

SESSION OF 2018

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

As Recommended by Senate Committee on  
Judiciary

**Brief\***

SB 265 would amend the crime of incest to specify the phrase “otherwise lawful sexual intercourse or sodomy” does not include the the crimes of rape or aggravated criminal sodomy as defined in the Kansas Criminal Code.

**Background**

SB 265 was introduced by the Senate Committee on Judiciary at the request of the Office of the Attorney General (AG’s Office). In the Senate Committee hearing, a representative of the AG’s Office appeared in support of the bill and explained it would address a recent Kansas Court of Appeals decision, *State v. Toothman*. In that case, the Court reversed Toothman’s conviction for rape and directed the trial court to impose a sentence of aggravated incest. The representative explained the Court found the crime of aggravated incest, a severity level 7, 5, or 3 person felony, was more specific than the crimes of aggravated sodomy and rape, severity level 1 person felonies. According to the representative, the AG’s Office believes that in adopting the phrase “otherwise lawful sexual intercourse or sodomy” in the incest statute, the Legislature intended to exclude rape and aggravated sodomy from the crime of incest, as these acts are unlawful. Further, the representative explained the bill would clarify that unlawful sexual acts will be prosecuted and punished as rape or aggravated sodomy, rather than receiving a lesser sentence under the incest statute.

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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>

No other testimony was provided.

According to the fiscal note provided by the Division of the Budget, the Office of Judicial Administration indicates any fiscal effect resulting from the enactment of the bill would be negligible.

The prison bed impact assessment provided by the Kansas Sentencing Commission indicates enactment of the bill would have no impact on prison admission, prison bed space, or the journal entry workload of the Commission.