



2022 LEGISLATIVE CHANGES TO THE KSGA AND RELATED CRIMINAL LAW

In the 2022 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.

SB 84

Sports Wagering

House Sub. for Sub. for SB 84 amends the Kansas Expanded Lottery Act (KELA) concerning the conducting of sports wagering operations by lottery gaming facilities. The bill adds new sections to KELA that are a part of and supplemental to the Kansas Lottery Act (KLA). The bill also amends the Kansas Parimutuel Racing Act and authorizes operation of historical horse race machines.

Sports Wagering Operations

The bill authorizes the Lottery to offer sports wagering in accordance with the KLA and KELA; and through one or more lottery gaming facility managers (managers) who have contracted with the Lottery under KELA to manage sports wagering on behalf of the Lottery, including, but not limited to, sports wagering through an interactive sports wagering platform and the use of any such licensed interactive sports wagering platforms (platform) at the primary facility of a professional sports team pursuant to a marketing agreement entered into between the gaming manager and the professional sports team; and through one or more platforms including the use of any such platform at the primary facility of a sporting facility pursuant to a marketing agreement entered into between the Lottery and the facility.

The bill limits each sports wagering manager to three interactive sports wagering platforms that must be approved by the executive director of the Lottery (Lottery Director), and wagering offered through a platform can be offered only as approved by the Lottery in accordance with KELA.

Misuse of Nonpublic Sports Information

The bill defines the crime of misuse of nonpublic sports information as placing, or causing to be placed, a bet or wager on a sports contest based on material nonpublic sports information relating to such bet or wager and establishes the crime as a severity level 5 nonperson felony.

The bill defines “on the basis of material nonpublic sports information” to mean the person placing the bet or wager, or causing such bet or wager to be placed, was aware of the material nonpublic information relating to such bet or wager when the person placed or caused the wager to be placed.

Sports Bribery and Tampering with a Sports Contest

The bill adds match fixing as a sports bribery offense and classifies it as a severity level 5 nonperson felony.

The bill amends law concerning the crime of tampering with a sports contest to raise the classification of the crime to a

severity level 8 nonperson felony from a severity level 9 nonperson felony.

SB 150

Legal Advertising; Protected Health Information

SB 150 creates law related to legal advertising and the use of protected health information to solicit individuals for legal services.

Requirements for Legal Advertisement

The bill creates a statutory section stating that a person engaging in legal advertisement within Kansas is required to:

- Disclose, at the outset of the advertisement, that “This is a paid advertisement for legal services”.
- Not present an advertisement as a “medical alert,” “health alert,” “consumer alert,” “public service announcement,” or similar terms;
- Not display the logo of a federal or state governmental agency in a manner that suggests affiliation with or the sponsorship of that agency;
- Not use the word “recall” when referring to a product that has not been recalled by a governmental agency or through an agreement between a manufacturer and governmental agency;
- Identify the sponsor of the advertisement;
- Indicate the identity of the attorney or law firm that will represent clients, or how cases will be referred to attorneys or law firms that will represent clients;
- If the advertisement is soliciting clients who may allege an injury from a U.S. Food and Drug Administration (FDA)-approved prescription drug, include the following warning: “Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor’s advice can result in injury.”; and
- If the advertisement is for a lawsuit soliciting clients who may allege an injury from a FDA-approved prescription drug or medical device or from a medical device substantially equivalent to an approved medical device, disclose that the drug or medical device remains approved by the FDA, unless the product has been recalled or withdrawn.

The bill requires any words or statements that must appear in an advertisement to be presented clearly and conspicuously, and written disclosures to be clearly legible. If such disclosures are televised or displayed electronically, the bill requires them to be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer. If an advertisement contains spoken disclosures, the bill requires such disclosures to be plainly audible and clearly intelligible.

SB 300

Kansas Racketeer Influenced and Corrupt Organization Act— Identity Theft or Identity Fraud

Sub. for SB 300 amends definitions in the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act), as follows.

The bill adds to the definition of “covered person” a person who has engaged in identity theft or identity fraud. The bill also adds identity theft or identity fraud to the list of crimes for which committing, attempting, or conspiring to commit or

soliciting, coercing, or intimidating another person to commit a misdemeanor or felony violation constitutes “racketeering activity” under the Kansas RICO Act.

SB 366

Amendments to the Kansas Offender Registration Act

SB 366 creates a mechanism to seek relief from the Kansas Offender Registration Act (KORA) for certain drug offenders. It also requires KORA registration for certain convictions of breach of privacy and for convictions of internet trading in child pornography.

Relief from KORA Registration for Certain Drug Offenders

The bill allows a drug offender to file a verified petition for relief from registration requirements if the offender has registered for a period of at least five years after parole, discharge, release, conviction, or adjudication. Time spent in incarceration, or time during which the offender does not substantially comply with KORA requirements, does not count toward the five-year duration of the registration period.

An offender who must register due to an out-of-state conviction or adjudication is not eligible to apply for relief under the bill unless that jurisdiction no longer requires the offender to file. The bill requires the court to order relief from registration requirements if the offender shows by clear and convincing evidence that:

The offender has not been convicted or adjudicated of a felony, other than a violation of KORA, within the five years immediately preceding the filing of the petition, and no proceedings involving any such felony are presently pending or being instituted against the offender; the offender’s circumstances, behavior, and treatment history demonstrate that the offender is sufficiently rehabilitated to warrant relief; and registration of the offender is no longer necessary to promote public safety.

If the court denies a petition, the bill prohibits the offender from filing another petition until three years have elapsed, unless the court orders a shorter time period. The bill requires successful petitioners to be removed from the offender registry and the Kansas Bureau of Investigation website, and relieves such petitioners from compliance with registration requirements. The bill creates an exception to allow offenders who have successfully been removed from the offender registry to petition for expungement of that offense and allows an offender to combine a petition for relief from registration requirements with a petition for expungement, if the offense is otherwise eligible for expungement.

Offender Registration for Breach of Privacy and Internet Trading in Child Pornography

The bill amends the definition of “sex offender” in the KORA to include any person who is convicted of breach of privacy by the following means: installing or using a concealed camcorder, motion picture camera, or photographic camera of any type to secretly videotape, film, photograph, or record, by electronic or other means, another identifiable person under or through the clothing being worn by that other person or another identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which that other person has a reasonable expectation of privacy; disseminating or permitting the dissemination of any videotape, photograph, film, or image obtained in violation of the above provision; or disseminating any videotape, photograph, film, or image of another identifiable person 18 years of age or older who is nude or engaged in sexual activity and under circumstances in which such identifiable person had a reasonable expectation of privacy, with the intent to harass, threaten, or intimidate such identifiable person, and such identifiable person did not consent to such dissemination.

The bill specifies the definition of “offender” in KORA (to require registration) would not include a person adjudicated as a juvenile offender for the above acts. The bill adds convictions of breach of privacy under the above provisions to those crimes for which an offender must register under KORA for 15 years. The bill amends the definition of “sexually violent crime” in KORA to include the crimes of internet trading in child pornography and aggravated internet trading in child pornography. The bill requires an offender to register under KORA for a period of 25 years if convicted of internet trading in child pornography or aggravated internet trading in child pornography if the victim is more than 14 years of age but less than 18 years of age. The bill requires an offender to register under KORA for such offender’s lifetime if convicted of aggravated internet trading in child pornography if the victim is less than 14 years of age.

SB 367

Custody and Disposition of Property Seized by Law Enforcement

SB 367 makes various amendments to the statute governing custody and disposition of property seized by law enforcement, as follows.

