

SESSION OF 2010

SUPPLEMENTAL NOTE ON SENATE BILL NO. 435

As Amended by House Committee of the Whole

Brief*

SB 435, as amended, would amend the statute on search incident to arrest and create new law requiring the collection of certain statistics in traffic or pedestrian stops.

Search Incident to Arrest

The bill would add language to the current statute to clarify that when a lawful arrest is effected, a law enforcement officer may reasonably search to the full extent allowed by and consistent with the *Constitution of the United States*.

Statistics in Traffic or Pedestrian Stops

The bill also would require the Kansas Criminal Justice Coordinating Council (KCJCC) to have an optically scannable uniform citizen contact data form available for use by all Kansas law enforcement officers to collect data on each traffic or pedestrian stop. The form would be created in consultation with representatives from state and local law enforcement, the National Association for the Advancement of Colored Persons, the American Civil Liberties Union, the Kansas Human Rights Commission, the National Council of La Raza, and Kansas Civil Rights advocates. The form would replace various traffic tickets used by law enforcement agencies and would be designed to collect certain data to be analyzed by statistical experts for patterns of racial profiling at least once every three months.

*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>

Law enforcement agencies or individual officers who need to correct racially biased behavior, identified as one standard deviation above the mean for all races of motorists and pedestrians stopped in a five block radius in a town or city or a 10 mile section of road or highway, would be contacted by the Attorney General's Office. An annual report summarizing the information collected would be prepared by the Attorney General for submission to the Legislature, the Governor, and Kansas Law Enforcement agencies on or before January 31 of each year. The Kansas Department of Transportation would be responsible for implementing the provisions of this section.

Background

The Fourth Amendment of the *United States Constitution* protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. That right shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. The Fourth Amendment's protection is fully incorporated by the Fourteenth Amendment of the *United States Constitution* to be applicable to the states. Common law permits a warrantless search incident to the warrant requirement.

The bill, as introduced, would have changed the word "a" to "the" in the subsection providing that a law enforcement officer may reasonably search a person incident to arrest for the purpose of discovering the fruits, instrumentalities, or evidence of "a" crime. The change would have reversed what the 2006 Legislature did in SB 431 when it replaced the word "the" with "a" in the subsection providing that a law enforcement officer may reasonably search a person incident to arrest for the purpose of discovering the fruits, instrumentalities, or evidence of "the" crime.

The proponent of the bill, as introduced, who presented testimony in the Senate Committee hearing was Senator David Haley.

The opponents of the bill, as introduced, who presented testimony in the Senate Committee hearing were representatives of the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, the Kansas Sheriffs Association, the Attorney General's Office, and the Kansas County and District Attorneys Association.

The Senate Committee amended the bill to delete section 1 of the bill leaving only the repealer section of the bill. This suggested amendment was made by an opponent of the bill, as introduced, during testimony. Written testimony was submitted by the Kansas Association of Criminal Defense Lawyers opposing the amendment.

The proponents of the bill who presented testimony in the House Committee were representatives from the Kansas Attorney General's Office, the Kansas Association of Chiefs of Police, and the Kansas County and District Attorneys Association.

Written testimony in opposition was submitted to the House Committee by the Kansas Association of Criminal Defense Lawyers.

Senator David Haley provided neutral testimony to the House Committee.

The House Committee amended the bill to add language that provides when a lawful arrest is effected, a law enforcement officer may reasonably search to the full extent allowed by and consistent with the *Constitution of the United States*.

The House Committee of the Whole amended the bill to add provisions regarding the collection of certain data to be analyzed by statistical experts for patterns of racial profiling.

The fiscal note on the bill, as introduced, may not be applicable since the bill has been amended.