

SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2608

As Recommended by House Committee on
Judiciary

Brief*

HB 2608 would amend and repeal law related to enforcement and collection of criminal restitution.

The bill would amend a statute governing collection of restitution to provide that Kansas judicial districts are authorized to utilize the collection services of contracting agents for the purpose of collecting restitution owed under an order of restitution.

The bill would amend the statute in the Kansas Criminal Code governing authorized dispositions when a person has been found guilty of a crime to remove language allowing collection of restitution as on a civil case judgment and to add language clarifying the applicable garnishment procedure. The bill also would remove language in this section referencing procedures and statutes repealed by the bill.

The bill would amend a statute in the Kansas Code of Criminal Procedure governing judgment and sentence to replace a reference to restitution enforcement statutes repealed by the bill with a reference to the statute governing collection of restitution.

The bill would amend the definition of “earnings” for purposes of wage garnishment provisions to remove the phrase “paid or.” Currently, earnings is defined as compensation paid or payable for personal services, whether

*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>

denominated as wages, salary, commission, bonus, or otherwise.

The bill would amend a section in the Kansas Code of Civil Procedure governing when a judgment becomes dormant to provide that undisputed payments made prior to a request for a release of judgment are voluntary and not subject to refund or recoupment.

The bill would repeal an article in the Kansas Code of Civil Procedure governing enforcement of judgment of restitution.

The bill would make technical amendments to update and ensure consistency in statutory references, dates, organization, and phrasing.

Background

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Butler & Associates law firm.

House Committee on Judiciary

In the House Committee hearing on February 15, 2022, a representative of Butler & Associates testified as a **proponent** of the bill, stating it would respond to several Kansas appellate decisions impacting collection of debts and restitution, including the Kansas Supreme Court's decision in *State v. Arnett*, 496 P.3d 928 (2021), which held the statutes in the Kansas Code of Civil Procedure governing enforcement of judgment of restitution were unconstitutional. The representative stated this decision has prevented any current collection of restitution on behalf of victims. Representatives of the Kansas County and District Attorneys Association and the Office of the Attorney General provided written-only proponent testimony.

A representative of the Kansas Association of Criminal Defense Lawyers testified as an **opponent** of the bill, stating the *Arnett* case is pending certiorari before the U.S. Supreme Court, where additional issues could be identified, and the better approach would be to provide for a jury to determine restitution when contested.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the Office of Judicial Administration (OJA) indicates enactment of the bill would have a fiscal effect on Judicial Branch revenues by allowing collection of restitution to resume. According to OJA, \$257.3 million of outstanding restitution is owed. Under the current contract, the Judicial Branch receives 1.0 percent of fees collected and estimates receiving \$2.6 million if all outstanding restitution was paid. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Criminal restitution; collection; wage garnishment