

SESSION OF 2022

SUPPLEMENTAL NOTE ON SENATE BILL NO. 367

As Recommended by Senate Committee on
Judiciary

Brief*

SB 367 would make various amendments to the statute governing custody and disposition of property seized by law enforcement, as follows.

The bill would specify that seized property shall be returned to its rightful owner or disposed of in accordance with the statute if no criminal charges are filed or prosecution is declined. The bill would clarify the procedure to be followed for filing a copy of the receipt provided when property is seized under a search warrant and allow for electronic filing of the receipt.

The bill would add “dangerous drugs” to provisions allowing for the taking of representative samples of and subsequent destruction or disposing of hazardous materials, and the use of such samples as evidence. The bill would define “dangerous drugs” and “representative sample.”

The bill would allow a sheriff to designate someone to hold a sale of unclaimed property.

The bill would amend a provision regarding disposition of a seized weapon when the individual from whom the weapon was seized is not convicted to clarify that, upon verifying whether the weapon is stolen, if the weapon is stolen or was seized from an individual the agency knows is not the owner of the weapon, the agency shall notify the owner of the weapon that the weapon may be retrieved. If the weapon was seized from a juvenile, the agency would be

*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>

required to notify the parent or legal guardian of the juvenile that the weapon may be retrieved by the parent or legal guardian. If the agency determines there is no other more appropriate person to retrieve the weapon, the agency would be required to notify the person from whom the weapon was seized that the weapon may be retrieved.

The bill would add a provision stating that, if the agency determines the individual authorized to retrieve a weapon under the above provisions is prohibited by state or federal law from possessing the seized weapon, the agency shall notify the individual that the weapon will not be returned due to the disqualification, which would be described in the notice. The agency would be prohibited from disposing of the weapon for 60 days after this notice to allow the individual to bring an action in an appropriate court challenging the agency's determination. After 60 days, the agency could dispose of the weapon as provided by law, unless otherwise directed by the court. An owner of a weapon prohibited by law from possessing the weapon would be allowed to request the agency to transfer the weapon to a designated properly licensed federal firearms dealer or to bring an action in an appropriate court to request an order to transfer the weapon, as allowed by law.

The bill would make additional amendments to clarify terms and ensure consistency in statutory phrasing.

Background

The bill was introduced in the Senate Committee on Judiciary at the request of a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association (law enforcement organizations).

[Note: SB 367 contains provisions identical to those in 2019 SB 133, as amended by the Senate Committee on

Judiciary. The bill died on Senate General Orders in the shortened 2020 Legislative Session.]

Senate Committee on Judiciary

In the Senate Committee hearing on January 31, 2022, a representative of the three law enforcement organizations referenced above and ACLU Kansas provided **proponent** testimony. Proponents generally stated enactment of the bill would provide greater clarity to law enforcement when handling seized property and codify best practices. Written-only proponent testimony was provided by representatives of the Kansas Highway Patrol and the League of Kansas Municipalities.

Opponent testimony was provided by a private citizen, expressing concern with the definition of “dangerous drugs” contained in the bill. No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration indicates enactment of the bill could increase the number of cases filed in district court because it allows for court actions to be filed, which could result in more time spent by court employees and judges processing and deciding these cases, and also estimates enactment of the bill could result in the collection of additional docket fee. However, a fiscal effect cannot be estimated.

The Kansas Highway Patrol indicates that enactment of the bill would make it easier for the agency to return property to its lawful owner and would prevent the agency from having to purchase additional storage space and still allow the agency to keep necessary evidence for criminal prosecution or other pending litigation.

The League of Kansas Municipalities states enactment of the bill would have a fiscal effect on municipalities; however, the League does not have enough information to determine what the fiscal effect would be.

The Kansas Bureau of Investigation indicates enactment of the bill would not have a fiscal effect on agency operations. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Crimes; punishment; criminal procedure; seizure of property; law enforcement