The bill specifies that seized property shall be returned to its rightful owner or disposed of in accordance with the statute if no criminal charges are filed or prosecution is declined. The bill clarifies the procedure to be followed for filing a copy of the receipt provided when property is seized under a search warrant and allow for electronic filing of the receipt.

The bill allows a sheriff to designate someone to hold a sale of unclaimed property. The bill amends a provision regarding disposition of a seized weapon when the individual from whom the weapon was seized is not convicted to clarify that, upon verifying whether the weapon is stolen, if the weapon is stolen or was seized from an individual the agency knows is not the owner of the weapon, the agency shall notify the owner of the weapon that the weapon may be retrieved.

SB 408

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 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 the residency of the defendant; the ability of the defendant to travel to the supervision office from the defendant's residence, place of employment, and school; the resources for residential and nonresidential sanctions or rehabilitative treatment available from each supervision entity or agency; and the 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.

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.

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). 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.

SB 483

Theft or Criminal Damage to Remote Service Units

SB 483 amends the crimes of theft and aggravated criminal damage to property to address theft or criminal damage to remote service units, as defined by the bill.

The term "remote service unit" has the same definition as in the Kansas Banking Code and specifically includes, but is not limited to, automated cash dispensing machines and automated teller machines (ATMs). The term is added to the definition of "value" contained in the theft statute.

The bill also amends the crime of aggravated criminal damage to include criminal damage to property where the damage exceeds \$5,000 and is committed with the intent to obtain currency upon a remote service unit, as defined above.

HB 2109

Charitable Privacy Act; KORA Exception Continuations

HB 2109 enacts the Charitable Privacy Act (Act) and continues in existence several exceptions in the Kansas Open Records Act (KORA).

Charitable Privacy Act

The Act defines "personal information" to mean any list, record, register, registry, roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, or volunteer of, or donor of financial or nonfinancial support to, a nonprofit organization.

The Act defines "nonprofit organization" to mean an organization exempt from federal income taxation pursuant to Section 501(c) of the Internal Revenue Code; an organization that has submitted an application with the Internal Revenue Service for a Section 501(c) exemption; or an organization that is a not-for-profit business entity organized under the Kansas General Corporation Code.

The Act defines "public agency" to mean the state or any political or taxing subdivision of the state, or any office, agency, or instrumentality thereof.

The Act prohibits a public agency from requiring an individual or a nonprofit organization to provide the agency with personal information or compelling the release of personal information; releasing or publicly disclosing personal information in the possession of the agency; or requesting or requiring a current or prospective contractor or grant recipient to provide the public agency with a list of nonprofit organizations to which the contractor or grantee has provided financial or nonfinancial support.

The Act provides that a person alleging a violation of its provisions may bring a civil action for injunctive relief or damages, and damages awarded are not less than \$7,500 for each violation of the Act's provisions. The court is allowed to award reasonable attorney fees and costs to the complainant when the court determines such award is appropriate.

A person who knowingly violates the Act's provisions is guilty of a class C nonperson misdemeanor.

HB 2138

Elections and Voting

Senate Sub. for HB 2138 amends and creates law pertaining to elections and voting, including voter registration, election audits, distinctive watermarks on paper ballots, electronic or electromechanical voting systems, electronic poll books, an affidavit system for transferring ballots, duties of the Secretary of State (Secretary) and election officials, electronic poll book fraud, exemptions from election crimes for poll workers, and providing electronic election results.

Affidavit System

The bill requires the Secretary, in consultation with county election officers, to develop an affidavit system to be utilized for the transfer of ballots. The bill requires each person who handles ballots to sign an affidavit listing, if applicable, the number of blank ballots, spoiled ballots, provisional ballots, number of counted ballots, number of advanced ballots in envelopes, name of the person to whom such ballots were delivered; and location of where the ballots were delivered.

The affidavit system developed by the bill applies to all ballots received, handled, and collected by county election offices prior to, on, and after the date of an election. The affidavit system will operate in conjunction with statutory provisions regarding transporting, preserving, and destroying ballots and election records.

Violations of the bill include altering any information provided in an affidavit or providing false information in an affidavit with the intent to hinder, prevent, or defeat a fair election. Such violations constitute a severity level 9 nonperson felony.

Assisting Voters in Marking or Signing Advanced Voting Ballots

The bill amends law to specify a county election officer assisting voters with marking or signing an advance ballot as part of the duties of the county election office would not be a violation of the bill. The bill also adds an exemption to a prohibition on a candidate for office similarly assisting a voter for candidates for office employed by a county election office who are assisting voters in marking or signing such voters' advance voting ballots as employees of that office. The exemption does not apply if the candidate's name appears on the ballot being marked or signed.

Confirmation Notices

The bill allows a county election officer to remove a registered voter from the registration list if such registrant has had no election-related activity for any four-calendar-year period and the confirmation notice sent by the county election officer is returned as undeliverable.

The bill defines "no election related activity" to mean such registrant has not voted, attempted to vote, requested or submitted an advance ballot application, filed an updated voter registration card, signed a petition required by law to be verified by the county election officer or the Secretary, or responded to any official election mailing transmitted by the county election office.

Crime of Electioneering

The bill adds exemptions from the crime of electioneering by a candidate for any county election officer (under continuing law, this exemption also applies to the Secretary and election officials); a candidate for precinct committeeman or committeewoman who is employed by a county election office; and engaged in the performance of such employee's duties; and a candidate for any office, not including candidates for Secretary of State, any election official or any county election officer, or precinct committeeman or committeewoman, who is employed by a county election office; engaged in the performance of such employee's duties; and not appearing as a candidate for office on any ballot such employee touches, handles, distributes, or counts.

In regard to electioneering, the bill defines "candidate" to mean an individual who has declared their candidacy or has been nominated for elected office in the election for which the individual is charged with having violated the electioneering provisions of the bill.

Audit of Elections Within One Percent

Continuing law requires, for an election to be certified, a manual audit or tally of each vote cast in an election, regardless of voting method, in one percent of all precincts, with a minimum of one randomly selected precinct per county, to be conducted by a sworn election board.

The bill amends law to require such an audit to be conducted in any even-numbered year federal, statewide, or state legislative race where the margin of victory is within one percent. The county election officer will be required to audit ten percent of all county precincts, with a minimum of one precinct, in the same manner as existing audit requirements. The precincts audited will be in addition to precincts audited for any election to be certified.

Canvass Abstracts Available for Review

The bill requires, upon the publication of the notice of the time and location of the audit required by the bill, that the abstracts of original canvass be made available for review by any authorized poll agent. The bill requires the abstracts from all precincts to be made available for review, not just the abstracts of precincts subject to the audit.

Elections Results—State Board of Canvassers

The bill requires each county election officer to provide precinct-level election results electronically in machine-readable format for all federal offices, statewide offices, legislative offices, and local offices not later than 30 days after the final canvass of general election results.

Electronic Poll Books

The bill defines "electronic poll book" as a list of registered voters for a particular precinct or polling location that may be transported to a polling location and on which each voter may sign their signature. The bill clarifies "electronic poll book" would not include automatic tabulating equipment or data processing equipment, including a direct recording electronic system, that are components of an electronic or electromechanical voting system.

