

## **Fingerprinting; Criminal History Record Information; SB 491**

**SB 491** creates and amends law to standardize language pertaining to criminal history and record check fingerprinting requirements for all requesting entities and identify what criminal history records may be released to various agencies for the purpose of verifying a person's identity, criminal history, qualifications, and fitness for employment.

The bill makes conforming amendments in several statutes to reflect the standard language created in the new sections and adds definitions in the applicable statutes as necessary to define who is required to be fingerprinted as provided in the new sections of the bill.

The bill specifies that fingerprints and criminal history record information is confidential and defines the penalties associated with unauthorized disclosure. [*Note: The bill does not substantively change fingerprinting requirements or the types of criminal records that may be released as already required by statute, with the exception of records released to the Board of Emergency Medical Services, as noted in New Section 2 of the bill.*]

### ***Fingerprinting Requirements and Criminal History Records for Criminal Justice Agencies***

The bill requires a criminal justice agency, as defined by the Kansas Code of Criminal Procedure, to require an applicant for criminal justice employment to be fingerprinted and have such fingerprints submitted to the state database maintained by the Kansas Bureau of Investigation (KBI) and the federal database maintained by the Federal Bureau of Investigation. Fingerprints submitted may be used to identify the applicant and determine whether the applicant has a record of criminal history in Kansas or another jurisdiction.

The criminal justice agency may use information obtained through fingerprinting for the purposes of verifying a person's identity and determining the person's qualifications and fitness to be employed or to maintain employment.

The bill requires the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records, juvenile adjudications, juvenile non-adjudications, and juvenile diversions to:

- A city clerk for the position of chief of police;
- A county election officer for a candidate for sheriff;
- The Governor for an appointment to the position of Kansas Highway Patrol (KHP) Superintendent; and
- A state, county, city, university, railroad, tribal, Horsethief Reservoir Benefit District, or school law enforcement agency for admitting applicants for certification by the Kansas Commission on Peace Officers' Standards and Training.

In addition to the records described above, the bill requires the KBI to certify any adult conviction record of a chief of police or candidate for sheriff to the Attorney General (AG).

### ***Fingerprinting Requirements and Criminal History Records for Other Governmental Agencies***

The bill identifies other governmental agencies that may require a person to be fingerprinted in the manner described above and authorizes such agencies to use information obtained through fingerprinting for the purposes of verifying a person's identity and determining the person's qualifications and fitness to:

- Be issued or maintain employment, licensure, registration, certification, or a permit;
- Act as an agent of a licensee;
- Hold ownership of a licensee; or
- Serve as a director or officer of a licensee.

With respect to fingerprint-based record checks authorized pursuant to this section, the bill requires state and local law enforcement agencies to assist with taking fingerprints of individuals and requires any public body to recess into a closed or executive session to receive and discuss criminal history information obtained. The bill also specifies the KBI may charge agencies a reasonable fee for conducting a criminal history record check, changed from a statutory fee amount.

The bill requires the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records, juvenile adjudications, juvenile non-adjudications, juvenile diversions, and juvenile expunged records to the Kansas Department for Aging and Disability Services (KDADS) or the Kansas Department for Children and Families for participation in a program administered for the placement, safety, protection, or treatment of vulnerable children or adults.

The bill requires KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records and juvenile expunged records to:

- The Kansas Racing and Gaming Commission (KRGCC) for candidates for employment or licensure; and
- The State Lottery for candidates for employment.

The bill requires the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records, juvenile adjudications, juvenile non-adjudications, and juvenile diversions to:

- The AG for applicants for a license to carry a concealed handgun;
- The Department of Administration for candidates for sensitive employees with unescorted physical access to state-operated or contracted data centers, telecommunications facilities, or other security-sensitive areas; and
- The Emergency Medical Services Board (EMS Board) for applicants for an emergency medical service provider certificate. [Note: Under prior law, the EMS Board was allowed to receive information related to only adult convictions and juvenile adjudications.]

The bill requires the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, and adult expunged records to:

- The AG for private detective applicants;
- The AG for certification to train private detectives in the handling of firearms and lawful use of force;
- The Kansas Commission on Peace Officers' Standards and Training for applicants for certification under the Kansas Law Enforcement Training Act;
- The State Gaming Agency for candidates for employment or licensure; and
- The Supreme Court and State Board of Law Examiners for applicants to practice law.

The bill requires the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, and juvenile adjudications to:

- The Athletic Commission within the Department of Commerce for candidates for the boxing commission; and
- The Secretary of Health and Environment for employees at a child care facility.

The bill requires the KBI to release criminal history record information related to adult convictions and juvenile adjudications to:

- KDADS for applicants for employment as disability services providers;
- The Secretary for Aging and Disability Services for applicants for employment at an adult care home; and
- The Secretary for Aging and Disability Services for applicants for employment with a home health agency.

