
Kansas Legislator Briefing Book

Prepared for the
2020 Kansas Legislature

KLRD

*Providing objective research and fiscal
analysis for the Kansas Legislature*

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Kansas Legislators are called upon to make decisions on many issues that come before the Legislature. In addition, members of the Legislature are frequently asked by constituent groups to discuss public policy issues in a community forum in their districts. The purpose of the *Kansas Legislator Briefing Book* is to assist members in making informed policy decisions and to provide information in a condensed form that is usable for discussions with constituents—whether in their offices in Topeka or in their districts.

This publication contains several reports on new topics plus reports from the prior version. Most of the reports from the prior version have been updated with new information.

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BIDS handles appeals of criminal convictions, conflicts of interest, and capital cases is included. Particular emphasis is placed on costs across the agency with detailed data on capital cases and compensation for assigned counsel.

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This article discusses the three tiers, or levels, of liquor taxation in Kansas (the liquor gallonage tax, the liquor enforcement tax, and the liquor drink tax.) Some history on the rates of the various taxes imposed is provided, as well as information on the disposition of revenues. For FY 2019, total identifiable liquor tax receipts were about \$145.8 million.

[Selected Tax Rate Comparisons](#) L-4

This article compares information used to calculate the tax base and tax rates between Kansas and selected states for various taxes. States compared include Kansas, Missouri, Nebraska, Oklahoma, Colorado, Iowa, Arkansas, and Texas. Taxes compared include individual income tax, corporate income tax, sales tax, motor fuel tax, and cigarette tax.

Transportation

[Distracted Driving: State Laws](#) M-1

Distracted driving was recorded as a factor in 2,228 crashes in Kansas in 2018 that led to injuries or property damage; 14 people died and 909 were injured in those crashes. State responses to distracted driving include bans on using electronic devices while driving. Researchers have found links between distraction and driving errors.

[Kansas Turnpike: The Relationship Between KTA and KDOT](#) M-2

This article outlines historical and statutory relationships between KTA and KDOT.

[School Bus Passing Law Enforcement in Other States](#) M-3

This article summarizes school bus camera laws in other states. Those laws differ in areas including law enforcement involvement in the process of determining a violation and issuing a citation, whether the owner of the vehicle is presumed to be the operator and is held accountable for the violation, what types of images become *prima facie* evidence of violation, and retention and uses of the images.

[State Highway Fund Receipts and Transfers](#) M-4

Projected revenues to the State Highway Fund (SHF) for use by the Kansas Department of Transportation can be described in five categories: state sales tax, state motor fuels tax, federal funding, vehicle registration fees, and “other.” This article discusses the parts of those categories, and it summarizes anticipated revenues the SHF has not realized and transfers from the SHF in recent years.

[State Motor Fuels Taxes and Fuel Use](#) M-5

Kansas’ motor fuels taxes are 24¢ a gallon on gasoline and 26¢ a gallon on diesel fuel, unchanged since 2003. This article reviews the history of those taxes and illustrates how Kansas fuels tax revenues and gasoline usage fluctuate over time. The article also includes information on the state gasoline tax portion of an individual’s overall fuel costs.

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This article discusses the Kansas Turnpike Authority, statutes governing its operation, and court decisions across the country related to turnpike tolls.

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Agriculture and Natural Resources

A-1 Industrial Hemp

Background

Industrial hemp is one variety of the *Cannabis sativa* L. plant. Industrial hemp is of the same plant species as marijuana, but it is genetically different. As defined by Kansas 2018 SB 263 and the federal Agricultural Act of 2014, industrial hemp contains less than 0.3 percent delta-9 tetrahydrocannabinol (THC) on a dry weight basis.

There are three general categories of industrial hemp products: seeds and grains, fiber, and floral plant extracts. These products are produced from the fiber, roots, stalks, leaves, seeds, or floral materials of the industrial hemp plant.

Federal Industrial Hemp Policy

Agricultural Act of 2014

The Agricultural Act of 2014, or 2014 Farm Bill, was passed by the U.S. Congress and signed into law by President Obama on February 7, 2014. Section 7606 of the 2014 Farm Bill legalized the growth and cultivation of industrial hemp in accordance with state law. The legislation authorized states to create agricultural pilot programs to research the growth, cultivation, or marketing of industrial hemp.

The 2014 Farm Bill did not remove "industrial hemp" from the federal list of controlled substances, thus restricting industrial hemp activities to the extent authorized in Section 7606. In 2016, the U.S. Department of Agriculture (USDA), in consultation with the U.S. Food and Drug Administration and the U.S. Drug Enforcement Administration, released the Statement of Principles on Industrial Hemp to provide guidance on how federal law applies to state activities authorized in Section 7606. Specifically, Section 7606 limited industrial hemp growth or cultivation to state agricultural pilot programs established by a state department of agriculture or state agricultural agency. Only state departments of agriculture and institutions of higher education (or persons licensed by them to conduct research) may grow or cultivate industrial hemp as part of the agricultural pilot program. In addition, for purposes of marketing

research, industrial hemp products may be sold in or among states with an agricultural pilot program, but may not be sold in states where such a sale is prohibited by state law. Federal law prohibits the transportation of industrial hemp plants and seeds across state lines.

Agriculture Improvement Act of 2018

The Agriculture Improvement Act of 2018, or 2018 Farm Bill, was passed by the U.S. Congress and signed into law by President Trump on December 20, 2018. Section 10113 of the 2018 Farm Bill directs the USDA to issue regulations and guidance to implement a program for the commercial production of industrial hemp.

The USDA issued an interim final rule with requests for comments on October 31, 2019. Comments received by December 30, 2019, will be considered prior to issuance of a final rule.

The USDA will develop a system in which states and Indian tribes may submit plans to the USDA for approval to administer hemp production in their areas. The USDA will also provide a plan for those individual producers in states and tribes that do not submit their own plan. Any submitted plans will not be reviewed until the regulations go into effect.

The 2018 Farm Bill allows states, tribes, and institutions of higher education to continue operating under the authorities of the 2014 Farm Bill until 12 months after the USDA establishes the plan and regulations required under the 2018 Farm Bill.

The 2018 Farm Bill requires each plan to include the following:

- A practice to maintain relevant information regarding land on which hemp is produced in the state or territory of the Indian tribe, including a legal description of the land, for a period of not less than three calendar years;
- A procedure for testing, using postdecarboxylation or other similarly reliable methods, THC concentration

levels of hemp produced in the state or territory of the Indian tribe;

- A procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this subtitle and products derived from those plants;
- A procedure to comply with the enforcement procedures under subsection (e) of the 2018 Farm Bill;
- A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify that hemp is not produced in violation of this subtitle;
- A procedure for submitting information regarding industrial hemp production to law enforcement as described in section 297C(d)(2) of the 2018 Farm Bill to the U.S. Secretary of Agriculture not more than 30 days after the date on which the information is received; and
- A certification that the state or Indian tribe has the resources and personnel to carry out the practices and procedures described in clauses (i) through (vi) of the 2018 Farm Bill.

Industrial Hemp in Kansas

Alternative Crop Research Act (2018)

In 2018, the Legislature passed and Governor Colyer signed into law SB 263, which created the Alternative Crop Research Act (Act). The Act became effective May 3, 2018.

The Act allowed the Kansas Department of Agriculture (KDA) to develop a pilot research program to grow and cultivate industrial hemp and promote the research and development of industrial hemp, in accordance with federal law. The KDA may act alone or coordinate with a state institution of higher learning. The Act allowed the KDA to license individuals to participate in the pilot program under its authority. The Act also removed industrial hemp, when cultivated, possessed, or used for activities authorized by the Act, from the definition of “marijuana” for

criminal law and controlled substances purposes. In addition, the bill charged the KDA to develop rules and regulations, which became effective February 8, 2019.

Fee Fund and Licenses

SB 263 also created the Alternative Crop Research Act Licensing Fee Fund (Fund) in the State Treasury. KDA was authorized to establish fees for licenses, license renewals, and other necessary expenses to offset the costs associated with implementing the pilot program. Moneys received from fees collected by the KDA are deposited in the Fund. In its rules and regulations, the KDA created four different research licenses, including the grower license, distributor license, processor license, and state educational institution license.

Research grower license. Individuals who have been issued a research grower license are authorized by the KDA to cultivate, grow, handle, harvest, store, and transport industrial hemp plants, plant parts, grains, or seeds in Kansas. Licensed growers are authorized to conduct these activities only in specific research sections (defined as land or buildings licensed by the KDA under the pilot program where the licensee may conduct industrial hemp research). The research grower license fee is \$1,000 for the initial licensed research section.

Research processor license. Individuals who have been issued a research processor license are authorized by the KDA to store and handle industrial hemp plants, plant parts, grains, or seeds and take part in any aspect of turning raw, harvested industrial hemp into a separate industrial hemp product in Kansas. The research processor license fee is \$3,000 per processing facility or mobile processing facility for fiber or grain and \$6,000 per processing facility or mobile processing facility for floral material.

Research distributor license. Individuals who have been issued a research distributor license are authorized by the KDA to distribute, transport, handle, and store raw, harvested industrial hemp plants, plant parts, grain, seed, and certified seed

in Kansas. The research distributor license fee is \$2,000 per licensed research section.

Research state educational institution license. A state educational institution research licensee may only cultivate, plant, grow, handle, harvest, condition, store, distribute, transport, or process industrial hemp in Kansas. Research activities falling under more than one license category require a separate research license application and fee for each license category.

Commercial Industrial Hemp Program Act (2019)

In 2019, the Legislature passed and Governor Kelly signed into law Senate Sub. for HB 2167, which created the Commercial Industrial Hemp Program Act (Act). The Act became effective July 1, 2019.

The Act requires the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA regarding how the KDA will monitor and regulate the commercial production of industrial hemp within the state, in accordance with federal law. In addition, the bill establishes the Commercial Industrial Hemp Program; makes changes to the Industrial Hemp Research Program; and establishes hemp processing registrations, prohibitions on specific products, sentencing guidelines, and waste disposal requirements.

Submitting a Kansas plan to the USDA is contingent on the USDA first issuing guidelines regarding what a commercial industrial hemp program should entail. The USDA issued an interim final rule with requests for comments on October 31, 2019. Comments received by December 30, 2019, will be considered prior to issuance of a final rule.

Changes to the Industrial Hemp Research Program

The Act requires the Secretary of Agriculture to continue accepting applications for the research program through June 1, 2019; makes changes to a modification fee and reasons for

disqualifications; and extends a deadline for rules and regulations regarding the research and development of industrial hemp in the state to December 31, 2019.

In addition, the Act allows the KDA to discontinue the Industrial Hemp Research Program if one or more of the following occurs:

- The federal law authorizing states to operate an industrial hemp research program is repealed;
- A federal plan by the USDA allowing for the cultivation and production of commercial industrial hemp is adopted; or
- Rules and regulations by the KDA establishing commercial industrial hemp production in the state are adopted.

