



# Kansas Sentencing Commission Newsletter

April 2021

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## CLE OPPORTUNITY

### NEW TO KANSAS CRIMINAL LAW: INTRODUCTION TO THE LS/CMI

On July 1st, 2021 the state of Kansas will be implementing a new risk/needs assessment tool for male offenders convicted of felonies. The Level of Service/Case Management Inventory (LS/CMI) assessment will be replacing the LSI-R for males.

The Kansas Sentencing Commission is pleased to offer a FREE live webinar that will introduce you to this tool. Learn how the LS/CMI works, why this assessment tool has been chosen, and how this tool can be incorporated into your daily practice.

When: May 27th, 2021 12:00-1:00pm

Cost: FREE!

Presenter: Dr. Deborah Koetzle

1 Kansas CLE credit (pending)

Register [HERE](#)

#### About the presenter:

Deborah Koetzle is an Associate Professor in the Department of Criminal Justice at John Jay College of Criminal Justice. She received her Ph.D. in Criminal Justice from the University of Cincinnati in 2006 and is a research fellow with the University of Cincinnati Corrections Institute. Her research interests center around effective correctional interventions with a focus on problem-solving courts, risk/need assessment, probation practices, and cross-cultural comparisons of correctional practices and policies. Dr. Koetzle's current and recently funded projects include an evaluation of ACE, a specialized probation unit for 16-24 year-olds in New York City, a meta-analysis of risk assessments for individuals charged with intimate partner violence, and providing technical assistance to the Salvadoran prison system. She has served as a consultant to local, state, and federal agencies on the topic of assessment, treatment, and quality assurance within both institutional and community-based programs. Her research has appeared in Justice Quarterly, the Journal of Research in Crime and Delinquency, Psychology, Public Policy, and Law, and other scholarly outlets. She is editor of Drug Courts and the Criminal Justice System and author of What Works (and Doesn't) in Reducing Recidivism.



# Congratulations to Kunlun Chang!



Congratulations to KSSC's Director of Research, Kunlun, on his well-deserved retirement! Kunlun was the first Director of Research for the Kansas Sentencing Commission and has served in that capacity since 1995. While working for the Commission, he played an instrumental role in the creation of databases and pioneering new projects, including producing the agency's first annual report in 1996.

Nationally renowned for his statistical precision, Kunlun produced adult prison population, juvenile correctional facility population and adult custody classification projections and policy impact assessments. The major policy impacts he completed include 2000 Senate Bill 323 (offender good time restoration), 2003 Senate Bill 123 (drug offender treatment), 2006 House Bill 2567 (Jessica's Law), 2007 Senate Bill 14 (probation revocation reduction and program credit), 2011 Senate Bill 6 (DUI and domestic violence diversions) and 2013 House Bill 2170 (justice reinvestment initiative in Kansas). In addition, he completed numerous impacts of major Supreme Court and Court of Appeals decisions.

Kunlun created KSSC's journal entry and probation revocation databases. He completed studies and research on Preliminary Evaluation of DARE in Kansas, Evaluation of School Resource Officer Program in Kansas, Intermediate Sanctions and Evaluation of Racial Disparity of Kansas Sentencing Guidelines. In his role as Director of Research, he was the lead statistician for the research design and implementation while also supervising the employees and projects in the research department. Thank you for your dedication and commitment to the agency, Kunlun! We wish you all the best in retirement!

