

SESSION OF 2014

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2473**

As Amended by House Committee

Brief*

Sub. for HB 2473, as amended, would amend current law and create new provisions concerning the regulation and possession of weapons, including firearms, handguns, and knives. Specifically, the bill would address concealed carrying of handguns; open carrying of firearms; regulation of firearms and knives by local units of government; forfeiture, return, and buyback of firearms; criminal use of weapons; and criminal possession of weapons.

Concealed Carrying of Firearms

The bill would create new prohibitions for municipalities related to their employees, and specifically to employees who are concealed carry of handgun license holders. Municipal employers of concealed carry license holders shall not require disclosure by municipal employees who possess concealed carry of handgun licenses. Municipalities could not terminate, demote, discipline, or otherwise discriminate against employees based on their refusal to disclose their status as a concealed carry license holder. Municipal employers would be prohibited from creating a record of any employee's possession or disclosure of a concealed carry license. Any such records created by a municipality before the effective date of the bill must be destroyed by July 31, 2014.

The bill would add a conviction for any of the offenses in KSA 2013 Supp. 21-6304(a)(1) (criminal possession of 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>

weapon), as amended elsewhere in this bill to include all weapons, and not only firearms, as a reason the Attorney General shall deny an application for a concealed carry handgun license. This provision also would require the Attorney General to deny the concealed carry application of applicants whose juvenile offenses, had the offenses been committed by an adult, would have constituted the commission of any of the offenses in KSA 2013 Supp. 21-6304(a)(1).

Open Carrying of Firearms

The bill would add new posting requirements for buildings where the open carrying of firearms could be prohibited as authorized in this legislation. The new provision would make it a violation of this statute to carry an unconcealed firearm into a building that was conspicuously posted according to the new requirements and posted in accordance with the rules and regulations of the Attorney General.

The bill replaces current law concerning the operation, possession, or carrying of a concealed concealed handgun under the influence of alcohol or illegally used controlled substances with a new provision applying the penalties for possessing or carrying any firearm under the influence, not just concealed handguns addressed in current law.

The bill would define "possession of a firearm under the influence" as knowingly possessing or carrying a loaded firearm on or about such person, or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm. The bill would amend the current evidentiary standards to be used in prosecutions related to possession of firearms under the influence to make them more consistent with existing law related to driving under the influence of drugs or alcohol. The bill also would establish civil penalties for refusal to submit to

testing required under the bill (\$1000 for each violation) and license revocations for concealed carry license holders after conviction of possession of a firearm while under the influence (revocation of concealed carry license for a minimum of one year for a first offense and three years for a second or subsequent offense).

Regulation of Firearms and Knives by Local Units of Government

Statutes passed during the 2013 Session would be expanded to prohibit cities and counties from adopting or enforcing ordinances, resolutions, regulations, or administrative actions governing the purchase, transfer, ownership, storage, carrying, or transporting of firearms, ammunition, or any related component. Cities and counties also would be prohibited from adopting or enforcing any ordinances, resolutions, or regulations relating to the sale of firearms by individuals having federal firearms licenses, if the local controls were more restrictive than any other ordinance, resolution, or regulation governing the sale of any other commercial good. Ordinances, resolutions, or regulations adopted before the effective date of the bill would be deemed null and void.

Cities and counties would be permitted to adopt ordinances, resolutions, or regulations pursuant to KSA 2013 Supp. 75-7c20 relative to the personnel policies governing concealed carry of handguns by city or county employees, so long as in compliance with this law.

A new provision would shield local units of government from being liable for the wrongful acts or omissions related to carrying a firearm, including acts or omissions by municipal employees.

The bill would repeal statutory provisions delegating to local units of government the authority to regulate open carry and transportation of a firearm.

Legislation from the 2013 Session would be expanded with regard to municipal regulation of knives. Municipalities could not enact or enforce any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components. Any ordinance, resolution, regulation, or tax relating to the transportation, possession, carrying, sale, transfer, purchase, gift, devise, licensing, registration, or use of a knife or knife-making components that is more restrictive than regulation on any other commercial product would be prohibited. Such ordinances, resolutions, regulations, or taxes adopted prior to the effective date of the bill would be deemed null and void.

Additionally, individuals could not be prosecuted for violating municipal regulations on knives or knife-making components between July 1, 2013, and the effective date of the bill (July 1, 2014). Violations occurring before the effective date would be added to the list of reasons for which a court would be required to order expungement of an individual's record and any person convicted of any municipal violation before the effective date would be given the ability to petition the court for expungement.

Forfeiture and Return of Firearms

The bill would repeal certain provisions concerning the forfeiture of firearms, adding new language that weapons or ammunition not covered elsewhere by statutes must be, at the discretion of the court:

- Forfeited to the law enforcement agency that seized the weapon for sale or trade to a licensed federal firearms dealer;
- Forfeited to the Kansas Bureau of Investigation for law enforcement, testing, or comparison by the forensic laboratory;

- Forfeited to a county forensic laboratory for law enforcement, testing, or comparison; or
- Forfeited to the Kansas Department of Wildlife, Parks and Tourism for use pursuant to KSA 32-1047.

