

SESSION OF 2013

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2120

As Amended by Senate Committee on Judiciary

Brief*

HB 2120 would amend the criminal code concerning the Kansas Bureau of Investigation's (KBI) collection of DNA samples and gaming crimes.

To align the law concerning the KBI's collection of DNA samples with current practices, the bill would remove references to drawing blood and require the specified persons to submit biological samples to the KBI when a person is fingerprinted as part of the booking procedure. The KBI would provide the necessary kits and supplies for collection and the samples would not be accepted for admission or comparison unless obtained in substantial compliance with the provisions of the bill by an accredited forensic laboratory meeting the national DNA index guidelines established by the Federal Bureau of Investigation. If the person's DNA sample was not properly obtained, the person would be required to provide another sample. Additionally, a sample collected by a law enforcement agency or juvenile justice agency in substantial compliance with the provisions of the bill, or any evidence based upon or derived from such sample, could not be excluded as evidence in any criminal proceeding on the basis that the sample was not validly obtained.

The bill also would amend provisions outlining who is required to submit such a sample. The bill would clarify that a person would be required to submit a sample when convicted of lewd and lascivious behavior only if the crime was committed in the presence of a person 16 or more years of

*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>

age. Further, the bill would specify that persons who were incarcerated on May 2, 1991, for a crime committed prior to that date would be required to submit a sample prior to final discharge or conditional release. Finally, the bill would strike provisions that are outdated, make other technical amendments, and define key terms.

In the area of gambling crimes, the bill would amend the definition of “bet” to provide that a bet does not include a “raffle,” which is defined in the bill as a fundraising event in which:

- Participants donate or agree to donate something of value for an opportunity to win something of value;
- Winning opportunities are represented by tickets differentiated by sequential enumeration;
- Winners are picked by a random drawing of tickets or some other similar method of determining a winner or by a race utilizing inanimate objects floated along a river, stream, canal, or other body of water; and
- The raffle is conducted for the benefit of a nonprofit organization, a state or federal agency, or a political subdivision.

Background

In the House Committee on Corrections and Juvenile Justice, a representative of the KBI appeared in support of the bill and explained that these revisions are recommended as saliva, rather than blood, is used more often for DNA samples, and other technical changes are necessary to remove conflicts and clean up the language.

The House Committee amended the bill to strike language that would have allowed a court to order a person

to submit a sample upon conviction or adjudication for any crime and to clarify language concerning the validity of these samples as evidence.

In the Senate Committee on Judiciary, a representative of the KBI offered testimony in support of the bill. Senator Jay Emler also appeared before the Committee and requested an amendment concerning the legality of raffles. Senator Emler explained the issue originally was considered by the Senate Committee on Federal and State Affairs in SB 148 and SB 220, and proposed the amendment as a means of avoiding lengthy floor debate on gaming, not just raffles.

The Senate Committee agreed to adopt the Emler amendment, which would exclude raffles, as defined in the amendment, from the definition of "bet."

The fiscal note prepared by the Division of the Budget for the bill, as introduced, indicates passage of the bill could have an effect on the Judicial Branch, but the precise impact is unknown. Passage of the bill would have no effect on the KBI or the Juvenile Justice Authority.