

SESSION OF 2010

SUPPLEMENTAL NOTE ON SENATE BILL NO. 399

As Amended by Senate Committee on
Judiciary

Brief*

SB 399, as amended, would amend the crime of aggravated endangering a child and amend the sentence enhancement of certain drug crimes.

Aggravated Endangering a Child

The bill would:

- Expand the crime of aggravated endangering a child, pursuant to subsection (3), to add causing or permitting a child to be in an environment where a person is cultivating or attempting to cultivate any controlled substance listed below, with the intent to manufacture, distribute, or possess with the intent to distribute:
 - Any controlled substance or controlled substance analog for the purpose of manufacturing the substance;
 - Any opiates or narcotic drugs listed in Schedule II;
 - Any depressant drug listed in Schedule I through IV;
 - Any stimulant listed in Schedule I through III;
 - Any hallucinogenic drug listed in Schedule I through III;
 - Any material, compound, mixture or preparation which contains any quantity of the substance, its optical isomers, salts and salts of isomers, as follows: benzylfentanyl, thenylfentanyl, Methcathinone, Aminorex, or Alpha-ethyltryptamine; or
 - Any anabolic steroids.

*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>

- Expand the crime of aggravated endangering a child, pursuant to subsection (4), to add causing or permitting a child to be in an environment where products, chemicals, compounds, mixtures, or preparations are stored for the purpose of manufacturing or attempting to manufacture any controlled substance in violation of the crime of unlawful possession of certain drug precursors and drug paraphernalia;
- 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; and
- Define controlled substance to mean any drug, substance, or immediate precursor included in Schedules I, II, III, and IV.

Sentence Enhancement of Certain Drug Crimes

The bill would:

- Add a definition of “minor”;
- Add a definition of “park property”;
- 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, to a person whom the offender knew or reasonably should have known to be pregnant, on any park property, or on or within 1,000 feet of any school property. The certain drugs referenced above would be:
 - Any opiates or narcotic drugs listed in Schedule II;
 - Any depressant drug listed in Schedule I through IV;
 - Any stimulant listed in Schedule I through III;

- Any hallucinogenic drug listed in Schedule I through III;
 - Any material, compound, mixture or preparation which contains any quantity of the substance, its optical isomers, salts and salts of isomers, as follows: benzylfentanyl, thenylfentanyl, Methcathinone, Aminorex, or Alpha-ethyltryptamine; or
 - Any anabolic steroids.
- 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, hallucinogenic drugs; material, compound, mixture or preparation which contains any quantity of certain substances, its optical isomers, salts and 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, to a person whom the offender knew or reasonably should have know to be pregnant, on any park property, 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, hallucinogenic drugs; material, compound, mixture or preparation which contains any quantity of certain substances, its optical isomers, salts and salts of isomers, and anabolic steroids), a drug severity level 9 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, to a person whom the offender knew or reasonably should have know to be pregnant, on any park property, or on or within 1,000 feet of any school property;
 - 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 any park property or on or within 1,000 feet of any school property.

Background

The proponents of the bill, as introduced, who provided testimony in the Senate Committee hearing were representatives of the Kansas Alliance for Drug Endangered Children, the Kansas Children's Service League, the Kansas Association of Chiefs of Police, and the Kansas Peace Officers' Association.

The opponent of the bill, as introduced, who provided testimony in the Senate Committee hearing was a representative of the Kansas Association of Criminal Defense Lawyers.

The Senate Committee amended the bill to:

- Delete the language expanding the crime of aggravated endangering a child to include causing or permitting a child under the age of 18 to have access to drugs, hypodermic syringes, needles, or other object used to inject drugs into the human body;
- Delete the definition of "presence of a minor";
- Replace the term "child under 18 years of age" with the term "minor";
- 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, to a person whom the offender knew or reasonably should have know to be pregnant, on any park property; or on or within 1,000 feet of any school property. The certain drugs are:

- Any opiates or narcotic drugs listed in Schedule II;
 - Any depressant drug listed in Schedule I through IV;
 - Any stimulant listed in Schedule I through III;
 - Any hallucinogenic drug listed in Schedule I through III;
 - Any material, compound, mixture or preparation which contains any quantity of the substance, its optical isomers, salts and salts of isomers, as follows: benzylfentanyl, thenylfentanyl, Methcathinone, Aminorex, or Alpha-ethyltryptamine; or
 - Any anabolic steroids.
- 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, hallucinogenic drugs; material, compound, mixture or preparation which contains any quantity of certain substances, its optical isomers, salts and 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, to a person whom the offender knew or reasonably should have know to be pregnant, on any park property, 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, hallucinogenic drugs; material, compound, mixture or preparation which contains any quantity of certain substances, its optical isomers, salts and salts of isomers, and anabolic steroids), a drug severity level 9 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, to a person whom the offender knew or reasonably should have know to be pregnant, on any park property, 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 any park property or on or within 1,000 feet of any school property.

The fiscal note on the bill, as introduced, states the Kansas Sentencing Commission estimates that passage of SB 399 would result in an increase of 13 adult prison beds in FY 2011 and an increase of 82 adult prison beds by FY 2020. However, the estimate includes only the elements of the bill relating to drug distribution near parks or school property. The effect of the other offenses is unknown because no data exists from which to make an estimate. The current capacity for male inmates is 8,123, and projections indicate that this capacity will be exceeded by the end of FY 2011.

If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, previously closed units would need to be reopened, which would require annual costs to staff, operate, and maintain the units. If it is necessary to increase capacity beyond reopening the closed units, one-time construction and equipment costs would be needed for new units. Likewise, annual costs to staff, operate, and maintain the new units would be incurred. The 2007 Legislature authorized a construction package that included projects at El Dorado, Yates Center, Ellsworth, and Stockton in the event population estimates indicate new units are needed. If one or more of these projects are necessary, the estimated total costs would range from \$7.0 million for one project at Ellsworth to \$66.4 million for all four projects. The actual construction costs would depend on when construction is undertaken. The actual operating costs incurred would depend on the base salary amounts, fringe benefit rates, food service costs, and inmate health care costs applicable at the time the new units are occupied. If SB 399 contributes to an increase in the inmate population beyond this new capacity, other expansion projects would need to be identified.

If the effect from SB 399 does not require expansion of capacity, the additional annual costs would be approximately \$2,400 per inmate for basic support, including food services. Additional expenditures for health care could also be incurred if the increase in the inmate population requires adjustments to 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 to contract payments is made. The amount of any adjustment would depend on the specific facility involved.

The Department of Social and Rehabilitation Services states that enactment of the bill could result in more children in the custody of the agency; however, the agency is unable to estimate the precise number of additional children. According to the Department, the current annual cost for each additional child who enters into agency custody is \$18,033. Any fiscal effect associated with SB 399 is not reflected in *The FY 2011 Governor's Budget Report*.