



State of Kansas

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Senate Judiciary Committee
2022 HB 2516

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Chairwoman Warren and members of the committee, thank you for the opportunity to appear today to testify in opposition to one of the changes HB 2516 seeks. This bill would do three things: (1) change the law governing an offender's challenge of their criminal history on appeal; (2) specify changes in appellate review of certain sentencing issues; and (3) require court services to attach a journal entry of each listed prior conviction necessary to establish the criminal history classification or special rule to a presentence investigation report (PSI). We oppose the change contemplated with attachment of journal entries.

Please note the judicial branch is not commenting on the policy of this proposed change. Instead, our concern arises because the amendment shifts the state's burden of proof onto a neutral judicial branch employee.

Under K.S.A. 2021 Supp. 21-6814, the burden of proof is placed on the state to prove the offender's criminal history. Furthermore, under subsection (c) of this statute, the state has the burden of proving any disputed portion of the offender's criminal history. This proposed change appears to shift the burden from the state to the court services officer. This is an inappropriate shift. Current law already requires a court services officer to attach any journal entries or documents obtained.

We ask the committee to respectfully consider adopting the attached balloon amendment removing the changes we discuss here. Those changes are contemplated in section 1 and paragraph (b) of section 2 of the bill. Adopting the attached balloon maintains current law and practice. We would also draw the committee's attention to the testimony of the Office of Judicial Administration, the Kansas District Judges Association, and the Kansas County and District Attorneys Association regarding this specific issue.

Thank you for your time and I would be happy to stand for questions.

HOUSE BILL No. 2516

By Committee on Corrections and Juvenile Justice

1-20

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing guidelines; criminal history calculation; requiring the
3 journal entries used to establish criminal history to be attached to a
4 criminal history worksheet and an offender who raises error in
5 calculation for the first time on appeal to show prejudicial error;
6 authorizing jurisdiction of the court to correct an illegal sentence while
7 a direct appeal is pending; amending K.S.A. 2021 Supp. 21-6813, 21-
8 6814 and 21-6820 and repealing the existing sections.
9

10 *Be it enacted by the Legislature of the State of Kansas:*

11 Section 1. K.S.A. 2021 Supp. 21-6813 is hereby amended to read as
12 follows: 21-6813. (a) The court shall order the preparation of the
13 presentence investigation report by the court services officer as soon as
14 possible after conviction of the defendant.

15 (b) Each presentence investigation report prepared for an offender to
16 be sentenced for one or more felonies committed on or after July 1, 1993,
17 shall be limited to the following information:

18 (1) A summary of the factual circumstances of the crime or crimes of
19 conviction.

20 (2) If the defendant desires to do so, a summary of the defendant's
21 version of the crime.

22 (3) When there is an identifiable victim, a victim report. The person
23 preparing the victim report shall submit the report to the victim and
24 request that the information be returned to be submitted as a part of the
25 presentence investigation. To the extent possible, the report shall include a
26 complete listing of restitution for damages suffered by the victim.

27 (4) An appropriate classification of each crime of conviction on the
28 crime severity scale.

29 (5) A listing of prior adult convictions or juvenile adjudications for
30 felony or misdemeanor crimes or violations of county resolutions or city
31 ordinances comparable to any misdemeanor defined by state law. Such
32 listing shall include an assessment of the appropriate classification of the
33 criminal history on the criminal history scale and the source of information
34 regarding each listed prior conviction and any available source of journal
35 entries or other documents through which the listed convictions may be
36 verified. ~~If any such journal entries or other documents~~ *The journal entries*

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1 ~~for each listed prior conviction that is necessary to establish the~~
 2 ~~appropriate classification on the criminal history scale or to establish a~~
 3 ~~special sentencing rule shall be attached to the criminal history worksheet~~
 4 ~~and be a part of the court record. If any other documents verifying the~~
 5 ~~listed convictions~~ are obtained by the court services officer, they shall be
 6 attached to the presentence investigation report ~~criminal history worksheet~~
 7 ~~and be a part of the court record.~~ Any prior criminal history worksheets of
 8 the defendant shall also be attached.

9 (6) A proposed grid block classification for each crime, or crimes of
 10 conviction and the presumptive sentence for each crime, or crimes of
 11 conviction.

12 (7) If the proposed grid block classification is a grid block that
 13 presumes imprisonment, the presumptive prison term range and the
 14 presumptive duration of postprison supervision as it relates to the crime
 15 severity scale.

