

SESSION OF 2007

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 31**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 31 would clarify the subject matter jurisdiction of municipal courts to allow the municipal court to hear and determine cases involving violations of city ordinances and specified violations that could be charged as a felony in district court. The felonies in which the municipal court and the district court would have concurrent jurisdiction are limited to those crimes which are contained in KSA 2006 Supp. 8-1567, Driving Under the Influence of Alcohol or Drugs; KSA 21-3412a, Domestic Battery; KSA 21-3701, Theft; KSA 21-3707, Worthless Checks; or KSA 65-4162, Possession of Marijuana, to allow jurisdiction to a municipal court for violations of an ordinance which is concurrent with the jurisdiction of a district court for violations of these statutes that would be punishable as a felony. These provisions would be retroactive for ordinance violations committed on or after July 1, 2006.

The bill also would provide that a city, district or county attorney could not knowingly and willingly enter a diversion agreement in lieu of further criminal proceedings with an illegal alien.

Background

A recent Kansas Supreme Court decision, *State v. Elliott*, 281 Kan. 583 (2006), held that municipalities do not have jurisdiction over and may not prosecute crimes designated as felonies. The defendant in *Elliott* was charged in district court with driving while suspended and felony driving under the influence of alcohol (DUI) with two or more prior convictions. A

*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>

jury convicted the defendant as charged. A presentence investigation revealed he had five prior DUI convictions. Prior to sentencing, he challenged his four prior municipal court DUI convictions claiming at least two of the convictions should have been charged as felonies in the district court, thus depriving the municipal court of jurisdiction. The district court agreed and struck two of the defendant's prior DUI convictions from his criminal history score, convicted him of felony DUI as a fourth-time offender, and sentenced him to nine months in jail. The Court of Appeals and the Kansas Supreme Court affirmed the trial court's decision.

The bill is an effort to clarify the municipal court's jurisdiction in light of *Elliott*.

The Senate Committee amended the bill by striking language which appears to narrow the municipal court's jurisdiction and replacing it with language that clarifies the municipal court's jurisdiction is expanded to include the specified felonies.

The proponents of the bill included Judge Karen Arnold-Berger, Overland Park Municipal Court; Sandy Jacquot, League of Kansas Municipalities; and Mike Taylor, Public Relations Director of the Unified Government of Wyandotte County.

There was no testimony in opposition to the bill.

The House Committee inserted the provisions regarding concurrent jurisdiction with municipal courts and district courts.

The House Committee of the Whole inserted the provisions regarding the prohibition on diversion agreements involving an illegal alien.

The fiscal note from the Division of Budget states that, according to the Office of Judicial Administration, passage of the original SB 31 would have a slight effect on district court caseloads, but a precise fiscal effect estimate could not be provided.