have direct supervision and control of the person; and
- The offender is a community corrections services officer or a contractor contracted to provide supervision services of a person placed on supervision, the offender would have to have direct supervision and control of the person.

The Senate Committee of the Whole amended the bill to:

- Add clarifying language that when the offender is a parole officer, volunteer for the Kansas Department of Corrections, or a volunteer of a contractor contracted to provide supervision services of a person placed on parole,

conditional release, or postrelease supervision, the offender would have to have knowledge that the person with whom the offender commits the proscribed sexual act is currently on parole, conditional release, or postrelease supervision;

- Clarify that an offender who is a court services officer or contractor contracted to provide supervision services of a person placed under supervision and control of court services, would be required to have knowledge that the person with whom the offender commits the proscribed sexual act is currently under supervision of court services;
- Require that when the offender is a community corrections services officer or a contractor contracted to provide supervision services of a person placed under supervision and control of community corrections, the offender would have to have knowledge that the person with whom the offender commits the proscribed sexual act is currently under supervision of community corrections;
- Increase the severity level of the crime of traffic in contraband to a severity level 4, nonperson felony if the contraband are firearms, ammunition, or explosives introduced or attempted to be introduced by an employee of the correctional institution or care and treatment facility;
- Create a special rule in sentencing to make the sentence of the crime of unlawful sexual relations a presumptive imprisonment sentence; and
- Amend the Kansas Offender Registration Act to add the crime of unlawful sexual relations to the list of crimes that require registration under the Act.

Proponents of the bill who presented testimony in the House Committee were Senator Jean Schodorf, the Commissioner of the Juvenile Justice Authority, and the Secretary of the Kansas Department of Corrections. There were no opponents of the bill in the House Committee. A

representative of the Kansas Division of Legislative Post Audit provided neutral testimony for the House Committee.

The House Committee amended the bill to:

- Make unlawful sexual relations a severity level 4, person felony where the offender is an employee of the Juvenile Justice Authority or an employee of a contractor who provides services in a juvenile correctional facility and the person with whom the offender is engaging in the unlawful sexual relations with is a person 16 years of age or older who is confined by lawful custody to such facility;
- Amend the unlawful sexual relations provision regarding a teacher or a person in a position of authority to delete the language requiring that the offender have knowledge that such person with whom the offender is engaging in unlawful sexual relations is a student enrolled at the school where the offender is employed;
- Make all other acts in violation of the crime of unlawful sexual relations a severity level 5, person felony;
- Make clarifying and technical amendments regarding the provisions of unlawful sexual relations;
- Amend the traffic in contraband penalty provision to clarify that it would be a severity level 5, nonperson felony if such items are defined as contraband by rules and regulations adopted by the Commissioner of the Juvenile Justice Authority, in a juvenile correctional facility by an employee of a juvenile correctional facility, unless the contraband are firearms, ammunition, or explosives;
- Add the provisions of HB 2508, as amended by House Corrections and Juvenile Justice, regarding parole board hearings; and
- Add the provisions of HB 2582, as recommended by House Corrections and Juvenile Justice, amending the

special rule in sentencing regarding burglary.

The fiscal note on the bill, as introduced, may no longer be accurate since additional bills have been inserted into SB 434.

Unlawful Sexual Relations; Traffic in Contraband; Kansas Offender Registration Act