Crimes and Controlled Substances Exceptions

The Act includes industrial hemp as an exception to the definition of “marijuana” in the definition sections of crimes involving controlled substances. The Act also excludes from the Schedule I controlled substances list any THC in industrial hemp as defined in the Act, solid waste and hazardous waste as defined in continuing law if the waste contains a THC concentration of not more than 0.3 percent, or hemp products as defined in the Act.

Hemp Processors

The Act requires the KDA to create and maintain a registry of all hemp processors operating with the state. Any person wishing to engage in the processing of industrial hemp must register and apply for registration annually with the Secretary of Agriculture. The fee for registration cannot exceed \$200 and will be established by the Secretary through rules and regulations.

The Act details the information required for the registration application, along with fees, fingerprinting, and criminal record history check requirements.

Prohibition on Products

The Act prohibits the manufacture, marketing, selling, or distribution of the following hemp products:

- Cigarettes containing industrial hemp;
- Cigars containing industrial hemp;
- Chew, dip, or other smokeless material containing industrial hemp;
- Teas containing industrial hemp;
- Liquids, solids, or gases containing industrial hemp for use in vaporizing devices; and
- Any other hemp product intended for human or animal consumption containing any ingredient derived from industrial hemp that is prohibited pursuant to the Kansas Food, Drug and Cosmetic Act or the Kansas Commercial Feeding Stuffs Act. This does not otherwise prohibit the use of any such ingredient, including cannabidiol oil, in hemp products.

Waste

The Act requires all solid and hazardous waste that results from cultivation, production, or processing of industrial hemp under the Act to be managed in accordance with all applicable solid and hazardous waste laws and regulations. In addition, if the waste can be used in the same manner as, or has the appearance of, a controlled substance, the Act requires the waste to be rendered unusable and unrecognizable before being transported or disposed. For more information, see [E-2 Legalization of Medical and Recreational Marijuana and Industrial Hemp](#).

Other States

As of this October 2019, 47 states have enacted legislation to establish industrial hemp cultivation and production programs.

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Agriculture and Natural Resources

A-2 State Water Plan Fund, Kansas Water Authority, and State Water Plan

State Water Plan Fund

The State Water Plan Fund is a statutory fund (KSA 82a-951) that was created by the 1989 Legislature for the purpose of implementing the State Water Plan (KSA 82a-903). The State Water Plan Fund is subject to appropriation acts by the Legislature and may be used for the establishment and implementation of water-related projects or programs and related technical assistance. Funding from the State Water Plan Fund may not be used to replace full-time equivalent positions or for recreational projects that do not meet the goals or objectives of the State Water Plan.

Revenue

Revenue for the State Water Plan Fund is generated from the following sources.

Water protection fees. A water protection fee of \$0.03 per 1,000 gallons of water is assessed on the following:

- Water sold at retail by public water supply systems;
- Water appropriated for industrial use; and
- Water appropriated for watering livestock.

Fees imposed on fertilizer and pesticides. A tonnage fee on fertilizer and a fee for the registration of pesticides is assessed and transferred to the State Water Plan Fund in the following amounts:

- Inspection fees are imposed on each ton of fertilizer sold, offered or exposed for sale, or distributed in Kansas. Of that fee, \$1.40 per ton is credited to the State Water Plan Fund; and
- Every agricultural chemical that is distributed, sold, or offered for sale within the state must be registered, with an annual fee assessed for each registration. The law requires that \$100 from each registration fee be credited to the State Water Plan Fund.

Sand royalty receipts. A fee of \$0.15 per ton of sand sold is deposited in the State Water Plan Fund.

Pollution fines. Certain fines and penalties are levied by the Kansas Department of Health and Environment (KDHE) for water-related pollution, including:

- Violation of terms or conditions relating to public water supply systems;
- Commission of prohibited acts in relation to the operation of a public water supply system; and
- Violations of law governing the disposal of solid and hazardous waste.

Clean water drinking fee. A clean water drinking fee of \$0.03 per 1,000 gallons of water is assessed on retail water sold by a public water supply system and delivered through mains, lines, or pipes. Since July 1, 2007, revenue from the clean water drinking fee has been distributed as follows:

- 5/106 to the State Highway Fund;
- Of the remaining, not less than 15.0 percent for on-site technical assistance for public water supply systems; and
- The remainder to renovate and protect lakes used for public water supply.

State General Fund transfer. By statute, \$6.0 million annually is to be transferred from the State General Fund to the State Water Plan Fund. In recent fiscal years, this amount has been reduced in appropriations bills. The 2018 Legislature approved a transfer of \$2.75 million from the State General Fund to the State Water Plan Fund for fiscal year (FY) 2019.

Economic Development Initiatives Fund transfer. By statute, \$2.0 million is to be transferred from the Economic Development Initiatives Fund to the State Water Plan Fund. The 2018 Legislature approved a transfer of \$500,000 from the Economic Development Initiatives Fund to the State Water Plan Fund for FY 2019.

STATE WATER PLAN FUND REVENUE AND TRANSFERS*			
Receipts and Transfers In	FY 2018 Actual	FY 2019 Approved	FY 2020 Approved
State General Fund	\$1,400,000	\$2,750,000	\$4,005,632
Economic Development Initiatives Fund	0	500,000	500,000
Municipal Water Fees	2,993,851	3,267,271	3,267,271
Industrial Water Fees	904,987	1,120,701	1,065,021
Stock Water Fees	368,617	464,256	458,695
Pesticide Registration Fees	1,431,093	1,334,523	1,375,453
Fertilizer Registration Fees	3,354,186	3,568,921	3,584,360
Pollution Fines and Penalties	158,620	165,000	150,000
Sand Royalty Receipts	6,580	45,000	16,466
Clean Drinking Water Fees	2,701,067	2,820,674	2,710,279
Total Receipts/ Transfers In	\$13,319,001	\$16,036,346	\$17,133,177
* Does not include cash forward, released encumbrances, or other service charges.			

Expenditures

Expenditures from the State Water Plan Fund are based on priorities of the State Water Plan. The State Water Plan is developed and approved by the Kansas Water Authority. The following table summarizes recent actual and approved expenditures from the State Water Plan Fund.

STATE WATER PLAN FUND EXPENDITURES			
Agency/Project	FY 2018 Actual	FY 2019 Approved	FY 2020 Approved
Department of Agriculture			
Interstate Water Issues	\$ 404,335	\$ 523,348	\$ 499,281
Water Use Study	75,000	117,778	72,600
Basin Management	539,837	619,692	621,651
Water Resources Cost Share	1,601,360	1,992,367	2,448,289
Nonpoint Source Pollution Assistance	1,331,554	2,159,487	1,860,104
Aid to Conservation Districts	2,000,000	2,092,637	2,192,637
Water Transition Assistance/CREP	222,280	390,910	302,046
Watershed Dam Construction	528,157	550,000	550,000
Water Quality Buffer Initiative	140,648	325,022	200,000
Riparian & Wetland Program	44,363	526,519	154,024
Streambank Stabilization	0	500,000	500,000
Irrigation Technology	0	100,000	100,000
Crop Research – Sorghum	0	150,000	0
Crop Research – Hemp	0	100,000	0
Crop and Livestock Water Research	0	0	350,000
<i>Subtotal - Department of Agriculture</i>	<i>\$ 6,887,534</i>	<i>\$ 10,147,760</i>	<i>\$ 9,850,632</i>
Kansas Water Office			
Assessment and Evaluation	\$ 446,047	\$ 597,976	\$ 700,000
GIS Database Development	50,000	0	0
MOU - Storage Operation and Maintenance	363,699	350,000	410,000
Technical Assistance to Water Users	382,256	364,219	325,000
Streamgaging	350,000	431,282	423,130
Kansas River Alluvial Aquifer Observation	100,000	50,000	0
Reservoir Bathymetric Surveys	0	200,000	350,000
Streambank Stabilization	1,000,000	0	0
Best Management Practices Implementation	0	900,000	700,000
Milford Lake RCPP	0	400,000	200,000
Water Vision Education	0	100,000	100,000
Streambank Stabilization Effectiveness Research	0	100,000	0
Harmful Algae Bloom Research	0	100,000	0
Water Technology Farms	0	75,000	75,000
Equus Beds Chloride Plume	0	50,000	50,000
Water Resource Planner	0	101,848	0
<i>Subtotal - Kansas Water Office</i>	<i>\$ 2,692,002</i>	<i>\$ 3,820,325</i>	<i>\$ 3,333,130</i>
Kansas Department of Health and Environment – Division of Environment			
Contamination Remediation	\$ 627,449	\$ 700,975	\$ 1,088,301
Total Maximum Daily Load	244,112	284,281	278,029
Nonpoint Source Program	235,045	313,703	303,208
Harmful Algae Bloom Pilot	0	450,000	450,000
Watershed Restoration and Protection (WRAPS)	549,996	735,888	730,884
Drinking Water Protection Program	0	0	350,000
<i>Subtotal - KDHE – Environment</i>	<i>\$ 1,656,602</i>	<i>\$ 2,484,847</i>	<i>\$ 3,200,422</i>
University of Kansas			
Geological Survey	\$ 26,841	\$ 26,841	\$ 26,841
Total Agency/Project Expenditures	\$ 11,262,979	\$ 16,479,773	\$ 16,411,025

Kansas Water Authority

The Kansas Water Authority (Authority) is a 24-member board that provides water policy advice to the Governor, Legislature, and the Director of the Kansas Water Office. The Authority is responsible for approving water storage sales, the State Water Plan, federal water contracts, and regulations and legislation proposed by the Kansas Water Office. The Authority meets quarterly. The Authority consists of 13 voting members and 11 ex officio members.

Voting membership includes:

- One member appointed by the Governor (also serving as chairperson);
- One member appointed by the President of the Senate;
- One member appointed by the Speaker of the House;
- A representative of large municipal water users;
- A representative of small municipal water users;
- A board member of a western Kansas Groundwater Management District (including districts 1, 3, and 4);
- A board member of a central Kansas Groundwater Management District (including districts 2 and 5);
- A member of the Kansas Association of Conservation Districts;
- A representative of industrial water users;
- A member of the State Association of Watershed Districts;
- A member with a demonstrated background and interest in water use, conservation, and environmental issues; and
- Two representatives of the general public.

Ex officio membership includes:

- The State Geologist;
- The Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture;

- The Secretary of Health and Environment;
- The Director of the Kansas Water Office (also serving as secretary);
- The Director of the Agricultural Experiment Station of Kansas State University;
- The Chairperson of the Kansas Corporation Commission;
- The Secretary of Wildlife, Parks and Tourism;
- The Secretary of Commerce;
- The Executive Director of the Division of Conservation of the Kansas Department of Agriculture;
- The Secretary of Agriculture; and
- The Director of the Kansas Biological Survey.

One primary responsibility of the Authority is to consider and approve policy for inclusion in the State Water Plan. The State Water Plan includes policy recommendations that have specific statewide or local impact and priority issues and recommendations for each of the 12 river basins in Kansas.

