

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 491

As Amended by Senate Committee on Judiciary

Brief*

SB 491, as amended, would create and amend law to standardize language pertaining to criminal history and record check fingerprinting requirements for all requesting entities and identify what criminal history records may be released to various agencies for the purpose of verifying a person's identity, criminal history, qualifications, and fitness for employment.

The bill would make conforming amendments in several statutes to reflect the standard language created in the new sections and add definitions in the applicable statutes as necessary to define who is required to be fingerprinted as provided in the new sections of the bill.

The bill would specify that fingerprints and criminal history record information would be confidential and define the penalties associated with unauthorized disclosure.

[*Note:* The bill would not substantively change fingerprinting requirements or the types of criminal records that may be released as already required by statute, with the exception of records released to the Board of Emergency Medical Services, as noted in New Section 2 of the bill.]

*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>

***Fingerprinting Requirements and Criminal History
Records for Criminal Justice Agencies (New Section
1)***

The bill would specify that a criminal justice agency, as defined by the Kansas Code of Criminal Procedure, must require an applicant for criminal justice employment to be fingerprinted and have such fingerprints submitted to the state database maintained by the Kansas Bureau of Investigation (KBI) and the federal database maintained by the Federal Bureau of Investigation (FBI). Fingerprints submitted could be used to identify the applicant and determine whether the applicant has a record of criminal history in Kansas or another jurisdiction.

The criminal justice agency could use information obtained through fingerprinting for the purposes of verifying a person's identity and determining the person's qualifications and fitness to be employed or to maintain employment.

The bill would require the KBI release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records, juvenile adjudications, juvenile non-adjudications, and juvenile diversions to:

- A city clerk for the position of chief of police;
- A county election officer for a candidate for sheriff;
- The Governor for an appointment to the position of Kansas Highway Patrol (KHP) Superintendent; and
- A state, county, city, university, railroad, tribal, Horsethief Reservoir Benefit District, or school law enforcement agency for admitting applicants for certification by the Kansas Commission on Peace Officers' Standards and Training.

In addition to the records described above, the bill would require KBI certify any adult conviction record of a chief of police or candidate for sheriff to the Attorney General (AG).

***Fingerprinting Requirements and Criminal History
Records for Other Governmental Agencies (New
Section 2)***

The bill would identify other governmental agencies that that may require a person be fingerprinted in the manner described above and would provide such agencies could use information obtained through fingerprinting for the purposes of verifying a person's identity and determining the person's qualifications and fitness to:

- Be issued or maintain employment, licensure, registration, certification, or a permit;
- Act as an agent of a licensee;
- Hold ownership of a licensee; or
- Serve as a director or officer of a licensee.

With respect to fingerprint-based record checks authorized pursuant to this section, the bill would require state and local law enforcement agencies to assist with taking fingerprints of individuals and would require any public body to recess into a closed or executive session to receive and discuss criminal history information obtained. The bill would also specify the KBI could charge agencies a reasonable fee for conducting a criminal history record check. [*Note: Current law specifies a dollar amount to be charged as a fee in certain statutes.*]

The bill would require the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records, juvenile adjudications, juvenile non-adjudications, juvenile diversions, and juvenile expunged records to:

- The Kansas Department for Aging and Disability Services (KDADS) or the Kansas Department for Children and Families (DCF) for participation in a program administered for the placement, safety, protection, or treatment of vulnerable children or adults.

The bill would require KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records and juvenile expunged records to:

- The Kansas Racing and Gaming Commission (KRGK) for candidates for employment or licensure; and
- The State Lottery for candidates for employment.

The bill would require the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, adult expunged records, juvenile adjudications, juvenile non-adjudications, and juvenile diversions to:

- The AG for applicants for a license to carry a concealed handgun;
- The Department of Administration for candidates for sensitive employees with unescorted physical access to state-operated or contracted data centers, telecommunications facilities, or other security-sensitive areas; and
- The Emergency Medical Services Board (EMS Board) for applicants for an emergency medical service provider certificate [*Note:* This would be a substantive change to the types of records currently received by the EMS Board. Under current law, the EMS Board is allowed to receive

information related to adult convictions and juvenile adjudications].

The bill would require the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, and adult expunged records to:

- The AG for private detective applicants;
- The AG for certification to train private detectives in the handling of firearms and lawful use of force;
- The Kansas Commission on Peace Officers' Standards and Training for applicants for certification under the Kansas Law Enforcement Training Act;
- The State Gaming Agency for candidates for employment or licensure; and
- The Supreme Court and State Board of Law Examiners for applicants to practice law.

