

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2813

As Amended by House Committee on Federal
and State Affairs

Brief*

HB 2813, as amended, would create the crime of reproductive coercion 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.

Reproductive Coercion

The bill would create the crime of reproductive coercion within the Kansas Criminal Code. The crime would be defined as:

- Engaging in coercion with knowledge that a woman is pregnant and with the intent to compel such woman to obtain an abortion when she has expressed a desire to not obtain an abortion; or
- To gain control over the reproductive autonomy of another through force, threat of force, or intimidation and may include, but not be limited to:
 - Unreasonably pressuring the other party to become pregnant;
 - Deliberately interfering with contraception use; or
 - Using coercive tactics to control pregnancy outcomes.

*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>

Penalty

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

Increased Penalty

The penalty for a reproductive coercion offense would be raised to a minimum of 90 days and a fine of \$1,000 to \$10,000 if:

- The offense was committed by the father or putative father who is 18 or older when the offense is committed; 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,” to mean the same as defined in public health law;
- “Coercion,” to 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 Kansas or federal law;
- Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration 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 continuing law, other than for a legitimate medical purpose.
- “Financial harm,” to 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.
- “Unborn child,” to 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.

Enhancement of Penalty

For offenses classified in severity level 2 through 10, the penalty would be enhanced 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 bill was introduced by the House Committee on Federal and State Affairs at the request of Representative Schmoie.

House Committee on Federal and State Affairs

In the House Committee meeting, **proponent** testimony was provided by Representative Schmoie and representatives of A Better Choice, Kansas Catholic Conference, Kansans for Life, Kansas Family Voice, and Project 2 Restore. The proponents stated the bill would help persons who feel they are forced into seeking an abortion, prosecutors addressing

human trafficking, and victims seeking justice against abusers.

Neutral testimony was provided by a representative of the Charlotte Lozier Institute who provided statistics from a study concerning whether persons who received an abortion procedure felt pressured to complete the procedure. Written-only neutral testimony was provided by the Kansas Coalition Against Sexual and Domestic Violence.

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

The House Committee amended the bill to replace provisions of the bill relating to a new crime of coercion to obtain an abortion with provisions creating a new crime of reproductive coercion that would cover reproductive autonomy, including coercion of abortion, coercion to become pregnant, interfering with contraception use, or other tactics used to control pregnancy outcomes.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board of Indigents' Defense Services (BIDS) indicates enactment of the bill would increase agency expenditures on legal counsel and support staff by unknown amounts. BIDS 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 \$84.36 per hour for public defenders and \$120 per hour for assigned counsel, each new low-level person felony case brought to BIDS would result in State General Fund (SGF) expenditures between \$2,918 and \$4,200.

BIDS further indicates mid-level felonies require 57 hours of attorney case work and high-level felonies require 99 hours of attorney case work. Each low-level felony that is

upgraded to a mid-level felony would require an additional 22 hours of work at a cost between \$1,834 and \$2,640. Each mid-level felony that is upgraded to a high-level felony would require an additional 42 hours of work at a cost between \$3,501 and \$5,040.

The Judicial Branch indicates the bill has the potential to increase the number of cases filed in district courts with a potential of increasing agency operating expenditures due to the additional time spent by court personnel in processing, researching, and hearing cases. However, an exact estimate of this effect could not be calculated. Enactment of the bill could also 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 the bill has the potential to increase prison admissions and beds by a negligible amount. The Department of Corrections indicates the bill may increase agency operating expenditures by a negligible amount that could be accommodated within existing resources.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties indicates 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; reproduction; pregnancy outcomes; sentencing