

SESSION OF 2011

SUPPLEMENTAL NOTE ON SENATE BILL NO. 6

As Amended by Senate Committee on
Judiciary

Brief*

SB 6, as amended, would repeal KSA 22-2501, which codifies the exception to the warrant requirement for a search made incident to an arrest by a law enforcement officer.

Background

The Fourth Amendment of the *United States Constitution* and § 15 of the *Kansas Constitution* prohibit unreasonable searches and seizures. Under United States Supreme Court and Kansas Supreme Court case law, warrantless searches are assumed to be unreasonable unless they fall within a recognized exception to the warrant requirement. One such exception is for a search made incident to an arrest by a law enforcement officer. This exception is recognized by United States Supreme Court case law and is codified in Kansas in K.S.A. 22-2501.

The bill, as introduced at the request of Senator David Haley, would have changed the word “a” to “the” in the subsection of KSA 22-2501 providing that a law enforcement officer may reasonably search a person incident to arrest for the purposes of discovering the fruits, instrumentalities, or evidence of “a” crime. The change would have reversed the action of the 2006 Legislature in SB 431 when it replaced the word “the” with “a” in the same subsection. In 2009, the Kansas Supreme Court, applying a recent United States Supreme Court decision more narrowly construing the search

*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>

incident to arrest exception, held that the statutory language allowing a search for the fruits, instrumentalities, or evidence of “a” (rather than “the”) crime was unconstitutional.

A substantially similar bill, SB 435, was introduced in the 2010 Legislature. After significant amendments were made to 2010 SB 435 in the Senate Committee and House Committee on Corrections and Juvenile Justice, the bill, although passed in different form by both houses, was ultimately ruled materially changed and referred to the Senate Committee on Federal and State Affairs. No further action was taken on SB 435 in the 2010 Legislature.

In the Senate Committee hearing, Senator David Haley testified in favor of the bill, as introduced. The Kansas Association of Criminal Defense Lawyers submitted written testimony supporting the bill, as introduced.

Representatives of the Kansas Peace Officers Association, the Kansas Association of Chiefs of Police, and the Kansas Sheriffs Association testified in opposition to the bill, as introduced. These opponents requested the Legislature repeal, rather than amend, KSA 22-2501. The Kansas County and District Attorney Association submitted written testimony asking the Legislature to repeal KSA 22-2501, but to pass the bill, as introduced, if the Legislature decided not to repeal the statute.

The Senate Committee amended the bill by striking all language except the provision repealing KSA 22-2501. The Committee recommended the bill be passed as amended.

The fiscal note on the bill, as introduced, stated the League of Kansas Municipalities indicated SB 6 would have no effect on cities. There would be no fiscal effect to the state budget. There is no fiscal note for the bill as amended.