Board of County Commissioners and County Election Officer Provisions

The bill permits a board of county commissioners (board) and county election officer (officer) to provide electronic poll books to be used at voting places, or for advance voting, at national, state, county, township, city, and school primary and general elections and in question submitted elections. Such board and officer are permitted to issue bonds to finance and pay for the purchase, lease, or rental of such electronic poll books. Such board and officer are permitted to adopt, experiment with, or abandon any electronic poll book authorized for use in the state. If the Secretary rescinds approval of any electronic poll book, the board and officer will be required to abandon such electronic poll book until changes required by the Secretary are made; if such changes cannot be made, the abandonment would be permanent.

Prohibitions

The bill prohibits, beginning July 1, 2022, the board and officer from purchasing, leasing, or renting any electronic poll book, unless such poll book has been certified by the Secretary. The bill also prohibits the operation of any electronic poll book with network connectivity that does not meet security standards established by the Secretary.

Secretary of State Responsibilities

The bill requires the Secretary to examine and approve the kinds or makes of electronic poll books; no kind or make of electronic poll book will be permitted to be used at any election until it receives certification by the Secretary.

Sale of Electronic Poll Books

The bill permits any person, firm, or corporation that desires to sell electronic poll books to political subdivisions in the state to request in writing for the Secretary to examine such poll books. The bill requires any such written request to include a certified check for \$250 to defray costs for the Secretary to provide the examination.

Electronic or Electromechanical Voting Systems

The bill requires that any electronic or electromagnetic voting system approved by the Secretary shall not have the capability of, or any component thereof shall not have the capability of, connecting to the internet or any other communications or computer network. The bill specifies such networks include, but are not limited to, a local area network, wireless network, cellular network, or satellite network, or the use of Bluetooth or any other wireless communications technology.

Use of Electronic Poll Books and Electronic or Electromechanical Voting Systems

The bill requires the board and officer to provide the number of units of electronic or electromechanical voting systems or electronic poll books as necessary to equip voting places, if such board and officer have determined a kind or make of such voting systems or poll books shall be used in the county.

If the Secretary has rescinded the approval of any electronic poll book, the bill prohibits any tax from being levied, or any moneys being paid from any fund, for the purchase, lease, or rent or such poll book. [*Note:* This adds to the prohibition in KSA 25-4407 for electronic or electromechanical voting systems.]

The bill adds electronic poll books to electronic or electromechanical voting systems as equipment for which the board must provide for storage and for which the officer must be in complete charge of its safekeeping, repair, and delivery. The bill requires the officer to see that such poll books, in addition to voting systems, are returned to their storage after any election.

The bill requires election judges before, during, and after the operation of the polling place, to make all electronic or electromechanical voting systems and vote tabulating equipment available to any candidate or any authorized poll agent for review to ensure there is no connectivity to the internet or to any other communications or computer network.

Testing of Vote Tabulation Equipment

To law requiring officers to have testing conducted of automatic tabulating equipment within five days prior to the date of an election, the bill adds a requirement for public notice of such test to be published on the county website, if the county has a website.

The bill amends law requiring such testing to be repeated after the completion of the canvass to require such repeat testing to be conducted within five business days after the completion of the canvass.

Electronic Poll Book Fraud

The bill expands the current crime of electronic or electromechanical voting system fraud to include electronic poll book fraud, defined as being in unlawful or unauthorized possession of electronic poll books; or intentionally tampering with, altering, disarranging, defacing, impairing, or destroying any electronic poll book, or component thereof.

Electronic poll book fraud is a severity level 9 nonperson felony.

Optical Scanning Equipment

To law requiring officers to have testing conducted of optical scanning equipment within five days prior to the date of an election, the bill adds a requirement for public notice of such test to be published on the county website, if the county has a website.

The bill amends law requiring such testing to be repeated after the completion of the canvass to require such repeat testing to be conducted within five business days after the completion of the canvass.

The bill prohibits any optical scanning equipment and systems using optical scanning equipment approved by the Secretary from having the capability of, or any component having the capability of, being connected to the internet or any other communications or computer network, including a local area network, wireless network, cellular network, satellite network, or using Bluetooth or any other wireless communications technology.

HB 2299

Fingerprinting for Criminal History Record Checks; Surveillance by KDWP; Law Enforcement Officer Jurisdiction; Search Warrant Time Limits; Disclosure of Information Regarding Children in Need of Care

HB 2299 creates and amends law related to fingerprinting for criminal history record checks, surveillance by Kansas Department of Wildlife and Parks employees, jurisdiction of law enforcement officers, the time period within which a search warrant must be executed, and disclosure of information to law enforcement agencies regarding a child alleged or adjudicated to be a child in need of care (CINC).

Fingerprinting for Criminal History Record Check—Rap Back Programs

The bill creates law requiring an applicant, employee, or volunteer subject to a criminal history record check to provide to the requesting authorized entity written consent to obtain such person's fingerprints to conduct a criminal history record check and participate in the Rap Back Program for the purpose of determining suitability or fitness for a permit, license, employment, or volunteer service.

The bill requires an authorized entity to notify each such person that fingerprints will be retained by the Kansas Bureau of Investigation (KBI) and the Federal Bureau of Investigation for all current and future purposes and uses authorized for fingerprint submission and when fingerprints will be enrolled in the Rap Back Program.

The bill specifies a criminal history record check may only be completed for the purpose for which the check was requested and requires submission of a new set of fingerprints for any additional record checks. The bill prohibits a person acquiring the records of or relating to fingerprints, or any information concerning any individual, from disclosing such information to any person who is not authorized to receive such information, and any intentional disclosure of such information is a class A nonperson misdemeanor.

Surveillance by Kansas Department of Wildlife and Parks Employees

The bill prohibits KDWP employees who are authorized to enforce the laws of the State from conducting surveillance on private property unless authorized pursuant to a lawfully issued warrant, court order, subpoena, the *U.S. Constitution*, or an exception to the search warrant requirement specified by the bill. The bill specifies that the above prohibition on

certain KDWP employees does not apply to any activities of an employee of KDWP when the purpose of the surveillance is to locate and retrieve a missing person.

Powers and Authority of Law Enforcement Officers Without Statewide Jurisdiction

The bill amends a statute governing jurisdiction of various law enforcement officers to provide a new subsection consolidating and clarifying the ability of law enforcement officers who do not otherwise have statewide jurisdiction to exercise the powers and authority of law enforcement officers anywhere when a request for assistance has been made by law enforcement officers from the area for which assistance is requested; in fresh pursuit of a person; transporting persons in custody to an appropriate facility, wherever such facility may be located; and investigating a crime that occurred within the law enforcement officer's jurisdiction, with appropriate notification to and coordination with a local law enforcement agency with jurisdiction where the investigation is to be conducted.

Powers and Authority of Law Enforcement Officers Outside Their Jurisdiction

In addition to the authority described above, the bill provides that law enforcement officers may exercise the powers and authority of law enforcement officers when outside their statutory jurisdiction when an activity is observed leading the officer to reasonably suspect a person is committing, has committed, or is about to commit a crime and reasonably believe that a person is in imminent danger of death or bodily injury without immediate action, subject to conditions specified by the bill.

Search Warrant Time Limitations

The bill amends the Code of Criminal Procedure to extend, from 96 hours to 240 hours, the time period within which a search warrant must be executed after it is issued.

Disclosure of CINC Information to Law Enforcement Agencies

The bill amends a law governing access, exchange, and disclosure of information in the Revised Kansas Code for Care of Children to require the Secretary for Children and Families to disclose confidential agency records of a child alleged or adjudicated to be a child in need of care to the law enforcement agency investigating the alleged or substantiated report or investigation of abuse or neglect, regardless of the disposition of such report or investigation.

