



2021 LEGISLATIVE CHANGES TO THE KSGA AND RELATED CRIMINAL LAW

In the 2021 Legislative Session, several statutory changes were passed that will affect criminal law practice, including changes in criminal penalties, the addition of new crimes, and changes to crimes that already exist. The following is not a comprehensive list of all the changes made during the Legislative Session.

Senate Bill 60

Psychological or Psychiatric Examinations of Crime Victims; Spousal Exception to Sexual Battery; Fleeing or Attempting to Elude a Police Officer; Sexual Extortion

SB 60 amends law in the Kansas Criminal Code (Code) related to jurisdictional application, psychological or psychiatric examinations of crime victims, the spousal exception in the crime of sexual battery, and the crime of fleeing or attempting to elude a police officer, and creates the crime of sexual extortion.

Psychological or Psychiatric Examinations of Crime Victims

The bill creates a provision within the Code to prohibit a court from requiring or ordering a victim of a crime to submit to or undergo a psychiatric or psychological examination in the prosecution for such crime.

Spousal Exception to Sexual Battery

The bill amends the definition of the crime of sexual battery to remove the element requiring the crime be committed against a victim “who is not the spouse of the offender.” The bill also makes a technical amendment to the definition of the crime of aggravated sexual battery in accordance with the change to the definition of sexual battery.

Fleeing or Attempting to Elude a Police Officer

The bill amends the offense of fleeing or attempting to elude a police officer to replace “willfully” with “knowingly” in reference to the mental state required for the offense, add operating a stolen motor vehicle to the list of conduct making the offense a severity level 9 person felony without prior convictions for the offense, and add the following conduct to the offense, which is classified as a level 7 person felony:

- Knowingly driving the wrong way into an opposing lane of travel on a divided highway;
- Knowingly departing the appropriate lane of travel into an opposing lane of travel on any roadway causing an evasive maneuver by another driver; or
- Knowingly driving through any intersection causing an evasive maneuver by another driver or causing a collision involving another motorist.

The bill amends the penalty for the felony offense without prior convictions to require the court to impose a fine of at least \$500 when the driver operates a stolen motor vehicle during the commission of the offense. The bill also clarifies that prior convictions for all versions of the offense are to be considered in determining the severity level of the current offense based on the number of prior convictions.

The bill also provides that, in a prosecution for theft of a motor vehicle, fleeing or attempting to elude a police officer is prima facie evidence of intent to permanently deprive the owner of the motor vehicle of the possession, use, or benefit thereof.

Sexual Extortion

The bill creates the crime of sexual extortion, which is defined as communicating by any means a threat to injure the property or reputation of a person, commit violence against a person, or distribute an image, video, or other recording of a person that is of a sexual nature or depicts such person in a state of nudity:

- With the intent to coerce such person to engage in sexual contact, sexual intercourse, or conduct of a sexual nature; or produce, provide, or distribute an image, video, or other recording of a person in a state of nudity, or depicting such person engaging in conduct that is of a sexual nature. Such conduct is a severity level 7 person felony; or
- That causes such person to engage in sexual contact, sexual intercourse, or conduct of a sexual nature; or produce, provide, or distribute an image, video, or other recording of a person in a state of nudity or engaging in conduct that is of a sexual nature. Such conduct is a severity level 4 person felony.

The bill also amends the Kansas Offender Registration Act to add a person convicted of sexual extortion to the definition of “sex offender” and to add sexual extortion to the list of offenses for which conviction requires offender registration for 15 years when one of the parties involved is less than 18 years of age. The bill provides registration is not required for a person adjudicated as a juvenile offender for an act that if committed by an adult constitutes the commission of sexual extortion.

SB 122

Rules of Evidence; Authentication and Exceptions

SB 122 amends various sections within the Kansas Rules of Evidence (Rules).

Hearsay Evidence Exception—Business Records

The bill amends an exception to the general prohibition on hearsay evidence for business records to replace a requirement that a judge find certain conditions regarding the records with a requirement that the conditions be shown by the testimony of the custodian or other qualified witness or by a certification that complies with self-authenticating certification provisions added elsewhere by the bill for certified domestic records of a regularly conducted activity or certified foreign records of a regularly conducted activity.

Authentication of a Writing

Currently, the Rules require authentication of a writing by certain means before it may be received in evidence and provide conditions under which certain documents that are at least 30 years old are sufficiently authenticated.

The bill replaces this provision with language requiring a proponent to produce evidence sufficient to support a finding that an item of evidence is what the proponent claims it is in order to satisfy the requirement of authenticating or identifying the item of evidence. The bill adds a non-exclusive list of examples, with explanations for each, of evidence that would satisfy the requirement.

These examples include:

- Testimony of a witness with knowledge;
- Nonexpert opinion about handwriting;
- Comparison by an expert witness or the trier of fact;
- Distinctive characteristics and the like;
- Opinion about a voice;
- Evidence about a telephone conversation;
- Evidence about public records;
- Evidence about ancient documents or data compilations;
- Evidence about a process or system; and
- Methods provided by a statute or rule.

Authentication of Copies of Records

The bill amends the section of the Rules governing authentication of copies of records to add a list of items of evidence that are self-authenticating and require no extrinsic evidence of authenticity in order to be admitted.

The list includes:

- Official publications;
- Newspapers and periodicals;
- Trade inscriptions and the like;
- Acknowledged documents;
- Commercial paper and related documents;
- Presumptions under law;
- Certified domestic records of a regularly conducted activity;
- Certified foreign records of a regularly conducted activity;
- Certified records generated by an electronic process or system; and
- Certified data copies from an electronic device, storage medium, or file.

