

SESSION OF 2011

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 55**

As Agreed to May 4, 2011

Brief*

House Sub. for SB 55 would create or amend law relating to search warrants and interception orders for electronic communication information, search incident to arrest, the crimes of harassment by telecommunications device and sexual exploitation of a child, required factors in determining conditions of release, employment of city and county prisoners, relief from firearm prohibitions for a person adjudicated mentally ill, expunged records, grand juries, direct appeals to the Supreme Court, community corrections, house arrest, arrest expungement fees, DUI offender house arrest and work release, and the forfeiture of appearance bonds.

***Search Warrants and Interception Orders for
Electronic Communication Information***

The bill would amend the statute governing issuance of search warrants to allow a magistrate to issue a search warrant for seizure of: information concerning the user of an electronic communication service; information concerning the location of electronic communication systems; or any other information made through an electronic communication system. The bill would clarify that jurisdiction under this provision extends to information held by entities registered to do business in Kansas or to entities outside Kansas that are

* Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

located in jurisdictions recognizing the authority of the magistrate to issue the search warrant. “Electronic communication service” and “electronic communication system” are given the same meaning as defined in KSA 22-2514.

The bill would amend the statute governing application for orders authorizing interception of a wire, oral or electronic communication to clarify that a judge may direct a provider of electronic communication service, regardless of the location or principle place of business of such provider, to furnish information, facilities, and assistance to an applicant seeking to intercept communications by a person served by the provider.

The bill would clarify that the sections containing the above provisions shall not be construed to require a search warrant for cellular location information in an emergency situation pursuant to KSA 22-4615.

Search Incident to Arrest

The bill would repeal KSA 22-2501, which codifies the exception to the warrant requirement for a search made incident to an arrest by a law enforcement officer.

Harassment by Telecommunications Device

The bill would amend the crime of harassment by telecommunications device to include the use of a telecommunications device to transmit an obscene, lewd, lascivious, or indecent image or text. The bill would make it illegal to use a telecommunications device to transmit any comment, request, suggestion, proposal, image, or text with intent to abuse, threaten, or harass any person at the receiving end.

Additionally, the bill would define “telecommunications device” to include telephones, cellular telephones, telefacsimile machines, and any other electronic device which uses an electronic communication service. The bill would remove the word “filthy” from the description of proscribed communication content and clarify that a person charged under this section also may be charged with and convicted of indecent solicitation of a child, electronic solicitation, sexual exploitation of a child, or promoting obscenity. Finally, the bill would make several technical amendments to ensure consistency.

Sexual Exploitation of a Child

The bill would amend the crime of sexual exploitation of a child. Among other actions, current law prohibits:

- Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct with the intent to promote any performance; or
- Promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

The bill would amend these provisions to also prohibit such conduct regarding a person the offender *believes* to be under 18 years of age.

(Note: The bill, as formatted, appears to make additional changes. However, these actually are 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.)

Required Factors in Determining Conditions of Release

The bill would amend KSA 2010 Supp. 22-2802 by adding the following factor to the required considerations by a magistrate at a first appearance in determining the conditions of release of a criminal defendant: “whether the defendant is lawfully present in the United States.”

Employment of County and City Prisoners

Under current Kansas law, a prisoner in a municipal or county jail may work in public employment and be compensated by a credit of \$5 per day worked, applied to fines and costs. Persons in jail awaiting trial or held on civil process may be employed and paid at the rate of \$5 per day.

The bill would allow charitable employment in such situations as an alternative to public employment. It would increase the rate of compensation for prisoners to \$5 credit toward fines and costs per each full hour worked. Similarly, persons awaiting trial or held on civil process would be credited \$5 toward any fines and costs for each full hour worked, or paid in an agreed amount not less than \$5 per day.

Under the bill, a court would be authorized to order community service in lieu of payment of fines. The person would receive a \$5 credit for each full hour worked and would be required to complete the community service within one year after the fine is imposed or one year after release from imprisonment or jail, whichever is later, unless the court required earlier completion.

***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 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.

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.

Finally, the bill would amend KSA 22-4705, regarding the KBI central repository, to specify that no court or criminal justice agency may charge the central repository for providing criminal history information to the repository, unless the court or agency has previously provided the same information.

Grand Juries

The bill would amend KSA 22-3001, concerning grand juries, by allowing 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, or 4 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;

- 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.

House Arrest and Work Release for DUI

The bill would specify that DUI offenders placed on house arrest must be electronically monitored, second-time offenders on house arrest must serve 120 hours of confinement within the residence, and third-or-subsequent offenders on house arrest must serve 240 hours of confinement within the residence.

Second-time offenders placed in work release must serve 120 hours of confinement, including an initial minimum of 48 consecutive hours of imprisonment. Third-or-subsequent offenders placed in work release must serve 240 hours of confinement, including the same initial minimum imprisonment.