16 (8) If the proposed grid block classification does not presume prison,
 17 the presumptive prison term range and the presumptive duration of the
 18 nonprison sanction as it relates to the crime severity scale and the court
 19 services officer's professional assessment as to recommendations for
 20 conditions to be mandated as part of the nonprison sanction.

21 (9) For defendants who are being sentenced for a conviction of a
 22 felony violation of K.S.A. 65-4160 or 65-4162, prior to their repeal, or
 23 K.S.A. 2021 Supp. 21-5706, and amendments thereto, and meet the
 24 requirements of K.S.A. 2021 Supp. 21-6824, and amendments thereto, the
 25 drug abuse assessment as provided in K.S.A. 2021 Supp. 21-6824, and
 26 amendments thereto.

27 (10) For defendants who are being sentenced for a third or subsequent
 28 felony conviction of a violation of K.S.A. 65-4160 or 65-4162, prior to
 29 their repeal, or K.S.A. 2021 Supp. 21-5706, and amendments thereto, the
 30 drug abuse assessment as provided in K.S.A. 2021 Supp. 21-6824, and
 31 amendments thereto.

32 (c) The presentence investigation report will become part of the court
 33 record and shall be accessible to the public, except that the official version,
 34 defendant's version and the victim's statement, any psychological reports,
 35 risk and needs assessments and drug and alcohol reports and assessments
 36 shall be accessible only to: The parties; the sentencing judge; the
 37 department of corrections; community correctional services; any entity
 38 required to receive the information under the interstate compact for adult
 39 offender supervision; and, if requested, the Kansas sentencing
 40 commission. If the offender is committed to the custody of the secretary of
 41 corrections, the report shall be sent to the secretary and, in accordance
 42 with K.S.A. 75-5220, and amendments thereto, to the warden of the state
 43 correctional institution to which the defendant is conveyed.

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1 (d) The criminal history worksheet will not substitute as a
2 presentence investigation report.

3 (e) The presentence investigation report will not include optional
4 report components, which would be subject to the discretion of the
5 sentencing court in each district except for psychological reports and drug
6 and alcohol reports.

7 (f) Except as provided in K.S.A. 2021 Supp. 21-6814, and
8 amendments thereto, the court may take judicial notice in a subsequent
9 felony proceeding of an earlier presentence investigation report criminal
10 history worksheet prepared for a prior sentencing of the defendant for a
11 felony committed on or after July 1, 1993.

12 (g) All presentence investigation reports in any case in which the
13 defendant has been convicted of a felony shall be on a form approved by
14 the Kansas sentencing commission.

15 Sec. 2. K.S.A. 2021 Supp. 21-6814 is hereby amended to read as
16 follows: 21-6814. (a) The offender's criminal history shall be admitted
17 in open court by the offender or determined by a preponderance of the
18 evidence at the sentencing hearing by the sentencing judge.

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19 (b) Except to the extent disputed in accordance with subsection (c),
20 ~~the summary of the offender's criminal history prepared for the court by~~
21 ~~the state criminal history worksheet and attached documents prepared for~~
22 ~~the court pursuant to K.S.A. 2021 Supp. 21-6813(c)(5), and amendments~~
23 ~~thereto,~~ shall satisfy the state's burden of proof regarding an offender's
24 criminal history.

25 (c) Upon receipt of the criminal history worksheet prepared for the
26 court, the offender shall immediately notify the district attorney and the
27 court with written notice of any error in the proposed criminal history
28 worksheet. Such notice shall specify the exact nature of the alleged error.
29 The state shall have the burden of proving the disputed portion of the
30 offender's criminal history. The sentencing judge shall allow the state
31 reasonable time to produce evidence to establish its burden of proof. If the
32 offender later challenges such offender's criminal history, which has been
33 previously established, the burden of proof shall shift to the offender to
34 prove such offender's criminal history by a preponderance of the evidence.

35 (d) *If an offender raises a challenge to the offender's criminal history*
36 *for the first time on appeal, the offender shall have the burden of*
37 *designating a record that shows prejudicial error. If the offender fails to*
38 *provide such record, the appellate court shall dismiss the claim. In*
39 *designating a record that shows prejudicial error, the offender may*
40 *provide the appellate court with journal entries of the challenged criminal*
41 *history that were not originally attached to the criminal history worksheet,*
42 *and the state may provide the appellate court with journal entries*
43 *establishing a lack of prejudicial error. The court may take judicial notice*