Budgetary Process

Historically, the Division of the Budget has assigned allocations to each agency for the expenditure of State Water Plan Fund moneys. Beginning with the FY 2008 budget cycle, the Authority and the Division of the Budget agreed to allow the Authority to develop a budget recommendation in lieu of the Division's allocation process.

A budget subcommittee of the Authority meets in the summer to develop a State Water Plan Fund budget proposal. The budget is presented to the full Authority each August. The Authority-approved budget is used by the state agencies to develop their budgets.

The Governor's budget includes recommended expenditures for the State Water Plan Fund when it is presented to the Legislature each January.

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Commerce, Labor, and Economic Development

B-1 Department of Commerce

The Kansas Department of Commerce (Department) is the cabinet agency concerned with economic development. Under the Office of the Secretary of Commerce, there are seven program groups: Business Incentives and Services, Community Development Assistance, Exporting and International Business, Commerce University Partnerships, Minority and Women Business and Development, Investor Programs and Services, and Workforce Services. The Athletic Commission and the Creative Arts Industries Commission also are organized within the Department. This article, while not exhaustive, summarizes the variety of programming and services designed to stimulate economic growth in Kansas.

Business Incentives and Services

Kansas Certified Development Companies (CDCs). These companies are not-for-profit corporations that contribute to the economic development of their communities or regions. CDCs work with the U.S. Small Business Administration and private lenders to provide financing to small businesses. The location of the 12 CDCs in Kansas can be found at kacdc.com. CDCs' loan packages often contain multiple sources of project funding, providing the small business customer with an optimal combination of rates and terms.

High Performance Incentive Program (HPIP). This program provides tax incentives to employers that commit to pay above-average wages and enhance their workers' skill development. HPIP offers employers four potential benefits:

- A 10.0 percent income tax credit for eligible capital investment at a company's facility that exceeds \$50,000 or \$1.0 million in the five metro counties of Douglas, Johnson, Sedgwick, Shawnee, and Wyandotte. The tax credit may be carried forward and used in any of the next 16 years in which the facility re-qualifies for HPIP;
- A sales tax exemption to use in conjunction with the company's capital investment at its facility;
- A training tax credit, worth up to \$50,000; and
- Priority consideration for access to other business assistance programs.

Kansas Industrial Training and Retraining Programs (KIT/KIR). These programs assist employers with training workers, whether on-site or in a classroom. The KIT Program may be used to assist firms involved in both pre-employment and on-the-job training, giving firms and prospective employees an opportunity to evaluate one another before making employment commitments. The KIR Program helps companies that are likely to terminate employees because of obsolete or inadequate job skills and knowledge. Eligible industries include basic enterprises that are incorporating new technology into their operations or diversifying production. At least one current employee must be trained to qualify for assistance.

Private activity bonds (PABs). These bonds are federally tax-exempt bonds. The types of bonds that qualify for tax-exempt status include:

- Exempt facility bonds;
- Qualified mortgage bonds;
- Qualified veterans' mortgage bonds;
- Qualified small issue bonds;
- Qualified student loan bonds;
- Qualified redevelopment bonds; and
- Qualified 501(c)(3) bonds.

Under the federal volume cap for 2018, Kansas has a bond allocation of \$311.4 million. The primary demand for bond allocation in Kansas has been for the issuance of exempt facility bonds, mortgage revenue bonds, and qualified small issue bonds, sometimes called industrial revenue bonds (IRBs). Exempt facility bonds are used to finance public infrastructure facilities pertaining to mass commuting, water, sewage, solid, or hazardous waste; heating or cooling utilities; and qualified residential rental projects. Mortgage revenue bonds (MRBs) and mortgage credit certificates (MCCs) are issued to provide first-time home buyers an enhanced opportunity to finance the purchase of a new home. Persons meeting certain financial and demographic guidelines are able to achieve substantial savings over the life of a home mortgage through the use of these programs. Kansas legislation allows cities, counties, or the Kansas Development

Finance Authority to issue IRBs for industrial or other authorized purposes, such as to purchase land; pay the cost of constructing and equipping new facilities; or to purchase, remodel, or expand existing facilities.

Promoting Employment Across Kansas Act (PEAK). This act gives qualified companies an incentive to locate or expand business operations and jobs in Kansas by allowing them to retain a portion of Kansas individual income withholding tax. A company must commit to creating five new jobs in non-metropolitan counties—or ten new jobs in the metropolitan counties of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee, and Wyandotte—over a two-year period. The company must also pay wages for the PEAK jobs that meet or exceed the county median or average wage or North American Industry Classification System (NAICS) average wage for that industry. Qualified applicants may include for-profit companies in eligible NAICS codes, as well as headquarters for not-for-profit organizations. Applicants must offer adequate health insurance coverage, as defined by KAR 110-21-1, to their full-time employees and pay at least 50.0 percent of the premium.

Depending on the number of PEAK jobs to be filled in Kansas and their wage levels, the Secretary of Commerce may approve benefit periods for a maximum of ten years. Companies that had entered into the program prior to January 1, 2013, may request an extension of the benefit period for up to two years from the Secretary of Commerce. During the benefit period, participating PEAK companies may retain up to 95.0 percent of the payroll withholding tax of PEAK-eligible jobs.

Caps are applied on the aggregate amounts of benefits received by companies that are expanding or relocating in Kansas. In FY 2019 and subsequent fiscal years, the cap on benefits is \$42.0 million. As of July 1, 2018, PEAK benefits cannot be used for retaining existing jobs.

Sales Tax and Revenue (STAR) Bonds. STAR Bonds allow city or county governments, subject to approval from the Department, to issue special revenue bonds for the financing of the infrastructure necessary for a major

economic development project. A form of tax increment financing (TIF), the proceeds from the incremental increase of sales tax revenue within the STAR Bond district, including state sales tax and transient guest tax revenues, may be used to pay off the bonds.

See [Briefing Book article B-2 Statewide STAR Bond Authority](#) for more details.

State Small Business Credit Initiative (SSBCI).

This initiative provides federal matching funds to eligible businesses through a network of partners. The Kansas Capital Multiplier Loan Fund provides businesses with matching loans, up to 9.0 percent of the private capital invested. Loans may range from \$25,000 to \$500,000. The Fund provides businesses with matching equity, up to 9.0 percent of the private equity invested. Eligible businesses include technology and bioscience companies working with a state entrepreneurial center or a university center of excellence. Rural businesses, businesses in distressed urban areas, or businesses with local angel investment may qualify. Equity investment may range from \$25,000 to \$250,000. Additional information may be found at NetWorkKansas.com.

Job Creation Program Fund (JCPF). This fund, administered by the Secretary of Commerce in consultation with the Secretary of Revenue and the Governor, aims to promote job creation and economic development by funding projects related to the major expansion of an existing commercial enterprise, the relocation to Kansas of a major employer, the award of a significant grant that has a financial matching requirement, the potential departure from the state or the substantial reduction of an existing employer's operations, training activities, the potential closure or substantial reduction of a major state or federal institution, projects in counties with at least a 10.0 percent decline in population over the last decade, or other unique economic development opportunities.

The 2.0 percent of withholding tax receipts, which previously was dedicated to the Investments in Major Projects and Comprehensive Training (IMPACT) Program, is deposited in the JCPF, provided the current debt services, including

administrative expenses, of the IMPACT Program have been met. The Secretary of Revenue annually estimates the amount of net tax savings, and that amount is deposited in the JCPF. The Secretary of Commerce is required to annually report to legislative leadership and the tax and commerce committees on the expenditures from the Fund.

Property tax abatement assistance. The Department may assist businesses and governmental entities with the application for industrial revenue bond tax abatements.

Energy incentives. Various incentives are offered to Kansas businesses and producers engaged in conventional and renewable energy production.

Community Development Assistance

The Kansas Downtown Redevelopment Act.

This act encourages entrepreneurs to locate and invest their businesses in central business districts or distressed neighborhoods. Property tax relief is offered in available areas designated by local governments and, subsequently, are reviewed and approved by the Department.

Kansas PRIDE. This is a community-initiated effort that helps local leaders prepare for and manage change, addressing such issues as planning, community services, and enrichment. The Department determines the eligibility for several financial incentives and tax credits. The Department then monitors the compliance of businesses and individuals for the duration of the incentive or tax credit agreement. The purposes and criteria for several financial incentives are outlined below.

Community Development Block Grant (CDBG) Program.

This program distributes federal funds to Kansas cities and counties looking to improve their communities. To receive funds, a project must meet at least one of the following federally mandated criteria:

- Benefits low- and moderate-income individuals;

- Removes or prevents slum or blight conditions; or
- Eliminates an urgent need created by a disaster when local funds are unavailable.

Kansas Community Service Program (CSP).

This program gives not-for-profit organizations a way to improve capital fundraising drives for community service, crime prevention, or health care projects. Tax credit awards are distributed through a competitive application process. Based on the scope and cost of the proposed project, applicants may request up to \$250,000 in tax credits. Applicant organizations in rural areas, defined as having less than 15,000 in population, are eligible for a 70.0 percent credit. Applicant organizations in non-rural areas are eligible for a 50.0 percent credit.

Rural Opportunity Zones. Started in 2011, Rural Opportunity Zones (ROZs) are designed to reverse population declines in rural areas of Kansas. Statute designates 77 counties as ROZs, including Allen, Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Decatur, Doniphan, Edwards, Elk, Ellsworth, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Republic, Rice, Rooks, Rush, Russell, Scott, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Trego, Thomas, Wabaunsee, Wallace, Washington, Wichita, Wilson, and Woodson.

The program has two incentives:

- A state income tax exemption for up to five years to individuals who move to a ROZ county from outside the state. Individuals must not have lived in Kansas for the past five years nor have an income of more than \$10,000 per year over the past five years from a Kansas source; and

- Student loan forgiveness, up to \$3,000 per year with a \$15,000 maximum benefit, for individuals who graduate from an accredited post-secondary institution and move to a ROZ county. The incentive is a county-state partnership, and counties must choose to participate.

As of 2019, 77 county governments or employers in the ROZ counties have joined the student loan forgiveness program. The income tax waiver is solely available in Chase County.

Exporting and International Business

The Department encourages international investment and increasing the export of goods and services produced in Kansas. Private companies can receive counseling regarding exports, marketing, international regulations, and searches for agents or distributors. Kansas vendors are recruited to attend international trade shows. The Department organizes trade missions and hosts foreign delegations when they visit Kansas.

EB-5 Visas. The Kansas Regional Center, designated by the U.S. Citizenship and Immigrations Services as a pilot participant, raises foreign investment capital for the Kansas economy *via* the issuance of EB-5 Visas. This visa allows a foreign investor and that individual's spouse and minor children to enter and stay in the country. A two-year green card is issued, allowing time for an investment of \$1.0 million or \$500,000 in targeted employment areas, such as rural areas, to be made and a minimum of ten jobs to be created.

Foreign Trade Zones. These zones, located in the Wichita and Kansas City areas, provide a duty- and quota-free entry point.

