

SESSION OF 2011

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2038

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2038 would amend 2010 Session Laws ch. 136, sec. 298, concerning hearings to consider a departure sentence in felony cases. (2010 Session Laws ch. 136 recodifies the Kansas Criminal Code, and will go into effect July 1, 2011.) The bill would make clear that when a court determines it is in the interest of justice to impose a departure sentence, which requires a separate departure sentence proceeding, the proceeding must take place in front of a jury, unless the jury is waived.

Background

HB 2038 was introduced to bring current sentencing law into compliance with a recent Kansas Supreme Court decision, *State v. Horn*, holding that waiver of a jury trial does not waive a defendant's right to a jury for an upward durational departure sentencing proceeding. In the House Committee on Corrections and Juvenile Justice, Sarah Fertig, Executive Director of the Kansas Sentencing Commission, testified in support of the bill. The Kansas County and District Attorneys Association also offered written testimony in support of the bill.

Passage of HB 2038 would have no fiscal effect.

*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>