

Crimes of Theft of Mail and Burglary; Supervision Consolidation; Criminal History Calculation and Correction of Illegal Sentence; Transfer of Certified Drug Abuse Treatment Programs to Sentencing Commission; SB 408

SB 408 amends the definition of the crime of theft, amends the definition of the crime of burglary, provides guidance for the consolidation of supervision into one supervision entity or agency for an offender under the supervision of two or more supervision entities or agencies, amends law concerning criminal history calculation and correction of an illegal sentence or clerical error, and transfers provider certification duties for certified drug abuse treatment programs (SB 123 programs) for drug offenders or divertees from the Kansas Department of Corrections to the Kansas Sentencing Commission.

Crime of Theft of Mail

The bill amends the definition of the crime of theft to make theft of property that is mail of value of less than \$1,500 from three separate locations within a period of 72 hours as part of the same act or transaction, or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct, a severity level 9 nonperson felony. [Note: Under continuing law, theft of property or services of the value of less than \$1,500 is a class A nonperson misdemeanor, unless an exception, such as the one created by the bill, applies.]

The bill defines “mail” as a letter, postal card, package, or bag sent through the U.S. Postal Service or other delivery service, or any other article or thing contained therein, or a sealed article or thing addressed to a person.

Crime of Burglary

The bill amends the definition of the crime of burglary by expanding the locations in which a person may not, without authority, enter or remain within to include any locked or secured portion of any dwelling or building, manufactured home, mobile home, tent, or other structure which is not a dwelling, with intent to commit a felony, theft, or sexually motivated crime therein. The bill also amends the definition of the crime of aggravated burglary to prohibit the same conduct when there is a human being present in the locations specified by the bill.

Consolidation of Supervision

The bill provides guidance for the consolidation of supervision into one supervision entity or agency for an offender under the supervision of two or more supervision entities or agencies.

The bill amends the statute governing transfer of supervision of persons on parole, on probation, assigned to a community correctional services program, or under suspended sentence to allow the district court where the defendant is currently being supervised to use the guidelines to determine whether it is appropriate to transfer jurisdiction of the defendant to a different district court or retain the jurisdiction.

District Court Transferring Supervised Offenders to Another District Court

If the defendant is being sentenced and is already being supervised on parole, on probation, assigned to a community corrections program, or under suspended sentence, then the district court where the defendant is currently being supervised is authorized to use the guidelines to determine whether it is appropriate to transfer jurisdiction of the defendant to a different district court.

Two supervision entities or agencies. If a new sentence would place the defendant under the supervision of two supervision entities or agencies, the bill authorizes the court to consider:

- Granting jurisdiction to the court with jurisdiction over the offense that has the longest underlying sentence of imprisonment; and
- Whether the severity of the new offense requires a higher level of supervision.
- If a higher level of supervision is not required, the bill states there may be a preference for maintaining supervision of the defendant by the current supervising entity or agency for the duration of supervision.
- If a higher level of supervision is required, the bill states there may be a preference for transferring supervision responsibility of the defendant to the appropriate supervision entity or agency for the duration of the supervision.

Two or more supervision entities or agencies and equal sentences. If two or more supervision entities or agencies are supervising the defendant for equal sentences, the bill authorizes the court to consider:

- Residency of the defendant;
- Ability of the defendant to travel to the supervision office from the defendant's residence, place of employment, and school;
- Resources for residential and nonresidential sanctions or rehabilitative treatment available from each supervision entity or agency; and
- Level of supervision available to the defendant by each supervision entity or agency.

District Court Retaining Jurisdiction

Under continuing law moved within the section by the bill, the district court from which the defendant is on parole, probation, assignment to a community correctional services program, or suspended sentence may retain jurisdiction of the defendant. The bill adds language providing that, if this happens, the defendant will be supervised by one supervision entity or agency.

Memorandum of understanding. The bill requires the Kansas Department of Corrections and the Office of Judicial Administration to enter into a memorandum of understanding (MOU) providing that a defendant on parole, probation, assignment to a community correctional services program, or suspended sentence will be supervised by one supervision agency or entity. The MOU must include, but not be limited to, provisions related to:

- Criteria for determining the most appropriate supervision agency or entity;
- How the financial obligations of supervision will be managed;
- Conditions of supervision;
- Sanctions for violations of supervision;
- Standards for seeking revocation of parole, probation, assignment to a community correctional services program, or suspended sentence;
- Termination of supervision; and
- Information sharing between supervision entities or agencies.

Criminal History Calculation and Correction of Illegal Sentence or Clerical Error

The bill amends law concerning criminal history calculation and correction of an illegal sentence or clerical error.

Criminal History Calculation

The bill amends law related to criminal history calculation by providing that if an offender raises a challenge to the offender's criminal history for the first time on appeal, the offender will have the burden of designating a record that shows prejudicial error in the calculation of criminal history. The bill requires the appellate court to dismiss the claim if the offender fails to provide such a record.

The bill further specifies 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 allows 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 also allows the court to remand the case if there is a reasonable question as to whether prejudicial error exists.

Correction of an Illegal Sentence or Clerical Error

The bill amends 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 also specifies that the sentencing court shall retain authority irrespective of any appeal to correct an illegal sentence or clerical error pursuant to continuing law. The bill further specifies 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 also clarifies the current applicability of a retroactivity clause to previous amendments made to the section.

Transfer of SB 123 Provider Certification to Kansas Sentencing Commission

The bill transfers provider certification duties for certified drug abuse treatment programs for drug offenders or divertees from the Kansas Department of Corrections to the Kansas Sentencing Commission (Commission), by replacing all references to the Secretary of Corrections with the Commission in the relevant definitions and provisions. The bill also removes community correction officers from those who may conduct criminal risk-needs assessments for purposes of such programs and allows the Commission to establish a process for revoking certification of programs that do not meet the Commission's qualifications for certification.