Forfeiture of Appearance Bonds

The bill would repeal KSA 2010 Supp. 22-2807a to resolve a direct date conflict between that statute and KSA 2010 Supp. 22-2807. KSA 2010 Supp. 22-2807a allows default judgment against the appearance bond obligor after 14 days. KSA 2010 Supp. 22-2807 allows default judgment against the obligor after 60 days and sets a two-year limitation on entry of judgment against an obligor. The 60 day/two year provision would control under this bill.

Conference Committee Action

The Conference Committee agreed to the changes incorporated in House Sub. for SB 55. The Committee then modified House Sub. for SB 63 by changing the search incident to arrest provision to repeal, rather than amend, KSA 22-2501, and placed this provision and the sexual exploitation of a child provision from House Sub. for SB 63 into House Sub. for SB 55.

Next, the Committee added the conditions of release and employment of prisoners provisions from House Sub. for 176. The Committee added the relief from firearm prohibitions and expunged records provisions from Sub. for SB 159. The Committee modified the expunged records provision by adding language specifying that a court or criminal justice agency may not charge the KBI central repository to provide criminal history information, unless the information has previously been provided.

The Committee added provisions from House Sub. for SB 60 related to grand juries, direct appeals to the Supreme Court, community corrections, house arrest, and arrest expungement fees. The Committee modified the grand jury provision to remove language that would allow the Attorney General to petition a district court for a grand jury and to limit the provision to felony levels 1-4, instead of levels 1-5 as in the original language.

The Committee added a provision to resolve the date conflict in the forfeiture of appearance bonds statute.

Finally, the Committee added language suggested by the Department of Transportation related to DUI offender house arrest and work release to comply with federal requirements.

Background

Senator Tom Holland requested the Senate Judiciary Committee introduce SB 55. As introduced, the bill contained the provisions regarding the crime of harassment by telecommunications device.

In the Senate Judiciary Committee, Senator Holland and representatives of the Bonner Springs Police Department, the Kansas Association of Chiefs of Police, and the Kansas Peace Officers Association appeared in support of SB 55. The proponents explained the current language of the statute makes it difficult to charge individuals who send harassing or threatening text messages. The conferees also stated the statutory language needs to be updated to include the full range of telecommunication devices that are now available. No opponents provided testimony.

The Senate Committee amended the bill to remove the word “filthy,” clarify the proposed definition of “telecommunications device,” include a provision regarding other crimes with which an offender may be charged, and restore language prohibiting the making of calls with intent to abuse or harass, whether or not conversation ensues. The Committee recommended the bill be passed as amended.

In the House Committee on Corrections and Juvenile Justice, representatives of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Association of School Boards testified in support of SB 55. The Association of Community Mental Health Centers of Kansas and the Kansas County and District Attorneys Association provided written testimony supporting the bill.

The House Committee recommended a substitute bill for SB 55 that included the provisions of SB 55 as well as modified language drawn from HB 2217 regarding search warrants for electronic communications and orders authorizing interception of electronic communication. HB 2217 had been introduced by Representative Tom Sloan at

the request of a detective from the Lawrence Police Department. The detective testified in support of HB 2217 at the House Committee's hearing on the bill.

The fiscal note on SB 55, as introduced, stated the bill would have no fiscal effect. The fiscal note on HB 2217, as introduced, stated the bill had the potential to increase search warrant requests and evidence introduced as a result of the warrant. The Office of Judicial Administration indicated that passage of HB 2217 would have a negligible fiscal effect that could be absorbed within the Judiciary's existing budget.

There is no fiscal note for the substitute bill.

***Background of House Sub. for SB 63—Sexual
Exploitation of a Child; Search Incident to Arrest***

The Kansas County and District Attorneys Association (KCDAA) requested the Senate Judiciary Committee introduce SB 63. As introduced, SB 63 would have amended the crime of sexual exploitation of a child. A similar “belief” provision is contained in the current electronic solicitation law.

In the Senate Judiciary Committee, a representative of the KCDAA appeared in support of SB 63, explaining that this change would allow a suspect to be charged under the statute even when the victim is actually an undercover law enforcement officer. A criminal defense attorney testified in opposition to the bill. The Senate Committee made no changes to the bill and recommended it be passed.

In the House Committee on Corrections and Juvenile Justice, the same conferees testified as before the Senate Committee. The House Committee modified the language of SB 6, regarding search incident to arrest, and placed the modified language into a substitute bill for SB 63. (Background information regarding SB 6 is included below.) The House Committee recommended House Sub. for SB 63 be passed.

The fiscal note on SB 63, as introduced, stated the bill would have no fiscal effect. The Kansas Sentencing Commission indicated the bill would have no impact on prison beds. Some members of the Senate Judiciary Committee stated they believed the bill might have a prison bed impact.

Background of SB 6—Search Incident to Arrest

The Fourth Amendment of the *United States Constitution* and § 15 of the *Kansas Constitution* Bill of Rights prohibit unreasonable searches and seizures. Under United States Supreme Court and Kansas Supreme Court case law, warrantless searches are assumed to be unreasonable unless they fall within a recognized exception to the warrant requirement. One such exception is for a search made incident to an arrest by a law enforcement officer. This exception is recognized by United States Supreme Court case law and is codified in Kansas in KSA 22-2501.