The bill requires the records to include, but not be limited to any information regarding such report or investigation; records of past reports or investigations concerning such child and such child's siblings and the perpetrator or alleged perpetrator; and the name and contact information of the reporter or persons alleging abuse or neglect and case managers, investigators, or contracting agency employees assigned to or investigating such report. The bill states that such records shall only be used for the purposes of investigating the alleged or substantiated report or investigation of abuse or neglect. The bill clarifies that a law enforcement agency investigating or receiving a report of a child who is alleged or adjudicated to be in need of care may freely exchange information and the above-described records with persons or entities specified in continuing law. The bill also adds an investigating law enforcement agency to the lists of persons or entities with access to the official and social files of a CINC proceeding.

HB 2361

Specialty Court Programs; Douglas County Law Library Board of Trustees

Senate Sub. for HB 2361 creates law requiring the Kansas Supreme Court (Court) to adopt rules for establishment and operation of specialty court programs within the state. The bill allows the chief judge of a judicial district to establish a specialty court program in accordance with the rules adopted by the Court.

Specialty Court Programs

The bill defines “specialty court” to mean a district court program that uses therapeutic or problem-solving procedures to address underlying factors that may be contributing to a person’s involvement in the judicial system, including, but not limited to, mental illness or drug, alcohol, or other addictions. Procedures may include treatment, mandatory periodic testing for prohibited drugs or other substances, community supervision, and appropriate sanctions and incentives.

Specialty Court Funding Advisory Committee

The bill establishes the Specialty Court Funding Advisory Committee (Committee) within the Judicial Branch.

The bill requires the Committee to evaluate resources available for assessment and treatment of people assigned to specialty courts or for the operation of specialty courts; secure grants, funds, and other property and services necessary or advantageous to facilitate the operation of specialty courts; recommend to the Judicial Administrator the allocation of resources among the various specialty courts operating within the state; and recommend legislation and rules to aid in development of specialty courts.

Specialty Court Funding

The bill provides that any judicial district, local government, or the Judicial Branch is not prohibited from directly applying for, receiving, and retaining funding to facilitate the operation of specialty courts. The bill does not require funds received by a judicial district or local government to be remitted to the State Treasurer.

Specialty Court Resources Fund

The bill creates the Specialty Court Resources Fund (Fund) in the State Treasury, to be administered by the Judicial Administrator. The bill directs all expenditures from the Fund to be for the purpose of operating specialty court programs established pursuant to the bill, including administrative costs related to such programs. The bill specifies that all expenditures from the Fund will be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Judicial Administrator or designee.

The bill further specifies the funds acquired through appropriations, grants, gifts, contributions, and other public or private sources that are designated for specialty court operations will be remitted to the State Treasurer in accordance with continuing law, and upon receipt of each remittance, the State Treasurer will deposit the entire amount into the State Treasury to the credit of the Fund.

Completion of a Specialty Courts Program

The bill provides that a sentence may be reduced or modified for a person sentenced to participate in a specialty courts program who successfully completes the program. The bill further clarifies that the bill shall not be construed to authorize a judge to impose, modify, or reduce a sentence below the minimum sentence required by law.

The bill makes a corresponding change to a sentencing statute to allow a judge to order a person who has been found guilty of a crime to participate in the specialty court program, as provided for in the bill.

Expungement

The bill provides that, subject to certain exceptions in continuing law, any person who has completed the requirements of a specialty court program established pursuant to the bill may petition the district court for expungement of the conviction and related arrest records. The bill allows the court to waive all or part of the docket fee imposed for filing such a petition. The bill amends law that directs a court to order a petitioner’s arrest record, conviction, or diversion expunged and to expunge such records if no felony proceeding is presently pending or being instituted against the petitioner. Continuing

law also requires that the circumstances and behavior of the petitioner warrant expungement and the expungement is consistent with the public welfare. The bill makes a technical amendment to specify certain restitution provisions of continuing law are procedural in nature and are to be applied retroactively.

HB 2377

Driving Under the Influence; Operating an Aircraft Under the Influence; Diversions; Commercial Driver's Licenses

HB 2377 creates and amends law related to operating an aircraft under the influence, driving under the influence (DUI), diversions, and commercial driver's licenses.

Operating an Aircraft Under the Influence

The bill creates the crime of operating an aircraft under the influence, provides for testing related to the crime, and repeals previous statutes prohibiting the operation of aircraft under the influence of alcohol or drugs and providing for related testing.

The bill defines "operating an aircraft under the influence" as operating or attempting to operate any aircraft within Kansas while:

- The alcohol concentration in the person's blood or breath, as shown by any competent evidence, including other competent evidence, is 0.04 or more;
- The alcohol concentration in the person's blood or breath, as measured within four hours of the time of operating or attempting to operate an aircraft, is 0.04 or more;
- Under the influence of alcohol to a degree that renders the person incapable of safely operating an aircraft;
- Under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely operating an aircraft; or
- Under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely operating an aircraft.

The offense is a class A nonperson misdemeanor, unless it occurs while the person convicted is prohibited from operating an aircraft by a court order pursuant to the bill or because the person's pilot license is revoked or suspended by order of the Federal Aviation Administration for a prior alcohol or drug-related conviction, in which case it is a severity level 6 nonperson felony.

For misdemeanor offenses, the following provisions apply:

- On a first conviction, the person convicted shall be sentenced to no less than 48 consecutive hours nor more than 6 months' imprisonment or, in the court's discretion, 100 hours of public service, and fined not less than \$750; and
- On a second or subsequent conviction, the person convicted shall be sentenced to no less than 90 days nor more than 1 year's imprisonment and fined not less than \$1,250, and the following conditions would apply:
- As a condition of any probation granted, the person shall be required to serve at least 120 hours of confinement, including at least 48 hours' imprisonment. The remainder may be served by a combination of imprisonment, work release (if the work release program requires the person to return to confinement at the end of each day), or a house arrest program;
- The person will receive hour-for-hour credit for time served in work release or house arrest until the minimum 120 hours' confinement is met. If required to serve more than the minimum 120 hours' confinement, the person will receive day-for-day credit for time served once the minimum 120 hours' confinement is met, unless

otherwise ordered by the court; and when in work release, the person will only be given credit for time served in confinement at the end of and continuing to the beginning of the person's work day. When under house arrest, the person will be monitored by an electronic monitoring device verifying the person's location, and the person may only be given credit for the time served within the boundaries of the person's residence.

For felony offenses, the following provisions apply:

- As a condition of any probation granted, the person shall be required to serve at least 30 days of confinement, including at least 48 consecutive hours' imprisonment. The remainder may be served by a combination of imprisonment, work release (if the work release program requires the person to return to confinement at the end of each day), or a house arrest program;
- The person will receive hour-for-hour credit for time served in work release or house arrest for the first 240 hours of confinement so served and will then receive day-for-day credit for time so served, unless otherwise ordered by the court; and
- When in work release, the person will only be given credit for time served in confinement at the end of and continuing to the beginning of the person's work day. When under house arrest, the person will be monitored by an electronic monitoring device verifying the person's location, and the person may only be given credit for the time served within the boundaries of the person's residence.

As part of the judgment of conviction, the court must order the person convicted not to operate an aircraft for any purposes for six months from the date of final discharge from the county jail, or the date of payment or satisfaction of a fine, whichever is later, or one year from such date on a second conviction. If the court suspends the sentence and places the person on probation, the court must order as a condition of probation that the person not operate an aircraft for any purpose for a period of 30 days from the date of the order on a first conviction or 60 days from the date of the order on a second conviction. In determining the number of occurrences of the offense, a conviction will include entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging commission of operating an aircraft under the influence, and it will be irrelevant whether an offense occurred before or after conviction or diversion for a previous offense.