Exporting. The Department provides various services to small businesses to establish contacts with international buyers and potential markets. Programs and services include trade show assistance, certification of free sale (*i.e.*, documentation verifying that specified imported

goods are freely sold and approved for export), credit reports, and trade expansion grants.

Commerce University Partnerships

Entrepreneurs and technology companies are able to partner with Kansas State University and its Technology Development Institute, the University of Kansas and its Bioscience Technology Business Center, Wichita State University and its Technology Corporation, Pittsburg State University, or Kansas Manufacturing Solutions (previously known as the Mid-America Manufacturing Technology Center or MAMTC) for the acquisition of technical expertise, applied research, and other services intended to improve productivity and capacity.

Office of Minority and Women Business Development

The Department encourages the creation and growth of minority- and women-owned businesses, providing information regarding procurement, contracting, commercial education, financing, and business management. The Department provides a directory of certain certified enterprises for purchasing agents, contractors, and others.

Kansas Statewide Certification Program. The Office also administers the Kansas Statewide Certification Program in which women and minority businesses can be certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise. Certification may increase opportunities for those businesses to gain contracts and subcontracts from governmental and private entities committed to the inclusion of less advantaged persons. Program services are free.

Investor Program Services

Individual Development Account (IDA). The IDA promotes self-sufficiency for low-income Kansans in a matched savings program. The tax credits, approximately \$500,000 awarded to

selected community-based organizations, are used to leverage donations, which will serve as a match for savings in an IDA. Savings accrued in IDAs may be used for home ownership, residence repairs, business capitalization, and postsecondary education.

Angel investment resources. Regional networks of angel investors and angel tax credits help to meet the financing needs of Kansas entrepreneurs by serving as a catalyst to stimulate the flow of private investment capital in early stage ventures. Angel networks identify and fund start-up business opportunities. Kansas income tax credits are available to individuals who provide seed-capital financing for emerging Kansas businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services.

Workforce Services

KANSASWORKS. The Department is responsible for the State's workforce system called KANSASWORKS. Established through the federal Workforce Investment Act (WIA) of 1998 and Gubernatorial Executive Order No. 01-06, KANSASWORKS links businesses and employers with job seekers and educational institutions that provide training. KANSASWORKS' goal is to provide persons looking for work a "one-stop shop" to find employment, training, and information about Unemployment Insurance benefits. Workforce Services determines employers' eligibility for several of the employee-related incentives and training programs previously mentioned in this article. If a business faces mass layoffs, a rapid response team can be sent out to the employer's facility to provide job counseling for soon-to-be displaced workers. Workforce Services also administers the following programs.

Federal Bonding Program. This program provides individual fidelity bonds to employers for applicants who are denied coverage because of a criminal record, history of chemical abuse, lack of employment history, or dishonorable discharge. Each bond's coverage is for \$5,000

for six months. The program is free to employers and job applicants.

Kansas Registered Apprenticeship. This program combines classroom instruction with on-the-job training. Apprenticeships may last one to six years, depending upon the occupation and the industry's standards. A specialized form of apprenticeship program is the Early Childhood Association Apprenticeship Program, which, in partnership with community colleges, certifies people working in childcare and early education.

Incumbent Worker Training Program. Financed by the WIA, this program provides grants to employers for training expenses associated with avoidance of mass layoff, the development of a best practice model, industries endorsed by a local workforce board, or a significant occupational demand.

Foreign Labor Certification. This certification qualifies an employer to hire foreign or alien workers if an employer cannot find qualified U.S. workers available to fill vacancies.

Workforce Services works with an advisory State Board, which is appointed by the Governor and composed of 19 members, including employers, human resources specialists, higher education administrators, and state officials. At the local level, the state is divided into 5 areas. Each area has a local board of directors with headquarters in Great Bend (Area I), Topeka (Area II), Kansas City (Area III), Wichita (Area IV), and Pittsburg (Area V). The 5 areas provide workforce services at 28 workforce centers across the state.

Work Opportunity Tax Credit (WOTC). This tax credit encourages private employers to hire within one of several targeted groups of job candidates who traditionally face barriers to employment, such as public assistance recipients, unemployed or disabled veterans, or ex-felons. The tax credit reduces an employer's federal income tax liability by as much as \$2,400 per qualified new worker in the first year of employment, with employers hiring disabled veterans saving up to \$9,600 in the first year of employment.

Workforce AID. The program helps employers find the technical training necessary for employees to meet employment needs.

KanVet. The program is a clearinghouse of resources and benefits for veterans.

Commissions

Kansas Athletic Commission. This commission, composed of five members appointed by the Governor and serving four-year terms, administers the laws governing wrestling and regulated sports, including professional boxing, kickboxing, and mixed martial arts. The Commission, in cooperation with the Boxing Commissioner, works to ensure the health and safety of contestants, fair and competitive bouts, and the protection of the general public. Regulatory responsibilities include the licensing and supervision of referees, judges, physicians, managers, contestants, timekeepers, seconds, promoters, and matchmakers for contests, as well as event oversight.

Kansas Creative Arts Industries Commission. This commission, composed of 11 members appointed by the Governor and legislative leadership, promotes the growth of creative industries in Kansas. This is pursued through two grant programs: the Strategic Investment Program, which supports the development and operation of art organizations, and the Arts Integration Program, which facilitates the involvement of the arts in education and community development goals.

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Commerce, Labor, and Economic Development

B-2 Statewide STAR Bond Authority

STAR Bond Q&A

What is a STAR Bond?

A STAR Bond is a tax increment financing (TIF) program that allows city governments to issue special revenue bonds, which are repaid by all of the revenues received by the city or county from incremental increases in transient guest taxes, local sales taxes, and use taxes collected from taxpayers doing business within the designated portion of the city's "sales tax and revenue" (STAR) bond district. All or a portion of the increased state sales and use tax revenues also may be used to repay the bonds, which typically have a 20-year repayment period.

What type of project can use STAR Bond financing?

- A project with at least a \$50.0 million capital investment and \$50.0 million in projected gross annual sales revenues;
- A project located outside of a metropolitan statistical area that has been found by the Secretary of Commerce (Secretary) to be in an eligible area under Tax Increment Financing law and of regional or statewide importance;
- A major commercial entertainment and tourism area as determined by the Secretary;
- Auto racetrack facilities, multi-sport athletic complexes, river walk canal facilities, historic theaters, the Manhattan Discovery Center, the Wyandotte County Schlitterbahn Project, museum facilities, or a major motorsports complex in Shawnee County; or
- A project involving buildings 65 years old or older and include contiguous lots that are vacant or condemned.

Is any project specifically excluded from use of STAR Bonds?

Projects including a gaming casino are specifically excluded from use of STAR Bonds.

How does the STAR Bond project work?

The law allows the governing body of a city to establish one or more special bond projects in any area in the city or outside a city's boundaries with the written approval of the county commission. However, each special bond project must be approved by the Secretary based on the required feasibility study prior to utilizing STAR Bonds.

The city is also required to propose a project plan, hold a hearing on the plan, and adopt the project plan. One mandated component of the project plan is a marketing study conducted to examine the impact of the special bond project on similar businesses in the projected market area.

Finally, the city must complete a feasibility study, which includes:

- Whether a project's revenue and tax increment revenue and other available revenues are expected to exceed or be sufficient to pay for the project costs;
- The effect, if any, the project will have on any outstanding special obligation bonds payable from the revenues used to fund the project;
- A statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;
- Visitation expectations, the unique quality of the project, an economic impact study, and integration and collaboration with other resources or businesses;
- The quality of service and experience provided as measured against national consumer standards for the specific target market;
- Project accountability, measured according to best industry practices;
- The expected return on state and local investment that the project is anticipated to produce;
- A statement concerning whether a portion of the local sales and use taxes are pledged to other uses and are unavailable as revenue for the project

and, if the revenues are so committed, a detailed explanation of the commitment and the effect; and

- An anticipated principal and interest payment schedule on the bond issue.

The Secretary places a limit on the total amount of STAR Bonds that may be issued for any project.

A city is also required to have a certified public accountant conduct an annual audit of each project. STAR Bond districts are prohibited from including real property that was part of another project or district unless that project or district has been approved by the Secretary prior to March 1, 2016. A district is limited to those areas being developed and any areas reasonably anticipated to directly benefit the project. However, STAR Bond districts created and approved in 2017 or later must exclude tax increment revenues derived from retail automobile dealers. If a STAR Bond district adds area, the base tax year for the newly annexed area will be the 12-month period immediately prior to the month in which the new area is added to the district.

What are the constraints placed on the developer?

The developer of a special bond project is required to commence work on the project within two years from the date of adoption of the project plan. If the developer does not commence work on the project within the two-year period, funding for the project ceases and the developer has one year to appeal to the Secretary for re-approval of the project. If the project is re-approved, the two-year period for commencement applies.

Also, the law requires that Kansas residents be given priority consideration for employment in construction projects located in a special bond project area.

What are eligible uses for STAR Bond proceeds?

- Purchase of real property, which may be acquired by means of eminent domain;

- Relocation assistance for property owners moving out of the project district;
- Site preparation work, including relocations of utilities;
- Drainage conduits, channels, levees, and river walk canal facilities;
- Parking facilities, including multi-level parking structures devoted to parking only;
- Street improvements;
- Street light fixtures, connection, and facilities;
- Utilities located within the public right-of-way;
- Landscaping, fountains, and decorations;
- Sidewalks and pedestrian underpasses or overpasses;
- Drives and driveway approaches located within the public right-of-way of an auto racetrack facility, major multi-sport athletic complex, museum facility, and major motorsports complex; and
- Up to 1.0 percent of the bond proceeds, but not exceeding \$200,000, plus any actual administrative costs incurred by the Department of Commerce (Department) that exceed the fee.

What are ineligible uses for the STAR Bond proceeds?

Costs incurred in connection with the construction of buildings or other structures are not eligible. In addition, proceeds are not available for fees and commissions paid to real estate agents, financial advisors, or any other consultants who represent the developer or any other businesses considering locating or located in a redevelopment district; salaries for local government employees; moving expenses for employees of the businesses locating within the redevelopment district; property taxes for businesses that locate in the redevelopment district; lobbying costs; bond origination fees paid to the city; any personal property as defined in KSA 79-102; or travel, entertainment, and hospitality.

Other Important Information

All cities that have projects financed with STAR Bonds are to prepare and submit an annual report to the Secretary by October 1 of each year. The Department compiles an annual report on all STAR Bond projects and submits them to the Governor; the Senate Committee on Commerce; and the House Committee on Commerce, Labor and Economic Development by January 31 each year. For the past three calendar years and year to date, each STAR Bond district must report the following information:

- The amount of sales and use tax collected;
- The amount of bond payments and other expenses incurred;
- The amount of bonds issued and the balance of bonds, by district and by project;
- The remaining cash balance in the project to pay for future debt service and other permissible expenses;
- Any new income-producing properties brought into the district, identifying the base amount of revenue the State would retain and the incremental amount that goes to the district;
- The amount of bonds issued to repay private investors, identifying the share of the indebtedness financed by private and public financing;
- The percentages of state and local effort committed to the district; and
- The number of visitors to the district, identifying the number of in-state and out-of-state visitors.

