

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2120**

As Agreed to April 3, 2013

**Brief\***

HB 2120 would amend the criminal code concerning the Kansas Bureau of Investigation's (KBI) collection of DNA samples, gambling crimes, and a special sentencing rule related to firearms.

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

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 Finally, the bill would strike provisions that are outdated, make other technical amendments, and define key terms.

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.

Finally, the bill would amend a special sentencing rule related to firearms. Under current law, the rule applies when an offender *carries* a firearm to commit a drug felony or *possesses* a firearm in furtherance of a drug felony. The bill would change this language to apply the rule when an offender *possesses* a firearm and such firearm was readily accessible during the commission of, or in furtherance of, a

felony involving controlled substances, or any attempt to commit such a crime.

### **Conference Committee Action**

The Conference Committee agreed to the Senate amendments and agreed to make a technical amendment restoring language inadvertently removed by HB 2252, which the Governor signed April 1, 2013, and add the text of SB 41, concerning a special sentencing rule related to firearms.

### **Background**

In the House Corrections and Juvenile Justice Committee, 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 Judiciary Committee, a representative of the KBI offered testimony in support of the bill. Senator Jay Emler also appeared and requested an amendment concerning raffles, an issue originally considered by the Senate Federal and State Affairs Committee in SB 148 and SB 220. He indicated the proposed amendment was 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.

**SB 41.** In the Senate Judiciary Committee, representatives of the Kansas County and District Attorneys Association testified in support of the bill. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association submitted written proponent testimony. There was no other testimony.

The Senate Committee amended the bill to add a provision requiring the firearm to be readily accessible for the rule to apply.

The same conferees offered testimony in support of the bill in the House Corrections and Juvenile Justice Committee. There was no other testimony.

The House Committee amended the bill to remove a phrase making the rule applicable to conspiracies to commit a covered crime and to replace the term "drug felony" with a statutory citation to felonies involving controlled substances.

The fiscal note prepared by the Division of the Budget indicates the bill has the potential to increase the number of cases filed in the courts. The Office of Judicial Administration cannot predict a precise fiscal effect and believes any effect likely would be accommodated within existing court schedules. The Kansas Sentencing Commission states the bill would have a negligible effect on prison bed needs.

crimes and criminal procedure; DNA evidence; commencement of criminal prosecution; gambling; raffle; possession of firearm in commission of a drug felony

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