

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2515

As Amended by Senate Committee on Judiciary

Brief*

HB 2515, as amended, would create a mechanism to seek relief from the Kansas Offender Registration Act (KORA) for certain drug offenders.

The bill would allow a drug offender to file a verified petition for relief from registration requirements if the offender has registered for a period of at least five years after parole, discharge, release, conviction, or adjudication. Time spent in incarceration, or time during which the offender does not substantially comply with KORA requirements, would not count toward the five-year duration of registration period.

An offender who must register due to an out-of-state conviction or adjudication would not be eligible to apply for relief under the bill unless that jurisdiction no longer required the offender to file.

The bill would outline requirements for the contents of the petition and would require the Judicial Council to develop a petition form for use under the bill's provisions. The bill would include filing, notice, hearing, and other procedural requirements for the petition, including notification to any living victims of the offense requiring registration. The bill would allow the court to require a risk-assessment of the registrant and would provide the process for that risk-assessment.

*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 require the court order relief from registration requirements if the offender shows by clear and convincing evidence that:

- The offender has not been convicted or adjudicated of a felony, other than a violation of KORA, within the five years immediately preceding the filing of the petition, and no proceedings involving any such felony are presently pending or being instituted against the offender;
- The offender's circumstances, behavior, and treatment history demonstrate that the offender is sufficiently rehabilitated to warrant relief; and
- Registration of the offender is no longer necessary to promote public safety.

If the court denies a petition, the bill would prohibit the offender from filing another petition until three years have elapsed, unless the court orders a shorter time period.

The bill would require successful petitioners to be removed from the offender registry and the Kansas Bureau of Investigation (KBI) website, and would relieve such petitioners from compliance with registration requirements.

The bill would create an exception to allow offenders who have successfully been removed from the offender registry to petition for expungement of that offense and would allow an offender to combine a petition for relief from registration requirements with a petition for expungement, if the offense is otherwise eligible for expungement.

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

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of Representative Owens.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 7, 2022, representatives from the American Civil Liberties Union (ACLU) of Kansas and the Kansas Association of Criminal Defense Lawyers (KACDL) provided **proponent** testimony, stating Kansas is an outlier among other states in regard to a drug registry; registry maintenance is costly and provides a strain on law enforcement resources, security risks arise through publishing registrants' personally identifiable information, there is a lack of evidence showing registries promote public safety, and registrants have difficulty engaging in positive life activities such as obtaining employment or purchasing a car.

Written-only proponent testimony was provided by representatives of the Council of State Governments (CSG) Justice Center, the Kansas Association of Chiefs of Police, the Kansas Peace Officers Association, the Kansas Sheriffs Association, and a private citizen.

A representative of the Johnson County Sheriff's Office provided **opponent** testimony, stating drug offenders have a high rate of recidivism and the registry is a non-punitive civil procedure serving as an effective means of overseeing drug offenders.

Senate Committee on Judiciary

In the Senate Committee hearing on March 17, 2022, a representative of KACDL testified as a **proponent** to the bill. Written-only proponent testimony was provided by

representatives of ACLU Kansas and CSG Justice Center. No other testimony was provided.

On March 18, 2022, the Senate Committee amended the bill to make it effective upon publication in the *Kansas Register*.

Fiscal Information

According to the revised fiscal note prepared by the Division of the Budget on the bill, the Kansas Sentencing Commission estimates enactment of the bill would save 43 adult prison beds by the end of FY 2023 and 71 prison beds by the end of FY 2032.

The Kansas Department of Corrections (KDOC) indicates a reduction in the prison population is beneficial toward avoiding future costs, but is not sufficient to reduce the current prison expenditures. The KDOC also indicates that enactment of the bill could require it to update information on the Kansas Adult Supervised Population Electronic Repository if the offender requests such information be readily available. The KDOC also indicates any fiscal effect would be minimal and could be absorbed within existing resources.

The KBI states there are currently 5,964 drug offenders on the registry, of which 3,556 have been registered for five years or more. The KBI also indicates that it is unknown how many offenders would apply for relief from the registry, but if all 3,556 offenders applied and were immediately approved it would take two full-time equivalent (FTE) positions working approximately 55.5 weeks to remove all from the registry. The KBI also states that it would be unlikely that all drug offenders would apply and be approved at once, and it would require \$51,468 from the State General Fund beginning in FY 2023 for one FTE position.

The Office of Judicial Administration (OJA) indicates that enactment of the bill would increase the workload of judges and district court personnel to process and research new petitions, provide notice and hold hearings, issue court orders, allow expungements on additional cases and provide notice to KBI and other law enforcement agencies within 14 days. The bill would also require additional work from court services officers to complete offender risk assessments, verify no new felony convictions within five years, complete record checks, and allow prosecutors access to confidential files. OJA further states enactment of the bill could result in collection of additional docket fees, but the fiscal effect could not be estimated because the amount of additional fees and whether the district courts could absorb the additional duties with existing staff or would need to hire additional employees is unknown.

The Kansas Association of Counties indicates enactment of the bill could increase expenditures for counties who are financially responsible for holding hearings to review the petitions for relief and for victim notification of the offender's status change. A fiscal effect cannot be estimated because the frequency of requests for relief and ability of offenders to meet eligibility requirements is unknown.

Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Kansas Offender Registration Act; drug offenders; relief from registration requirements; expungement