

SESSION OF 2024

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2436**

As Recommended by Senate Committee on
Federal and State Affairs

Brief*

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

Coercion to Obtain an Abortion

The bill would create the crime of coercion to obtain an abortion. The crime would be 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 such woman has expressed her desire to not obtain an abortion.

Penalty

The bill would classify 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.

*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>

Increased Penalty

The penalty for the coercion to obtain an abortion offense would 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 would define the following terms:

- “Abortion” would mean the same as defined in public health law;
- “Coercion” would mean 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 legitimate medical purpose;
- “Financial harm” would mean 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” would mean 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 would create a special sentencing rule that would 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 would 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 would enhance the penalty one severity level above the severity level classification assigned in law.

For offenses classified in severity level 1, the bill would require a penalty of imprisonment for life, without eligibility for probation or suspension, modification, or reduction of the sentence. Further, the bill would specify the offender would

not be eligible for parole prior to serving 25 years' imprisonment, and that 25 years could not be reduced by the application of good time credits. However, if the offender's criminal history classification would mean the offense would carry a penalty of presumptive imprisonment of a term to exceed 300 months, the offender would 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 would specify the escalated sentence would not be considered a departure or subject to appeal.

Background

The Senate Committee on Federal and State Affairs removed the contents of HB 2436, inserted the contents of SB 527, and recommended a substitute bill be passed.

[*Note:* As passed by the House, HB 2436 would have created the Kansas Public Investments and Contracts Protection Act and would amend law governing the Kansas Public Employees Retirement Fund and investment standards. Similar provisions were enacted in 2023 HB 2100.]

SB 527 (Coercion to Obtain an Abortion)

The bill was introduced by the Senate Committee on Federal and State Affairs at the request of Senator O'Shea.

[*Note:* Provisions of the bill are similar to those of HB 2813.]

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, **proponent** testimony was provided by Representative Schmoe and representatives of Kansas Catholic Conference, Kansas Family Voice, and Kansans for Life. The proponents generally stated the bill would protect women from coercion to obtain an abortion, promote the value and dignity of all individuals by allowing individuals to choose whether to have an abortion, and provide an additional tool for prosecutors to seek justice for women.

Written-only proponent testimony was provided by representatives of A Better Choice and Project 2 Restore.

Neutral testimony was provided by a representative of the Charlotte Lozier Institute who provided information about the prevalence of coercion and unwanted abortion.

Written-only neutral testimony was provided by a representative of the Kansas Coalition Against Sexual & Domestic Violence.

Written-only opponent testimony was provided by a representative of the Kansas Birth Justice Society.

Fiscal Information

SB 527 (Coercion to Obtain an Abortion)

According to the fiscal note prepared by the Division of the Budget on SB 527, the Board of Indigents' Defense Services (Board) indicates the bill would increase agency expenditures on legal counsel and support staff by unknown amounts. The Board estimates that, on average, low-level person felony cases require 35 hours of direct work by an attorney to provide constitutionally adequate representation. Based on the rates of \$83.36 per hour for public defenders

and \$120 per hour for assigned counsel, each new low-level person felony case brought to the agency would result in State General Fund (SGF) expenditures of \$2,918 to \$4,200. The Board indicates that mid-level felonies require 57 hours of attorney case work, while high-level felonies require 99 hours of attorney case work. Therefore, each low-level felony that is upgraded to a mid-level felony would require the agency to perform 22 hours of additional work at a cost of \$1,834 to \$2,640 SGF. Each mid-level felony that is upgraded to a high-level felony would require 42 hours of additional work at a cost of \$3,501 to \$5,040 SGF.

The Judiciary indicates that the bill has the potential to increase the number of cases filed in district courts. This may increase agency operating expenditures due to the additional time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. However, the Judiciary is unable to calculate an exact estimate of this effect. The bill has the potential to increase the collection of docket fees and fines, which are deposited in the SGF; however, the amount of additional collections is unknown.

The Sentencing Commission indicates that the bill has the potential to increase prison admissions and beds by a negligible amount. The Department of Corrections indicates that the bill may increase agency operating expenditures by a negligible amount that could be accommodated within existing resources. Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates that the bill has the potential to increase operating expenditures for county jails. The League of Kansas Municipalities did not provide an estimate of the bill's fiscal effect on cities.

Crimes; abortion; coercion; sentencing guidelines