The bill, as introduced at the request of Senator David Haley, would have changed the word “a” to “the” in the subsection of KSA 22-2501 providing that a law enforcement officer may reasonably search a person incident to arrest for the purposes of discovering the fruits, instrumentalities, or evidence of “a” crime. The change would have reversed the action of the 2006 Legislature in SB 431 when it replaced the word “the” with “a” in the same subsection. In 2009, the Kansas Supreme Court, applying a recent United States Supreme Court decision more narrowly construing the search incident to arrest exception, held that the statutory language allowing a search for the fruits, instrumentalities, or evidence of “a” (rather than “the”) crime was unconstitutional.

A substantially similar bill, SB 435, was introduced in the 2010 Legislature. After significant amendments were made to 2010 SB 435 in the Senate Committee and House Committee on Corrections and Juvenile Justice, the bill, although passed in different form by both houses, was ultimately ruled materially changed and referred to the Senate Committee on

Federal and State Affairs. No further action was taken on SB 435 in the 2010 Legislature.

In the Senate Committee hearing, Senator David Haley testified in favor of the bill, as introduced. The Kansas Association of Criminal Defense Lawyers submitted written testimony supporting the bill, as introduced. Representatives of the Kansas Peace Officers Association, the Kansas Association of Chiefs of Police, and the Kansas Sheriffs Association testified in opposition to the bill, as introduced.

These opponents requested the Legislature repeal, rather than amend, KSA 22-2501. The Kansas County and District Attorney Association submitted written testimony asking the Legislature to repeal KSA 22-2501, but to pass the bill, as introduced, if the Legislature decided not to repeal the statute.

The Senate Committee amended the bill by striking all language except the provision repealing KSA 22-2501. The Committee recommended the bill be passed as amended.

In the House Committee on Corrections and Juvenile Justice, a representative of the Kansas Association of Criminal Defense Lawyers and the Kansas Attorney General testified in support of SB 6. Senator David Haley provided neutral testimony. A representative of the Kansas Association of Defense Lawyers testified in opposition to the amended bill, stating they supported the bill as introduced. Before incorporating the language of SB 6 into House Sub. for SB 63, the House Committee modified the language regarding search incident to arrest to permit such a search to the extent allowed by the *United States Constitution* and *Kansas Constitution*.

The fiscal note on SB 6, as introduced, stated the League of Kansas Municipalities indicated the bill would have no effect on cities. There would be no fiscal effect to the state budget. There is no fiscal note for the bill as amended.

***Background of House Sub. for SB 176—
Conditions of Release; Employment
of City and County Prisoners***

KSA 2010 Supp. 22-2802 governs the determination of an appearance bond and other conditions of release for a person charged with a crime.

Senator Jeff King requested the Senate Judiciary Committee introduce SB 176. As introduced, SB 176 only included the provision requiring consideration of whether the defendant is lawfully present in the United States in determining the conditions of release.

In the Senate Judiciary Committee, Senator King testified in support of SB 176, explaining that some magistrates are not sure whether they can consider the proposed factor under current law. The Kansas Professional Bail Bond Association provided written testimony supporting the bill. 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, Senator King and the Kansas Professional Bail Bond Association submitted written testimony supporting the bill as passed by the Senate. The House Committee adopted a substitute bill for SB 176 that included the original language of SB 176, added the provisions of SB 37, regarding employment of county and city prisoners, and modified and added the provisions of HB 2319, regarding house arrest.

The Committee recommended House Sub. for SB 176 be passed.

The fiscal note on SB 176, as introduced, stated the bill would have no fiscal effect.

***Background of Sub. for SB 159—
Relief from Firearm Prohibitions;
Expunged Records***

Senator Mary Pilcher-Cook introduced SB 159. As introduced, the bill contained parolee and postrelease supervision search provisions.

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.

A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill.

While working the bill, the Senate Committee adopted several amendments proposed by Senator Pilcher-Cook and 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.

***Background of House Sub. for SB 60—
Grand Juries; Direct Appeals to the
Supreme Court; Community Corrections;
House Arrest; Arrest Expungement Fees***

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. (Background information regarding HB 2319 and HB 2162 is included below.)

The fiscal note on SB 60, as introduced, stated 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. It was referred to the Senate Committee on Judiciary.

The fiscal note for HB 2031 indicated 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. It has been referred to the Senate Committee on Judiciary.

The fiscal note for HB 2371, as introduced, indicated 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.

Courts; warrants for electronic information; search incident to arrest; harassment by telecommunications device; sexual exploitation of a child; required factors in determining conditions of release; lawful presence in the United States; firearm prohibitions; mentally ill; expunged records; Kansas Bureau of Investigation; grand juries; appeals; community corrections; house arrest; arrest expungement fees; work release; DUI appearance bonds.