

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2516

As Amended by Senate Committee on Judiciary

Brief*

HB 2516, as amended, would amend law concerning criminal history calculation and correction of an illegal sentence or clerical error.

Criminal History Calculation

The bill would amend law related to criminal history calculation by providing that if an offender raises a challenge to their criminal history for the first time on appeal, the offender would have the burden of designating a record that shows prejudicial error in the calculation of criminal history. The bill would further provide that if the offender fails to provide such a record, the appellate court would be required to dismiss the claim.

The bill would further specify that in designating a record that shows prejudicial error, the offender may provide the appellate court with journal entries of the challenged criminal history that were not originally attached to the criminal history worksheet, and the State may provide the appellate court with journal entries establishing a lack of prejudicial error.

The bill would allow the court to take judicial notice of such journal entries, complaints, plea agreements, jury instructions, and verdict forms for Kansas convictions when determining whether prejudicial error exists. The bill would also allow the court to remand the case if there is a reasonable question as to whether prejudicial error exists.

*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>

Correction of an Illegal Sentence or Clerical Error

The bill would amend law concerning appellate review of certain sentencing matters, to specify that in addition to a departure sentence, as provided in continuing law, a ruling on a motion for correction of an illegal sentence is subject to appeal by the defendant or the State. Continuing law provides that such appeal shall be to the appellate courts in accordance with rules adopted by the Kansas Supreme Court.

The bill would also specify that the sentencing court shall retain authority irrespective of any appeal to correct an illegal sentence or clerical error pursuant to continuing law. Further the bill would specify that, notwithstanding provisions in continuing law, if a motion to correct an illegal sentence is filed while a direct appeal is pending, any change in the law that occurs during the pending direct appeal shall apply.

The bill would also amend this section of the bill to maintain the current applicability of a retroactivity clause to previous amendments made to the section.

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice at the request of a representative of the Office of the Attorney General (OAG). As introduced, the bill also would have amended requirements for presentence investigation reports.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing on February 1, 2022, **proponent** testimony was presented by representatives of the OAG and the Kansas Association of Criminal Defense Lawyers (KACDL).

Neutral testimony was presented by a representative of the Office of Judicial Administration (OJA).

No other testimony was provided.

Senate Committee on Judiciary

In the Senate Committee hearing on March 8, 2022, **proponent** testimony was provided by representatives of KACDL, Kansas County and District Attorneys Association (KCDAA), and the OAG. Neutral testimony was presented by representatives of the Kansas Association of Court Services Officers and OJA. Representatives of the Judicial Branch and the Kansas District Judges Association testified as **opponents**. The Judicial Branch representative requested an amendment removing the changes the bill, as introduced, would have made to the contents of the presentence investigation report. The other opponent and neutral conferees and the representative of the KCDAA expressed support for the proposed amendment.

On March 15, 2022, the Senate Committee adopted the amendment proposed by the Judicial Branch representative.

Fiscal Information

According to the fiscal note prepared by the Division of Budget on the bill, as introduced, the Sentencing Commission does not collect data on appellate court cases, but would change criminal history scores in its journal entry databases if a corrected journal entry is received. The Sentencing Commission indicates there could be a minimal effect in the reduction of prison beds needed due to corrected sentences.

The OJA indicates enactment of the bill would have an unknown fiscal effect on its operations because the amount of additional work required by court services officers and district court clerks is unknown.

Any fiscal effect associated with the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Appellate court; criminal history; prejudicial error; illegal sentences