Reauthorized in 2017, the authority to issue debt pursuant to the STAR Bond Financing Act will sunset on July 1, 2020, unless continued by an act of the Legislature.

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Commerce, Labor, and Economic Development

B-3 Unemployment Insurance Trust Fund

Overview

The Kansas Unemployment Insurance (UI) Trust Fund was created in 1937 as the state counterpart to the Federal Unemployment Insurance Trust Fund. The UI Trust Fund provides income stability for Kansas citizens during times of economic difficulty while stimulating economic activity. UI is a federal program managed by the State. Changes to Employment Security Law cannot take effect until approved by the U.S. Department of Labor. The Legislature has modified the provisions of the Kansas Employment Security Law several times over the past two decades.

State Fund Contributions

Contributions to the UI Trust Fund are made by Kansas employers and are governed by KSA 2019 Supp. 44-710a. The UI Trust Fund is designed to be self-correcting during economic cycles. Moneys in the UI Trust Fund accumulate during periods of economic expansion; benefits are distributed during economic recessions.

The State charges employers a fee on the first \$14,000 of wages paid to each employee. This is called the taxable wage base. The amount collected from employers varies depending upon the presence or absence of several factors or conditions, such as employer classifications. Employers in Kansas can be classified as a new employer, an entering and expanding employer, a positive balance employer, or a negative balance employer.

New employers in the construction industry with less than three years of employment history are charged a fee amount equal to 6.0 percent of their taxable wage base. For new employers who are not in the construction industry and have fewer than 24 months of payroll experience, the contribution rate is 2.7 percent.

After receiving notice from the Kansas Department of Labor regarding contributions owed for the upcoming rate year, a new employer has 30 days to request an alternative rate be applied if the employer can provide information that the employer's operation has

been in existence in another state for a minimum of three years prior to moving to Kansas.

If that condition is met, the employer's contribution rate will be equal to the rate previously charged by another state provided that rate was not less than 1.0 percent. In order to retain the reduced contribution rate, the employer must maintain a positive account balance throughout the four-year period the reduced rate is in effect.

Employers with an employment history of at least three years qualify for experience-based ratings.

Employers are classified as positive balance when their total contributions to the UI Trust Fund exceed the amount of unemployment benefits charged to their accounts. Positive balance employers are grouped into 27 rate groups depending upon their unemployment experience, and a specific contribution rate is determined for each employer.

The standard rates for the positive groups range from 0.2 percent for rate group 1 and increase by 20 basis points in each subsequent rate group until 5.4 percent is established for rate group 27.

Employers not classified as negative balance employers are eligible to receive a fee discount of 25.0 percent if all reports are filed and contributions are made by January 31. This discount does not apply if other discounts provided by law are in effect or if the UI Trust Fund balance is insufficient.

Employers are classified as negative balance when their total contributions to the UI Trust Fund do not exceed the amount of unemployment benefits charged to their accounts. They are grouped into 11 rate groups. The standard rates for the negative groups range from 5.6 percent for rate group N1 and increase by 20 basis points in each subsequent rate group until 7.6 percent is established for rate group N11.

The solvency adjustment, which is based upon the UI Trust Fund's reserve ratio (the UI Trust Fund's balance as of July 31, divided by total payroll for contributing employers) and the average high benefit cost rate (an average of the three highest ratios of benefits paid to total wages in the most

recent 20 years) is applied to all experience-rated employers, which range from a maximum of 1.6 percent to a minimum of -0.5 percent. Employers have the choice to make additional contributions to the UI Trust Fund in order to become positive balance employers and qualify for an experience-based rating with lower contribution rates.

Federal Unemployment Trust Fund

In addition to the contributions to the UI Trust Fund, employers are taxed by the Federal Unemployment Tax Act (FUTA).

Employers pay a rate of 6.0 percent on the first \$7,000 of income; however, the federal government provides a tax credit of 5.4 percent against this rate for states with an unemployment insurance program in compliance with federal requirements.

This yields an effective contribution rate of 0.6 percent for Kansas employers. FUTA funds are used for administrative purposes and to fund loans for state unemployment insurance programs when they become insolvent.

Solvency of UI Trust Fund

Kansas uses the Average High Cost Multiple (AHCM), as recommended by the U.S. Department of Labor, to ensure the UI Trust Fund is adequately funded. The AHCM is the number of years a state can pay benefits out of its current UI Trust Fund balance if it were required to pay benefits at a rate equivalent to an average of the three highest 12-month periods in the past 20 years. Provided the AHCM is equal to or greater than 1.15, a solvency adjustment of -0.5 percent reduces the employers' contributions rates. If the AHCM is between 0.75 and 1.14999, there is no adjustment. However, depending upon the extent to which the AHCM is lower than 0.75, a solvency adjustment of 1.0 percent to 1.6 percent may be added to employers' contributions rates.

The primary determinants of the UI Trust Fund depletion rate are the benefits paid out, the number of persons to whom unemployment is

paid, and the amount of time for which benefits are paid.

Current Status of the UI Trust Fund

If a future recession were severe enough to deplete the UI Trust Fund, which happened during the Great Recession, the Kansas Department of Labor is authorized to borrow from the federal Labor Department, Pooled Money Investment Board, or both to make weekly benefit payments. The State General Fund is not obligated to ensure the solvency of the UI Trust Fund. Likewise, the UI Trust Fund may not be used for non-employment security purposes. Federal UI loans must be repaid in a single lump sum plus interest, which is waived if a state’s UI trust fund was sufficiently solvent prior to the loan. Failure to repay the loan results in the FUTA tax credit for employers being reduced by an additional 0.3 percent annually until the debt is repaid.

Employee Benefits

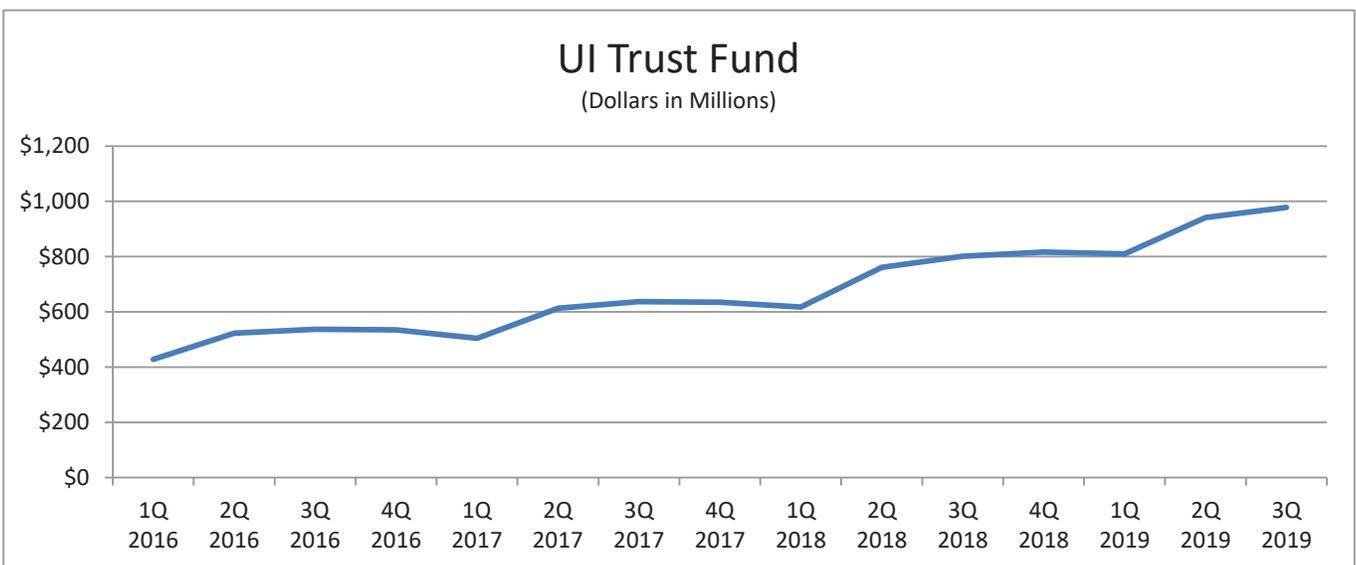
An individual is eligible for unemployment compensation when that person has lost employment through no fault of his or her own. Termination or resignation generally disqualifies a person from receiving UI benefits; however,

Kansas Employment Security Law allows for several exceptions to this prohibition.

The amount of money an employee can receive in benefits will vary depending on the level of compensation the employee received during employment and the length of time the employee can receive benefits. However, there are strict upper and lower limits on benefit payments to prevent over- and under-compensation. If the Kansas Department of Labor determines a person made a false statement or representation when applying for benefits, that person is disqualified from receiving benefits for five years.

Calculating the Weekly Benefit

The weekly benefit amount is what the claimant will receive each week in unemployment compensation. The weekly benefit amount is determined by multiplying 4.25 percent times the highest earning quarter in the first four of the last five completed calendar quarters. The weekly benefit amount is limited to either \$474 or 55.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year, whichever is greater. Employees are guaranteed to receive at least 25.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year.



Calculating the Length of Compensation

During a standard or non-recessionary period, an employee's duration of benefit is calculated in one of two ways, whichever is less. First, an employee can receive weekly compensation for a specified number of weeks, or second, the duration of benefits is determined by multiplying one-third times the total benefits received in the first four of the last five completed calendar quarters. The weekly benefits amount is divided into the total benefits received in order to determine the number of weeks an employee can receive compensation. If the unemployment rate for Kansas is equal to or greater than 6.0 percent, a person is eligible for a maximum of 26 weeks of benefits. If the unemployment rate is less than 6.0 percent but greater than 4.5 percent, a person is eligible for 20 weeks of benefits. A person is eligible for 16 weeks of benefits if the unemployment rate is equal to or less than 4.5 percent. For purposes of this provision, the law calculates the unemployment rate using a three-month, seasonally adjusted rolling average.

The federal Emergency Unemployment Compensation Act of 2008 (Act) extends an

employee's duration of benefits by 20 weeks and has an additional Tier 2 trigger to provide 13 weeks of compensation when unemployment exceeds 6.0 percent, for a total of 33 weeks above the 26 weeks of unemployment compensation in non-recessionary periods. All benefits paid under the Act are paid from federal funds and do not impact the UI Trust Fund balance. By law, Kansas will provide an additional 13 weeks of unemployment compensation when the Kansas economy hits one of several indicators, including an unemployment rate of at least 6.5 percent for the previous three months. An applicant can receive less than 13 weeks of extended state benefits in the event his or her original eligible benefit period was less than 26 weeks based on the one-third calculation. Under state law, extended Kansas benefits are paid 50.0 percent from the UI Trust Fund and 50.0 percent from the Federal Unemployment Account.

