

January 2021

KSSC 2020 Fourth Quarter Newsletter

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Thank you!

We'd like to take this opportunity to thank you for your continued partnership. This agency owes its success to people like you. We hope your holiday season and the New Year has been filled with much joy, happiness and success. We look forward to working with you in the coming year.

-The Staff of the Kansas Sentencing Commission

2021 Sentencing Commission Meeting Schedule

The 2021 meeting schedule has been approved and is available [here](#). Meetings are held by Zoom or in the Senate Room of the Jayhawk Tower at 1:30 p.m.



Upcoming Webinar on Recent Case Law Affecting Criminal Sentencing in Kansas

- ◆ 2/25/21 at noon—sign up [HERE](#)
- ◆ If interested in the CLE version, see **BELOW**.

To be added to the listserv, email Francis Givens at francis.givens@ks.gov.

Criminal Sentencing Case Law Update CLE - Live Webinar

- ◆ **When: February 26th, 2021 at noon**
- ◆ **Cost: Free**
- ◆ **Presenters: Francis Givens (KSSC Special Projects Director) and Chris Lyon (KSSC Staff Attorney)**
- ◆ **Presenters will review recent cases affecting criminal sentencing law in Kansas, with a focus on cases decided in 2020. Both published and unpublished opinions will be discussed. Relevant statutes will be included and discussed as well.**
- ◆ **1 hour CLE — sign up [HERE](#)**

After registering, you will receive a confirmation email containing information from Zoom about joining the webinar.

Contact Francis Givens at francis.givens@ks.gov if you have any questions.

2021 KSSC Legislative Proposals

Approved by the Commission as of January

Item #	Description
1.	Amending the requirements for offender registration. See 2020 HB 2474 (Judicial Council) and 2019 HB 2051 (KSSC) . Both approved.
2.	Allowing earned discharge credit for people on probation. See 2019 HB 2052 .
3.	Increasing felony loss thresholds for certain property crimes – Eleven property crimes proposed to be raised from \$1,000 to \$1,500 for felony threshold. See 2020 HB 2485 .
4.	Changing certain penalties for drug crimes. See 2019 HB 2047 .
5.	Requiring legislative members of the sentencing commission to be members of the senate judiciary and house corrections and juvenile justice as set forth in KSA 74-9102 . See 2020 HB 2493 .
6.	Clarifying concurrent or consecutive sentencing for persons convicted of new crimes while on release for a felony. See KSA 21-6604(f)(4) , KSA 21-6606(d) and 2019 HB 2046 .
7.	Extending terminal medical release to inmates in the custody of the department of corrections with a condition likely to cause death within 120 days. See 2020 HB 2469 .
8.	Creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with court services and community corrections for supervision. See 2020 HB 2002 .
9.	Clarifying jurisdiction and supervision of offenders in a certified drug abuse treatment program – All parties must agree to the transfer to offender’s SB 123 probation to the location where offender would be receiving usual courtesy supervision. See 2020 HB 2470 .
10.	Amending the criminal penalties for unlawful tampering with electronic equipment (SL6 np) – If an offender is on felony supervision and commits this crime, the violation would be a severity level 8, nonperson felony. If on misdemeanor supervision or court-ordered supervision in any civil case the violation would be a class A nonperson misdemeanor. See 2020 HB 2494 .
11.	Modification of Care and Treatment Law – Allowing courts to prohibit possession of a firearm in a temporary custody order pursuant to the care and treatment act for mentally ill persons. See 2020 HB 2551 .
12.	Modify Good Time and Program Credits – Current 15%-20% good time credit would be modified to 25% for person and 40% for nonperson felonies. Program credit would be increased from 120 to 150 days. See 2020 HB 2004 .
13.	Early prison release to Community Corrections for certain SL 2-5 drug offenders after 50% service of sentence in KDOC.
14.	Special Rule #26 – Determining prior convictions when charging drug crimes in same complaint. KSA 2019 Supp. 21-6805(f)(1) .
15.	Codify the definition of “absconder” in statute to assist probation and parole officers. See St. v. Dooley .
16.	Expand drug grid presumptive probation to 3H-I, 4G-I, and 5A-D. Border boxes expanded to 3G.
17.	Total time on probation capped at twice the term.
18.	Expanding SB 123 drug treatment to nondrug offenders SL 7-10.



APPELLATE UPDATE*

- In a recent case where the defendant’s prior California burglary adjudication was scored as a person felony, the Kansas Supreme Court held that the burglary should be scored as a nonperson offense because under *Vandervort’s* “closest approximate” rule, Kansas’ non-dwelling version of the Kansas burglary statute was the closest approximation to the relevant California statute. See *State v. Gales*, 476 P.3d 412, 419 (Kan. December 4, 2020).
- A panel of the Court of Appeals recently held that prior out-of-state DUI convictions should only be used to calculate a defendant’s criminal history if the elements of the statute are identical to or narrower than the Kansas DUI statute. See *State v. Myers*, 475 P.3d 1256, 1264 (Kan. App. October 2, 2020).
- In a case where a juvenile offender convicted of premeditated first-degree murder was sentenced to a hard 50 sentence, the Court of Appeals remanded the case back to the district court to determine whether imposing a hard 50 sentence was constitutionally disproportionate under the Eighth Amendment. See *Williams v. State*, No. 121,815, 2020 WL 5996442 at *16 (Kan. App. October 9, 2020). The Court held that the Eighth Amendment prohibits sentencing a juvenile to life without parole unless he or she is “the rare juvenile offender whose crime reflects irreparable corruption” and that this prohibition applies regardless of whether the sentencing scheme is construed as mandatory or discretionary. *Id.* at 10. Additionally, the Court held that the defendant’s hard 50 sentence is the functional equivalent of life without parole. See *id.* at 14. Lastly, the Court held that a sentencing court cannot impose a hard 50 sentence on a juvenile offender convicted of premeditated first-degree murder without first considering the offender’s youth and attendant characteristics, including the child’s diminished culpability and heightened capacity for change, while keeping in mind that such a sentence is constitutionally disproportionate for all but the rarest of children whose crimes reflect irreparable corruption. *Id.* at 15.
- Where a defendant’s criminal history included a conviction for criminal threat, the Court of Appeals ruled that inclusion of the conviction was proper whether the conviction was for reckless or intentional criminal threat because when the defendant was sentenced and when his sentence became final, both the intentional and reckless disregard versions of criminal threat were constitutional. See *State v. Louis*, No. 121,572, 2020 WL 6243249 at *9 (Kan. App. October 23, 2020).
- The Court of Appeals recently held that a defendant’s prior offense could be used both to calculate his criminal history score and to classify him as a persistent sexual offender because the prior conviction was not used to enhance the severity level of his current offense, it did not change his current offense from a misdemeanor to a felony, and it was not used as an element of his current offense under K.S.A. 2016 Supp. 21-6810(d)(9). See *State v. Williams*, No. 121,571, 2020 WL 5849347 at *2 (Kan. App. October 2, 2020) (unpublished opinion).
- Where a defendant’s probation extension resulted in the probation term becoming longer than the underlying sentence, the Court of Appeals found the extension violated K.S.A. 2019 Supp. 21-6608(c)(8) because the statute caps probation time on the sentence imposed rather than the most prison time the district court could have imposed at sentencing. See *State v. Trevitt*, No. 122,168, 2020 WL 6811983 at *3 (Kan. App. November 20, 2020) (unpublished opinion).

*This is not an exhaustive list of all cases affecting sentencing. To review all recent cases, click [here](#).

