

SESSION OF 2021

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 60**

As Agreed to April 9, 2021

Brief*

SB 60 would amend law in the Kansas Criminal Code (Code) related to jurisdictional application, psychological or psychiatric examinations of crime victims, the spousal exception in the crime of sexual battery, and the crime of fleeing or attempting to elude a police officer, and would create the crime of sexual extortion.

Jurisdictional Application

The bill would amend the statute governing jurisdictional application of the Code to define “proximate result” to mean any logical effect or consequence of an act regardless of whether the statute governing the charged offense considers the specific effect or consequence of such act. [Note: Under continuing law, a crime is considered to have been committed partly within the state if the proximate result of the person’s act occurs within the state.]

Psychological or Psychiatric Examinations of Crime Victims

The bill would create a provision within the Code to prohibit a court from requiring or ordering a victim of a crime

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to submit to or undergo a psychiatric or psychological examination in the prosecution for such crime.

Spousal Exception to Sexual Battery

The bill would amend the definition of the crime of sexual battery to remove the element requiring the crime be committed against a victim “who is not the spouse of the offender.” The bill would also make a technical amendment to the definition of the crime of aggravated sexual battery in accordance with the change to the definition of sexual battery.

Fleeing or Attempting to Elude a Police Officer

The bill would amend the offense of fleeing or attempting to elude a police officer to replace “willfully” with “knowingly” in reference to the mental state required for the offense, add operating a stolen motor vehicle to the list of conduct making the offense a severity level 9 person felony without prior convictions for the offense, and add the following conduct to the offense, which would be classified as a level 7 person felony:

- Knowingly driving the wrong way into an opposing lane of travel on a divided highway;
- Knowingly departing the appropriate lane of travel into an opposing lane of travel on any roadway causing an evasive maneuver by another driver; or
- Knowingly driving through any intersection causing an evasive maneuver by another driver or causing a collision involving another motorist.

The bill would amend the penalty for the felony offense without prior convictions to require the court to impose a fine of at least \$500 when the driver operates a stolen motor vehicle during the commission of the offense. The bill also

would clarify that prior convictions for all versions of the offense are to be considered in determining the severity level of the current offense based on the number of prior convictions.

Additionally, the bill would provide that, in a prosecution for theft of a motor vehicle, fleeing or attempting to elude a police officer would be *prima facie* evidence of intent to permanently deprive the owner of the motor vehicle of the possession, use, or benefit thereof.

Sexual Extortion

The bill would create the crime of sexual extortion, which would be defined as communicating by any means a threat to injure the property or reputation of a person, commit violence against a person, or distribute an image, video, or other recording of a person that is of a sexual nature or depicts such person in a state of nudity:

- With the intent to coerce such person to engage in sexual contact, sexual intercourse, or conduct of a sexual nature; or produce, provide, or distribute an image, video, or other recording of a person in a state of nudity, or depicting such person engaging in conduct that is of a sexual nature. Such conduct would be a severity level 7 person felony; or
- That causes such person to engage in sexual contact, sexual intercourse, or conduct of a sexual nature; or produce, provide, or distribute an image, video, or other recording of a person in a state of nudity or engaging in conduct that is of a sexual nature. Such conduct would be a severity level 4 person felony.

The bill would also amend the Kansas Offender Registration Act to add a person convicted of sexual extortion to the definition of “sex offender” and to add sexual extortion

to the list of offenses for which conviction requires offender registration for 15 years when one of the parties involved is less than 18 years of age. The bill would provide registration is not required for a person adjudicated as a juvenile offender for an act that if committed by an adult would constitute the commission of sexual extortion.

Conference Committee Action

The Conference Committee agreed to the provisions of SB 60 as passed by the Senate regarding jurisdictional application in the Code. The Conference Committee also agreed to add the contents of:

- SB 204, as passed by the Senate, regarding psychological or psychiatric examinations of crime victims;
- HB 2120, as passed by the House, regarding the spousal exception in the crime of sexual battery;
- HB 2093, as amended by the Senate Committee on Judiciary, regarding the crime of fleeing or attempting to elude a police officer; and
- HB 2001, as passed by the House, regarding the crime of sexual extortion

Background

As it entered conference, SB 60 contained provisions regarding jurisdictional application and the crimes of aggravated criminal sodomy and aggravated sexual battery. The Conference Committee retained only the provisions regarding jurisdictional application and added the contents of SB 204, HB 2120, HB 2093, and HB 2001. The background for each bill is described below.

