

SESSION OF 2011

**SUPPLEMENTAL NOTE ON HOUSE
SUBSTITUTE FOR SENATE BILL NO. 176**

As Recommended by House Committee on
Corrections and Juvenile Justice

Brief*

House Sub. for SB 176 would amend current law with regard to: factors to be considered by a magistrate in determining conditions of pretrial release of a criminal defendant; employment of county and city prisoners; and house arrest.

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

*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>

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.

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 could also 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.)

Background

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 Jeff 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.

The following is background information regarding the other bills from which language was drawn in creating House Sub. for SB 176.

SB 37

Judge Phillip Journey requested the Senate Judiciary Committee introduce SB 37. A similar bill was introduced at Judge Journey's request in the 2010 Legislature as SB 520, but progressed only through the House Committee on Corrections and Juvenile Justice. The language of SB 37 reflects amendments that were made by the Senate Committee on Judiciary, Senate Committee of the Whole, and the House Committee on Corrections and Juvenile Justice to 2010 SB 520.

In the Senate Committee on Judiciary, Judge Journey testified in support of SB 37. No opponents appeared at the

Committee hearing. The Committee made technical amendments to the bill and recommended it be passed as amended.

Judge Journey testified in support of the bill before the House Committee on Corrections and Juvenile Justice.

The fiscal note on SB 37, as introduced, stated the Office of Judicial Administration indicates SB 37 could require additional court service officer supervision hours and cause revenue declines to district courts through reduction of paid fines. However, the Office of Judicial Administration cannot determine a precise fiscal effect. Municipalities also could see revenue declines through reduction of paid fines, but the League of Kansas Municipalities indicates a precise fiscal effect for cities cannot be estimated. The Kansas Association of Counties indicates counties could experience additional costs, but such costs are difficult to predict. Any fiscal effect is not reflected in The FY 2012 Governor's Budget Report.

HB 2319

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 only be used 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 before incorporating 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 and clarifying some definitions, timing requirements, and the structure of the bill.

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.