The list also includes additional explanations of and requirements for certifying the above items of evidence.

Original Document Required as Evidence; Exceptions

The bill amends the section of the Rules setting forth the general rule that an original writing is the only evidence that may be offered to prove its contents, subject to certain exceptions. The bill rewords the general rule to provide clarity. Additionally, the bill adds language to include recordings and photographs in the general rule and in the remainder of the section.

The bill adds a provision stating a duplicate is admissible to the same extent as the original, unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

The bill adds a provision allowing the proponent to prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent is not required to account for the original.

The bill rewords a provision regarding determinations made by the judge and determinations made by the trier of fact or jury to clarify its organization and wording.

The bill adds definitions for "photograph," "original," and "duplicate" to this section.

SB 127

Driver's License Changes

SB 127 amends laws related to renewal of driver's licenses and certain provisions applicable when a driver's license has been suspended for failure to comply with a traffic citation. The bill is in effect upon publication in the Kansas Register.

License suspension time period

The bill amends, in a statute requiring suspension of a driver's license for driving when the person's driving privileges are canceled, suspended, or revoked, a provision requiring the Division to extend a period of suspension or revocation an additional 90 days, to state the suspension or revocation shall not be extended for any additional time if the person's license was suspended for failure to comply with a traffic citation.

Eligibility and application for restricted driving privileges

Concerning eligibility for restricted driving privileges for a person whose driver's license expired while the license was suspended for failure to pay fines for traffic citations, the bill removes the requirement that the person has not previously received a stayed suspension as a result of a driving while suspended conviction.

The bill removes a nonrefundable \$25 fee that current law requires to be submitted to the Division by an applicant for restricted driving privileges in lieu of suspension of driving privileges for failure to comply with a traffic citation.

Reinstatement fee

The bill makes a technical amendment to the period during which the Supreme Court is authorized to impose an additional charge per reinstatement fee. Continuing law requires a court to assess a \$100 reinstatement fee when the court notifies the Division of failure to comply with a traffic citation.

Waiving a fine or court costs.

The bill allows a person assessed a fine or court costs for a traffic citation to petition the court to waive all or a portion of the costs. The bill authorizes the court to waive or modify payments upon determining that paying the amount due would impose manifest hardship on the person or their immediate family.

SB 172

Crimes Related to Critical Infrastructure Facilities

SB 172 amends the Kansas Criminal Code regarding crimes involving property by eliminating the crime of tampering with a pipeline and establishing four new crimes: trespassing on a critical infrastructure facility (CIF), aggravated trespassing on a CIF, criminal damage to a CIF, and aggravated criminal damage to a CIF. The bill also allows a judge to order restitution for property damage to any victim of the four new crimes.

Right to Peacefully Protest

The bill includes a "whereas" clause that states the provisions of the bill protect the right to peacefully protest for all Kansans and citizens of the four sovereign nations within the state's borders while also protecting the critical infrastructure located within the state.

Definition of Critical Infrastructure Facility

The bill defines a CIF, as used in the bill, as any:

- Petroleum or alumina refinery;
- Electric generation facility, substation, switching station, electrical control center, electric distribution or transmission lines, or associated equipment infrastructure;
- Chemical, polymer, or rubber manufacturing facility;
- Water supply diversion, production, treatment, storage, or distribution facilities and appurtenances, including, but not limited to, underground pipelines and a wastewater treatment plant or pump station;
- Natural gas compressor station;
- Liquid natural gas or propane terminal or storage facility;
- Facility that is used for wireline, broadband, or wireless telecommunications or video services infrastructure, including backup power supplies and cable television headend;
- Port, railroad switching yard, railroad tracks, trucking terminal, or other freight transportation facility;
- Gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas, propane, or natural gas liquids;
- Transmission facility used by a federally licensed radio or television station;
- Steelmaking facility that uses an electric arc furnace to make steel;
- Facility identified and regulated by the U.S. Department of Homeland Security Chemical Facility Anti-Terrorism Standards program, facility operated by the Office of Laboratory Services under the supervision of the Secretary of Health and Environment, or the National Bio and Agro-Defense Facility or Biosecurity Research Institute at Kansas State University;
- Dam that is regulated as a hazard class B or class C dam by the state or federal government;
- Natural gas distribution utility facility, or natural gas transmission facility, including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, belowground or aboveground piping, a regular station, or a natural gas storage facility;
- Crude oil, including Y-grade or natural gas liquids, or refined products storage and distribution facility, including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, belowground or aboveground pipeline or piping, and truck loading or offloading facility; or
- Portion of any belowground or aboveground oil, gas, hazardous liquid, or chemical pipeline, tank, railroad facility, or any other storage facility that is enclosed by a fence or other physical barrier or clearly marked with signs prohibiting trespassing that are obviously designed to exclude intruders.

Crimes Related to Critical Infrastructure Facilities

The bill eliminates the crime of tampering with a pipeline and creates four new crimes.

Trespassing on a Critical Infrastructure Facility

Under the bill, trespassing on a CIF means, without consent of the owner or the owner's agent, knowingly entering or remaining in:

- A CIF; or
- Any property containing a CIF, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign

or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill classifies trespassing on a CIF as a class A nonperson misdemeanor.

Aggravated Trespassing on a Critical Infrastructure Facility

Under the bill, aggravated trespassing on a CIF means, with the intent to damage, destroy, or tamper with a CIF or impede or inhibit operations of the facility, knowingly entering or remaining in:

- A CIF; or
- Any property containing a CIF, if such property is completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders or is clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization.

The bill classifies aggravated trespassing on a CIF as a severity level 7 nonperson felony.

