

SESSION OF 2011

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR SENATE BILL NO. 159**

As Recommended by Senate Committee on
Judiciary

Brief*

Sub. for SB 159 would amend KSA 2010 Supp. 22-3717, governing parole and postrelease supervision, by adding a provision stating that parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer, special enforcement officer, or other law enforcement officer at any time, with or without a search warrant and with or without cause. The bill would require the Kansas Parole Board, in granting parole or establishing conditions for postrelease supervision, to order the parolee or person on postrelease supervision to agree in writing to this search provision.

The bill would further require any sex offender granted parole or placed on postrelease supervision to agree in writing to not possess pornographic materials. The bill would define "pornographic materials" and make this provision retroactive to every sex offender on parole or postrelease supervision on July 1, 2011.

The bill also would amend the law governing probation to require as a condition of probation that the defendant be subject to searches of the defendant's person, effects, vehicle, resident and property by court service officers, community correctional services officers, and other law enforcement officers, if there is reasonable suspicion of the defendant violating conditions of probation or criminal activity.

*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 defendant also would be subject to random but reasonable drug or alcohol testing.

(Note: Section 2 of the bill, as formatted, also appears to create a correctional supervision fee and correctional supervision fund. However, these are actually changes made by the 2010 Legislature. They must be formatted as amendments in this bill because the recodification of the Criminal Code, also authorized by the 2010 Legislature, will not go into effect until July 1, 2011.)

Background

Senator Mary Pilcher-Cook introduced SB 159. As introduced, the bill contained the parolee and postrelease supervision search provision and language indicating the provision was not to be construed to authorize arbitrary or capricious searches or searches for the sole purpose of harassment. The search provision would have been made retroactive to every subject offender on parole or postrelease supervision as of July 1, 2011.

In the Senate Committee on Judiciary, Senator Pilcher-Cook and a representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association testified in support of the bill. The proponents stated the bill was necessary in light of recent decisions by the U.S. Court of Appeals for the Tenth Circuit and the Kansas Supreme Court holding that Kansas parolees are protected from suspicionless searches because there is no statute authorizing such searches. See *United States v. Freeman*, 479 F.3d 743, 748 (10th Cir. 2007); *State v. Bennett*, 288 Kan. 86, 97-98, 200 P.3d 455 (2009).

A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill, questioning whether such provisions were necessary in Kansas.

While working the bill, the Committee adopted several amendments proposed by Senator Pilcher-Cook. The amendments placed the parolee search provision in different subsections, removed the language regarding arbitrary and capricious searches, removed the provision making the parolee search requirement retroactive, and added the probation search and testing provisions. The Committee recommended a substitute bill incorporating the amendments.

The revised fiscal note on the bill, as introduced, states the Kansas Sentencing Commission indicates the impact on prison beds is unknown because there is no relevant data available. The Department of Corrections and Kansas Association of Counties indicate the expanded search or seizure provisions would have no fiscal effect on parole and local law enforcement operations. The Kansas Parole Board indicates any fiscal effect resulting from the enactment of the bill could be absorbed within existing resources.