

SESSION OF 2010

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2453**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

Sub. for HB 2453 would expand the enhancement of the crime of cultivating, distributing, or possession with the intent to distribute a controlled substance or controlled substance analog if the crime is committed on or within 1,000 feet of any school property. The enhancement is expanded to include the alternative that the crime is committed in the presence of a minor if the offender is 18 or more years of age. The penalty for this crime would be a drug severity level 2 felony.

The bill would expand the enhancement of the crime of distributing, possession with intent to distribute, or manufacture with intent to distribute any drug paraphernalia on or within 1,000 feet of any school property. The enhancement is expanded to include the alternative that the crime is committed in the presence of a minor if the offender is 18 or more years of age. The penalty for this crime would be a drug severity level 4 felony.

The bill would:

- Define “minor” to mean a person under 18 years of age;
- Define “presence of a minor” to mean a minor is within close proximity to the illegal activity, the illegal activity is conducted in a place where minors can reasonably be expected to be present, or in the minor’s dwelling whether or not the minor is present in the dwelling; and

*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>

- Clarify that the term “presence of a minor” does not require a defendant actually be aware of the presence of a minor or a minor actually be aware of the illegal activity.

Background

The proponents of the bill, as introduced, who testified at the House Committee were Representative Virgil Peck, and representatives of the Coffeyville Police Department, and the Bureau of Child Care and Health Facilities.

There were no opponents of the bill who testified at the House Committee.

The House Committee introduced a proposed substitute bill during final action. The proposed substitute would define “minor” to mean a person under 18 years of age. Additionally, the proposed substitute would define “presence of a minor” to mean a minor is within close proximity to the illegal activity, the illegal activity is conducted in a place where minors can reasonably be expected to be present, or in the minor’s dwelling whether or not the minor is present in the dwelling. Finally, the proposed substitute would clarify that the term “presence of a minor” does not require a defendant actually be aware of the presence of a minor or a minor actually be aware of the illegal activity. There was no testimony taken on the proposed substitute. The proposed substitute was adopted by the House Committee.

According to the fiscal note on the bill, as introduced, the Kansas Sentencing Commission estimates that enactment of HB 2453 would have a negligible effect on adult prison beds; however, the precise number is unknown because there are no existing data for the amended drug crime. According to the Kansas Department of Health and Environment (KDHE), passage of the bill would have no fiscal effect on agency operations and would not affect Department regulation of child care facilities. KDHE currently coordinates with law enforcement regarding child care facility issues.

HB 2453, as introduced, has the potential for increasing litigation in the courts because of the expanded crime in the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to predict the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a precise fiscal effect cannot be determined. In any case, the fiscal effect would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Any fiscal effect associated with HB 2453 is not reflected in *The FY 2011 Governor's Budget Report*.