The bill requires the KBI to release criminal history record information related to adult convictions and non-convictions to:

- The AG for appointees of the Governor to positions subject to confirmation by the Senate and judicial appointees;
- Appointing authorities for non-gubernatorial appointees;
- The Behavioral Sciences Regulatory Board (BSRB) for applicants for a license, registration, permit or certificate issued by the BSRB;
- The Board of Examiners in Optometry for applicants for an optometry license;
- The State Board of Healing Arts (KSBHA) for applicants for any license, registration, permit, or certificate issued by the KSBHA;
- The KSBHA for applicants to be a physical therapist or physical therapy assistant;
- The Board of Nursing for applicants for licensure as a professional nurse, practical nurse, or mental health technician;
- The Board of Pharmacy for persons seeking a license, registration, permit or certificate issued by the Board of Pharmacy;
- The Division of Vehicles, Department of Revenue, for applicants for a license to drive a commercial motor vehicle;
- The Insurance Commissioner for applicants for licensure as an insurance agent;
- The Insurance Commissioner for applicants for a public adjuster license;
- The Real Estate Commission for applicants for licensure to act as a broker or salesperson; and
- The State Lottery for a vendor to whom a major procurement contract is to be awarded.

The bill requires the KBI to release criminal history record information related to adult convictions to:

- The AG for applicants for licensure as a bail enforcement agent;
- The State Banking Board for any officer, director, or organizer of a proposed fiduciary financial institution;

- The Bank Commissioner for:
  - An applicant for a license issued under the Kansas Money Transmitter Act;
  - An applicant for employment as a new executive officer or director with a money transmitter company;
  - A proposed officer, director, or shareholder of a trust company related to a change of control application;
  - Applicants for a license to engage in mortgage business or registration to conduct mortgage business in the state as a loan originator;
  - Members of a co-partnership or association and certain officers or directors of a corporation under the Uniform Consumer Credit Code; and
  - Applicants for licensure under the Kansas Credit Services Organization Act;
  
- The Kansas Commission for the Deaf and Hard of Hearing (Commission) for:
  - The Executive Director of the Commission;
  - Interpreters; and
  - Communication access service providers;
  
- The Kansas Commission on Veterans Affairs Office (KCVAO) for candidates for certain types of employment within the KCVAO;
  
- The Department of Agriculture for:
  - Hemp employees;
  - Licensure as a hemp producer; and
  - Hemp destruction employees;
  
- The Department of Credit Unions for candidates for employment;
  
- The Department of Health and Environment (KDHE) for:
  - Employees in the Office of Vital Statistics; and
  - Employees in the Office of Laboratory Services;
  
- The Department of Revenue for employees and contractors with access to federal tax information;

- The Division of Alcoholic Beverage Control, Department of Revenue, for nonresident applicants for licensure;
- The Division of Vehicles for employees authorized to manufacture, produce, or issue drivers' licenses and identification cards;
- The head of an Executive Branch agency for employees or contractors whose duties include collection, maintenance, or access to personal information;
- The Legislative Division of Post Audit for employees or contractors of the Division;
- The members of a Senate standing committee for appointees to the Kansas Public Employees Retirement Systems Board of Trustees;
- Municipalities for an applicant for merchant or security police;
- The Office of the State Fire Marshal for applicants for registration as a hemp processor; and
- The Real Estate Appraisal Board for:
  - Licensure under the Certified and Licensed Real Property Appraisers Act; and
  - Applicants for licensure under the Appraisal Management Company Registration Act.

### ***Disclosure; Violations***

The bill specifies that fingerprints and criminal history record information received pursuant to the bill is confidential and not subject to disclosure pursuant to the Kansas Open Records Act until July 1, 2029, unless the Legislature reviews and reenacts the exemption prior to that date.

Disclosure or use of criminal history information for any purpose other than the purposes established by the bill is a class A nonperson misdemeanor and constitutes grounds for removal from office.

### ***Name-based Criminal History Record Checks***

The bill also allows specified governmental agencies, identified below, to require a name-based criminal history record check of a person from the state database maintained by the KBI for the purposes of determining whether the person has a criminal record in Kansas that prohibits the person from employment, licensure, registration, or obtaining a permit.

The bill requires the KBI to release criminal history record information related to adult convictions and non-convictions to:

- The KSBHA for determining qualifications for licensure by the KSBHA; and
- The State Lottery for the purpose of awarding major contracts.

The bill requires the KBI to release criminal history record information related to adult convictions to:

- The AG for applicants for roofing contractor registration;
- The Board of Nursing for applicants for nurse and mental health technician licensure;
- The Governor and the Senate for appointees:
  - As Executive Director of the KRGC;
  - As members of the KRGC; and
  - An Executive Director of the State Gaming Agency;
- The Joint Committee on Kansas Security for committee staff members of the Office of Revisor of Statutes and the Kansas Legislative Research Department;
- KDADS for:
  - Applicants for an adult care home operator license; or
  - Applicants for licensure as an adult care home administrator;
- KDHE for applicants of a permit to construct, alter, or operate a solid waste processing facility;
- KRGC for employees who are animal health officers; and
- The State Lottery for applicants for employment at the Lottery including applicants for employment under the Kansas Expanded Lottery Act.

### ***Technical Amendments***

The bill makes conforming amendments to various statutes that authorize fingerprinting and criminal history record checks to reflect the language created in the new sections of the bill. The bill adds definitions in certain statutes to clarify who may be fingerprinted and removes language regarding specific fees that may be charged for criminal history records.