Criminal Damage to a Critical Infrastructure Facility

Under the bill, criminal damage to a CIF means knowingly damaging, destroying, or tampering with a CIF. The bill classifies criminal damage to a CIF as a severity level 6 nonperson felony.

Aggravated Criminal Damage to a Critical Infrastructure Facility

Under the bill, aggravated criminal damage to a CIF means knowingly damaging, destroying, or tampering with a CIF with the intent to impede or inhibit operations of the facility. The bill classifies aggravated criminal damage to a CIF as a severity level 5 nonperson felony.

HB 2026

Certified Drug Abuse Treatment Program—Divertees; Jurisdiction and Supervision for 2003 SB 123 Program; Community Corrections Services Program; Amendments to Corrections-related Crimes

HB 2026 establishes a certified drug abuse treatment program for certain persons who have entered into a diversion agreement pursuant to a memorandum of understanding and amends law related to supervision of offenders and the administration of certified drug abuse treatment programs. It also amends law to change penalties for crimes involving riot in a correctional facility and unlawfully tampering with an electronic monitoring device.

Certified Drug Abuse Treatment Program—Divertees

The bill establishes a certified drug abuse treatment program (program) for certain persons who enter into a diversion agreement (divertees) pursuant to a memorandum of understanding (MOU).

The bill allows eligibility for participation in a program for offenders who enter into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2021, for persons who have been charged with felony possession of a controlled substance and whose criminal history score is C or lower with no prior felony drug convictions.

[Note: Under continuing law, Kansas' sentencing guidelines for drug crimes utilize a grid containing the crime severity level (1 to 5, 1 being the highest severity) and the offender's criminal history score (A to I, A being the highest criminal history score) to determine the presumptive sentence for an offense. Felony drug possession is currently classified as a drug severity level 5 felony. An offender is classified as criminal history C if the offender has one person felony and at least one nonperson felony.]

The bill also provides that, as part of the consideration of whether to allow a person to enter into such a diversion agreement, a person who meets the criminal charge and history requirements shall be subject to:

- A drug abuse assessment that is required to include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the divertee; and
- A standardized criminal risk and need assessment specified by the Kansas Sentencing Commission (Commission).

The bill further requires the diversion agreement to include provisions that require the divertee to comply with and participate in a program if the divertee meets the assessment criteria set by the Commission, with a term of treatment not to exceed 18 months.

Supervision

The bill provides that divertees who are committed to a program could be supervised by community correctional services or court services pursuant to an MOU. A divertee will be discharged from the program if the divertee:

- Is convicted of a new felony; or
- Has a pattern of intentional conduct that demonstrates the divertee's refusal to comply with or participate in the program, in the opinion of the county or district attorney.

If a divertee is discharged, such person will be subject to the revocation provisions of the respective diversion agreement.

Definitions

The bill defines "mental health professional" for this purpose to include:

- Licensed social workers;
- Persons licensed to practice medicine and surgery;
- Licensed psychologists;
- Licensed professional counselors; or
- Registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the Secretary of Corrections to treat persons pursuant to continuing law.

The bill defines "divertee" to mean a person who has entered into a diversion agreement pursuant to continuing law and amendments made by the bill.

Memorandum of Understanding

The bill amends law related to diversion agreements by adding provisions related to an MOU.

The bill allows a county or district attorney to enter into an MOU with the chief judge of a judicial district or community correctional services to assist with the supervision and monitoring of persons who have entered into a diversion agreement. The county or district attorney will retain authority over whether a particular defendant may enter into a diversion agreement or whether such agreement will be revoked.

The bill requires an MOU to include provisions related to:

- Determining the level of supervision needed for a defendant;
- Use of a criminal risk and needs assessment;
- Payment of costs for supervision; and
- Waiver of the supervision fee established by the bill.

The bill authorizes the Office of Judicial Administration to adopt guidelines regarding the content of an MOU between a county or district attorney and the chief judge of a judicial district and the administration of a supervision program operating pursuant to such MOU.

The bill amends law regarding the contents of diversion agreements to specify that such agreements may include provisions related to the MOU.

Supervision Fees

The bill provides that divertees who are supervised pursuant to an MOU will be required to pay a supervision fee in the amount established in continuing law for misdemeanor or felony post-conviction supervision, as appropriate for the crime charged. The bill allows a county or district attorney, in accordance with an MOU, to reduce or waive the supervision fee.

The bill requires the county or district attorney to collect supervision fees, with the moneys collected to be paid into the county general fund and used to fund the costs of diversion supervision performed pursuant to the MOU.

The bill also requires divertees who are supervised pursuant to an MOU to pay the actual costs of urinalysis testing required as a term of supervision. Payments for such testing must be remitted to the county treasurer for deposit in the county general fund, and the cost of such testing can be reduced or waived by the county or district attorney.

The bill further requires county or district attorneys to determine the extent, if any, that a divertee is able to pay for assessment and treatment, and the bill requires such payments to be used by the supervising agency to offset costs to the State or county. If such financial obligations are not met or cannot be met, the county or district attorney must be notified for the purpose of collection or review and further action on the diversion agreement.

Jurisdiction and Supervision for 2003 SB 123 Program

The bill amends law related to jurisdiction of, supervision of participants in, and eligibility for the nonprison sanction of placement in a certified drug abuse treatment program (2003 SB 123 Program).

Jurisdiction and Supervision

The bill provides that, when a defendant is sentenced to the nonprison sanction of placement in a certified drug abuse treatment program, the district court from which the defendant is on parole, on probation, assigned to a community correctional services program, or under a suspended sentence, may transfer jurisdiction of the defendant with the concurrence of the receiving district court and all parties.

