

April 2020

KSSC 1st Quarter Newsletter

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Thank you!

We hope you all are safe and healthy. Thank you for working with us through these unprecedented times.

-The staff of the Kansas Sentencing Commission

Congratulations to Stacey Donovan!

Congratulations to former Commission member, Stacey Donovan, on her appointment to the Douglas County bench! Stacey was appointed to serve as a member of the Kansas Sentencing Commission in July 2015 by former Governor Sam Brownback and she served on the Commission until she was appointed Judge by Governor Kelly. As a member of the Commission, Stacey brought valuable input from her experience as a public defender. While on the Commission, she was a member of numerous subcommittees. She also served as the chair of the Journal Entry subcommittee. Her contributions to the Commission will be missed. Congratulations, Stacey!



KSSC members and staff recognized Stacey Donovan and Chris Mechler for their outstanding service to the Commission at the Commission meeting on 2/21/20.

SB 123 COVID-19 Response

Effective immediately SB 123 providers will be able to bill for Telehealth services to accommodate client needs during the COVID-19 public health crisis. Providers must utilize HIPAA-compliant telehealth platforms, the service must be supported by their current licensure provisions, and must be identical in content to those services rendered in-office. Telehealth billing will include all outpatient modalities at this time. The requirements for Telehealth services will also be relaxed to include telephone contact. Additionally, if Client Placement Agreements are not able to be obtained, documentation via email will be accepted in lieu of the CPA. These changes represent temporary accommodation until further notice. Any questions should be addressed to the SB 123 Program Director, Kira Johnson.

Welcome New Commission Members

KSSC is pleased to announce the following members have recently been appointed to the Commission:



Mark Dupree

On February 20, 2020, Governor Laura Kelly appointed Mark A. Dupree, Sr. as a member of the Kansas Sentencing Commission to succeed Daniel Dunbar. Mr. Dupree is the District Attorney of Wyandotte County, KS, the 4th largest county in the State of Kansas. D.A. Dupree and his team of excellent employees are implementing strategic and visionary policies to expand the function of the Wyandotte County District Attorney's Office. Mr. Dupree is an active member in the community. He graduated from the University of Kansas with a Bachelor's Degree in Political Science and minor in Leadership Studies. He graduated from Washburn University School of Law thereafter. Mr. Dupree is married to his law school sweetheart and former law partner, Attorney Shanelle Dupree, and they have four beautiful and active children.



Spence Koehn

On April 1, 2020 Chief Justice Luckert appointed Spence Koehn to succeed Chris Mechler as the Office of Judicial Administration (OJA) member of the Sentencing Commission. Mr. Koehn is the Court Services Specialist for the Office of Judicial Administration. He graduated from Ottawa University in 1995. Following graduation, he began working with the 4th Judicial District Community Corrections where he was an Intensive Supervision Officer for over 5 years before becoming an Intensive Supervision Officer for Johnson County Court Services in 2001. In 2003 he became a Court Services Officer in the 6th Judicial District, where he remained until 2015, when he began working in the same capacity for the 4th Judicial District until his hire by OJA in 2020. He has served on the Kansas Association of Court Services (KACSO) Executive Board and as the KACSO Training Chairperson.



Jermaine Wilson

On February 24, 2020, Governor Laura Kelly appointed Jermaine Wilson as a public member of the Kansas Sentencing Commission to succeed James Echols. Mr. Wilson, the once convicted felon who served 4 years in juvenile corrections and 3 years in prison, turned his life around, expunged his criminal record and became the Mayor of Leavenworth, KS in 2019. He's an ordained Minister, Founder of the Non-Profit organization called Unity in the Community Movement, Community Outreach Coordinator for Connections to Success, husband and father of 5 children.



Jessica Glendening

On February 20, 2020, Governor Laura Kelly appointed Jessica Glendening as a member of the Kansas Sentencing Commission to succeed Stacey Donovan. Jessica Glendening graduated from the University of Kansas School of Law in May of 2004. Since January of 2006 she has practiced at the Johnson County Public Defender's Office, in private practice as a solo practitioner, and at the Shawnee County Public Defender's Office, where she is currently a full-time public defender. She has served on the board of the Kansas Association of Criminal Defense Attorneys and has worked as an adjunct for the trial advocacy class at the Washburn University School of Law. Jessica lives in Lawrence and when she is not working, she is spending time with her husband, her two daughters, and her pet dog.



Pat Colloton

On February 20, 2020, Governor Laura Kelly appointed Pat Colloton as a public member of the Kansas Sentencing Commission to succeed Ronald Pauls. Ms. Colloton is an attorney who served in the Kansas House of Representatives from 2004-2012. From 2008-2012 Ms. Colloton chaired the House Corrections and Juvenile Services Committee and also served on the Sentencing Commission. For the past twelve years, Ms. Colloton has been a member of the Johnson County Criminal Justice Advisory Council. Pat and her husband, who is also named Pat, have lived in Leawood for the past thirty years. They have a daughter, Katy, who is a writer and actress living in Los Angeles.