Enforcement of the UI System

In 2013, the Legislature authorized the Secretary of Labor to hire special investigators with law enforcement capabilities to investigate UI fraud, tax evasion, and identity theft.

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Education

C-1 Career Technical Education (CTE) in Kansas

In 2012, legislation (SB 155) launched a new plan to enhance career technical education (CTE) in Kansas with the purpose of better preparing high school students for college and careers. Beginning with the 2012-2013 school year, Kansas high school students could qualify for free college tuition in approved technical courses offered at Kansas technical and community colleges. The program also initially provided school districts with a \$1,000 incentive for each high school student who graduated from that district with an industry-recognized credential in a high-need occupation.

The 2015 Legislature changed the incentive to a prorated amount not to exceed \$750,000 in total. During the 2016 Session, the appropriated amount decreased from \$750,000 to \$50,000 for fiscal year (FY) 2016 and FY 2017, which was estimated to cover the cost of the certification examinations only.

The 2017 Legislature moved the \$50,000 incentive funds from the Kansas Board of Regents (KBOR) to the Kansas State Department of Education (KSDE) for FY 2018 and FY 2019.

The appropriated amount for tuition was prorated in FY 2016 and FY 2017, as there was no increase in appropriations and the amount did not cover all participants in the program. The program was fully funded in FY 2018 and FY 2019.

Occupations on the qualifying credential incentive list can be found on the KBOR website. The list currently includes, but is not limited to, the following occupations:

- Heavy and tractor-trailer truck drivers;
- Computer support specialists;
- Nursing assistants;
- Automotive service technicians and mechanics;
- Machinists;
- Farm equipment mechanics;
- Firefighters;
- Carpenters;
- Welders;
- Electricians;

- Plumbers and pipefitters;
- Sheet metal workers; and
- Heating, air-conditioning, and refrigeration mechanics and installers.

Student Participation

Since the program’s inception, the number of students participating in postsecondary career technical education has grown, resulting in a growth of college credit hours generated and credentials earned by high school students. The table published on the KBOR website summarizes the increase in participation over time.

Student Participation in CTE								
	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017	2018-2019*
Participating Headcount	3,475	3,870	6,101	8,440	10,275	10,023	10,666	13,675
College Credit Hours Generated	28,000	28,161	44,087	62,195	76,756	79,488	85,302	105,084
Credentials Earned	--	548	711	1,419	1,682	1,224	1,458	1,803

* preliminary numbers

National Recognition

In 2013, the Career Technical Education Initiative received national recognition as one of the “Top Ten Innovations to Watch” from The Brookings Institution. The same year, Martin Kollman of

KSDE and Lisa Beck of KBOR published the article “Free CTE College Tuition and Certification Funding: KS SB 155 at Work” in the September issue of *Techniques*, a national monthly magazine published by the Association for Career and Technical Education.

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Education

C-2 Mental Health Intervention Team Pilot Program

2018 Legislation

In Sub. for SB 423 and House Sub. for SB 61, the 2018 Legislature created the Mental Health Intervention Team Pilot Program (Program) for fiscal year (FY) 2019 “to improve social-emotional wellness and outcomes for students by increasing schools’ access to counselors, social workers and psychologists statewide” (2018 Sub. for SB 423, Sec. 1(a)). The legislation required school districts and community mental health centers (CMHCs) to enter into partnerships through memorandums of understanding (MOUs) to implement the Program. Additionally, the legislation required mental health intervention teams to consist of school liaisons employed by the participating school districts and clinical therapists and case managers employed by the participating CMHCs. The legislation specified nine school districts that would participate in the Program.

The Legislature appropriated \$10.0 million from the State General Fund (SGF) to the Kansas State Department of Education (KSDE) to fund the Program. The appropriations included \$4.2 million to cover treatment costs for participating students. This included \$2.6 million in match for Medicaid costs and \$1.5 million for CMHCs. In addition, the appropriations included \$3.3 million to cover the costs associated with the school liaisons hired by participating school districts. Finally, \$2.5 million was included to create an online database to be used for the Program.

2019 Legislation

In House Sub. for SB 25, the 2019 Legislature reauthorized the Program for FY 2020. The Legislature appropriated \$8.0 million from the SGF. The Legislature also made several adjustments to the Program, reappropriating unused funds for the pilot program from FY 2019 to FY 2020, requiring a 25.0 percent local match for the school liaisons hired by participating school districts, and, finally, providing the State Board of Education (State Board) with the authority to expand the Program to additional school districts for FY 2020.

Program Overview

Scope of Program

As implemented by KSDE, the Program will focus on providing care to two groups of students. The “alpha group” consists of youth who are Children in Need of Care (CINC) and are in state custody. These students have experienced multiple placements and move school districts multiple times throughout the school year. The “beta group” consists of youth who may move from time to time, but are also likely to reside in one school district throughout their education.

Duties of Intervention Team Members

The duties of school liaisons employed by participating school districts include, but are not limited to:

- Identifying appropriate referrals;
- Acting as a liaison between the school district and the CMHC;
- Helping the CMHC prioritize interventions for identified students;
- Facilitating connections between identified students’ families and the CMHC staff;
- Communicating with child welfare contacts to get the educational history of a student who has moved schools; and
- Gathering outcomes to monitor the effectiveness of the program.

The duties of clinical therapists employed by participating CMHCs include, but are not limited to:

- Helping the school liaison identify and prioritize students for treatment interventions;
- Conducting a clinical assessment of the identified student and making appropriate treatment recommendations;
- Providing individual and family therapy;
- Communicating with school personnel to help them understand a student’s

diagnosis, family circumstance, and suggested interventions; and

- Gathering outcome data to monitor the effectiveness of the Program.

The duties of case managers employed by participating CMHCs include, but are not limited to:

- Working with the school liaison and clinical therapist to identify and prioritize students for treatment interventions;
- Providing outreach to students, families, and child welfare contacts to help engage in treatment;
- Helping maintain communication between all entities involved, including family, student, school, clinician, child welfare, and community;
- Making referrals to appropriate community resources; and
- Helping to reconnect students and families when they are not following through with the treatment process.

Memorandums of Understanding

Participating school districts are required to enter into two MOUs for the Program. The first MOU is with KSDE, which outlines the basic requirements of the Program and specifies how funding received for the Program is to be spent. The second MOU is between the school district and its partner CMHC. This MOU outlines how the school district and CMHC will cooperate in the implementation of the Program. KSDE produced and distributed a standard memorandum for this agreement, but did not require school districts to use it.

Additionally, KSDE has entered into a MOU with the Kansas Department of Health and Environment (KDHE), which covers the distribution of the funding for Medicaid-related costs. During FY 2019, the Medicaid funding for the program was distributed to the participating school districts. The school districts then made payments to KDHE. For FY 2020, however, KSDE will pay KDHE directly for Medicaid-related costs.

Breakdown of Funding

Total funding for the Program for FY 2020 is \$9.3 million. This includes the \$8.0 million appropriated by the 2019 Legislature and \$1.3 million reappropriated from FY 2019 to FY 2020. Most of the funding for the Program flows through the participating school districts. Following is a description of the two different grants to school districts and the payments to be made to KDHE.

School Liaison Grant. This grant is distributed to school districts on a monthly basis. School districts submit requests each month to cover anticipated expenditures. Allowable expenditures for this grant include salary, fringe benefits, travel expenses, and a computer that must be used exclusively by the school liaison. Beginning in FY 2020, participating school districts must cover 25.0 percent of the cost of the liaisons. Anticipated school liaison grant funding for FY 2020 is \$3.8 million, compared to \$3.3 million in FY 2019.

CMHC Grant. This grant will be distributed quarterly to school districts. School districts must forward all payments to the participating CMHC to cover the cost for treatment and services for students who are uninsured or underinsured. Anticipated CMHC grant funding for FY 2020 is \$2.0 million, compared to \$1.5 million in FY 2019.

KDHE Payments. As mentioned above, KSDE will make payments directly to KDHE to cover Medicaid costs related to the Program. Anticipated KDHE payments for FY 2020 are \$2.6 million, which is the same as in FY 2019.

Reporting Requirements

KSDE requires participating school districts to submit, in conjunction with their partner CMHC, two reports during the fiscal year. A report covering the first half of the school year is due December 20, 2019. The second report covering the entire year is due June 30, 2020.

These reports track the number of students served and various academic performance measures, including attendance, behavior, and graduation. Additionally, the year-end report will include a

financial report on program expenditures for the fiscal year.

Participating School Districts

During the first year of the Program, there were a total of 9 participating school districts, serving 79 schools. They included:

- Topeka (USD 501): 28 schools;
- Wichita (USD 259): 22 schools;
- Kansas City (USD 500): 10 schools;
- Parsons (USD 503): 5 schools;
- Garden City (USD 457): 5 schools;
- Abilene (USD 435): 3 schools;
- Herington (USD 487): 3 schools;
- Chapman (USD 473) 2 schools; and
- Solomon (USD 393): 1 school.

Using the authority provided in 2019 House Sub. for SB 25, the State Board has expanded the Program for FY 2020. According to information provided by KSDE, the Program will serve students in 180 schools in 32 school districts during the 2019-2020 school year.

The table on the following page includes a list of all school districts participating in the Program during FY 2020, along with the estimated grant payments to each school district.

Participating School Districts for FY 2020

<u>USD</u>	<u>USD Name</u>	<u>School Liaison Grant</u>	<u>CMHC Grant</u>
239	North Ottawa County**	\$ 44,580	\$ 14,860
259	Wichita*	1,261,977	1,049,031
262	Valley Center	45,345	15,115
266	Maize	85,520	28,507
270	Plainville	20,222	6,741
286	Chautauqua County	25,008	8,336
305	Salina	279,000	93,000
306	Southeast of Saline	33,825	11,275
310	Fairfield	32,785	10,928
311	Pretty Prairie***	39,429	13,143
329	Wabaunsee	32,100	10,700
349	Stafford	44,939	14,980
382	Pratt	48,741	16,247
383	Manhattan-Ogden	49,734	16,578
402	Augusta	50,648	16,883
435	Abilene*	91,029	125,750
438	Skyline	28,667	9,556
446	Independence	35,700	11,900
453	Leavenworth	39,681	13,227
457	Garden City*	58,976	55,500
461	Neodesha	45,130	15,043
484	Fredonia	42,655	14,218
489	Hays	41,975	13,992
490	El Dorado	79,200	26,400
500	Kansas City*	752,250	133,800
501	Topeka*	424,441	208,000
503	Parsons*	57,375	78,000
State Totals		\$ 3,790,932	\$ 2,031,710

* Participating school district during FY 2019. Abilene also serves as the fiscal agent for Solomon (USD 393), Chapman (USD 473), and Herington (USD 487).

** Serves as the fiscal agent for Twin Valley (USD 240).

*** Serves as the fiscal agent for Haven Public Schools (USD 312).

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Education

C-3 School Finance—Recent Legislative Changes

The 2015, 2016, 2017, 2018, and 2019 Legislatures passed major changes to school finance.