The bill would require the KBI to release criminal history record information related to adult convictions, adult non-convictions, adult diversions, and juvenile adjudications to:

- The Athletic Commission within the Department of Commerce for candidates for boxing commission; and
- The Secretary of Health and Environment for employees at a childcare facility.

The bill would require the KBI to release criminal history record information related to adult convictions and juvenile adjudications to:

- KDADS for applicants for employment as a disability services provider;

- The Secretary for Aging and Disability Services for applicants for employment at an adult care home; and
- The Secretary for Aging and Disability Services for applicants for employment with a home health agency.

The bill would require the KBI to release criminal history record information related to adult convictions and non-convictions to:

- The AG for appointees of the Governor to positions subject to confirmation by the Senate and judicial appointees;
- Appointing authorities for non-gubernatorial appointees;
- The Behavioral Sciences Regulatory Board (BSRB) for applicants for a license, registration, permit or certificate issued by the BSRB;
- The Board of Examiners in Optometry for applicants for an optometry license;
- The Board of Healing Arts (KSBHA) for applicants for any license, registration, permit or certificate issued by the KSBHA;
- The KSBHA for applicants to be a physical therapist or physical therapy assistant;
- The Board of Nursing for applicants for licensure as a professional nurse, practical nurse or mental health technician;
- The Board of Pharmacy for persons seeking a license, registration, permit or certificate issued by the Board of Pharmacy;

- The Division of Motor Vehicles (DMV) for applicants for a license to drive a commercial motor vehicle;
- The Insurance Commissioner for applicants for licensure as an insurance agent;
- The Insurance Commissioner for applicants for a public adjuster license;
- The Real Estate Commission for applicants for licensure to act as a broker or salesperson; and
- The State Lottery for a vendor to whom a major procurement contract is to be awarded.

The bill would require the KBI to release criminal history record information related to adult convictions to:

- The AG for applicants for licensure as a bail enforcement agent;
- The State Banking Board for any officer, director or organizer of a proposed fiduciary financial institution;
- The Bank Commissioner for:
 - An applicant for a license issued under the Kansas Money Transmitter Act;
 - An applicant for employment as a new executive officer or director with a money transmitter company;
 - A proposed officer, director, or shareholder of a trust company related to a change of control application;
 - Applicants for a license to engage in mortgage business or registration to conduct mortgage business in the state as a loan originator;

- Members of a co-partnership or association and certain officers or directors of a corporation under the Uniform Consumer Credit Code; and
- Applicants for licensure under the Kansas Credit Services Organization Act;
- The Kansas Commission for the Deaf and Hard of Hearing (Commission) for:
 - The Executive Director of the Commission;
 - Interpreters; and
 - Communication access service providers;
- The Kansas Commission on Veterans Affairs Office (KCVAO) for candidates for certain types of employment within the KCVAO;
- The Department of Agriculture (KDA) for:
 - Hemp employees;
 - Licensure as a hemp producer; and
 - Hemp destruction employees;
- The Department of Credit Unions for candidates for employment;
- The Department of Health and Environment (KDHE) for:
 - Employees in the Office of Vital Statistics; and
 - Employees in the Office of Laboratory Services;
- The Department of Revenue for employees and contractors with access to federal tax information;
- The Division of Alcoholic Beverage Control for nonresident applicants for licensure;

- The DMV for employees authorized to manufacture, produce, or issue drivers' licenses and identification cards;
- The head of an Executive Branch agency for employees or contractors whose duties include collection, maintenance, or access to personal information;
- The Legislative Division of Post Audit for employees or contractors of the Division;
- The members of a Senate standing committee for appointees to the Kansas Public Employee Retirement Systems Board of Trustees;
- Municipalities for an applicant for merchant or security police;
- The Office of State Fire Marshal for applicants for registration as a hemp processor;
- The Real Estate Appraisal Board (Board) for:
 - Licensure under the Certified and Licensed Real Property Appraisers Act; and
 - Applicants for licensure under the Appraisal Management Company Registration Act.

Disclosure; Violations

The bill would specify that fingerprints and criminal history record information received pursuant to New Section 1, New Section 2, and New Section 3 would be confidential and not subject to disclosure pursuant to the Kansas Open Records Act (KORA) until July 1, 2029, unless the Legislature reviews and reenacts the exemption prior to that date.

