

Coercion to Obtain an Abortion; Senate Sub. for HB 2436

Senate Sub. for HB 2436 creates the crime of coercion to obtain an abortion and creates a special sentencing rule that will apply to persons convicted of certain crimes against a victim with the intent to compel an abortion.

Coercion to Obtain an Abortion

The bill creates the crime of coercion to obtain an abortion. The crime is defined as engaging in coercion with both the knowledge a woman is pregnant and the intent to compel such woman to obtain an abortion when the woman has expressed her desire to not obtain an abortion.

Penalty

The bill classifies the offense of coercion to obtain an abortion as a nongrid person felony with a sentence of between 30 days and 1 year imprisonment and a fine of \$500 to \$5,000.

Increased Penalty

The penalty for the coercion to obtain an abortion offense will be raised to a sentence between 90 days and 1 year imprisonment and a fine between \$1,000 and \$10,000 if:

- The offense was committed by the father or putative father of the unborn child who is 18 years of age or older at the time of the offense; and
- The offense is committed against a pregnant woman who is under the age of 18.

Definitions

The bill defines the following terms:

- “Abortion” means the same as defined in public health law;
- “Coercion” means any of the following:
 - Threatening to harm or physically restrain an individual or the creation or execution of any scheme, plan, or pattern intended to cause an individual to believe that failure to perform an act would result in financial harm to, or physical restraint of, an individual;
 - Abusing or threatening abuse of the legal system including threats of arrest or deportation without regard to whether the individual being threatened is subject to arrest or deportation under state or federal law;

- Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document from an individual without regard to whether the documents are fraudulent or fraudulently obtained; or
- Facilitating or controlling an individual's access to a controlled substance, as defined in public health law, and amendments thereto, other than for a legitimate medical purpose;
- "Financial harm" means any of the following:
 - Any loan, promissory note, or other credit instrument that provides for interest at a rate that is prohibited by state or federal law;
 - Any employment contract or other agreement for the payment of wages that violates the Wage Payment Act;
 - Extortion as defined in the Kansas Criminal Code; or
 - Any other adverse financial consequence; and
- "Unborn child" means a living individual organism of the species *Homo sapiens*, in utero, at any stage of gestation from fertilization to birth.

Special Sentencing Rule

The bill creates a special sentencing rule that will apply when a trier of fact makes a finding beyond a reasonable doubt that an offender committed certain acts, enumerated by the bill, including an attempt or conspiracy of such act with knowledge that a woman is pregnant and with intent that the act will compel the woman to obtain an abortion, despite the woman having expressed a desire not to obtain an abortion.

The bill will apply the special sentencing rule to the following crimes and other offenses as defined in the statutes:

- Kidnapping;
- Interference with parental custody;
- Criminal restraint;
- Assault;
- Battery;
- Domestic battery;
- Criminal threat;
- Human trafficking;
- Stalking;
- Blackmail;
- Endangerment;

- Rape;
- Criminal sodomy;
- Sexual battery;
- Indecent liberties with a child;
- Unlawful voluntary sexual relations;
- Indecent solicitation of a child;
- Electronic solicitation;
- Sexual exploitation of a child;
- Sexual extortion;
- Endangering a child;
- Abuse of a child;
- Incest; and
- Abandonment of a child.

Enforcement of Penalty

For offenses classified in severity level 2 through 10, the bill enhances the penalty one severity level above the severity level classification assigned in law.

For offenses classified in severity level 1, the bill requires a penalty of imprisonment for life, without eligibility for probation or suspension, modification, or reduction of the sentence. Further, the bill specifies the offender will not be eligible for parole prior to serving 25 years' imprisonment and that 25 years imprisonment term could not be reduced by the application of good time credits. However, if the offender's criminal history classification means the offense would carry a penalty of presumptive imprisonment of a term to exceed 300 months, the offender will be required to serve a mandatory minimum term of the applicable number of months under the sentencing grid.

[*Note:* Under continuing law, Kansas' sentencing guidelines for nondrug crimes utilize a grid containing the crime severity level (1 to 5, 1 being the highest severity level) and the offender's criminal history score (A to I, A being the highest criminal history score) to determine the presumptive sentence for an offense.]

The bill specifies the escalated sentence will not be considered a departure or subject to appeal.