If a person is charged with a violation of the offense involving drugs, the fact that the person is or has been entitled to use the drug under Kansas law shall not constitute a defense against the charge.

Related Testing Provisions

The bill authorizes a request to a person operating or attempting to operate an aircraft in Kansas to submit to one or more tests of the person's blood, breath, urine, or other bodily substance to determine the presence of alcohol or drugs, administered at the direction of a law enforcement officer. The procedural requirements and related provisions reflect previous law for such testing for the crimes being repealed by the bill or in the context of DUI offenses, except for certain oral and written notice requirements in the DUI procedure.

Similarly, the bill includes provisions allowing a law enforcement officer to request a person operating or attempting to operate an aircraft in Kansas to submit to a preliminary screening of the person's breath or oral fluid, or both, if the officer has reasonable suspicion to believe the person has been operating or attempting to operate an aircraft while under the influence of alcohol, drugs, or a combination of both. The procedural requirements and related provisions reflect continuing law for such preliminary screenings in the DUI context.

DUI, Diversions, and Commercial Driver's Licenses

The bill creates and amends law related to DUI and driving a commercial motor vehicle under the influence (commercial DUI). The bill also makes additional amendments regarding diversions and commercial driver's licenses (CDLs).

Reinstatement of driver's license. The bill creates law allowing a person whose license is restricted to operating only a vehicle with an IID and who meets the conditions detailed below to request reinstatement of the person's driver's license

by submitting a request to the Division of Vehicles (Division), Kansas Department of Revenue (KDOR), in a form and manner prescribed by the Division. The Division must approve such request if all of the following conditions are met:

- The person's IID restriction period has been extended at least five years, not including any period of incarceration, beyond the initial IID period required by law due to the person's failure to provide the Division with proof of completion of the IID program;
- During the person's IID restriction period and any extension, the person has not had an alcohol or drug-related conviction or occurrence and has not been convicted of an IID circumvention offense in Kansas or any other jurisdiction;
- During the person's IID restriction period and any extension, the person has not been convicted of transportation of liquor in opened containers, purchase or consumption of alcohol by a minor, any offense listed in the statute defining a "habitual violator," or two or more moving traffic violations committed on separate occasions; and the person's driving privileges have not been revoked, suspended, canceled, or withdrawn due to another action by the Division or a court; and
- At the time of submitting the request, the person does not have any pending charges or proceedings involving any of the above violations.

Transfer of ignition interlock oversight. The bill transfers oversight of state certification of Ignition Interlock Device (IID) manufacturers and service providers from the KDOR to the Kansas Highway Patrol (KHP).

Ignition interlock device program completion. The bill removes a 90-day waiting period to apply for IID and various restrictions on driving with an IID and adds the following required conditions for a person to complete the IID program:

- The person must have no more than two standard violations and no serious violation in the 90 consecutive days prior to application for reinstatement; and
- The application must occur upon or after expiration of the applicable ignition interlock period required by law.

Reduced ignition interlock device program costs. In a statute governing approval and maintenance of IIDs, the bill removes a provision requiring each IID manufacturer to provide a credit of at least two percent of the gross program revenues in Kansas as a credit for persons qualified to obtain an IID who are indigent as evidenced by qualification and eligibility for the federal food stamp program, and adds the provisions detailed below regarding reduced IID program costs (reduced costs).

Any person whose license is restricted to operating only a motor vehicle with an IID installed may request reduced costs by submitting a request to the Division in a form and manner prescribed by the Division. The Division must review each request to determine whether the person is eligible for reduced costs. A person will be eligible for reduced costs if the person's annual household income is less than or equal to 150 percent of the federal poverty level, as defined by the bill; if the person is eligible for the food assistance, child care subsidy, or cash assistance program pursuant to KSA 39-709; or if the person is currently eligible for the Low Income Energy Assistance Program (LIEAP) as determined by the Department for Children and Families (DCF).

If the Division determines the person is eligible for reduced costs, the person must pay 50 percent of the program costs, and the manufacturer must adjust its charges accordingly.

DUI under the age of 21; IID restriction period. The bill amends the offense of DUI under the age of 21 to reduce the required IID restriction period for a first offense with a breath or blood alcohol test result of 0.02 or greater but less than 0.08 from 330 to 180 days.

Commercial DUI; Commercial Driver's Licenses

Charges and penalties. The bill clarifies that continuing limits on plea bargains for commercial DUI shall not be construed to prohibit an amendment or dismissal of any charge where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt on such charge.

The bill amends the penalties for a first conviction of commercial DUI to remove a minimum imprisonment or public service hours requirement.

The bill amends the penalties for a second conviction of commercial DUI to reorganize and clarify minimum confinement requirements. A requirement that the offender serve at least 48 hours of imprisonment is modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement. The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the section and will then receive day-for-day credit for any additional confinement imposed, unless otherwise ordered by the court.

The bill increases the penalty for a third or subsequent conviction of commercial DUI from a non-grid, nonperson felony to a severity level 6 nonperson felony, and reorganizes and standardizes minimum confinement requirements, setting the required minimum confinement as 30 days. The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and will then receive day-for-day credit for subsequent confinement, unless otherwise ordered by the court.

The bill removes postrelease supervision provisions that could conflict with the general postrelease supervision conditions that will now apply to the offense as a severity level 6 nonperson felony.

The bill gives a court discretion to waive any portion of a fine imposed for commercial DUI, except for \$250 required to be remitted to the State Treasurer and credited to the Community Correction Supervision Fund upon a showing the offender successfully completed court-ordered education or treatment.

Lifetime disqualification and other CDL amendments

The bill amends the statute governing disqualification from driving a commercial motor vehicle to specify that a continuing provision for lifetime disqualification upon a second or subsequent occurrence of certain specific offenses, test refusals, or test failures (second offense lifetime disqualification) applies to occurrences arising from two or more separate incidents occurring on or after July 1, 2003. If a person is disqualified for life under this provision, and at least one of the disqualifying incidents occurred prior to July 1, 2003, the bill will allow the person to apply to the Secretary for review of the incidents and modification of the disqualification.

The bill replaces a provision allowing the Secretary to adopt rules and regulations establishing guidelines under which a second offense lifetime disqualification may be reduced to a period of not less than ten years with a provision requiring any person with a second offense lifetime disqualification who seeks to have commercial driving privileges restored after ten years of disqualification to apply in writing to the Division.

The bill requires the Division to restore the person's commercial driving privileges if the Division determines none of the occurrences leading to lifetime disqualification included DUI or commercial DUI; the person has not had an occurrence of certain specific offenses, test refusal, or test failure during the 10-year period preceding application; the person has had no alcohol-or drug-related convictions during the 10-year period preceding the application; the person has no pending alcohol-or drug-related criminal charges; the person has had no convictions for violations that occurred while operating a commercial motor vehicle during the 10-year period preceding application; the person has successfully completed an alcohol or drug treatment or comparable program that meets or exceeds the minimum standards approved by the Kansas Department for Aging and Disability Services if any of the disqualifying offenses were drug or alcohol related; the person is no longer a threat to the public safety of Kansas. The Division may request, and the person would be required to provide, any additional information or documentation the Division deems necessary to determine the person's fitness for relicensure; the person is otherwise eligible for licensure; and the person has not previously been restored to commercial motor vehicle privileges following a prior 10-year minimum disqualification.

