

SESSION OF 2014

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2490**

As Amended by House Committee on Judiciary

**Brief\***

HB 2490, as amended, would amend the law concerning the conduct of the jury after a case is submitted. 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

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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>

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