

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2365

As Recommended by House Committee on
Judiciary

Brief*

HB 2365 would create law providing immunity from prosecution for the crimes of possession of controlled substances and possession of drug paraphernalia, and any city ordinance or county resolution prohibiting the same acts, if a person and, if applicable, up to four other persons acting in concert with such person:

- Initiated contact with law enforcement, law enforcement agency, or emergency medical services; requested medical assistance on such person's behalf because such person reasonably believed such person was in need of medical assistance; and
- Cooperated with law enforcement officers and emergency medical services personnel in providing medical assistance.

The bill also would extend immunity from prosecution when such person:

- Initiated contact with law enforcement or emergency medical services, or was one of not more than four persons who acted in concert with such person, and requested medical assistance for another person who reasonably appeared to be in need of medical assistance;

*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>

- Provided such person's full name, the name of not more than four other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services;
- Remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrived; and
- Cooperated with emergency medical services personnel and law enforcement officers in providing medical assistance.

Immunity also would be extended to the person who reasonably appeared to be in need of medical assistance if the person cooperated with emergency medical services personnel and law enforcement in providing medical assistance.

The bill would state a person would not be allowed to initiate or maintain an action against a law enforcement officer or such officer's employer based on the officer's compliance or failure to comply with these new provisions. The bill would also state that except in cases of reckless or intentional misconduct, a law enforcement officer would be immune from liability for arresting a person who is later determined to be immune from prosecution under the bill's provisions.

The bill would state its provisions would not apply to a person seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search. The bill would prohibit its provisions from being construed to preclude a person who is immune from criminal prosecution pursuant to its provisions from being prosecuted

on the basis of evidence obtained from an independent source.

The bill would state that no property seized by law enforcement during an encounter that results in a person being immune under the bill's provisions would be subject to civil asset forfeiture.

Background

The bill was introduced by the House Committee on Judiciary at the request of a private citizen who works as a pharmacist and serves as a community advocate.

House Committee on Judiciary

In the House Committee hearing on February 22, 2021, the requestor of the bill and a representative of Reno County Health Department testified as **proponents** of the bill. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association, a physician, a registered nurse, and a private citizen provided written-only **proponent** testimony.

A representative of the Johnson County Sheriff's Office testified as an **opponent** of the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates enactment of the bill would have no fiscal effect on the revenues or expenditures of the Judicial Branch. The Kansas Sentencing Commission indicates enactment of the bill would have no fiscal effect on prison admissions, beds, or the workload of journal entries.

Controlled substances; drug paraphernalia; medical assistance; immunity