SB 60 (Jurisdictional Application)

SB 60 was introduced by the Senate Committee on Insurance at the request of the Office of Attorney General. As introduced, the bill included provisions regarding jurisdictional application in the Code.

Senate Committee on Judiciary

In the Senate Committee hearing on February 3, 2021, the Deputy Solicitor General testified as a **proponent** of the bill, stating the bill is a response to a recent ruling of the Kansas Court of Appeals stating that when determining proximate result jurisdiction, Kansas courts may consider the negative consequences of a person's out-of-state criminal acts within Kansas only if the statutory language of that person's charged crime considered such negative consequences.

A representative of the Kansas Association of Criminal Defense Lawyers (KACDL) provided written-only **opponent** testimony, stating the bill is premature because the litigation related to this issue is still pending.

No other testimony was provided.

House Committee on Judiciary

In the House Committee hearing on March 15, 2021, the Deputy Solicitor General testified as a **proponent** of the bill.

Written-only **opponent** testimony was submitted by a representative of KACDL. No other testimony was provided.

On March 24, 2021, the House Committee amended the bill to change the effective date to upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

House Committee of the Whole

On March 29, 2021, the House Committee of the Whole adopted an amendment to add provisions related to the crimes of aggravated criminal sodomy and aggravated sexual battery. [Note: The Conference Committee did not retain this amendment.]

SB 204 (Psychological or Psychiatric Examinations of Crime Victims)

SB 204 was introduced by the Senate Committee on Judiciary at the request of the Kansas County and District Attorneys Association (KCDAA).

[Note: SB 204 contains provisions similar to those of 2020 SB 355, as amended by the Senate Committee on Judiciary].

Senate Committee on Judiciary

In the Senate Committee hearing on February 17, 2021, a representative of the KCDAA testified as a **proponent** of the bill. Written-only proponent testimony was provided by a representative of the Kansas Coalition Against Sexual and Domestic Violence (KCSDV).

Written-only neutral testimony was provided by a representative of the KACDL. No other testimony was provided.

On February 17, 2021, the Senate Committee recommended the bill be placed on the Consent Calendar.

House Committee on Judiciary

In the House Committee hearing on March 11, 2021, representatives of the KCDA and KCSDV testified as **proponents** of the bill. Written-only proponent testimony was provided by a representative of Children's Advocacy Centers of Kansas, Inc.

Written-only neutral testimony was provided by a representative of KACDL. No other testimony was provided.

On March 24, 2021, the House Committee amended the bill to change its effective date to upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

On March 31, 2021, the bill was stricken from the Calendar pursuant to House Rule 1507.

HB 2120 (Spousal Exception to Sexual Battery)

HB 2120 was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of Representative Parker.

House Committee on Judiciary

In the House Committee hearing on February 2, 2021, **proponent** testimony was provided by representatives of the KCSDV and the Metropolitan Organization to Counter Sexual Assault and by a private citizen, stating the bill would ensure Kansas citizens are protected against sexual violence in domestic circumstances. No other testimony was provided.

HB 2093 (Fleeing or Attempting to Elude a Police Officer)

HB 2093 was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association.

House Committee on Judiciary

In the House Committee hearing on January 27, 2021, representatives of the Johnson County Sheriff's Office, KCDA, and Kansas Highway Patrol (KHP), and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association (law enforcement organizations) testified as **proponents** of the bill, stating motor vehicle theft is increasing in Kansas and stolen vehicles are involved in other crimes, and the bill would help address these issues. A representative of the National Insurance Crime Bureau provided written-only proponent testimony.

No neutral or **opponent** testimony was provided.

On February 18, 2021, the House Committee amended the bill to clarify the consideration of prior convictions (as suggested by the law enforcement organizations) and add provisions regarding willfully driving the wrong way and related offenses (as suggested by the law enforcement organizations and the KHP). [Note: The Conference Committee retained these amendments.]

Senate Committee on Judiciary

In the Senate Committee hearing on March 22, 2021, representatives of the KHP, the Johnson County Sheriff's Office, and the law enforcement organizations again provided **proponent** testimony on the bill. Written-only proponent testimony was provided by a representative of the KCDA.