The bill also would address the return of seized weapons. Individuals not convicted of a violation and not prosecuted as juveniles would be required to be notified that the weapon may be retrieved by the individuals after the law enforcement agency verifies the weapon is not stolen. Such notification must include the location where the weapon can be retrieved and must occur within 30 days of the conclusion of prosecution. Weapons that cannot be returned, and are not forfeited because of the condition of the weapon, and any weapon used in the case of a murder or manslaughter, must be destroyed.

The existing statute concerning forfeiture, KSA 21-6307, would be repealed and the new forfeiture provisions would be moved to the general criminal procedures statute found in KSA 22-2512.

Firearms Buyback Programs

The bill would prohibit local government taxes from being used to implement, administer, or operate a firearms buyback program. Firearms buyback program would be defined in the bill as “any program wherein individuals are offered the opportunity to gift, sell, or otherwise transfer ownership of such individual’s firearm to a city or county.”

Criminal Use of Weapons

Daggers, dirks, dangerous knives, straight-edged razors, and stiletos would be added to the list of prohibited weapons, and the possession of any such dangerous weapon with the intent to use it against another person would constitute the crime of criminal use of a weapon.

The bill would add language to existing law, exempting use of a firearm with a barrel less than 12 inches by a person less than 18 years of age at a private range with permission of that person's parent or legal guardian, from the crime of criminal use of a weapon. The bill also would delete language requiring a person who is less than 18 years of age to know or have reason to know that the barrel of the firearm that a person possesses is less than 12 inches long in order to be guilty of criminal use of a weapon.

Criminal Possession of Weapons

The bill also would broaden language in KSA 2013 Supp. 21-6304, to refer to criminal possession of a weapon instead of criminal possession of only a firearm. Additionally, the bill would add references to a previous version of the drug code to ensure that conviction of any and all drug crimes would give rise to the crime of criminal possession of a weapon.

Background

At the House Committee hearing, Representative Howell, along with representatives from the Kansas Libertarian Party, the Kansas State Rifle Association, the Kansas Association of Chiefs of Police, the Kansas Sheriff's Association, and the Kansas Peace Officer's Association presented testimony in favor of the bill. Representatives from the Sedgwick County Commissioners and the Kansas Libertarian Party submitted written testimony supporting the

bill. Representatives from the Kansas Association of Counties, the League of Kansas Municipalities, and the Unified Government of Wyandotte and Kansas City, Kansas presented testimony in opposition to the bill. The cities of Lawrence and Overland Park submitted written testimony opposing the bill. Neutral testimony was presented by the Kansas Department of Wildlife, Parks and Tourism and the Office of Judicial Administration. Neutral written testimony was submitted by the Kansas Attorney General's Office and Johnson County Community College.

When the House Committee initially worked the bill on February 12, 2014, the Committee recommended a substitute bill. The House Committee amended and expanded the original bill by including new provisions and amending existing provisions related to concealed carrying of handguns, open carrying of firearms, regulation of firearms and knives by local units of government, the forfeiture and return of firearms, firearms buyback programs, criminal use of weapons, and criminal possession of weapons. The substitute bill also repeals the existing statutes concerning the forfeiture of firearms (KSA 2013 Supp 21-6307) and the concealed carry of a handgun by a license holder while under the influence of illegally used drugs or alcohol (KSA 75-7c12) and replaces them with broader provisions.

The bill was rereferred to the House Committee later in the 2014 Session, and on March 12, 2014, the Committee amended its substitute bill concerning provisions related to concealed carry, open carry, and criminal use of a weapon.

Concealed Carrying of Firearms

The Committee amendments would add juvenile offenses, which, if had been committed by an adult, would constitute the commission of any of the offenses in KSA 2013 Supp. 21-6304(a)(1), to the list of circumstances when the Attorney General must deny a concealed carry application.

Open Carrying of Firearms

Regarding open carry, the Committee deleted provisions allowing individuals to possess, store, carry, or transport a loaded handgun in a motor vehicle, regardless of whether or not the individual possesses a concealed carry handgun license, so long as the individual is not otherwise prohibited by law from possessing a firearm.

The Committee further amended provisions concerning the crime of possession of a firearm while under the influence, expanding the definition of the crime to include driving under the influence of any drug (previously the crime only included driving under the influence of controlled substances) and making the evidentiary standards more consistent with existing DUI statutes.

Criminal Use of Weapons

The Committee also deleted language exempting possession of a firearm with a barrel less than 12 inches by a person less than 18 years old from the crime of criminal use of a firearm.

Criminal Possession of Weapons

Additionally, the bill, as amended by the House Committee, would add references to a previous version of the drug code to ensure that conviction of any and all drug crimes would give rise to the crime of criminal possession of a weapon.

The fiscal note on the original bill indicates the Office of Judicial Administration stated passage of the bill could increase the number of cases and appeals filed in district court. An increased caseload would result in the collection of additional docket fees. However, until the courts have the opportunity to operate under the terms of the bill, an accurate

estimate of the fiscal impact on the courts could not be provided. Additionally, the League of Kansas Municipalities indicated it anticipated costs associated with the staff time required to review and redraft or repeal personnel policy provisions and ordinances already adopted by local units of government. An estimate of the fiscal impact on local units of government could not be given since it is unknown how many would be impacted by passage of the bill. The Kansas Association of Counties indicated increased costs associated with accelerated requirements to put adequate security measures in place if the bill were passed.

Any fiscal effect associated with the bill, as introduced, is not reflected in *The FY 2015 Governor's Budget Report*. A revised fiscal note was not available for the substitute bill.