

SESSION OF 2009

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2236

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2236, as amended, would move the drug crimes from Chapter 65 (Public Health) to Chapter 21 (Crimes and Punishments) of the *Kansas Statutes Annotated*. In addition, the drug crimes would be reorganized to group the crimes into the following categories: manufacture, distribution, possession, and paraphernalia.

New Sections 1-17 would provide:

- A section for definition of terms;
- A declaration that the version of the law that controls would depend on the date the crime was committed;
- Manufacture of a controlled substance or controlled substance analog would be a drug severity level 1 felony and would provide for the sentence for such crime;
- The defendant would be responsible for the cost and expenses of seizure, disposition, and decontamination of a manufacturing site;
- Distribution of a controlled substance or controlled substance analog would be a drug crime ranging from a class A nonperson misdemeanor to a drug severity level 1 felony, depending on the violation;
- Possession of a controlled substance or controlled substance analog would be a class A nonperson misdemeanor or a drug severity level 4 felony, depending on the violation;
- For a separate crime for the use of any communication facility to commit, cause, or facilitate a crime of

*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>

- manufacture, distribution, or possession of a controlled substance or controlled substance analog;
- For the crime of unlawfully obtaining and distributed a prescription drug;
 - For the crime of possession of precursor chemicals with the intent to use the chemicals to manufacture a controlled substance and for the crime of possession of drug paraphernalia;
 - For the crime of advertise, market, label, distribute or posses with the intent to distribute precursor chemicals or drug paraphernalia;
 - Factors to consider in determining whether an object is drug paraphernalia;
 - For the crime of unlawful abuse of toxic vapors;
 - For the crime of distribution, possession with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance;
 - For the crime of unlawfully distributing or possessing with the intent to distribute any substance which is not a controlled substance, i.e., purporting to distribute cocaine but distribute flour instead;
 - That the prosecuting attorney would be required to notify the Board of Pharmacy of the initiation of a drug prosecution for a controlled substance analog so that the Board may collect the data to recommend to the Legislature whether the controlled substance analog should or should not be scheduled;
 - For the crime regarding the proceeds derived from a violation of any of the previously described sections; and
 - Uniformity.

Sections 18-63 would change references to the drug crimes in the *Kansas Statutes Annotated* from the Chapter 65 references to a reference to the new section or sections in the bill.

Background

The 2007 Legislature passed House Substitute for Senate Bill 14 which created the Kansas Criminal Code Recodification Commission (Commission). The Commission was charged with the responsibility of:

- Making recommendations concerning proposed modifications, amendments, and additions to the code;
- Analyzing and reviewing criminal statutes and making recommendations for legislation to ensure that sentences are appropriate and proportionate to other sentences, with emphasis on the sentencing guidelines grid for drug crimes;
- Reviewing and determining the severity of the Kansas sentencing policies in relation to other states and to review possible adjustments that may relieve or eliminate prison capacity issues; and
- Studying and making recommendations concerning statutory definitions of crimes and criminal penalties and evaluate if certain criminal conduct may be combined into one statute.

The bill is a product of the work of the Commission.

The proponents of the bill, as introduced, who testified at the House Committee on Corrections and Juvenile Justice were Ed Klumpp, Vice Chairperson of the Commission; and Hon. John White, Retired, Reporter of the Commission. The Reporter testified that the bill proposes to move drug crimes from Chapter 65 to Chapter 21; and to group existing statutes into the core offenses of manufacture, distribution, and possession without revising existing Kansas law.

There were no opponents of the bill, as introduced, who testified at the House Committee on Corrections and Juvenile Justice.

There were two conferees who provided neutral testimony on the bill, as introduced, included Helen Pedigo, Executive

Director, Kansas Sentencing Commission, who testified before the House Committee to ask for technical amendments; and Tom Stanton, President, Kansas County and District Attorneys Association.

The House Committee amended the bill to incorporate the technical amendments requested by Helen Pedigo, as well as other technical amendments prepared by the Office of the Revisor of Statutes.

The fiscal note states the Kansas Sentencing Commission estimates that passage of HB 2236, as introduced, would not require additional adult prison beds in FY 2010. For the section of the bill regarding state imprisonment for felony DUI violations, the Secretary of Corrections would be able to make the determination that prison capacity is available or not; therefore, additional beds would not be required. (KLRD Staff note: Section 19 in the bill is in current law and is not changed by the bill). According to the Office of Judicial Administration and the Office of the Attorney General, the bill would have no fiscal effect on their operations.