The bill specifies that, if an offender is permitted to leave the judicial district of the sentencing court, the court may:

- Transfer supervision over the offender from that judicial district to another; and
- Either transfer or retain jurisdiction of the offender.

Eligibility

The bill amends a provision related to the assignment of a risk status by a criminal risk and needs assessment to remove a requirement that the assessment assigns either a high or low risk status.

The bill also removes a requirement that an offender be assigned a high risk status on the drug abuse assessment and a moderate or high risk status on the criminal risk and needs assessment to participate in the 2003 SB 123 Program. The bill requires the Commission to determine the criteria for participation in the 2003 SB 123 Program.

Community Corrections Services Program

Continuing law allows for assessment of certain felony offenders by a standardized risk assessment tool specified by the Commission, and for placement of certain felony offenders in a community corrections services program that provides supervision, treatment, and other services to offenders.

The bill allows the Commission to determine an appropriate risk level for placement in the program, and it removes the requirement that offenders be assigned certain risk levels to participate.

Riot and Incitement to Riot in a Correctional Facility

The bill increases the criminal penalties for riot and incitement to riot when the crime occurs in a correctional facility. The bill defines “correctional facility” for this purpose as a jail or a correctional institution as defined by continuing law.

Riot

Continuing law defines “riot” to mean five or more persons acting together and without lawful authority engaging in any:

- Use of force or violence that produces a breach of the public peace; or
- Threat to use such force or violence against any person or property if accompanied by power, or apparent power, of immediate execution.

The bill increases the penalty for riot, when it occurs in a correctional facility, from a class A misdemeanor to a severity level 8 person felony.

Incitement to Riot

Continuing law defines “incitement to riot” to mean, by words or conduct, knowingly urging others to engage in a riot, under circumstances that produce a clear and present danger of injury to persons or property or a breach of the public peace.

The bill increases the penalty for incitement to riot, when it occurs in a correctional facility, from a severity level 8 person felony to a severity level 6 person felony.

Unlawfully Tampering with Electronic Monitoring Equipment

The bill lowers the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a severity level 8 nonperson felony when the equipment is used for court-ordered supervision, postrelease supervision, or parole in relation to a felony.

The bill also lowers the criminal penalty for unlawfully tampering with electronic monitoring equipment from a severity level 6 nonperson felony to a class A nonperson misdemeanor when the equipment is used for court-ordered supervision, postrelease supervision, or parole in relation to a misdemeanor or for court-ordered supervision in a civil case.

HB 2058

Concealed Carry Licenses, Kansas Protection of Firearms Rights Act

HB 2058 amends law related to the recognition and issuance of a concealed carry license (license), creates two concealed carry license classes, and creates the Kansas Protection of Firearms Rights Act.

License Reciprocity

The bill specifies a valid license or permit to carry a concealed firearm issued by another jurisdiction is recognized in Kansas while such permit or license holder is not a Kansas resident. The bill provides valid licenses or permits issued by another jurisdiction entitle the lawful holder only to carry concealed handguns as defined in Kansas law, and it requires such persons to act in accordance with Kansas laws while carrying a concealed handgun in the state. The bill also states criminal provisions in continuing law prohibiting the carrying of a concealed firearm by persons under age 21 do not apply to residents of another state who are less than 21 years of age and lawfully carrying a concealed firearm pursuant to a recognized out-of-state license.

The bill provides that recognition of a license or permit from another jurisdiction is not construed to impose a general prohibition on the open or concealed carrying of handguns, either loaded or unloaded, without a license.

Kansas Protection of Firearms Rights Act

The bill enacts the Kansas Protection of Firearms Rights Act by amending law regarding criminal possession of a weapon by a convicted felon.

Lifetime Prohibition

The bill specifies, for convictions of a person felony or violation of certain controlled substances crimes prior to July 1, 2009, the convicting court would have had to find the person used a firearm in the commission of the crime, rather than having been in possession of a firearm at the time of the commission of the crime.

Three-year Prohibition

The bill prohibits possession of weapons, including firearms, by an individual as follows:

- Such individual has been convicted of a person felony or a crime under the law of another jurisdiction that is substantially the same as such person felony; or
- Such individual was adjudicated as a juvenile offender for a crime that if committed by an adult would constitute a person felony; and
- Such individual was not found by the convicting court to have used a firearm in the commission of the crime; and
- Less than three years have elapsed since such individual satisfied the sentence imposed or the terms of any diversion agreement or was discharged from supervision.

Eight-year Prohibition

Prior law prohibited possession of a weapon by persons:

- Convicted of certain controlled substances felony crimes; certain crimes against persons and property; sex offenses; or an attempt, conspiracy, or criminal solicitation of any such felony;
- Convicted of a crime under the law of another jurisdiction that is substantially the same as such felony; or
- Who have been released from imprisonment for such felony, or adjudicated as a juvenile offender because if committed by an adult, the crime would constitute the commission of such felony.

The bill clarifies prior law to provide that such provisions would apply if less than eight years have elapsed since the person satisfied the sentence imposed or the terms of any diversion agreement or was discharged from supervision.

The bill makes clarifies that persons convicted of certain controlled substance felony offenses prior to their 2010 recodification transfer are prohibited from possessing a weapon.

Three-month Prohibition

The bill would also prohibit possession of a weapon by an individual if:

- Such individual has been convicted of any other nonperson felony, other than those specified in the bill and continuing law, or a crime of another jurisdiction that is substantially the same as such nonperson felony; or
- Such individual was adjudicated as a juvenile offender because if committed by an adult, the crime would constitute the commission of such nonperson felony; and
- Less than three months have elapsed since such individual satisfied the sentence imposed or terms of any diversion agreement or was discharged from supervision.