2015

Legislation in 2015 repealed the School District Finance and Quality Performance Act (SDFQPA) that was passed in 1992 and, in its place, created the Classroom Learning Assuring Student Success (CLASS) Act. The CLASS Act provided a block grant of funding for each school district for school years 2015-2016 and 2016-2017.

2016

The 2016 Legislature, in both its regular session and its special session, altered the formula for providing Supplemental General State Aid for fiscal year (FY) 2017 and amended laws related to virtual school state aid, the Extraordinary Need Fund (ENF), and federal funding for certain pre-kindergarten programs.

Legislation passed in the 2016 Special Session reinstated the Supplemental General State Aid and Capital Outlay State Aid formulas in effect prior to the enactment of the CLASS Act, which the 2016 Legislature fully funded. In addition, the 2016 Special Session legislation reduced from \$5,600 to \$5,000 the amount of funding school districts were entitled to receive under the block grant for full-time virtual school students for FY 2017.

Legislation directed the State Board of Education (State Board) to review applications for funds from the ENF. In determining a district's need, the State Board must consider:

- Any extraordinary increase in enrollment for the current school year;
- Any extraordinary decrease in assessed valuation for the current year;
- Any other unforeseen acts or circumstances substantially impacting a district's general fund budget for the current year; and
- In lieu of any of the above, whether the district has reasonably equal access to substantially similar educational opportunities through similar tax effort.

Special Session legislation set expenditure limits on the ENF at \$13.0 million and provided that no moneys could be expended from the ENF in FY 2017 until the sale or merger of the Kansas Bioscience Authority was complete. The legislation directed the first \$25.0 million in proceeds from the sale or merger to be deposited in the State General Fund. If the remaining proceeds were less than \$13.0 million, the amount of money appropriated to the ENF was to be reduced by the amount of the shortfall.

2017

The 2017 Legislature passed the Kansas School Equity and Enhancement Act, which reinstated a weighted enrollment formula similar to the SDFQPA. Weightings include at-risk students, declining enrollment, high-density at-risk students, bilingual students, low enrollment, high enrollment, new school facilities, ancillary school facilities, cost of living, career technical education, and transportation.

The weighted enrollment of a school district is once again multiplied by a coefficient to determine the aid the district receives in its general fund.

This multiplier—formerly known as base state aid per pupil—is now referred to as base aid for student excellence (BASE).

2018

The 2018 Legislature increased the BASE over a five-year period to arrive at an amount of \$4,713 by school year 2022-2023. The legislation also made changes to weightings associated with transportation, at-risk students, career and technical education, and bilingual students. Finally, the legislation added aid for special education, early childhood education, student mental health, and college and career entry exams.

2019

The 2019 Legislature further increased the BASE over a four-year period to arrive at an amount of \$4,846 by school year 2022-2023. The legislation also made changes to various school accountability, auditing, and reporting provisions. Finally, the legislation requires the Kansas State Board of Education to identify and approve evidence-based at-risk programs.

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Education

C-4 School Safety and Security

During the 2018 and 2019 Sessions, the Kansas Legislature passed provisions regarding school safety and security. House Sub. for SB 109 (2018) included school safety grants, statewide standards for securing schools, school safety plans, and emergency preparedness drills (also known as safety drills). House Sub. for SB 25 (2019) included additional requirements for school safety grants. SB 128 (2019) amended law related to the minimum number of safety drills required to be conducted in schools each school year.

School Safety and Security Grants

House Sub. for SB 109 (2018) created the School Safety and Security Grant Fund (Fund) in the Kansas State Department of Education (KSDE) and transferred \$5.0 million from the State General Fund (SGF) to the Fund for fiscal year (FY) 2019. The Fund, controlled by the State Board of Education (State Board), provides grant moneys to school districts for school safety and security improvements. School districts are required to match the amount of the grant on a dollar-for-dollar basis.

For FY 2019, the State Board awarded grants to 156 of the state's 286 school districts. The average grant was \$32,268. The smallest grant was awarded to Healy (USD 468) for \$1,043, and the largest was awarded to Wichita (USD 259) for \$922,613.

House Sub. for SB 25 (2019) appropriated \$5.0 million from the SGF to the Fund for FY 2020. The bill required FY 2020 disbursements to be for the acquisition and installation of security cameras and any other systems; equipment and services necessary for security monitoring of facilities operated by a school district; and for securing doors, windows, and any entrances to such facilities.

For FY 2020, the State Board awarded grants to 169 of the state's 286 school districts. The average grant was \$29,585. The smallest grant was awarded to Moscow (USD 209) for \$670, and the largest was awarded to Wichita (USD 259) for \$921,475.

Statewide Standards for Securing Schools

House Sub. for SB 109 (2018) required the State Board to develop and adopt statewide standards for making all public schools safe

and secure by January 1, 2019. The bill required those standards to include, but not be limited to, the infrastructure of school buildings, security technology utilized in schools, and communication systems. The State Board was required to consult with the Adjutant General's Department, Kansas Bureau of Investigation (KBI), Kansas Department of Health and Environment (KDHE), and the State Fire Marshal when developing these standards. The State Board was permitted to consult with other state or local agencies or school districts. These standards were adopted and can be found on KSDE's Safe and Secure Schools Unit webpage: <https://www.ksde.org/Kansas-Safe-Schools>.

School Safety Plans

The State Board was required to adopt statewide standards for school safety and security plans by January 1, 2019. House Sub. for SB 109 (2018) required those standards to include, but not be limited to, the evaluation of school building infrastructure; training of school district employees on safety policies; procedures for notification, securing a building during an emergency, emergency evacuation, and recovery after an emergency; incorporation of school safety plans into existing emergency response plans; distribution of school safety plans to pertinent local agencies; and procedures to ensure school safety plans are implemented.

The State Board was required to consult with the Adjutant General's Department, KBI, KDHE, and the State Fire Marshal when developing these standards. The State Board was permitted to consult with other state or local agencies or school districts. These standards were adopted and can be found on KSDE's Safe and Secure Schools Unit webpage: <https://www.ksde.org/Kansas-Safe-Schools>.

House Sub. for SB 109 (2018) required, during FY 2019, local boards of education to adopt a comprehensive school safety plan based on the standards adopted by the State Board, school districts to consult with local law enforcement and emergency management agencies to review school infrastructure and existing emergency

response plans, and adopted school safety plans to be sent to the State Board and each local agency the school district consulted with during the creation of the plan. These safety plans are required for a school district to receive school safety grant disbursements from the Fund.

Emergency Preparedness (Safety) Drills

House Sub. for SB 109 (2018) required the State Fire Marshal to expend moneys to require administrators of public and private schools to conduct at least 16 emergency preparedness drills during the 2018-2019 school year and to prescribe the manner in which such drills are to be conducted. These 16 emergency preparedness drills included 4 fire drills; 3 tornado drills; and 9 crisis drills, such as intruder response drills and lock-down drills.

SB 128 (2019) amends law related to the minimum number of safety drills required to be conducted in schools each school year. The bill requires the State Fire Marshal to adopt rules and regulations requiring administrators of public and private schools and educational institutions, except community colleges, colleges, and universities, to conduct at least four fire drills, two tornado drills (one in September and one in March), and three crisis drills each school year.

The bill requires the three crisis drills to be conducted at some time during school hours, aside from the regular dismissal at the close of the day's session. Continuing law requires fire and tornado drills to be conducted at some time during school hours, aside from the regular dismissal at the close of the day's session. The bill states the manner in which such crisis drills are conducted may be subject to approval by the Safe and Secure Schools Unit of KSDE.

The bill authorizes the State Fire Marshal to grant an exemption pursuant to KSA 31-136, authorizing a variance for the number or manner of fire drills, tornado drills, and crisis drills for students receiving special education or related services.

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Identification

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Elections and Ethics

D-1 Election Security

Election security continues to be an important topic of discussion at all levels of government. This article examines the major election vulnerabilities and summarizes election security activities being undertaken at the federal level as well as in Kansas.

Tools Used in Elections

The Election Assistance Commission (EAC) noted more than 300,000 pieces of voting equipment were deployed during the 2018 election. Since a majority of election tools are electronic, cybersecurity and tampering are major issues concerning election security. Many tools and resources increase the efficiency and security of elections. The tools and resources examined in this article include online voter registration systems, electronic poll books, election personnel, voting machines, storage and tallying of ballots, transmission of vote tallies, post-election audits, and other cybersecurity tools.

Online voter registration systems. The EAC found there were more than 211 million registered voters during the 2018 election. According to the National Conference of State Legislatures (NCSL), currently 37 states and the District of Columbia (D.C.) use an online voter registration system to register those voters.

As with any online system, there are benefits and risks. Online voter registration can expedite new voter registration, updates to existing voter registrations, and finding other election information, such as locating polling places. However, online voter registration systems are at risk of cyberattacks, as was seen when hackers targeted election systems, including voter registration systems, in 21 states. While Arizona, Florida, and Illinois were confirmed to have breaches of their voter registration systems, an NBC News article¹ indicated four other states' voter registration systems were compromised to varying levels of severity. To date, no evidence has been found that any voter information was altered or deleted.

According to the United States Computer Emergency Readiness Team (US-CERT), potential cyberattacks on voter registration systems could include: phishing,² injection flaws,³ cross-site scripting vulnerabilities,⁴ denial-of-service (DoS) attacks,⁵ server vulnerabilities, and ransomware. If voter registration information

were made inaccessible or changed during the voting period, the interference could result in long lines and confusion, leading some voters to become discouraged and potentially not vote.

US-CERT outlines several ways to protect voter registration systems, including patching applications and operating systems, application whitelisting,⁶ restricting administrative privileges, input validation,⁷ using firewalls, backing up voter registration data and storing it offline, conducting risk analysis, training staff on cybersecurity, having an incident response and business continuity plan tested and in place, and penetration testing.⁸ NCSL also cites several approaches to ensure voter registration security, including requiring registrants to provide their driver's license number or last four digits of their Social Security number; automatic "time outs" after a certain period of inactivity; "captcha" boxes, where registrants must decode images that a computer cannot decode; data encryption; highlighting unusual activity; and multi-screen systems, which offer one question on a screen.

Electronic poll books. In January 2014, the Presidential Commission on Election Administration recommended all jurisdictions transition to electronic poll books (EPBs). The EAC indicates that 36 states and D.C. used EPBs during the 2018 election, with seven of these states using EPBs in all election jurisdictions. EPBs replace paper poll books and allow poll workers to access the list of eligible voters, check in voters more efficiently, and prevent voters from checking in more than once. EPBs are electronically connected to a central registration database either *via* the Internet or a closed network. This connection could be either at the time of downloading the list onto the device or during the entire time the device is in use. However, the Brennan Center for Justice (Brennan Center) notes there are no accepted technical standards for these connections and there are concerns about security and fraud prevention, especially for those connected to remote computers *via* the Internet. EPBs are vulnerable to many of the same risks as other computer tablets. The Center for Internet Security (CIS) identifies six major risks associated with EPBs: risks associated with established (whether

persistent or intermittent) Internet connectivity; network connections with other internal systems, some of which may be owned or operated by other organizations or authorities, including private networks for EPBs; security weaknesses in the underlying commercial off-the-shelf product, whether hardware or software; security weaknesses in the dedicated components, whether hardware or software; errors in properly managing authentication and access control for authorized users, including permissions for connecting to networks and attaching removable media; and difficulties associated with finding and rolling back improper changes found after the fact.

