

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2144

As Amended by House Committee on
Corrections and Juvenile Justice

Brief*

HB 2144, as amended, would amend law concerning presentence investigation reports, criminal history calculation, and correction of a criminal sentence.

Presentence Investigation Reports

The bill would amend law related to presentence investigation reports to require journal entries, for each listed prior conviction, that are necessary to establish the appropriate criminal history classification or a special sentencing rule be attached to the criminal history worksheet and be a part of the court record. The bill would also specify that if any other documents verifying the listed convictions are obtained by a court services officer, they shall be attached to the criminal history worksheet and be part of the court record.

Further, the bill would amend provisions related to the State's burden of proof to provide that, except to the extent disputed in an appeal for a criminal history error, the criminal history worksheet and attached documents prepared for the court pursuant to continuing law shall satisfy the State's burden of proof regarding an offender's criminal history. Current law states a summary of the offender's criminal history prepared for the court by the State satisfies the State's burden of proof.

*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>

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.

Correction of a Criminal Sentence

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 further provide that the amendments concerning correction of an illegal sentence or clerical error are not procedural and are not to be construed or applied retroactively.

Background

The bill was introduced by the House Committee on Corrections and Juvenile Justice (House Committee) at the request of a representative of the Office of the Attorney General.

House Committee on Corrections and Juvenile Justice

In the House Committee hearing, **proponent** testimony was presented by a representative of the Office of the Attorney General, who stated the bill was introduced to limit claims on appeal for an incorrect criminal history score when the record is insufficient to establish whether a claim is valid and to encourage defendants to challenge their criminal history through a motion to correct an illegal sentence at the district court level.

Neutral testimony was presented by a representative of the Kansas Association of Criminal Defense Lawyers. No other testimony was provided.

The House Committee amended the bill by inserting provisions related to presentence investigation reports and appeals to correct an illegal sentence or clerical error.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board of Indigents' Defense Services (BIDS) estimates additional expenditures of \$982,462 from the State General Fund for FY 2022 for an additional 13.0 full-time equivalent (FTE) positions if the bill is enacted. BIDS states there would be an increased workload on appellate public defenders challenging criminal history scores for the first time on appeal, which would require the addition of 2.0 FTE Legal Assistant positions to assist with the challenges. Additionally, BIDS states 11.0 FTE Legal Assistant positions would be needed for increased litigation and to assist with criminal history score challenges at the district court level.

The Office of Judicial Administration indicates enactment of the bill would have a negligible fiscal effect on the operations of the Judicial Branch. The Kansas Association of Counties states enactment of the bill could have a fiscal effect on counties if offenders have to remain in custody for a longer period of time due to an error that does not rise to the level of a prejudicial error.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Appellate court; criminal history; prejudicial error