Any person who previously had commercial motor vehicle privileges restored pursuant to the statute will not be eligible to apply for restoration if the person receives another lifetime disqualification.

The bill adds a separate lifetime disqualification provision for any person who uses a commercial motor vehicle in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined in the provision.

The bill increases the minimum disqualification period for operating a commercial motor vehicle in violation of an out-of-service order from 90 days to 180 days for a first violation; and from one year to two years if the person has one prior violation in a separate incident within the ten years immediately preceding the current violation.

Motorized Bicycles

In the statute requiring drivers to have a valid driver's license, the bill removes a provision allowing the Division to issue a class C license valid only for the operation of motorized bicycles to persons who have had their driving privileges suspended for an offense other than commercial DUI or a second or subsequent DUI, complete a mandatory suspension period for DUI-related offenses, and submit an application and \$40 nonrefundable application fee. The bill removes a corresponding provision regarding the disposition of the application fee.

The bill specifies the continuing penalty of a class B misdemeanor for violations of the section is a nonperson misdemeanor.

DUI Charges and Penalties

The bill clarifies that continuing limits on plea bargains for DUI shall not be construed to prohibit an amendment or dismissal of any charge where the admissible evidence is not sufficient to support a conviction beyond a reasonable doubt on such charge.

The bill amends the penalties for a first conviction of DUI to remove a minimum imprisonment or public service hours requirement.

The bill amends the penalties for a second conviction of DUI to reorganize and clarify minimum confinement requirements. A requirement that the offender serve at least 48 hours of imprisonment is modified to remove requirements that this period be served consecutively and at the beginning of the overall period of confinement. The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the minimum 120 hours of confinement required by the section and will then receive day-for-day credit for any additional confinement, unless otherwise ordered by the court.

The bill increases the penalty for a third conviction if the person has a prior conviction within the preceding 10 years (not including any period of incarceration) or a fourth or subsequent conviction of DUI from a non-grid, nonperson felony to a severity level 6 nonperson felony, and accordingly removes specific imprisonment and fine requirements. The bill also amends provisions regarding imprisonment at a state facility for the felony offense and related responsibilities of a sheriff to reflect the amendment making the penalty a sentencing guidelines offense, rather than a non-grid felony. Additionally, the bill removes the felony offense from postrelease supervision provisions that could conflict with the general postrelease supervision conditions that will now apply to the offense as a felony on the sentencing grid.

The bill amends the penalties for a third conviction of DUI, a third conviction of DUI with a prior conviction within the preceding 10 years, and a fourth or subsequent conviction to reorganize and standardize minimum confinement requirements, setting the required minimum confinement as 30 days. The bill specifies that an offender shall receive hour-for-hour credit in work release or house arrest for the first 240 hours of confinement required by these provisions and will then receive day-for-day credit for subsequent confinement, unless otherwise ordered by the court.

The bill gives a court discretion to waive any portion of a fine imposed for DUI, except for \$250 required to be remitted to the State Treasurer and credited to the Community Correction Supervision Fund, upon a showing the offender successfully completed court-ordered education or treatment.

Diversion

The bill amends statutes governing consideration of diversion by city attorneys and county or district attorneys to specify a diversion agreement shall not be entered into on a complaint or traffic citation alleging a violation of the statutes governing automobiles and other vehicles (or of ordinances prohibiting the same acts), if the defendant was a commercial driver's license holder at the time of the violation or at any subsequent time prior to being considered for diversion.

These statutes also are amended to allow diversion for an alleged alcohol related offense involving a motor vehicle accident or collision that resulted in personal injury only to the defendant.

A statute prohibiting certain diversions for CDL holders is amended to prohibit a prosecuting attorney from masking or deferring imposition of judgment or allowing an individual to enter into a diversion that would prevent a commercial learner's permit or CDL holder's conviction from appearing on the Commercial Driver's License Information System (CDLIS) driver record of any violation of a state or local traffic control law that occurred in any type of motor vehicle, and this provision will apply regardless of whether the driver was convicted for an offense committed in the state where the driver is licensed or in any other state. The bill states this provision would not apply to parking, vehicle weight, or vehicle defect violations.

HB 2508

Definition of "Possession"; Elements and Severity Levels for Crime of Abuse of a Child; Appearance Bonds; Witness Testimony at Preliminary Examination; Competency Proceedings and Commitment of Certain Persons

HB 2508 amends law in the Kansas Criminal Code concerning the definition of "possession" and the elements of and severity levels for the crime of abuse of a child. It also amends law in the Kansas Code of Criminal Procedure concerning forfeiture of appearance bonds, witness testimony at preliminary examinations, and competency proceedings and commitment of certain persons.

Definition of "Possession"

The bill amends the definition of "possession" to mean "knowingly having joint or exclusive control over an item, or knowingly keeping some item in a place where the person has some measure of access and right of control."

Elements and Severity Levels for Crime of Abuse of a Child

The bill replaces the elements of the crime of abuse of a child with language stating abuse of a child is committing any of the following acts against a child under 18 years of age:

- Knowingly torturing, cruelly beating, cruelly striking, or cruelly kicking. This conduct is a severity level 5 person felony if the child is at least 6 years of age but less than 18 years of age and a severity level 3 person felony if the child is under 6 years of age;
- Knowingly inflicting cruel and inhuman corporal punishment or knowingly using cruel and inhuman physical restraint, including caging or confining the child in a space not designated for human habitation or binding the child in a way that is not medically necessary. This conduct is a severity level 5 person felony if the child is at least 6 years of age but less than 18 years of age and a severity level 3 person felony if the child is under 6 years of age;
- Recklessly causing great bodily harm, abusive head trauma, permanent disability, or disfigurement. This conduct is a severity level 4 person felony;
- Knowingly causing great bodily harm, abusive head trauma, permanent disability, or disfigurement. This conduct is a severity level 3 person felony);

- Knowingly inflicting cruel and inhuman corporal punishment with a deadly weapon. This conduct is a severity level 3 person felony; or
- Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck, or chest of the child or by blocking the nose or mouth of the child in a manner whereby death or great bodily harm may be inflicted. This conduct is a severity level 3 person felony.

Forfeiture of Appearance Bonds

The bill requires, if a defendant fails to appear as directed by the court and guaranteed by an appearance bond, the court in which the bond is deposited to issue an arrest warrant for a defendant. If the defendant is charged with a felony offense, the bill requires the sheriff to enter the warrant into the National Crime Information Center's (NCIC) index within 14 days of issuance and to notify the court if the warrant is not entered into the index.

The bill adds the following to the circumstances under which a court must direct a forfeiture to be set aside: the arrest warrant required by the above provision was not issued within 14 days of the forfeiture; a warrant that is required to be entered into the NCIC index pursuant to the above provision was not entered within 14 days of issuance, unless there is good cause shown for such failure to enter; or the defendant has been arrested outside of Kansas, and the prosecuting attorney has declined to proceed with extradition.

Witness Testimony at Preliminary Examination

The bill allows, at a preliminary examination, the defendant and the state to present witness testimony through a two-way electronic audio-video communication device.

Competency Proceedings and Commitment of Certain Persons

The bill amends provisions in the Kansas Code of Criminal Procedure regarding competency of defendants to stand trial, proceedings to determine competency, and commitment of incompetent defendants, persons found not guilty by reason of mental disease or defect and convicted defendants.