2020 Legislative Proposals Status Update

Below is the current status for KSSC's 2020 proposals:

- 1) Modify good time credit—current 15-20% credit for ongrid offenses would be increased to 50%, [HB 2484](#) Stricken from calendar in House 2/27/20;
- 2) Early discharge from probation—incentivize offenders to complete probation early with judicial hearing required after 50% service of probation term, [HB 2052](#) In House Corrections and Juvenile Justice, last action 2/6/19;
- 3) Offender Registration Act—remove drug crimes from Kansas Offender Registration Act and amend all payment violations of K.S.A. 22-4903(c)(3) to be punishable as a misdemeanor, [HB 2051](#) In House Corrections and Juvenile Justice, last action 1/23/19;
- 4) Reducing the length of sentence of drug severity level 5 possession crimes to be proportional with nondrug severity level 8 crimes, [HB 2047](#) in House Corrections and Juvenile Justice, last action 2/25/19;
- 5) Unlawful tampering with electronic monitoring equipment—amend K.S.A. 21-6322 from severity level 6 felony to a severity level 8 to be proportional with current escape from custody penalty, [HB 2494](#) Stricken from the calendar in House 2/27/20;
- 6) Increase felony loss threshold to \$1,500 for 11 property crimes to be consistent with the current felony theft threshold, [HB 2485](#) Stricken from calendar in the House 2/27/20;
- 7) Modification of Care and Treatment Law: Amends the Care and Treatment law during an involuntary commitment to allow for a mental illness determination at a temporary custody hearing with a finding that respondent is a danger to themselves or others. This finding would prohibit the respondent from purchasing a firearm until such time as the respondent petitions and receives approval from the court, [HB 2551](#) in House judiciary, last action 2/3/20;
- 8) SB 123 program extended to diversion—allows for state funding of substance abuse treatment to incentivize offenders and lower costs to law enforcement, prosecutors and the courts, [HB 2472](#) In House Corrections and Juvenile Justice, last action 2/13/20;
- 9) Compassionate release policy—amend K.S.A. 22-3729(a)(1) to allow release of an inmate with a terminal illness likely to cause death within 90 days rather than the current 30 days [HB 2469](#) Passed in House as amended from 90 to 120 days, currently in Senate Judiciary with last action 3/12/20;
- 10) Post-sentencing transfer of jurisdiction for 2003 SB 123 eligible cases—all parties must agree to transfer of jurisdiction to offender's current place of residence, [HB 2470](#) Passed in House, currently in Senate Judiciary with last action 3/12/20;
- 11) Resolve conflict of mandatory or discretionary consecutive sentences for new crimes while on felony bond in K.S.A. 21-6604(f)(4) and K.S.A. 21-6606(d) [HB 2046](#) in House Corrections and Juvenile Justice, last action 2/4/19; and
- 12) Designate certain legislative members for KSSC membership amending K.S.A. 74-9102, [HB 2493](#) Stricken from calendar in the House 2/27/20.

APPELLATE UPDATE*

- The Kansas Supreme Court recently held the hard 25 life sentence is not categorically disproportionate as applied to young adults convicted of felony murder. *State v. Patterson III*, 455 P.3d 792, 804 (Kan. 2020).
- In a burglary of a dwelling case, where the owner testified that no one lived at the building and he had no plans to live there or rent it out, the Kansas Supreme Court found the dwelling requirement was not met because there was no present, subjective intent that the building be used as a dwelling. See *State v. Downing*, 456 P.3d 535 (Kan. 2020).
- The Kansas Supreme Court recently held that *Wetrich* applied to defendant, whose case was pending on direct appeal when *Wetrich* was decided, because defendant was entitled to the benefit of a change in the law. See *State v. Williams*, 456 P.3d 540, 548 (Kan. 2020). Because *Wetrich* changed the law governing the defendant's sentence, even though *Wetrich* did not render that sentence illegal, it did render Williams' sentence erroneous. See *id.*
- The Kansas Supreme Court ruled that a Taser used by the defendant in an aggravated robbery is a deadly weapon for purposes of the Kansas Offender Registration Act (KORA). See *State v. Carter*, 2020 WL 1070966 at *6 (March 6, 2020). Although the district judge made an oral finding that there was a “dangerous weapon involved”, instead of the finding required by statute, the Court found that indicating a deadly weapon was used in the commission of the crime on the journal entry was enough to satisfy the requirement for KORA. See *id.* at 3.
- The Kansas Supreme Court held that a sentencing judge's use of the same two prior misdemeanor domestic batteries both to calculate a defendant's criminal history for his or her base sentence on a current primary grid crime and to elevate a current domestic battery to a felony does not violate K.S.A. 2015 Supp. 21-6810(d)(9)'s restriction on double counting. *State v. Fowler*, 457 P.3d 927 Syl. ¶ 2 (Kan. 2020).
- The Kansas Court of Appeals ruled that when restitution is ordered, the language of K.S.A. 2018 Supp. 21-6604(b)(2) requires the district court to establish a plan for “payment of restitution.” See *State v. Roberts*, 2020 WL 858103 at *6 (Kan. App. February 21, 2020).
- *This is not an exhaustive list of all cases affecting sentencing. To review all recent cases, click [here](#).