

SESSION OF 2011

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

As Amended by Senate Committee of the Whole

Brief*

Sub. for SB 159 would create or amend statutory provisions related to probation, parole, postrelease supervision, expunged records, and relief from firearm prohibitions for a person adjudicated mentally ill.

Conditions of Parole, Postrelease Supervision, and Probation

The bill 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.

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

(Note: 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.)

***Relief From Firearm Prohibitions For A Person
Adjudicated Mentally Ill***

The bill would create a new section allowing a person who has been adjudicated mentally ill to petition for relief from state and federal firearm prohibitions and would govern the contents of the person's petition for such relief as well as a court's duties in considering and granting the petition. Pursuant to the bill, a court could grant relief only if it determined the petitioner would not be likely to act in a manner dangerous to public safety and if granting relief would not be contrary to the public interest. The court would be required to provide documentation of a granted petition to the Kansas Bureau of Investigation (KBI) and, immediately upon receiving such documentation, the KBI would be required to enter the order into the appropriate state and federal databases. The new section also would define some of its key terms.

Expunged Records

The bill would amend KSA 12-4516a and 22-2410 to require courts to make expunged records and related information available to the KBI to complete a person's criminal history record information within the central repository or to provide information or documentation to the Federal Bureau of Investigation (FBI) to determine a person's qualification to possess a firearm. It also would amend the definition of "criminal history record information" in KSA 22-4701 to include "any supporting documentation" and prohibit courts or criminal justice agencies from assessing fees and charges against the central repository for providing criminal history record information.

The bill also would amend KSA 38-2312 to require courts to send certified copies of juvenile expungement orders to the KBI, which would then be required to notify every juvenile or criminal justice agency that may possess records or files ordered to be expunged.

Finally, the bill would allow the custodians of records or files from an expunged juvenile adjudication or records of an arrest, conviction, diversion, and incarceration related to an expunged crime to disclose that information to the KBI to complete a person's criminal history record information within the central repository or to provide information or documentation to the FBI to determine a person's qualification to possess a firearm.

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 Senate 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 Senate Committee of the Whole amended Sub. for SB 159 by adding language from HB 2329 regarding relief from firearm prohibitions and expunged records.

HB 2329 was heard in the House Committee on Corrections and Juvenile Justice, where a representative of the KBI testified in support of the bill. No opponents offered testimony, and the House Committee made technical amendments to the bill.

The revised fiscal note on SB 159, as introduced, stated 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.

The fiscal note on HB 2329 indicated the precise impact of the bill on the Judicial Branch cannot be given as the number of petitions for relief that will be filed is unknown. The KBI indicates passage of HB 2329 would make the state eligible for future federal grants.