# Congratulations!



# KSSC Legislative Proposals Update

Last updated 4/6/21

Bill #	Description and Current Status
<a href="#">HB 2026</a>	Creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with chief judges and community corrections for supervision; <i>In Conference Committee</i> ;
<a href="#">HB 2027</a>	Modifying the criminal penalties for unlawfully tampering with electronic monitoring equipment; <i>Stricken from calendar in the House 3/5/21</i> ;
<a href="#">HB 2028</a>	Increasing felony loss thresholds for certain property crimes – Eleven property crimes proposed to be raised from \$1,000 to \$1,500 for felony threshold, <i>Stricken from calendar in the House 3/5/21</i> ; <i>Provisions of HB 2028 were added to <a href="#">HB 2229</a> which was stricken from the calendar in the House on 3/5/21</i> ;
<a href="#">HB 2030</a>	Extending terminal medical release to inmates in the custody of the department of corrections with a condition likely to cause death within 120 days, <i>In Senate Judiciary</i> ;
<a href="#">HB 2031</a>	Increasing good time and program credits for certain offenders, <i>In House Corrections and Juvenile Justice</i> ;
<a href="#">HB 2081</a>	Modifying how certain prior convictions are counted for the special sentencing rule related to possession of a controlled substance and providing concurrent or consecutive sentencing for persons convicted of new crimes while on release for a felony; <i>In Senate Judiciary</i> ;
<a href="#">HB 2083</a>	Requiring legislative members of the sentencing commission to be members of the senate judiciary and house corrections and juvenile justice committees, <i>Stricken from calendar in the House 3/5/21</i> ;
<a href="#">HB 2084</a>	Allowing earned discharge credit for offenders on probation and limiting the maximum term of supervision on probation, <i>In House Corrections and Juvenile Justice</i> ;
<a href="#">HB 2092</a>	Amending the requirements for offender registration, <i>In House Corrections and Juvenile Justice</i> ;
<a href="#">HB 2095</a>	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, <i>In House Judiciary</i> ;
<a href="#">HB 2121</a>	Codify the definition of “absconder” in statute to assist probation and parole officers, Contents of HB 2076 and HB 2153 were added to HB 2121 by Senate Committee; <i>In Conference Committee</i> ;
<a href="#">HB 2128</a>	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, <i>In Senate Judiciary</i> ;
<a href="#">HB 2139</a>	Reducing the criminal penalties for most severity level 5 drug crimes and increasing the penalties for offenders in criminal history category 5-I, <i>In House Corrections and Juvenile Justice</i> ;
<a href="#">HB 2146</a>	Expanding the number of presumptive probation and border grid blocks in the sentencing grid for drug crimes; <i>Stricken from calendar in the House 3/5/21</i> ;
<a href="#">HB 2147</a>	Early prison release to Community Corrections for certain SL 2-5 drug offenders after 50% service of sentence in KDOC, <i>In House Corrections and Juvenile Justice</i> ;
<a href="#">HB 2374</a>	Authorizing the Kansas sentencing commission to change risk assessment cut-off levels for participation in the certified drug abuse treatment program, <i>In Senate Judiciary</i> ;
<a href="#">SB 3</a>	Creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with chief judges and community corrections for supervision, <i>In Senate Judiciary*</i> ;
<a href="#">SB 4</a>	Modifying the criminal penalties for unlawfully tampering with electronic monitoring equipment, Contents of HB 2192, HB 2191, HB 2128 and HB 2374 added to SB 4 by House Committee; <i>Stricken from calendar in the House 3/31/21</i> ;
<a href="#">SB 5</a>	Increasing felony loss thresholds for certain property crimes – Eleven property crimes proposed to be raised from \$1,000 to \$1,500 for felony threshold, <i>In Senate Judiciary*</i> ;
<a href="#">SB 7</a>	Extending terminal medical release to inmates in the custody of the department of corrections with a condition likely to cause death within 120 days; <i>In Senate Judiciary*</i> ;
<a href="#">SB 8</a>	Increasing good time and program credit for certain offenders; <i>Stricken from calendar in the Senate 3/31/21*</i> .