On March 25, 2021, the Senate Committee amended the bill to replace “willfully” with “knowingly” in provisions referencing the mental state required for the offense. [Note: The Conference Committee retained these amendments.]

HB 2001 (Sexual Extortion)

The bill was introduced by Representative Owens.

House Committee on Judiciary

In the House Committee hearing on January 20, 2021, representatives of the Johnson County Sheriff’s Office, KCSDV, and Legal Momentum – The Women’s Legal Defense and Education Fund provided **proponent** testimony, stating the bill, as introduced, would address conduct that does not fit squarely within Kansas’ current sexual conduct and blackmail offenses. Written-only proponent testimony was submitted by a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association.

No neutral or **opponent** testimony was provided.

On February 4, 2021, the House Committee amended the bill to include “other recordings” within the definition of sexual extortion and to exempt adjudicated juvenile offenders from the registration requirement for the crime. [Note: The Conference Committee retained these amendments.]

Senate Committee on Judiciary

In the Senate Committee hearing on March 15, 2021, representatives of the KCSDV and Legal Momentum – The Women’s Legal Defense and Education Fund provided **proponent** testimony. No other testimony was provided.

On March 15, 2021, the Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*. [Note: The Conference Committee did not retain this amendment.]

Fiscal Information

SB 60 (Jurisdictional Application)

According to the fiscal note prepared by the Division of the Budget on SB 60 as introduced, the Office of Judicial Administration (OJA) indicates enactment of the bill would have a negligible fiscal effect on the operations of the Judicial Branch.

SB 204 (Psychological or Psychiatric Examinations of Crime Victims)

According to the fiscal note prepared by the Division of the Budget on SB 204, OJA indicates enactment of the bill would have a negligible fiscal effect on the operations of the Judicial Branch.

HB 2120 (Spousal Exception to Sexual Battery)

According to the fiscal note prepared by the Division of the Budget on HB 2120, OJA indicates enactment of the bill could have a fiscal effect on the Judicial Branch and result in more time spent by court employees and judges processing and deciding these cases. Enactment of the bill would also increase the amount of supervision of offenders required by court service officers. The OJA estimates enactment of the bill could result in the collection of docket fees, fines, and supervision fees assessed in those cases filed under the bill's provisions. The Kansas Sentencing Commission (Commission) states enactment of the bill could have an

effect on prison admissions and bed space; however, the effect cannot be estimated. Any fiscal effect associated with enactment of HB 2120 is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2093 (Fleeing or Attempting to Elude a Police Officer)

According to the fiscal note prepared by the Division of the Budget on HB 2093 as introduced, OJA indicates enactment of the bill could have a fiscal effect on the Judicial Branch by requiring additional supervision by court services officers and by resulting in the collection of additional fines and supervision fees in cases filed under the bill's provisions.

The Commission estimates enactment of the bill could affect prison admissions and populations, but the possible effect cannot be estimated. Any fiscal effect associated with HB 2093 is not reflected in *The FY 2022 Governor's Budget Report*.

HB 2001 (Sexual Extortion)

According to the fiscal note prepared by the Division of the Budget on HB 2001, as introduced, the OJA indicates enactment of the bill could increase the number of cases filed in district court, requiring more time spent by court employees and judges on such cases. Because a possible penalty for the crime is probation, court services officers may be required to perform additional supervision. The bill could also result in the collection of docket fees, probation fees, and fines assessed. However, according to OJA, a fiscal effect cannot be determined, because the number of additional cases is unknown.

The Commission estimates enactment of the bill could result in an increased occupancy of prison beds and admissions, but a fiscal effect cannot be estimated because no data currently exists for the crime of sexual extortion. The

current estimated available bed capacity is 9,420 for males and 948 for females. The Commission's most recent ten-year projection estimates the year-end population for available male prison capacity will be under capacity by 1,287 inmates in FY 2021 and 1,241 inmates in FY 2022. The Kansas Department of Corrections indicates enactment of the bill would increase adult and juvenile facility bed utilization, but estimates there would be no fiscal effect. Any fiscal effect associated with enactment of HB 2001 is not reflected in *The FY 2022 Governor's Budget Report*.

Criminal procedure; jurisdiction; proximate result; crimes; sexual extortion; offender registration; sexual battery; spousal exception; punishment; psychiatric or psychological examination; victim; fleeing or attempting to elude; motor vehicle theft

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