

MEMORANDUM

To: Leyton Gunn, Division of the Budget
From: Scott M. Schultz, Executive Director
Date: January 24, 2022
Re: Prison Bed Impact Assessment, **HB 2516 – Requiring an offender who raises error in such offender's criminal history calculation for the first time on appeal to show prejudicial error, requiring the journal entry used to establish criminal history to be attached to the criminal history worksheet and authorizing the court to correct an illegal sentence while a direct appeal is pending.**

IMPACT ASSESSMENT

- This bill **may** impact admissions and prison beds, but it will not be significant.
- This bill will have **no** impact on the workload of the Commission.

SUMMARY OF THE BILL

Section 1. K.S.A. 2021 Supp. 21-6813 is amended to include language that the presentence investigation report shall contain journal entries for each listed prior conviction that is necessary to establish the appropriate classification on the criminal history scale or to establish a special sentencing rule. The journal entries shall be attached to the report along with any other document verifying listed convictions and any prior criminal history worksheets.

Section 2. K.S.A. 2021 Supp. 21-6814 is amended to include language that the presentence investigation report which contains journal entries for each listed prior conviction that is necessary to establish the appropriate classification on the criminal history scale or to establish a special sentencing rule (amended K.S.A. 21-6813) shall satisfy the state's burden of proof regarding an offender's criminal history.

In addition, language is added 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. If the offender fails to provide such record, the appellate court shall dismiss the claim. 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 court may 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 court may remand the case if there is a reasonable question as to whether prejudicial error exists.

Furthermore, the sentencing court shall retain authority irrespective of any to correct an illegal sentence or clerical error pursuant to K.S.A. 22-3504, and these changes will be procedural in nature and apply retroactively.

FINDINGS

- The KSSC does not collect data on appellate court cases.
- The KSSC will change criminal history scores in the journal entry databases if a corrected journal entry is received by our office.
- While it is possible that corrected sentences **may** result in an overall reduction of prison beds over the course of 10 years, the total impact is likely to be minimal.
- A corrected criminal history score will likely have **no** impact on prison admissions, as the offender is already serving their sentence in a prison facility while on appeal or is serving probation.
 - An offender granted an appeal bond may avoid admission to prison if their criminal history is corrected, but that circumstance will not significantly decrease prison admissions.

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