

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 60**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 60 would amend current law regarding the convening of a grand jury, certain direct appeals to the Kansas Supreme Court, community corrections, house arrest, and arrest expungement fees.

Grand Juries

The bill would amend KSA 22-3001, concerning grand juries, by allowing the Attorney General in any judicial district or the district or county attorney in such attorney's county to petition the chief judge of the district court to order a grand jury to be summoned to investigate alleged violations of an off-grid felony; a severity level 1, 2, 3, 4, or 5 felony; or a drug severity level 1 or 2 felony. The bill would require the chief judge to consider the petition and, if found to be in proper form, order a grand jury to be summoned.

Direct Appeals for Certain Off-Grid Offenses

The bill would amend KSA 22-3601 to remove cases involving certain off-grid offenses from the list of appeals that are to be taken directly to the Kansas Supreme Court, rather than to the Court of Appeals. The offenses are:

- Aggravated human trafficking, when the offender is 18 years of age or older and the victim is less than 14 years of age;

*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>

- Rape, when the offender is 18 years of age or older and the victim is under 14 years of age;
- Aggravated criminal sodomy, when the offender is 18 years of age or older and the victim is under 14 years of age;
- Aggravated indecent liberties with a child, when the offender is 18 years of age or older and the victim is under 14 years of age;
- Sexual exploitation of a child, when the offender is 18 years of age or older and the child is under 14 years of age;
- Promoting prostitution, when the offender is 18 years of age or older and the prostitute is less than 14 years of age; and
- An attempt, conspiracy, or criminal solicitation of any of the above offenses.

Community Corrections

The bill would amend current law concerning community corrections. Specifically, the bill would amend KSA 75-5291(a)(3), which requires adult offenders sentenced to community supervision in Johnson County for certain felonies to be placed under court services or community corrections supervision, by extending the expiration of that provision from January 1, 2011, to July 1, 2013.

Further, the bill would amend KSA 75-52,112, which governs a community corrections grant program overseen by the Secretary of Corrections. Effective July 1, 2011, the program's current goal of "reducing each community corrections program's revocation rate by at least 20 percent" would be replaced with the goal of "achieving and maintaining a supervision success rate of at least 75 percent or improving such rate by at least 3 percent from the previous year."

“Supervision success rate” would be defined in this section as the percentage of those persons under supervision in a community corrections program whose supervision is not revoked and remanded to the custody of the Department of Corrections for imprisonment.

Consistent with these changes, the bill would modify current provisions concerning priority of awards, giving preference to counties in which the supervision success rate for offenders on community supervision is significantly lower than the statewide average, which target a higher supervision success rate than required (75 percent or 3 percent annual supervision success rate improvement), or which target the successful reentry of offenders who are considered medium or high risk for revocation. Similarly, it would amend the subsection concerning grant applications by requiring in an applicant's proposal a plan to achieve and maintain a supervision success rate of at least 75 percent, improve such rate by at least 3 percent from the previous year, or target the successful reentry of offenders who are considered medium or high risk for revocation.

House Arrest

The bill would amend current law concerning house arrest. It would allow municipal judges to sentence a defendant convicted of violating an ordinance to house arrest. Further, it would allow a court to consider assigning a defendant to a house arrest program prior to imposing a sentence for nondrug-grid crimes. House arrest also could be imposed as a sanction for offenders who fail to comply with conditions of parole or postrelease supervision. Defendants would not be eligible for a house arrest program if convicted of an off-grid felony, any nondrug crime ranked in severity levels 1 through 5, or any felony ranked in severity levels 1 through 3 of the drug grid.

The offender on house arrest would be required to consent to monitoring by one or more of the following:

- An electronic monitoring device on the offender's person or in the offender's home;
- A remote blood alcohol monitoring device; or
- A home telephone verification procedure.

The Secretary of Corrections or the court would be authorized to contract for independent monitoring services which are able to provide monitoring 24 hours a day, every day of the year, and any other services as determined by the Secretary.

The bill also would require the court to inform the offender and any other people residing with the offender at the time house arrest is entered of the nature and extent of house arrest monitoring and to obtain the written agreement of the offender to comply with all requirements. The offender would be required to remain within the property boundaries of the offender's residence at all times during the house arrest, except as allowed in the house arrest agreement. Additionally, an offender would be required to allow any law enforcement, community corrections, or court services officer or duly authorized agent of the Department of Corrections to enter the offender's residence to verify compliance with the conditions of the house release.

Key terms for the house arrest provisions are defined in the bill.

(Note: The bill, as formatted, appears to also make changes regarding a domestic violence offender assessment and ballistic resistant material. 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.)

Arrest Expungement Fees

The bill would exempt from payment of arrest expungement petition docket fees any petitioner who has had criminal charges dismissed because a court has found there was no probable cause for the arrest, has been found not guilty in court proceedings, or has had the charges against the petitioner dropped.

