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MEMORANDUM

To: House Committee on Corrections and Juvenile Justice

From: Office of Revisor of Statutes

Date: February 1, 2022

Subject: Bill Brief on HB 2516

HB 2516 requires an offender who raises error in such offender's criminal history calculation for the first time on appeal to show prejudicial error, requires the journal entry used to establish criminal history to be attached to the criminal history worksheet and authorizes the court to correct an illegal sentence while a direct appeal is pending.

Section 1 amends K.S.A. 21-6813, which is the statute about presentence investigation reports. Subsection (b)(5) is amended to provide that the journal entries for each listed prior conviction that is necessary to establish criminal history or the application of a special sentencing rule shall be attached to the criminal history worksheet and be a part of the criminal record.

Section 2 amends K.S.A. 21-6814, which is the statute about calculating criminal history. Current law provides that the summary of the offender's criminal history prepared by the court shall satisfy the state's burden of proof regarding an offender's criminal history. The bill would provide that the criminal history worksheet and attached documents, instead of the summary, shall satisfy the state's burden of proof. A new subsection (d) is added to provide that if an offender raises a challenge to the offender's criminal history for the first time on appeal, the offender shall have the burden of designating a record that shows prejudicial error, otherwise the claim shall be dismissed. In designating such a record, 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 court may take judicial notice of such documentation when determining whether prejudicial error exists. The court may remand the case if there is a reasonable question as to whether prejudicial error exists.

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Section 3 amends K.S.A. 21-6820 to provide that a ruling on a motion to correct an illegal sentence pursuant to K.S.A. 22-3504 is subject to appeal by the defendant or the state. Under current law, the sentencing court shall retain authority for 90 days after entry of judgment of conviction to modify its judgment or correct errors. This bill would provide that the sentencing court shall retain authority to correct an illegal sentence or clerical error. If a motion to correct an illegal sentence is filed while a direct appeal is pending, any change in law that occurs during the pending direct appeal shall apply.