Expungement or Pardon of Felony Convictions

The bill removes the restriction on firearm possession for an individual who has had a felony conviction expunged or pardoned if a lifetime, three-year, or three-month weapons possession prohibition applies under the bill.

Expungement Proceedings

Prior law required a court to order a petitioner's arrest record, conviction, or diversion be expunged if the court makes certain findings. The bill requires that for petitions seeking expungement of a felony conviction, the court find that possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public.

Concealed Carry License Application

The bill removes a provision that required the person disclose that the arrest, conviction, or diversion occurred, even if the associated records are expunged, when such person applies for a license.

Firearm Possession

The bill provides, when a person whose arrest record, conviction, or diversion of a crime that resulted in such person being prohibited by state or federal law from possessing a firearm has been expunged, it shall be deemed that such person's right to keep and bear arms is fully restored. The restoration of rights includes, but is not limited to, the right to use, transport, receive, purchase, transfer, and possess firearms. The bill specifies that the provisions concerning restoration of rights would include any orders issued prior to July 1, 2021.

Disclosure of Expunged Records

Continuing law provides expunged records may not be disclosed except when requested by certain persons. The bill amends provisions related to disclosure to the Attorney General by specifying such records can be disclosed to the Attorney General for any purpose authorized by law, except that such records cannot be the basis for the denial of a concealed carry permit.

The bill also amends provisions allowing disclosure to the Kansas Bureau of Investigation (KBI) to remove provisions allowing such records to be used in connection with a National Instant Criminal Background Check System (NICS) record check through the Federal Bureau of Investigation (FBI), to determine a person's qualifications to possess a firearm.

The bill further specifies, upon issuance of an expungement order, the KBI is required to report to the FBI that such expunged record should be withdrawn from NICS. The KBI is required to include such expungement order in the person's criminal history record for purposes of documenting the restoration of such person's right to keep and bear arms.

HB 2077

Criminal Justice Commissions, Task Forces, and Boards

HB 2077 amends law related to the Kansas Criminal Justice Reform Commission, Kansas Closed Case Task Force, and the Kansas Crime Victims Compensation Board.

The bill takes effect upon publication in the Kansas Register.

Kansas Criminal Justice Reform Commission

Study Topics

The bill amends some statutorily required study topics of the Kansas Criminal Justice Reform Commission (Commission) and creates new topics.

Diversion programs

The bill amends the requirement related to analysis of diversion programs to require the Commission to analyze diversion programs utilized throughout the state and make recommendations for legislation that:

- Requires pre-filing and post-filing diversion to be an option in all counties;
- Establishes minimum statewide standards for diversion; and
- Provides a method for sealing or otherwise removing diversion records from criminal records.

Supervision

The bill amends the requirement related to review of supervision levels and programming for offenders on community supervision for felony offenses by requiring the Commission to:

- Review the supervision practices for offenders who serve sentences for felony offenses on supervision, to include:
 - Supervision by court services;
 - Community corrections; and
 - Parole; and
- Discuss and develop detailed recommendations for legislation that establishes research-based standards and practices for all community supervision programs that:
 - Provide for incentives for compliant offenders to earn early discharge from supervision;
 - Create standardized terms and conditions for community supervision and provide for a method that courts may utilize to use special terms as indicated through the introduction of compelling evidence;

- Create standardized effective responses to behavior through a system of incentives and graduated sanctions; and
- Provide for a means to consolidate concurrent supervision into one supervision agency.

Monitor implementation of recommendations

The bill requires the Commission to monitor the implementation of previously endorsed Commission recommendations, including those developed through justice reinvestment, and receive updates, review data, and identify opportunities for coordination, collaboration, or legislation as needed.

Removed study topics

The bill removes statutory study requirements relating to specialty courts, evidence-based programming, specialty correctional facilities, and information management data systems. The bill also removes the requirement that the Commission study other matters it determines to be necessary.

Commission Membership

The bill adds a public defender member to the Commission, to be appointed by the State Director of the Board of Indigents' Defense Services.

Final Report

The bill extends the final report and recommendation submission deadline from December 1, 2020, to December 1, 2021.

Kansas Closed Case Task Force

The bill modifies law concerning the Kansas Closed Case Task Force (Task Force) by renaming it the Alvin Sykes Cold Case DNA Task Force. The bill extends the deadline, from October 1, 2020, to October 1, 2021, for completion of the protocol implementation plan relating to closed cases. Similarly, the bill extends the deadline, from December 1, 2020, to December 1, 2021, for the Task Force's report containing a plan for uniform implementation of the protocol. The bill extends the sunset date for the Task Force from December 30, 2020, to December 30, 2021. The bill also requires the Office of Revisor of Statutes, the Kansas Legislative Research Department, and the Division of Legislative Administrative Services to aid the Task Force as requested by the co-chairpersons.

The bill amends the membership of the Task Force to allow a designee to serve in place of the state combined DNA index system (CODIS) administrator, but otherwise continues the Task Force as it existed on December 29, 2020, with all other members appointed prior to that date continuing as members of the Task Force.

Kansas Crime Victims Compensation Board

The bill amends the definition of "victim" for purposes of the Kansas Crime Victims Compensation Board (Board) compensation award process to include a person who suffers personal injury or death as a result of witnessing a violent crime when the person was 16 years of age or younger at the time the crime was committed.

Under continuing law, the general rule is a claim for compensation must be filed within two years after the injury or death upon which the claim is based.

