

SESSION OF 2005

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2304

As Amended by Senate Committee of the Whole

Brief*

HB 2304 would expand the unlawful possession of controlled substances law to include the ingestion or injection of drugs. The expansion is commonly referred to as internal possession.

The penalty for a first violation would be a class A nonperson misdemeanor. A second or subsequent offense would be punishable as a drug severity level 4 felony.

The bill also would amend KSA 8-1001 dealing with implied consent for certain tests of the person's blood, breath, urine, or other bodily substance to include preliminary screening tests under KSA 8-1012.

Background

The requestor of the bill spoke in favor of the measure. Others who expressed support for the bill included conferees from the Kansas Bureau of Investigation and the Kansas Highway Patrol.

The Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*.

The Senate Committee of the Whole amendment addresses the recent Kansas Supreme Court case of *State v. Jones* (Case No. 89, 658 February 18, 2005), which held that the implied consent provisions of KSA 8-1001 do not apply to preliminary screening tests under KSA 8-1012.

*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>

The fiscal note indicates that passage of HB 2304 would likely increase the number of offenders charged and convicted under the drug possession statutes. However, the number of people charged and convicted because of ingestion or injection of prohibited substances cannot be estimated. State agencies that could experience a fiscal effect from this increase in activity would include the Judiciary, the Kansas Sentencing Commission, and the Department of Corrections.

When considered by custody level, the Department of Corrections has been operating at near or excess capacity for medium and maximum custody male inmates. Nearly all of the current available capacity for male inmates is at the minimum custody level. If the bill contributes to an increase in the inmate population sufficient to require additional facility capacity, one-time construction and equipment costs would be needed. In addition, annual costs to staff and operate the additional capacity would be required.

If the bill does not contribute to the need for capacity expansion, additional annual costs of approximately \$2,000 per inmate for basic support, including food service, would be needed. Additional expenditures for health care also could be incurred, if the increase in the inmate population required adjustments in the medical contract. Provisions of the health care contract provide that whenever the inmate count at a facility changes by more than a specified percentage, an adjustment in contract payments is made. The amount of any adjustment would depend on the specific facility involved.