Appropriate State, County, or Private Institution or Facility

The bill defines "appropriate state, county, or private institution or facility" (appropriate facility) to mean a facility with sufficient resources, staffing, and space to conduct the evaluation or restoration treatment of the defendant. The term does not include a jail or correctional facility as a location where evaluation and restoration treatment services are provided unless the administrative head or law enforcement official in charge of the jail or correctional facility agrees that the facility has the appropriate physical and care capabilities that such services may be provided by the state security hospital or its agent or a state hospital or its agent; a qualified mental health professional, as defined in the Care and Treatment Act for Mentally Ill Persons, who is qualified by training and expertise to conduct competency restoration treatment; an individual who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the Behavioral Sciences Regulatory Board; or a physician who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the State Board of Healing Arts.

Proceedings to Determine Competency

The bill replaces language allowing a court to commit a defendant to the state security hospital or an appropriate facility for competency examination and report to the court with language allowing the court to order an evaluation to be completed by an appropriate facility to be conducted in person or by use of available electronic means while the defendant is in jail, at any secure location, or on pretrial release.

The bill replaces language allowing the court to designate certain appropriate clinics, centers, or facilities to conduct the examination with language allowing the court to designate an appropriate facility to conduct the examination and

add “any secure location” as a place where the defendant may be located.

The bill reduces the minimum number of physicians or psychologists the court may appoint to examine the defendant from two to one and clarifies the qualifications of such physicians or psychologists.

The bill clarifies the procedure and time limitation for commitment of the defendant to an institution or facility for the examination, and requires, before the expiration of the 60-day evaluation period, the professional approved by the court to examine the defendant or, if the defendant is committed for inpatient examination, the chief medical officer or head of the appropriate institution or facility to certify to the court whether the defendant is competent to stand trial.

Evaluation and Treatment of Incompetent Defendant

The bill amends provisions requiring a defendant found incompetent to stand trial to be committed for evaluation and treatment to instead require such defendant to be ordered for evaluation and treatment, conducted on an outpatient or inpatient basis, by an appropriate facility. The bill states that evaluation or restorative treatment of a defendant shall not be conducted in a jail unless the administrative head or law enforcement official in charge of the jail agrees to such evaluation or restorative treatment being conducted in such jail.

The bill allows an evaluation and treatment to be ordered to be conducted on an outpatient basis in person or by use of available electronic means while the defendant is in jail, at any secure location, on pretrial release, or in any other appropriate setting.

The bill allows outpatient evaluation and treatment at an appropriate facility to be ordered to be conducted for a defendant charged with a misdemeanor offense. For a defendant charged with a felony offense, the bill allows an inpatient commitment to the state security hospital or its agent or a state hospital or its agent, or an outpatient commitment to such facilities or agents if the defendant meets screening criteria established by the state security hospital. In ordering an inpatient commitment, the court is required to consider the defendant’s mental condition, behaviors, and the availability of outpatient evaluation and treatment options.

A provision requiring notification of the county or district attorney in the county where the criminal proceeding is pending, at the time of commitment, for the purpose of providing victim notification is moved and amended to standardize terms and reflect the new procedures provided by the bill.

A provision requiring the chief medical officer of the institution to certify to the court within 90 days of commitment whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future is amended to reflect the new evaluation and treatment options provided by the bill. The bill requires the court to set a hearing within 21 days after such certification, unless exceptional circumstances warrant delay, for the purpose of determining competency.

If such probability does exist, the bill expands the places the court may order the defendant to remain to include jail, a secure location, on pretrial release, or at an appropriate setting. If such probability does not exist, the bill requires the prosecuting attorney where the charges are filed (if the evaluation and treatment was not provided by the state security hospital or its agent or a state hospital or its agent), or the prosecuting attorney or the Secretary for Aging and Disability Services (if the evaluation and treatment was provided by the state security hospital or its agent or a state hospital or its agent), to commence involuntary commitment proceedings, and requires such proceedings to commence within 21 days of receipt of the certification, unless exceptional circumstances warrant delay. The bill implements similar requirements if a defendant, who was found to have had a substantial probability of attaining competency, has not attained competency within six months from the date of the original commitment.

The bill requires, rather than allows, a defendant committed to a public institution or facility under these provisions who is thereafter sentenced for the crime charged at the time of commitment to be credited with all of the time during which the defendant was committed and confined.

If the defendant is ordered or has met criteria to receive an outpatient evaluation and treatment, and the chief medical

officer of the appropriate institution or facility determines that the defendant's mental health condition or behaviors warrant terminating outpatient treatment services and commencing inpatient evaluation and treatment, the chief medical officer or head of the facility or institution is required to provide a report to the court within ten days after outpatient treatment is terminated. The bill provides content and procedural requirements for such report, including procedures for the court to order the sheriff of the county where the charges are filed to transport the defendant to the state security hospital or its agent or a state hospital or its agent for inpatient services.

The bill requires the court, prosecuting attorney, defense counsel, and chief medical officer of any institution or the head of any facility where the defendant is receiving outpatient services to provide requested documentation to the state security hospital or its agent or the state hospital or its agent for the purpose of managing inpatient admission.

Psychotropic Medications

The bill allows, notwithstanding a statute providing certain rights to persons in the custody of the Secretary for Aging and Disability Services, psychotropic medications to be prescribed for any defendant who is ordered or has met the criteria to receive evaluation and treatment on an inpatient or outpatient basis at an appropriate facility. The bill outlines requirements for the prescription, ordering, administration, and review of such medications.

The bill prohibits such medications from being administered to a defendant for two days prior to and during any hearing, if such medications alter the defendant's mental state to adversely affect the defendant's judgment or hamper the defendant in preparing for or participating in the hearing. Prior to the hearing, the bill requires a report of all such medications or other treatment that has been administered to the defendant, and a copy of any written consent signed by the defendant, to be submitted to the court.

The bill allows the defendant's counsel to preliminarily examine the attending physician regarding the administration of any medication to the defendant within two days of the hearing and the effect that medication may have had on the defendant's judgment or ability to prepare for or participate in the hearing. If the court determines that medication or other treatment has been administered that adversely affects the defendant's judgment or ability to prepare for or participate in the hearing, the court may grant the defendant a reasonable continuance to allow the defendant to be better able to prepare for or participate in the hearing. The bill requires the court to order that such medication or other treatment be discontinued until the conclusion of the hearing, unless the court finds that such medication or other treatment is necessary to sustain the defendant's life or to protect the defendant or others, in which case the court is required to order the hearing to proceed.

The bill requires, if a defendant who is charged with a felony is receiving treatment under this section and is not deemed a present danger to self or others objects to taking any medication prescribed for the purpose of restoring the defendant to competency, the defendant's objection to be recorded in the defendant's medical record and written notice of such objection to be forwarded to the medical director of the treatment institution or facility or the director's designee and to the court where the criminal charges are pending. The bill permits the medication to be administered over the defendant's objection only if the court finds that:

- The medication is substantially unlikely to have side effects that may undermine the fairness of the trial;
- The medication is medically appropriate;
- Less intrusive alternatives have been considered;
- The medication is necessary to advance significantly important governmental trial interests; and
- The administrative head or law enforcement official in charge of the jail has agreed to having the medication administered over the defendant's objection in the jail.

Commitment of Persons Found Not Guilty By Reason of Mental Disease or Defect

The bill amends the statute governing commitment of persons found not guilty by reason of mental disease or defect to allow commitment to an appropriate secure facility in addition to the state security hospital as permitted under continuing law. Accordingly, the bill amends various procedural provisions to incorporate the licensed psychologist at or head of such appropriate secure facility. The bill amends hearing timing requirements in this statute to allow delay if the court finds that such delay is warranted by exceptional circumstances.