*\*This bill did not pass its house of origin, and therefore it is dead the remainder of the session.*

# APPELLATE UPDATE\*

- In a case where the defendant pled no contest to charges connected to a high risk investment scheme, the Kansas Supreme Court held that that acceptance of responsibility by itself was not a substantial and compelling reason for a dispositional departure because the defendant pled no contest in exchange for the dismissal of 10 other counts, minimized his involvement, and was reluctant to pay restitution for the victims' entire loss. See *State v. Morley*, 479 P.3d 928, 936 (Kan. January 29, 2021).
- In a case where the defendant was sentenced to two consecutive hard 50 sentences, the Kansas Supreme Court ruled that the district court did not abuse its discretion when it found the defendant's mitigating evidence, including evidence of remorse and good character, were not substantial and compelling reasons to depart from the presumptive sentence because the sentencing judge listened to all of the evidence and considered it when denying the departure. See *State v. McNabb*, 478 P.3d 769, 772 (Kan. January 8, 2021).
- Where the evidence was insufficient to show that a defendant possessed drugs, his conviction for distribution of controlled substances was reversed because the Kansas Supreme Court found that possession is an element of the crime of distribution of a controlled substance under K.S.A. 2019 Supp. 21-5705(a). See *State v. Crosby*, 479 P.3d 167, 174 (Kan. January 15, 2021).
- Where a judge departed an off-grid, indeterminate life sentence to an on-grid, determinate sentence, the Kansas Supreme Court recently reversed and remanded for the district court to impose a legal sentence because the judge departed more than 50% of the standard grid sentence which is allowed for convictions of a crime of extreme sexual violence. See *State v. Dunn*, No. 119,866, 2021 WL 1045457 (Kan. March 19, 2021).
- Where Special Rule 10 (defendant commits a new felony while on felony bond) applied, the Court of Appeals recently remanded the case back to the district court for the judge to use his discretion in deciding whether to send a defendant to prison or probation because the special rule allows for a court to use its discretion when granting probation or prison. See *State v. Parker*, No. 122,300, 2021 WL 219885 at \*3 (Kan. App. January 22, 2021) (unpublished opinion).
- In a case where the defendant's probation was revoked, the Court of Appeals found that the defendant's assaultive behavior constituted a danger to public safety and her attitude and behavioral problems amounted to a threat to her own welfare, thereby allowing the court to impose defendant's prison sentence without the intermediate sanction. See *State v. Nelson*, No. 122,029, 2021 WL 137400 at \*2 (Kan. App. January 15, 2021) (unpublished opinion).
- The Court of Appeals recently held that Kansas statutes do not require a district court to include jail credit time in a probation violation journal entry unless the district court revokes probation and orders confinement. See *State v. Moss-Barrett*, No. 122,360, 2021 WL 401955 at \*2 (Kan. App. February 5, 2021) (unpublished opinion).
- In a recent decision the Court of Appeals found that a defendant's prior criminal threat conviction was properly scored as a person felony because when the defendant's sentence became final, both intentional and reckless criminal threat were constitutional. See *State v. McCullough*, No. 122,167, 2021 WL 646111 at \*4 (Kan. App. February 19, 2021) (unpublished opinion). The Court also applied *Keel* and found that the defendant's prior second marijuana conviction should be scored as a nonperson misdemeanor as this was the classification of the offense at the time of the defendant's current crime. See *id.* at \*5.
- Where a defendant was convicted of criminal threat, among other crimes, the Court of Appeals reversed the criminal threat conviction because the district court instructed the jury on both intentional and reckless criminal threat, neither the jury instructions nor the state's argument steered the jury towards one mental state or the other, the jury was not instructed that it had to unanimously agree on the mental state, the verdict form did not require the jury make a specific finding, and based on the evidence presented at trial it was reasonable that the defendant acted with reckless disregard for whether his statements caused the victim fear. See *State v. Cardillo*, No. 120,606, 2021 WL 1149145 at \*5 (March 26, 2021) (unpublished opinion). Additionally, the Court of Appeals vacated the defendant's controlling sentence for his drug conviction to determine if a criminal threat conviction was properly included in his criminal history because the PSI did not state which subsection for his prior criminal threat conviction. See *id.* at \*3.

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