Current law provides an extended deadline for filing an application for compensation by persons under the age of 16 who are victims of certain crimes. The bill expands the listing of these crimes by adding a reference to a separate listing of "sexually violent crimes" in continuing law. The bill accordingly removes references to specific crimes already incorporated in the listing of sexually violent crimes.

The bill also provides an extended deadline for compensation for mental health counseling to be awarded under certain circumstances.

Current law allows mental health counseling compensation to be awarded if a claim is filed within two years of:

- Testimony, to a claimant who is or will be required to testify in a sexually violent predator commitment of an offender who victimized the claimant or the victim on whose behalf the claim is made; or
- Notification, to a claimant who is notified that DNA testing of a sexual assault kit or other evidence has revealed a DNA profile of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made or is notified of the identification of a suspected offender who victimized the claimant or the victim on whose behalf the claim is made, whichever occurs later.

The bill replaces these specific exceptions with a provision allowing the Board to award compensation for mental health counseling to:

- A victim, under the bill's amended definition pertaining to witnesses of violent crimes, if the Board finds there was good cause for the failure to file within the required time periods and the claim is filed before the victim turns 19 years of age; or
- A victim of a sexually violent crime, if the Board finds there was good cause for the failure to file within the required time periods and the claim is filed within 10 years of the date such crime was committed, or, if the victim was less than 18 years of age at the time such crime was committed, the claim is filed within 10 years of the date the victim turns 18 years of age.

HB 2078

Statutory Speedy Trial; Deadline Suspension; Reports; Prioritization of Cases for Trial

HB 2078 suspends the provisions of the speedy trial statute in the Kansas Code of Criminal Procedure until May 1, 2023, in all criminal cases and removes a provision in the statute authorizing the Chief Justice to issue an order to extend or suspend any deadlines or time limitations and requiring trials to be scheduled within 150 days of termination of such order.

Additionally, the bill adds a provision requiring trial courts to consider relevant factors when prioritizing cases for trial, including, but not limited to:

- The trial court's calendar;
- Relative prejudice to the defendant;
- The defendant's assertion of the right to speedy trial;
- The calendar of trial counsel;
- Availability of witnesses; and
- The relative safety of the proceedings to participants as a result of the response to the COVID-19 public health emergency in the judicial district.

The bill requires the Office of Judicial Administration to prepare and submit a report to the Senate Committee on Judiciary and the House Committee on Judiciary on or before January 17, 2022, and January 16, 2023, containing the following information disaggregated by judicial district:

- Number of pending criminal cases on January 1, 2022, and January 1, 2023, respectively;

- Number of criminal cases resolved during FY 2021 and FY 2022, respectively, and the method of disposition in each case;
- Number of jury trials conducted in criminal cases during FY 2021 and FY 2022, respectively; and
- Number of new criminal cases filed in FY 2021 and FY 2022, respectively.

The bill states the amendments made by the bill are procedural in nature and shall be construed and applied retroactively.

HB 2390

Kansas Open Records Act; Exceptions; Cybersecurity; Public Employees; Home Address; Fraudulent Liens; Criminal Penalties

HB 2390 reviews, amends, and adds exceptions to the Kansas Open Records Act (KORA) and creates and amends law regarding the filing of fraudulent liens.

Filing of Fraudulent Liens

The bill adds a provision to the Kansas Criminal Code that prohibits the filing of certain liens or claims against real or personal property and provides for criminal penalties, as follows.

The bill provides it is a severity level 8 nonperson felony for any person to present for filing in any public record:

- Any lien or claim against any real or personal property when such person knows or reasonably should know such lien or claim is false or contains any materially false, fictitious, or fraudulent statement or representation;
- Any document that purports to assert a lien against real or personal property of any person or entity that is not expressly provided for in Kansas or federal law, does not depend on the consent of the owner of the real or personal property affected, and is not an equitable or constructive lien imposed by a court with proper jurisdiction;
- Any financing statement pursuant to Article 9 of the Uniform Commercial Code, when such person knows or reasonably should know the financing statement is not based on a bona fide security agreement or was not authorized or authenticated by the alleged debtor identified in the financing statement or the debtor's authorized representative; or
- Any document filed in an attempt to harass an entity, individual, or public official, or obstruct a governmental operation or judicial proceeding, when such person knows or reasonably should know the document contains false information.

Under the new crime, it also is unlawful for any person to violate a court order issued pursuant to the statute governing an expedited process to review and determine the validity of liens and claims against real or personal property. In the statute, the bill adds to the process a requirement that, if the court orders the lien or claim to be set aside, the court's findings of fact and conclusions of law must include:

- An order prohibiting the person who filed such lien or claim from filing any future lien or claim with any filing officer without approval of the court that enters the order; and
- A provision stating a violation of the order may subject the party in violation to civil and criminal penalties.

The bill also requires any order finding a lien or claim is fraudulent to include a provision stating a violation of the order may result in civil and criminal penalties and removes a provision providing for a specific penalty of imprisonment of up to 120 days, a fine not to exceed \$1,000, or both.

HB 2071

Stalking a Minor; Penalties

HB 2071 amends the definition of the crime of stalking to include intentionally engaging in a course of conduct targeted at a specific child under the age of 14 that would cause a reasonable person in the circumstances of the targeted child, or a reasonable person in the circumstances of an immediate family member of such child, to fear for the child's safety.

The penalty for the new provision is a severity level 7 person felony for a first conviction and a severity level 4 person felony for a second or subsequent conviction.

