

SESSION OF 2018

SUPPLEMENTAL NOTE ON SENATE BILL NO. 409

As Amended by Senate Committee on Judiciary

Brief*

SB 409, as amended, would add provisions to the Criminal and Civil Codes of Procedure concerning contact of jurors following criminal and civil actions. Immediately following discharge of the jury, the bill would allow the defendant, the defendant's attorney or representative, the prosecutor or the prosecutor's representative (in a criminal case), or the plaintiff or the plaintiff's attorney (in a civil case) to discuss the jury deliberations or verdict with a member of the jury only if the juror consents to the discussion and the discussion takes place at a reasonable time and place.

If such discussion occurs at any time other than immediately following the discharge of the jury, prior to discussing the jury deliberations or verdict with a member of a jury, the defendant, the defendant's attorney or representative, the prosecutor or the prosecutor's representative, or the plaintiff or the plaintiff's attorney would be required to inform the juror of the identity of the case, the party in the case that the person represents, the subject of the interview, the absolute right of the juror to discuss or not discuss the deliberations or verdict in the case with the person, and the juror's right to review and have a copy of any declaration filed with the court.

The bill would require any unreasonable contact with a juror by the defendant, the defendant's attorney or representative, the prosecutor, or the prosecutor's representative without the juror's consent to be immediately reported to the trial court. Any violation would be considered 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>

violation of a lawful court order, which the bill provides would be punished as contempt of court.

In both criminal and civil actions, the bill would require the court, on completion of a jury trial and before the jury is discharged, to inform the jurors they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone. Further, before the jury is discharged, the bill would require the judge to inform jurors of the consent required for a discussion with the parties, the obligation to report unreasonable contact, and that violation of the court order can be punished as contempt of court.

Finally, the bill would state nothing in the section would prohibit a law enforcement officer from investigating an allegation of criminal conduct.

Background

The bill was introduced by Senator Pettey. In the Senate Committee on Judiciary hearing, staff of the Office of Revisor of Statutes explained that currently, contact with jurors is governed by Supreme Court Rule 169, which requires instruction on completion of a jury trial and before the jury is discharged that whether jurors talk to anyone is entirely their own decision; jurors may talk to attorneys but need not; and attorney contact over a juror's objections or that becomes critical of the juror's service should be reported to the court. Senator Pettey appeared as a proponent and stated she introduced the bill after hearing from a judge who expressed concerns about contact after a trial when a defendant who was convicted sent letters to jurors and the court had no recourse. The judge offered written-only proponent testimony. No other testimony was provided.

The Senate Committee amended the bill to distinguish requirements based upon whether the discussion occurs "immediately following the discharge of the jury," rather than upon the passage of 24 hours from the verdict.

According to the fiscal note prepared by the Division of the Budget, the Office of Judicial Administration indicates enactment of the bill could affect the number of appeals filed and could impact district courts because jurors would have the right to any copy of a declaration filed with the court. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.