Commitment of Convicted Defendants

The bill amends a statute allowing commitment for mental examination, evaluation, and report of a convicted defendant as part of the presentence investigation, to provide that all such commitments shall be to the state security hospital. Under current law, such commitment may also be to a suitable local mental health facility or to a private hospital.

HB 2540

Amendments to Uniform Controlled Substances Act and Definition of Marijuana

HB 2540 amends the Uniform Controlled Substances Act (Act) and the definition of “marijuana” in the Act and the Kansas Criminal Code (Code). The amended definition of marijuana exempts U.S. Food and Drug Administration (FDA)-approved drug products containing an active ingredient derived from marijuana. The bill also makes technical changes.

Definitions

The bill amends the definition of “marijuana” to exempt FDA-approved drug products in the Act and in the definition sections of the Code pertaining to crimes involving controlled substances. In response to this definition change, the bill removes from the Kansas Schedule IV the FDA-approved drug Epidiolex to mirror the federal de-scheduling of this drug.

Uniform Controlled Substances Act

Schedule I

The bill adds two opiates, one opioid derivative, and one compound containing hallucinogenic substances to Schedule I. The bill also makes spelling and substance number updates, changes “ring” to “group” in certain cannabinoid classes, and adds a “syncan” class.

Schedule II

The bill adds to Schedule II one opioid metabolite of oxymorphone and oxycodone, one intravenous opioid medication for severe acute pain, and one opioid analgesic.

Schedule IV

The bill adds to Schedule IV one short-acting sedation medication, an insomnia medication, an antidepressant used to treat depression and postpartum depression, and a medication for treatment of sleepiness due to narcolepsy or sleep apnea.

Schedule V

The bill adds to Schedule V a medication for treatment of adult seizures and a drug used to treat migraines without aura.

Habeas Corpus Motions and Notice of Release of Sexually Violent Predators;

HB 2607 amends time limitations for *habeas corpus* motions under KSA 60-1507 and amends the Kansas Sexually Violent Predator Act (SVPA) regarding the notice of release or anticipated release of sexually violent predators (SVPs).

Time Limitations for Habeas Corpus Motions

Under continuing law, such motions must be filed within one year of:

- The final order of the last Kansas appellate court to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction; or
- The denial of a petition for *writ of certiorari* to the U.S. Supreme Court or issuance of such court's final order following granting such petition.

The bill adds that such motions have to be filed within one year of the decision of the district court denying a prior motion under the section, the opinion of the last appellate court in this state to exercise jurisdiction on such prior motion, or the denial of the petition for review on such prior motion, whichever is later.

The bill provides that this amendment would not bar actions under this section that are brought within one year of the bill's effective date.

Notice of Release or Anticipated Release of Sexually Violent Predators

Under current law, when it appears a person meets the criteria to be determined a SVP, the agency with jurisdiction is required to give written notice to the Attorney General and a multidisciplinary team (as defined in the statute) 90 days prior to the release or anticipated release of such person.

The bill requires that on and after July 1, 2023, and prior to July 1, 2024, such notice be given 90 days to two years prior to such release or anticipated release. On and after July 1, 2024, the bill requires notice to be given two years prior to such release or anticipated release.

The bill adds the following non-exclusive list of situations in which such notice must be given:

Anticipated release from total confinement of a person convicted of a sexually violent offense, except as soon as practicable following readmission to prison of a person returned for less than 90 days for revocation of postrelease supervision. Release of a person charged with a sexually violent offense who has been determined to be incompetent to stand trial. Release of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect; or Release of a person who has been found not guilty of a sexually violent offense by reason of mental disease or defect, and the jury answers in the affirmative to a special question regarding criminal intent.

Detention and Secure Confinement of Sexually Violent Predators

The bill amends a statute governing the process for a court to determine probable cause that a person is a SVP to provide an exception to the current rule that, upon a probable cause finding, the court must direct the person to be taken into custody and detained in county jail until such time a determination is made on whether the person is subject to confinement under the SVPA.

The bill provides the transport and detention to county jail would not occur when the person is subject to secure confinement at a facility operated by the Secretary of Corrections until such confinement ends. In addition, the bill adds a provision to this section to allow the court to secure such confined person's attendance at the proceeding by directing the sheriff of the county where the proceeding will be held to take the person into physical custody and detain in the county jail for such time reasonable to secure the person's attendance at the proceeding. The bill specifies that nothing in the

statute creates rights regarding appearance at proceedings or the amount of time detained in county jail for the person alleged to be a SVP.

The bill also changes a notice requirement for the probable cause hearing to replace timing based upon when the person is taken into custody with timing based upon the filing of a petition under the SVPA, removes references to “detainer” or “detained,” adjusts the definition of “agency with jurisdiction” to reflect the other amendments made by the bill, and makes clarifying amendments.

HB 2608

Criminal Restitution—Enforcement, Collection; Wage Garnishment

HB 2608 amends and repeals law related to enforcement and collection of criminal restitution, wage garnishment, and dormant judgments in response to *State v. Arnett*, 496 P.3d 928 (2021).

The bill amends 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 amends 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 removes language in this section referencing procedures and statutes repealed by the bill.

The bill amends 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 amends the definition of “earnings” for purposes of wage garnishment provisions to remove the phrase “paid or” from “compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.”

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

HB 2717

Prohibiting Municipal Restrictions on Law Enforcement Cooperation; Limiting Municipal ID Cards

HB 2717 prohibits municipalities from restricting law enforcement cooperation with federal authorities and prohibits the use of municipal identification cards from being used to satisfy state proof of identity requirements, including for voter identification. The bill also makes technical changes.

Definitions

The bill defines the following terms:

- “Law enforcement agency” means a city police department, county sheriff’s department or police department, or any law enforcement department of a state taxing entity;
- “Law enforcement officer” means a full-time or part-time employee of a municipality whose duties include the prevention or detection of crime and enforcement of criminal and traffic laws;
- “Municipal identification card” means any document, card, or other instrument issued by a city or county and bearing a name, photograph, or descriptive information intended for an individual to use as a form of

identification; and

- “Municipality” means a city, county, or state taxing entity that employs law enforcement officers.

Prohibited Actions of Municipalities

The bill prohibits municipalities from enacting, implementing, or enforcing an ordinance, resolution, rule, or policy that prohibits or restricts a law enforcement officer, local official, or local government employee from doing the following with information on a person’s citizenship or immigration status:

- Communicating or cooperating with federal officials;
- Sending to or receiving information from the U.S. Department of Homeland Security;
- Obtaining maintaining information; or
- Exchanging information with another federal, state, or local government entity.

The bill states that any such ordinance, resolution, rule, or policy is null and void. Municipalities are also prohibited from limiting or restricting the enforcement of federal immigration laws.

Racial or Other Biased Policing

The bill makes the use of racial or other biased-based policing for the enforcement of federal immigration law and communications with federal agencies unlawful.

The bill uses existing law to define “racial or other biased-based policing” as the unreasonable use of race, ethnicity, national origin, gender, or religion by a law enforcement officer in deciding to initiate an enforcement action.

The use of these characteristics are not considered racial or other biased-based policing when used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action.

A person believing they have been subjected to racial or other biased-based policing would be able to file a complaint with the applicable law enforcement agency or the Attorney General.

Cause of Action

The Attorney General, county attorney, or district attorney is authorized to bring a court action to compel a municipality or person to comply with the provisions of the bill.