HB 2121

Mistreatment of a Dependent Adult or Elder Person; Absconding from Supervision; Sureties; Delivery of a Person Arrested; Certificate of Identification; Parole and Postrelease Supervision Guidance

HB 2121 amends the penalties for the crime of mistreatment of a dependent adult or elder person, defines the term "absconds from supervision," amends law regarding sureties and delivery of a person arrested, amends law concerning proof of identity documents accepted for the issuance of a replacement driver's license, and requires the Secretary of Corrections to develop guidance for parole officers to use while supervising offenders on parole and postrelease supervision.

Mistreatment of a Dependent Adult or Elder Person

The bill amends the crime of mistreatment of a dependent adult or elder person to raise the penalty:

- From a severity level 5 person felony to a severity level 2 person felony when the crime involves infliction of physical injury, unreasonable confinement, or unreasonable punishment and the victim is a dependent adult who is a resident of an adult care home during the commission of the offense; and
- From a severity level 8 person felony to a severity level 5 person felony, when the crime involves omission or deprivation of treatment, goods, or services that are necessary to maintain physical or mental health of the victim and the victim is a dependent adult who is a resident of an adult care home during the commission of the offense.

Absconding from Supervision

The bill adds a definition of "absconds from supervision" to the Kansas Code of Criminal Procedure (Code). The bill defines the term to mean knowingly avoiding supervision or knowingly making the defendant's whereabouts unknown to the defendant's supervising court services officer or community correctional services officer.

The bill also adds a definition of "absconded from supervision" in a statute relating to parole. The bill defines the term to mean knowingly avoiding supervision or knowingly making the defendant's whereabouts unknown to the defendant's supervising parole officer, court services officer, or community correctional services officer.

Sureties; Delivery of a Person Arrested

The bill amends law related to sureties in the Code to state any person who is released on an appearance bond may be arrested and delivered to a custodial officer of the court by a surety or surety's designee in the county where the complaint subject to the bond was filed. Under current law, sureties seeking discharge of an appearance bond may do so in any county in the state in which the person is charged.

The bill defines "custodial officer of the court" as the sheriff or keeper of the jail in the county.

Certification of Identification

The bill expands the list of proof of identity documents accepted by the Division of Vehicles, Kansas Department of Revenue, for the issuance of a replacement driver's license to include a certification of identification issued by a court services officer. The bill specifies such certification could be issued by a supervising agency to offenders under probation supervision of such agency.

Parole and Postrelease Supervision Guidance

The bill requires the Secretary of Corrections to develop guidance for parole officers to use while supervising offenders on parole and postrelease supervision. The bill requires the guidance to include intervention responses to behavior that constitutes a violation of parole or postrelease supervision and incentive responses to compliant behavior and pro-social achievements.

Senate Sub. for HB 2183

Elections and Voting

Senate Sub. for HB 2183 amends and creates law pertaining to elections and voting, including on advance mail ballots, registered voter information reporting, assistance with the return of advance ballots, advance ballot return deadlines, the authority of the Secretary of State, duties of election officials, electioneering, and election funding. The bill also creates the crime of false representation of an election official.

Alteration of Advance Mail Ballot Postmark

The bill amends election law to make it unlawful for any person to knowingly backdate or otherwise alter a postmark or other official indication of the date of mailing of an advance mail ballot if the intent is to make the mailing date appear different from the actual date of mailing by the voter or voter's designee. A violation will carry the same criminal penalty as other violations concerning advance voting, a level 9 nonperson felony.

Signature Matching on Advance Voting Ballots

The bill prohibits a county election officer from accepting an advance voting ballot transmitted by mail unless they first verify the signature on an advance voting ballot envelope matches the signature on file in the county voter registration records. If the signature of a person on the advance voting ballot envelope does not match the signature on file, the ballot will not be counted. Verification could occur by electronic device or human inspection.

The bill specifies that such verification will not be required if the voter has a disability that prevents them from signing the ballot or that prevents them from signing the ballot in a way that matches the signature on file in the county voter registration records.

Authority to Extend the Advance Mail Ballot Deadline

The bill removes the authority of the Secretary of State (Secretary) to extend the deadline for receiving advance mail ballots. Under continuing law, the deadline for a county election office to receive advance voting ballots is the last mail delivery on the third day following an election; current law authorizes the Secretary to permit additional time.

False Representation of an Election Official

The bill creates the crime of false representation of an election official, defined as knowingly engaging in any of the following by phone, mail, email, website, or other online activity or other means of communication while not holding a position as an election official:

- Representing oneself as an election official;

- Engaging in conduct that gives the appearance of being an election official; or
- Engaging in conduct that would cause another person to believe a person engaging in such conduct is an election official.

The bill defines an “election official” to mean the Secretary, any employee of the Secretary, any county election commissioner or county clerk, any employee of any county election commissioner or county clerk, or any other person employed by a county election office.

False representation of an election official will be a level 7 nonperson felony.

Registered Voter Reporting Requirements

The bill requires the Secretary to publish the following information on the official website of the Secretary each month:

- The total number of registered voters in each county;
- The total number of registered voters in each county who have been identified by the county election office as having mail that is undeliverable and the number of such voters as a percentage of all registered voters in the county; and
- The total number of registered voters for each political party.

The bill requires the Secretary, on the tenth day prior to any election, to publish on the official website of the Secretary, the total number of registered voters in each voting precinct, including the total number of such registered voters affiliated with each political party on the official website of the Secretary.

Delivering or Assisting with Advance Voting Ballots

The bill prohibits any person from delivering an advance voting ballot on behalf of another person, unless the person submits an accompanying written statement at the time of delivery, signed by both the voter and the person delivering the ballot. The bill specifies that only the person delivering such ballot could deliver the written statement.

