

SESSION OF 2009

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2233**

As Amended by Senate Committee on  
Judiciary

**Brief\***

HB 2233, as amended, would amend current law on an appeal by the prosecution, withdrawal of a guilty or no contest plea after sentencing, and selection of alternate jurors.

Appeal by the Prosecution

HB 2233 would amend current law regarding appeals by the prosecution to clarify the term "an appeal by the prosecution." The term would include appeals, interlocutory appeals, and appeals that seek discretionary review in the Kansas Supreme Court or the United States Supreme Court.

Criminal defendants have a statutory right to a speedy trial pursuant to KSA 22-3402. A criminal defendant would be discharged from further liability if not promptly brought to trial. The law provides for certain circumstances to toll, or stop, the time counted for speedy trial purposes. KSA 22-3604 tolls the time during the pendency of an appeal by the prosecution for speedy trial.

Withdrawal of a Guilty or No Contest Plea

The bill also would amend the statute on withdrawal of a guilty or no contest plea after a sentence has been imposed in a criminal case. The bill would place a one year limitation from the final order on the direct appeal in the case or when Kansas appellate jurisdiction terminates; or upon the United States Supreme Court's (Court) denial to review the case or on the final order in the case if the Court granted review.

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\*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 bill would provide a provision to extend the time limitation upon an additional, affirmative showing of excusable neglect by the defendant.

Under current law, there is no time limitation on when a defendant may withdraw a guilty or no contest plea after sentencing.

#### Selection of Alternate Jurors

The bill also would amend current law to authorize selection of one or more alternate jurors in a criminal case to be selected at the same time as the regular jury is being selected.

Under current law, the alternate juror or jurors are selected after the regular jury has been empaneled and sworn. The bill would leave it to the discretion of the judge to decide whether the alternate juror or jurors are selected at the same time as the regular jury or after the regular jury has been empaneled and sworn.

The bill would be in effect upon the publication in the *Kansas Register*.

#### **Background**

The provisions of HB 2233, as recommended by the House Committee on Corrections and Juvenile Justice remain unchanged in the bill. The provisions of HB 2099, as amended by the House Committee on Corrections and Juvenile Justice, are inserted into HB 2233. The provisions of HB 2097, as recommended by the House Committee on Corrections and Juvenile Justice also are inserted into HB 2233.

The proponent of the bill's provision on appeals by the prosecution, as introduced, who testified at the House Committee was Steve McAllister, Solicitor General of Kansas, Attorney General's Office. He also testified before the Senate

Committee on Judiciary in favor of the provision. There were no opponents of the bill's provision on appeals by the prosecution, as introduced, who testified at the House Committee.

The proponent of the bill's provision on withdrawal of a guilty or no contest plea, as introduced, who testified at the House Committee on Corrections and Juvenile Justice was Kevin O'Connor, Assistant Sedgwick County District Attorney on behalf of the Kansas County and District Attorneys Association (KCDA). The proponent in the Senate Committee was Melissa Johnson, Assistant Seward County Attorney on behalf of the KCDA.

The opponent of the bill's provision on withdrawal of a guilty or no contest plea, as introduced, who testified at the House Committee on Corrections and Juvenile Justice was Carl Folsom, III, Kansas Association of Criminal Defense Lawyers.

There were no opponents who testified at the Senate Committee hearing.

The proponent of the bill's provision on the selection of alternate jurors, as introduced, who testified at the House Committee on Corrections and Juvenile Justice was Kevin O'Connor, Assistant Sedgwick County Attorney. The proponents in the Senate Committee on Judiciary were Melissa Johnson, Assistant Seward County Attorney on behalf of the Kansas County and District Attorneys Association; and Chief Judge Richard Smith, 6<sup>th</sup> Judicial District.

There was no opponent of the bill who testified at the House Committee on Corrections and Juvenile Justice or in the Senate Judiciary Committee.

The Senate Committee amended the bill to insert the provisions of HB 2099, withdrawal of guilty or no contest plea, and the provisions of HB 2097, selection of alternate jurors.

According to the fiscal note on the bill's provision on appeals by the prosecution, the Office of Judicial Administration indicates that passage of the bill would not have a fiscal effect.

The fiscal note on the bill's provision on withdrawal of a guilty or no contest plea, as introduced, state the Office of Judicial Administration indicates passage of the bill would have no fiscal effect on the operations of the court system.

The fiscal note from the Division of Budget states that passage of the bill's provision on selection of alternate jurors, as introduced, would have no fiscal effect on the Judicial Branch.