

SESSION OF 2014

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2490

As Amended by Senate Committee on Judiciary

Brief*

HB 2490, as amended, would amend the law concerning the Kansas Bureau of Investigation's (KBI) collection of DNA samples and the conduct of the jury after a case is submitted.

DNA Collection

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

*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>

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 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 Finally, the bill would strike provisions that are outdated, make other technical amendments, and define key terms.

Jury Conduct

If the jury is permitted to separate either during the trial or after the case is submitted to them, the bill would require the court to admonish them to immediately report any attempt by another person to converse with them on any subject of the trial. The bill would strike language requiring the court to admonish the jury it is their duty not to “form or express an opinion” on any subject of the trial until it is finally submitted to them. Instead, the bill would require the court to admonish the jury it is their duty not to make any final determinations or express any opinion on any subject of the trial until the case is finally submitted to them.

The bill would strike language allowing the jury to request the officer to conduct them to the court to receive information on a point of law or to have the evidence read or exhibited to them in the presence of the defendant, unless the defendant voluntarily absents himself, and his counsel and after notice to the prosecuting attorney. In lieu of this procedure, subject to the court’s discretion, the bill would allow the jury, upon retiring for deliberation, to take any admitted exhibits into the jury room to review them without further permission from the court. The court could provide equipment to facilitate review. Further, the bill would provide that the jury would be instructed that any question it wishes to ask the court about the instructions or evidence should be signed, dated, and submitted in writing to the bailiff. The court would be required to notify the parties of the contents of the

questions and provide them an opportunity to discuss an appropriate response. The bill would require the court to respond to all questions from a deliberating jury in open court or in writing and would allow the court to grant a jury's request to rehear testimony. The bill also would require the defendant to be present during the discussion of such written questions and during response given in open court, unless such presence is waived. Written questions from the jury, the court's response, and any objections thereto would be made a part of the record.

Finally, the bill would provide that the amendments would establish a procedural rule and, as such, would be construed and applied retroactively.

Background

In the House Judiciary Committee, a representative of the Office of the Attorney General appeared in support of the bill and stated the bill was intended to conform the law to the actual practice of district courts and juries and was patterned after other states' laws regarding similar subject matter. A representative of the Leavenworth County Attorney Office also appeared in support of the bill, and a representative of the Kansas Association of Criminal Defense Lawyers offered neutral testimony.

The House Committee amended the bill to remove language that would have allowed jurors to assimilate and evaluate the evidence as it accumulates during the trial and prohibit deliberation before the case is finally submitted to them. Additionally, the Committee added language to clarify that the jury's ability to take any admitted exhibits into the jury room would be at the court's discretion.

The same proponents appeared in support of the bill in the Senate Judiciary Committee.

The Senate Judiciary Committee amended the bill to add the DNA provisions of 2013 HB 2120, which was vetoed due to concerns about the constitutionality of language regarding raffles that had been added to HB 2120.

Background—2013 HB 2120

In the House Committee on Corrections and Juvenile Justice, a representative of the KBI appeared in support of HB 2120 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.

A representative of the KBI also offered testimony in support of the bill in the Senate Committee on Judiciary.

The fiscal note prepared by the Division of the Budget for HB 2120, 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.

The fiscal note prepared by the Division of the Budget states HB 2490, as introduced, would have no fiscal effect on the revenues or expenditures of the Judicial Branch.