

SESSION OF 2012

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

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

House Sub. for Sub. for SB 159 would amend KSA 2011 Supp. 21-6607, governing conditions of probation, to require as a condition of probation that the defendant be subject to searches of the defendant's person, effects, vehicle, residence, and property by a court services officer, community correctional services officer, and any other law enforcement officer, if there is reasonable suspicion the defendant violated conditions of probation or engaged in criminal activity. Any law enforcement officer conducting a search pursuant to this provision would be required to submit a written report containing specified information regarding the search to the appropriate court services officer or community correctional services officer by the close of the next business day after the search. The defendant also would be subject to random but reasonable drug and alcohol testing.

The bill would amend KSA 2011 Supp. 22-3717, governing parole and postrelease supervision, by adding a provision stating parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to search or seizure by a parole officer or Department of Corrections enforcement, apprehension, and investigation officer at any time, with or without a search warrant and with or without cause. The provision would emphasize it is not to be construed to authorize arbitrary or capricious searches or searches for the sole purpose of harassment.

*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>

Additionally, a parolee or person on postrelease supervision would be subject to search or seizure by any law enforcement officer based on reasonable suspicion of a violation of the conditions of parole or postrelease supervision or of criminal activity. The parolee or person on supervision would be required to agree to this provision in writing. Any law enforcement officer conducting such a search would be required to submit a written report by the close of the next business day after the search.

The bill would update statutory references to the Kansas Parole Board to reflect the transfer of its duties to the Prisoner Review Board and would require the Prisoner Review Board, in granting parole or establishing conditions for postrelease supervision, to order the parolee or person on postrelease supervision to agree in writing to the new search provisions.

Finally, the bill would 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, 2012.

Background

Senator Mary Pilcher-Cook introduced SB 159 in 2011. 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 2011 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 2011 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 2011 House Committee on Corrections and Juvenile Justice, where a representative of the Kansas Bureau of Investigation (KBI) testified in support of the bill. No opponents offered testimony, and the House Committee made technical amendments to the bill.

The sections of Sub. for SB 159 drawn from HB 2329 were subsequently included in House Sub. for SB 55, which was passed by the 2011 Legislature and signed by the Governor.

In the 2012 House Committee on Corrections and Juvenile Justice, Senator Pilcher-Cook, a representative of the Kansas Association of Chiefs of Police, Kansas Sheriffs

Association, and Kansas Peace Officers Association, and representatives of the Department of Corrections and KBI testified in support of the bill. The Kansas Association of Court Services Officers submitted written testimony supporting the bill. A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill.

The House Committee recommended a substitute bill that made the following changes to the bill: removed the provisions included in Sub. for SB 55, added the provision requiring a written report by a law enforcement officer conducting a search, and added a reasonable suspicion standard for search or seizure of a parolee by a law enforcement officer.

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.