

Various Crimes and Criminal Procedures

House Sub. for SB 55 creates or amends 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 amends 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 clarifies that jurisdiction under this provision extends to information held by entities registered to do business in Kansas or to entities outside Kansas that are 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 amends 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 principal 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 clarifies 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 repeals KSA 22-2501, which codified 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 amends 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 makes 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 defines “telecommunications device” to include telephones, cellular telephones, telefacsimile machines, and any other electronic device which uses an electronic communication service. The bill removes the word “filthy” from the description of proscribed communication content and clarifies 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 makes several technical amendments to ensure consistency.

Sexual Exploitation of a Child

The bill amends the crime of sexual exploitation of a child to prohibit the following conduct:

- Employing, using, persuading, inducing, enticing or coercing a person the offender believes to be 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 person the offender believes to be under 18 years of age, knowing the character and content of the performance.

(Note: The bill, as formatted, appears to make additional changes. However, these actually are changes made by the 2010 Legislature. The 2010 changes 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 amends 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

The bill allows charitable employment of prisoners, or persons awaiting trial or held on civil process, in municipal or county jails as an alternative to public employment. It increases 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 will 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 is authorized to order community service in lieu of payment of fines. The person ordered to perform community service will receive a \$5 credit for each full hour worked and will 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 requires earlier completion.

Relief from Firearm Prohibitions for a Person Adjudicated Mentally Ill

The bill creates a new section allowing a person who has been adjudicated mentally ill to petition for relief from state and federal firearm prohibitions and governs 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 may grant relief only if it determines the petitioner would not be likely to act in a manner dangerous to public safety and if granting relief will not be contrary to the public interest. The court must provide documentation of a granted petition to the Kansas Bureau of Investigation (KBI) and, immediately upon receiving such documentation, the KBI must enter the order into the appropriate state and federal databases. The new section also defines some of its key terms.

Expunged Records

The bill amends 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.

The bill also amends the definition of "criminal history record information" in KSA 22-4701 to include "any supporting documentation" and prohibits courts or criminal justice agencies from assessing fees and charges against the central repository for providing criminal history record information.

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

The bill allows 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 amends 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 amends 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 requires 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 amends 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 amends 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.

The bill amends KSA 75-52,112, which governs a community corrections grant program overseen by the Secretary of Corrections. Effective July 1, 2011, the program's previous goal of "reducing each community corrections program's revocation rate by at least 20 percent" will 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" is 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 modifies 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, the bill amends 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 amends law concerning house arrest by allowing municipal judges to sentence a defendant convicted of violating an ordinance to house arrest. Further, the bill allows a court to consider assigning a defendant to a house arrest program prior to imposing a sentence for nondrug-grid crimes. House arrest also may be imposed as a sanction for offenders who fail to comply with conditions of parole or postrelease supervision. Defendants are not 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 is 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 is 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 requires 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 must 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 must 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. The 2010 amendments 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 exempts 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 specifies 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 repeals 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 allowed 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 now controls, pursuant to this bill.