Background

The Kansas Supreme Court requested the Senate Committee on Judiciary introduce SB 60. As introduced, SB 60 contained the provisions regarding direct appeals to the Kansas Supreme Court. The offenses referred to in the bill were made off-grid crimes by 2006 HB 2576 as part of what is commonly referred to as "Jessica's Law."

In the Senate Committee on Judiciary, a representative of the Kansas Supreme Court appeared in support of SB 60, stating the Supreme Court has heard more than 30 cases involving Jessica's Law. The conferee stated the large number of Jessica's Law cases is now delaying other important cases before the Supreme Court, even though most of the novel legal issues have been settled in previous cases. The Supreme Court therefore wants the Court of Appeals to be able to hear cases involving Jessica's Law. No opponents provided testimony. The Committee made no changes to the bill and recommended it be passed.

In the House Committee on Corrections and Juvenile Justice, the same conferee appeared in support of the bill as before the Senate Committee. The House Committee amended the bill by adding the language of HB 2031, regarding grand juries, and HB 2371, regarding community corrections. (Background information regarding HB 2031 and HB 2371 is included below.) The House Committee recommended a substitute bill for SB 60 incorporating the amended language be passed.

The House Committee of the Whole amended the substitute bill by adding language from HB 2319, regarding house arrest, and language from HB 2162, regarding expungement fees.

The fiscal note on SB 60, as introduced, states the bill would have no fiscal effect on the Judicial Branch. There is no fiscal note available for the substitute bill.

Background of HB 2031—Grand Juries

In the House Committee on Judiciary, Representative Greg Smith; his wife, Missey Smith; and a representative of the National Coalition for the Protection of Children and Families appeared in support of HB 2031. No opponents offered testimony. The Committee made a technical amendment to the bill. HB 2031, as amended, passed the House on final action by a vote of 116-5. It has been referred to the Senate Committee on Judiciary.

The fiscal note for HB 2031 indicates that passage would result in an increased use in grand juries, but not knowing how often a grand jury would be summoned, no precise fiscal effect to the Judicial Branch was given.

Background of HB 2371—Community Corrections

In the House Committee on Corrections and Juvenile Justice, representatives of the Kansas Department of Corrections, Johnson County Department of Corrections, and the Kansas Community Corrections Association appeared in support of HB 2371.

The House Committee on Corrections and Juvenile Justice amended the bill by replacing January with July in the section requiring adult offenders sentenced to community supervision in Johnson County to be placed under court services or community corrections supervision. HB 2371, as amended, passed the House on final action by a vote of 116-7. It has been referred to the Senate Committee on Judiciary.

The fiscal note for HB 2371, as introduced, indicates that the precise fiscal effect to counties is unknown. The Division of the Budget had not yet received information from the Department of Corrections about the potential fiscal impact of this bill.

Background of HB 2319—House Arrest

In the House Committee on Corrections and Juvenile Justice, a representative of the Kansas Alternative Corrections Association appeared in support of HB 2319. The Committee also received written testimony in support of the bill from Representative Kay Wolf; Vanguard Offender Management, Inc.; Private Home Detention, Inc.; and a local criminal defense attorney.

The Committee amended the bill by giving municipal judges the authority to sentence a defendant convicted of violating an ordinance to house arrest; making defendants convicted of an off-grid felony, any nondrug crime ranked in severity levels 1 through 5, or any felony ranked in severity levels 1 through 3 of the drug grid ineligible for house arrest; and providing that radio frequency devices would be used only when there is no available means of global positioning system technology in such location at such time. The Committee recommended the bill be passed as amended.

HB 2319 was withdrawn from the calendar and referred to the House Committee on Appropriations. The House Committee on Corrections and Juvenile Justice modified the language of HB 2319 and then incorporated it into House Sub. for SB 176. The modifications included adding house arrest as a sanction for offenders who fail to comply with the conditions of parole or postrelease supervision, reworking the radio frequency device provision, and clarifying some definitions, timing requirements, and the structure of the bill.

The house arrest language added to House Sub. for SB 60 by the Committee of the Whole was the same as the house arrest language added to House Sub. for SB 176.

The fiscal note for HB 2319, as introduced, indicated it would have no fiscal effect on the Department of Corrections and that any impact on the Office of Judicial Administration would likely be accommodated within existing resources.

Background of HB 2162 – Arrest Expungement Fees

In the House Committee on Corrections and Juvenile Justice, bill sponsor Representative Nile Dillmore and a private citizen appeared in support of HB 2162. The House Committee took no action on the bill.

The fiscal note for HB 2162 indicated it would eliminate the revenues from the \$100 docket fee and \$15 surcharge for arrest expungement petitions in those circumstances described by the bill. The total number of such expungement filings is not known, and thus a precise statement of the total decrease in docket fee and surcharge revenues cannot be determined. HB 2162 would have no fiscal effect on expenditures by the Judicial Branch.