The bill requires the statement to be on a form established by the Secretary containing:

- A sworn statement from the person delivering the ballot affirming they have not exercised undue influence on the voting decision of the voter, nor delivered more than ten advance voting ballots on behalf of other persons during the election; and
- A sworn statement by the voter affirming the authorization of the person to deliver the ballot, and the person has not exercised undue influence on the voting decision of the voter.

The bill prohibits:

- A candidate for office from delivering an advance voting ballot on behalf of another voter unless it is on behalf of an immediate family member [Note: The candidate could return no more than ten advance voting ballots total.]; and
- An individual from delivering more than ten advance voting ballots on behalf of other voters during an election.

A violation of these provisions will be a class B misdemeanor.

The bill prohibits a candidate for office from assisting any voter in marking an advance ballot or signing an advance ballot form, except it will not be a violation for the Secretary, an election official, or county election office to assist a voter while in the performance of the duties of such office. A violation of this provision will be a class C misdemeanor.

Electioneering

The bill expands the definition of “electioneering” in continuing law to include a candidate:

- Touching or handling a voter’s ballot during the voting process, unless it is on behalf of an immediate family member;
- Distributing or counting ballots;
- Hindering or obstructing a voter from voting, entering, or leaving a polling place; or
- Hindering or obstructing an election board worker from performing election duties.

The new electioneering provisions will not apply to the Secretary, an election official, or county election office.

Under continuing law, electioneering is a class C misdemeanor.

Transparency in Revenues Underwriting Act

The bill creates the Transparency in Revenues Underwriting Act (Act), prohibiting election officials from knowingly accepting moneys, directly or indirectly, for any expenditures related to conducting, funding, or facilitating election administration.

The bill will not apply to:

- Acts of appropriation;
- Any moneys collected by an election official from the payment of fees or assessed costs;
- Any monetary campaign contributions for any candidate for the office of county clerk; or
- Moneys otherwise provided by law.

A violation of the Act is a level 9 nonperson felony.

HB 2332

Advance Voting and Election Laws, Election Tampering; Temporary Vacancy Appointment Process

HB 2332 creates and amends law concerning addresses maintained for registered voters, solicitation of advance voting ballot applications, alteration of election laws, and the crime of election tampering.

The bill establishes a process for the handling of temporary vacancies created by officers or employees of the State or political subdivisions of the State due to military service.

Addresses Maintained for Registered Voters

The bill requires each county election officer to maintain a residential address and mailing address for each registered voter if the mailing address is different from the residential address.

The bill requires the residential address of a registered voter to correspond to a physical location where the voter resides and not be a post office box or other address that does not correspond to a physical location that can be occupied. If the residential address does not meet these requirements, the voter is not validly registered.

The bill requires this information to be recorded in any electronic database maintained by each county election officer.

Solicitation of Advance Voting Ballot Applications

The bill requires any individual who solicits by mail a registered voter to file an application for an advance voting ballot, and in such mailing includes an application for an advance voting ballot, to include in such mailing:

- The name of the individual or organization causing such solicitation to be mailed;
- The name of the president, chief executive officer, or executive director, if an organization;
- The address of such individual or organization; and
- The statement: “Disclosure: This is not a government mailing. It is from a private individual or organization.”

The bill requires all such information to be included on both the exterior of the mailing and on each page contained within the mailing (except on the application for the advance voting ballot) in a clear and conspicuous label in 14-point or larger font.

The bill requires the advance voting ballot application included in such a mailing to:

- Be the official application for advance voting ballot by mail provided by the Secretary of State;
- Not have any portion of such application form completed prior to mailing; and
- Contain an envelope addressed to the appropriate county election office for the mailing of such application.

The bill prohibits the person mailing the application to the voter from directing the completed application be returned to such person.

The bill provides a violation of such requirements is a class C nonperson misdemeanor.

The bill exempts from such requirements the Secretary of State, any election official, county election offices, and the official protection and advocacy for voting access system for the State as provided in the Help America Vote Act of 2002, or any other entity required by federal law to provide information concerning elections and voting procedures. [Note: The Disability Rights Center of Kansas is the designated protection and advocacy system in Kansas.]

Additionally, the bill prohibits any person not a resident of Kansas or domiciled in Kansas from mailing or causing to be mailed an application for an advance voting ballot. The bill provides individuals may file a complaint with the Attorney General alleging a violation of this provision; such complaint must include the name of the person alleged to have violated this provision. The bill requires the Attorney General to investigate any allegations of violations under this provision and permits an action to be filed against any person found to have violated this provision. The bill provides any person who violates this provision is subject to a civil penalty of \$20, and each mailing of an application for an advance voting ballot constitutes a separate violation.

These provisions of the bill become effective January 1, 2022.

Alteration of Election Laws

The bill creates law to prohibit the Governor, the Executive Branch, and the Judicial Branch from altering election laws.

The bill requires approval from the Legislative Coordinating Council prior to the Secretary of State entering into consent decrees with any court. The bill specifies that it could not be construed to limit or otherwise restrict the judicial power of the state government in the exercise of any of its constitutional powers.

The bill contains a severability clause regarding these provisions.

Election Tampering

The bill expands the crime of election tampering to include:

- Changing or attempting to change, alter, destroy, or conceal any vote cast by paper ballot or computer;
- Changing or attempting to change any vote by manipulating computer hardware or software, election machines, wireless or cellular transmissions, or vote tabulation methods; or
- Knowingly producing false vote totals.

The bill clarifies the crime of election tampering by making or changing any election record does not include making or changing any election record by a person who is lawfully carrying out an election duty.

7/12/21