Disclosure or use of criminal history information for any purpose other than the purposes established in New Section

1 or New Section 2 would be a class A nonperson misdemeanor and would constitute grounds for removal from office.

Name-Based Criminal History Record Checks (New Section 3)

The bill would also allow specified governmental agencies, identified below, to require a name-based criminal history record check of a person from the state database maintained by KBI for the purposes of determining whether the person has a criminal record in Kansas that would prohibit the person from employment, licensure, registration, or obtaining a permit.

The bill would require the KBI to release criminal history record information related to adult convictions and non-convictions to:

- The KSBHA for determining qualifications for licensure by the KSBHA; and
- The State Lottery for the purpose of awarding major contracts.

The bill would require the KBI to release criminal history record information related to adult convictions to:

- The AG for applicants for roofing contractor registration;
- The Board of Nursing for applicants for nurse and mental health technician licensure;
- The Governor and the Senate for appointees:
 - As Executive Director of the Kansas Racing and Gaming Commission (KRGC);
 - As members of the KRGC; and

- An Executive Director of the State Gaming Agency;
- The Joint Committee on Kansas Security for committee staff members of the Office of Revisor of Statutes and the Kansas Legislative Research Department;
- KDADS for:
 - Applicants for an adult care home operator license; or
 - Applicants for licensure as an adult care home administrator;
- KDHE for applicants of a permit to construct, alter, or operate a solid waste processing facility;
- KRGC for employees who are animal health officers; and
- The State Lottery for applicants for employment at the Lottery including applicants for employment under the Kansas Expanded Lottery Act.

Technical Amendments (Sections 4 – 103)

The bill would make conforming amendments to statutes that authorize fingerprinting and criminal history record checks to reflect the language created in the new sections of the bill. The bill would add definitions in certain statutes to clarify who may be fingerprinted and remove language regarding specific fees that may be charged for criminal history records.

Background

The bill was introduced by the Senate Committee on Judiciary at the request of a representative of the KBI.

Senate Committee on Judiciary

In the Senate Committee hearing, representatives of KBI and the Board of Emergency Medical Services (EMS Board) testified as **proponent** of the bill. The KBI representative stated the changes proposed by the bill are necessary to comply with standards set by the FBI to allow a non-criminal justice agency to receive national criminal history record information. The EMS Board representative requested an amendment to change what records may be released to the EMS Board.

Written-only proponent testimony was provided by a representative of the American Physical Therapy Association.

Representatives of the Board of Pharmacy and the Insurance Department provided neutral testimony on the bill requesting technical amendments to address errors and oversights made during drafting of the bill.

No other testimony was provided.

The Senate Committee adopted a technical amendment that would resolve errors and oversights made in drafting, including those requested by the Board of Pharmacy and the Insurance Department.

The Senate Committee also adopted an amendment to allow the EMS Board to receive criminal history records related to adult convictions, adult non-convictions, adult diversions, adult expunged records, juvenile adjudications, juvenile non-adjudications, and juvenile diversions.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, KDADS indicates the agency can charge \$19 for each criminal history record check for individuals applying for work in an adult care home, mental health center, substance abuse provider facility,

psychiatric residential treatment facility, or home health agency. The bill would allow KDADS to charge a reasonable fee for a criminal history record check. Pursuant to this change, KDADS indicates enactment of the bill would allow the agency to charge the entire costs of background checks, which is \$47, instead of the current statutory amount of \$19. KDADS currently absorbs the additional costs through its fee funds. The agency estimates that because they would now be allowed to collect the entire costs of the background checks, its fee fund revenues would increase by \$4.8 million.

The Office of Judicial Administration states that enactment of the bill could increase the number of cases filed in district court because it creates new crimes which would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. Because the crimes would carry misdemeanor penalties, there could be additional supervision of offenders required to be performed by court services officers. Enactment of the bill could also increase the collection of supervision fees that are deposited into its fee funds. Enactment of the bill could increase the collection of docket fees, fines, and supervision fees that would be deposited into the State General Fund. However, a fiscal effect cannot be estimated.

The Division of the Budget received responses from approximately 32 state agencies, including regulatory boards, and they all stated that the provisions of the bill would not have a fiscal effect on agency operations. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

The Kansas Association of Counties states that if an entity currently is not using this process, then it would require them to update their processes. However, a fiscal effect for such entities cannot be estimated. The League of Kansas Municipalities states that enactment of the bill would not have a fiscal effect on cities.

Fingerprinting; criminal history record checks; Kansas Bureau of Investigation