

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 265**

As Amended by Senate Committee of the Whole

**Brief\***

SB 265, as amended, would amend the crime of violating a protective order to establish penalties for repeat violations of such orders and would create law in the Kansas Code of Criminal Procedure requiring a defendant convicted of an offense causing death or incapacitation of a victim pay restitution in the form of child support to any minor child of such victim.

***Violation of a Protective Order***

The bill would add a penalty for a second or subsequent conviction for violating a protection from stalking, sexual assault, or human trafficking order as a severity level 7 person felony. Current law provides the penalty is a Class A person misdemeanor, regardless of how many times a violation has occurred previously.

The bill would also add a penalty upon a second or subsequent conviction for violating an extended protective order as a severity level 4 person felony. Current law provides the penalty is a severity level 6 person felony regardless of how many times a violation has occurred previously.

***Restitution Order For Support of Minor Child***

The bill would require, if a defendant is convicted of an offense that resulted in the incapacitation or death of a victim

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\*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>

who is a parent or guardian of a minor child, a court to order the defendant pay restitution in the form of reasonable and necessary support of each minor child of the victim until each minor child reaches 18 years of age and has graduated from high school. Alternatively, support would be ordered until the class of which the child is a member when the child turns 18 graduates.

In determining a “reasonable and necessary” amount of support pursuant to the bill, the court would be required to consider a non-exclusive list of factors, as specified by the bill.

The court’s order would be enforced as a judgment of restitution, to be paid to the child’s parent or guardian, and payments would continue until any arrearage owed pursuant to the order is paid in full.

The bill would provide that if the victim or the victim’s family received a civil judgment prior to a restitution order pursuant to the bill, restitution would not be ordered. If the victim or victim’s family receives a civil judgment subsequent to a restitution order pursuant to the bill, the restitution order would be offset by the amount received in such civil judgment.

## **Background**

As introduced, the bill contained provisions pertaining to violations of a protective order. The Senate Committee of the Whole amended the bill to add provisions concerning restitution orders for support of a minor child (SB 182).

### ***SB 265 (Violation of a Protective Order)***

SB 265 was introduced by the Senate Committee on Ways and Means at the request of Senator McGinn. The bill

was referred to the Senate Committee on Judiciary on February 17, 2023.

*Senate Committee on Judiciary*

In the Senate Committee hearing on March 6, 2023, **proponent** testimony was provided by a Sedgwick County District Court judge who generally stated that the intent of the bill is to subject a repeat offender to increased penalties for violations of a protective order.

Written-only proponent testimony was provided by a representative of the Kansas Coalition Against Sexual and Domestic Violence; a representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association; and a private citizen.

No other testimony was provided.

*Senate Committee of the Whole*

The Senate Committee of the Whole amended the bill to include provisions pertaining to orders of restitution for support of a minor child.

***SB 182 (Restitution Order For Support of Minor Child)***

The bill was introduced by Senator Haley on February 7, 2023, and referred to the Senate Committee on Judiciary on February 8, 2023.

**Fiscal Information**

***SB 265 (Violation of a Protective Order)***

According to the fiscal note prepared by the Division of the Budget on SB 265, as introduced, the Kansas Sentencing

Commission estimates that enactment of the bill could increase prison admissions and the number of beds needed, but that a precise effect cannot be determined at this time.

The current estimated available bed capacity is 9,428 for males and 936 for females. Based upon the Commission's most recent ten-year projection contained in its FY 2023 Adult Inmate Prison Population Projections report, it is estimated that the year-end population will total 7,933 male and 764 female inmates in FY 2023 and 8,043 male and 740 female inmates in FY 2024.

The Office of Judicial Administration (OJA) and the Department of Corrections indicate enactment of the bill would not have a fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

#### ***SB 182 (Restitution Order For Support of Minor Child)***

According to the fiscal note prepared by the Division of the Budget on SB 182, OJA indicates enactment of the bill could have a fiscal effect on expenditures of the Judicial Branch. The bill's provisions require courts to consider various factors in determining the amount of child support obligation, which would be paid to the child's parent or guardian. Nevertheless, until the courts have had an opportunity to operate under the provisions of the bill, an accurate estimate of the fiscal effect on expenditures by the Judicial Branch cannot be given.

The Department for Children and Families (DCF) indicates that enactment of the bill would have a negligible fiscal effect on the Child Support Services (CSS) Program. The bill does not state who is responsible for establishing the support. If the intent is that DCF CSS is responsible, training would occur to determine how to establish the support as it does not utilize the Kansas Child Support Guidelines which CSS normally uses in cases. Also, child support orders do not

require persons to utilize CSS services. The responsibility to establish the order could be handled by private counsel or, in counties where available, the District Court Trustee.

The Department of Revenue indicates the bill would have no fiscal effect on the agency.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Protective order; protection from stalking order; protection from sexual assault order; protection from human trafficking order; violation; restitution; minor child