The EAC provides regulations created by Indiana, Ohio, Pennsylvania, and Virginia. Based on regulations and guidance from these states, some ways in which EPBs can be secured include the use of secure sockets layer security,⁹ use of a virtual private network,¹⁰ and proper security training for staff.

Election personnel. One of the largest cybersecurity risks is human error. Potential security issues associated with election personnel include phishing e-mails; malware disguised as system patches; or the creation of unintentional gaps in cybersecurity, physical security, or both. One group of election personnel with a direct and important role in election security on Election Day is poll workers. Poll workers are election officials, usually volunteers, responsible for ensuring proper and orderly voting at polling stations. Depending on the state, election officials may be identified as members of a political party or nonpartisan. Their duties can include issuing ballots to registered voters, registering voters, monitoring the voting equipment, explaining how to mark a ballot or use voting equipment, or counting votes.

During the 2018 election, there were more than 600,000 poll workers nationwide, with more than two-thirds of those being older than 61 years of age. The most recent EAC 50-state survey of requirements for poll workers notes that in all states and territories, poll workers must generally be at least 18 years old; be registered to vote in that state; and be a resident of the county or

district in which they will work. A majority of states, including Kansas, require poll workers to receive training, but the type, frequency, intensity, and requirements for who is trained vary greatly. Most states, including Kansas, and many precincts do not require poll workers and other election personnel to be subject to background checks, which pose potential risks concerning who has access to voting equipment and data.

Voting machines. In response to issues identified during the 2000 presidential election, Congress passed the 2002 Help America Vote Act (HAVA). The law provided almost \$3.3 billion to help states replace voting systems and improve election administration. Voluntary technical standards for computer-based voting machines were first developed in the 1980s, but HAVA instituted the development and required regular updating of voting machine standards by the EAC. While the EAC guidelines are voluntary, most states, including Kansas, require their voting machines conform to EAC guidelines. The EAC adopted the Voluntary Voting Systems Guidelines (VVSG) Version 2.0 in September 2017.

According to NSCL, nine states¹¹ and D.C. require election machine testing to federal standards, including standards set by the Federal Election Commission (FEC), National Institute of Standards and Technology (NIST), and the EAC; 17 states¹² require testing by a federally accredited lab; 12 states¹³ require full federal certification; and 4 states¹⁴ refer to federal agencies or standards, but do not fall into any of the previous categories.¹⁵

More than 330,000 pieces of voting equipment to cast and tabulate votes were deployed for the 2018 election. The EAC indicated almost 90.0 percent of election jurisdictions used voting machines equipped with some form of paper backup, and less than 2.0 percent of jurisdictions relied solely on voting machines with no paper backup. As of August 2018, 38 states require some element of federal testing and certification of election systems before installing them in their state. Eight states do not require such testing or certification.

In July 2018, one of the top voting equipment manufacturers and software vendors, Election Systems & Software (ES&S), admitted to a Congressperson that ES&S installed remote-access software¹⁶ on its voting devices between 2000 and 2006. In 2006, the source code for ES&S' remote-access software was stolen, which would allow hackers to examine the code and find vulnerabilities to exploit. Once discovered, ES&S informed customers; however, it was the customers' responsibility to remove the software. At least 60.0 percent of ballots cast in 2006 were tabulated on ES&S systems. However, ES&S announced in August 2018 it had formed new partnerships with multiple DHS offices to help conduct cyber-hygiene scans of ES&S public-facing Internet presence, monitor and share cyber-threat information, detect and report indicators of compromise, develop and distribute election security best practices, and raise election security awareness. ES&S also has installed ALBERT network security sensors¹⁷ in its voter registration environments. The company has become a member of two Information Sharing and Analysis Centers (ISACs), including the Elections Infrastructure ISAC and the Information Technology ISAC, organizations that aim to improve cyber-threat information sharing between the private and public sectors.

The EAC notes ballot-marking devices (BMDs) were the most widely used type of voting equipment in 2018. Following are descriptions of the two main types of voting equipment used to count votes.

Optical scan device. Optical scan devices were used in almost 80.0 percent of election jurisdictions. The optical scan device is used in at least some polling places in every state. Voters mark choices on paper ballots by hand or use an electronic BMD, and the ballots are read by an electronic counting device. Optical scan devices are regarded as more secure than direct recording electronic devices because they create a voter verifiable paper audit trail (VVPAT), meaning votes can be verified and cannot be altered electronically. However, as optical scan devices use electronic mechanisms to count ballots, vote counts are vulnerable to cyberattacks, though an

audit of the paper ballots is likely to catch any irregularities.

Direct recording electronic machine. The direct recording electronic voting machine (DRE) allows voters to mark choices *via* a computer interface and those choices are recorded directly to an electronic memory. Delaware, Georgia, Indiana, Kentucky, Louisiana, Mississippi, New Jersey, Pennsylvania, South Carolina, and Tennessee all used DREs with no VVPAT in at least half their election jurisdictions during the 2018 election. DREs pose a unique concern because there is no way to verify the choice a voter intended to make is the same as the choice recorded in the machine's memory. To solve this problem, many states configured DREs to produce a verifiable paper record of the voter's ballot. However, a voter must still review this ballot before casting it to verify it is correct. In November 2016, a former Central Intelligence Agency (CIA) Director noted DRE voting machines as a key vulnerability.

Limited life cycles. The average life span of electronic voting machines is less than ten years, and most of the machines in use are out of date and unable to be updated. Out-of-date devices and systems are not only more susceptible to technical issues but also to cyberattacks and other means of tampering. The Institute for Critical Infrastructure Technology (ICIT) noted many voting devices have not been patched for almost a decade and use antiquated software that is unsupported by the manufacturer. The Brennan Center estimates the initial cost of replacing voting equipment throughout the United States could exceed \$1.0 billion. Many jurisdictions do not have the funds to replace outdated technology. Kansas statutes place financial and maintenance responsibilities for voting devices with the counties. Based on the narratives provided by the states receiving federal election grant funding, 34 states¹⁸ and D.C. are in the process of updating or replacing their voting equipment. New Mexico and Rhode Island replaced voting equipment statewide in 2014 and 2016, respectively.

Outdated voting machines and software can also result in issues such as vote-flipping, where a voter selects one candidate but the machine records another candidate. In October 2018, the Texas

Director of Elections issued an election advisory stating certain voting machines, specifically the Hart eSlate system, were changing one or more voter selections from one candidate to another when voters simultaneously turned a selection dial and hit the "enter" button. Eighty-two of the 254 counties in Texas have these machines. The issue with the eSlate machine first surfaced in the 2016 presidential election. Voters in Georgia, Nevada, North Carolina, Pennsylvania, and Tennessee also reported vote-flipping during the 2016 presidential election.

Storage of voting equipment. ICIT found that many pieces of voting equipment are stored in locations with minimal security, allowing election personnel relatively easy and unregulated access to alter equipment, either intentionally or unintentionally.

Storage and tallying of ballots. The EAC indicates the vast majority of ballots cast in person on Election Day are counted at the precinct or polling location. Provisional ballots are typically counted either partially or entirely at a central location.

While paper ballots are stored in physical ballot boxes, electronic ballots are stored on machine smart cards, a machine's random-access memory, or other electronic devices. Security measures, such as passwords, specific access cards, encryption, and tamper-resistant tape, limit access to stored ballots. However, these measures are not foolproof.

Election results are also vulnerable after the ballot storage has been removed from the device to be tallied. Ballots may be tallied at the polling place or at a central location. Paper ballots are tallied by hand or by a scanner that produces a printout of the votes. Voting devices that do not utilize paper ballots tally votes internally and produce either a printed or digital tally. It is estimated 5.0 percent of ballots in the United States are tallied by hand, while the other 95.0 percent are tallied either by voting devices or scanners. Voting devices and scanners can experience errors, such as not calculating the votes correctly, not reading a ballot, or producing multiple readings of the same ballot. Tallying by hand carries the

lowest risk for deliberate error, as it would be difficult to intentionally alter, switch, or destroy ballots without being detected. However, there is still the possibility of human error.

Transmission of vote tallies. After votes have been tallied, the totals must be sent to a central location to determine the total vote tally of that race. Vote tallies are typically transmitted in one of the following ways: spoken over the phone to someone at election headquarters, who will input that data into a spreadsheet; some voting machines are equipped with modems that connect to a telephone line rather than the Internet, and can be transmitted electronically; or memory cards or sticks physically delivered to voting headquarters, where they are turned over to election officials who put the data storage device in their machines and download the actual results. Some voting machines allow preliminary results to be transferred to a county office using the same kind of modem found in smart phones, rather than being physically carried from each polling station. While this method of transmission allows early results to be shared instantly, it also means the data is only as secure as the cellular company carrying it. Such connections, which not only transmit data but also receive it, provide yet another potential system weakness.

Each of these methods has risks. Some of the risks include “bad actors” providing altered or incorrect information; hackers infiltrating the systems used to transmit the tallies and altering or deleting the tallies; or simple human error.

A secure means of communicating preliminary or final vote counts to the media and public are also important. Some election officials may choose to utilize official election websites or social media accounts to communicate this information. If a bad actor was able to manipulate the website or account to display incorrect information or take down the website or account all together, this could lead to confusion and frustration, as well as damaging public trust in election officials.

Post-election audits. Currently, 37 states and D.C. require some form of a post-election audit. NCSL has divided post-election audits into two categories:

- Traditional post-election audit: usually conducted manually by hand counting a portion of the paper records and comparing them to the electronic results produced by an electronic voting machine; and
- Risk-limiting audit: an audit protocol that makes use of statistical principles and methods and is designed to limit the risk of certifying an incorrect election outcome.

Thirty-two states¹⁹ and D.C. require a traditional post-election audit, and Colorado, Nevada, Rhode Island, and Virginia statutorily require risk-limiting audits.

See [D-4 Post-election Audits in this Briefing Book](#) for more information.

Internet Voting

The EAC reported Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) voters are increasingly using electronic means to receive and return absentee ballots. E-mail was the most popular electronic transmission method, with 56.6 percent of UOCAVA voters receiving their absentee ballots and 29.6 percent returning the ballot *via* e-mail. Voting securely through the Internet places much of the security responsibility on the voter and the security measures they have in place on their devices. Although it is possible to strengthen a wireless connection against an attacker for such applications, doing so is not easy and can be easily misconfigured. Also, these stronger protections can be difficult to use and maintain, especially for those unfamiliar with the technology.

In 2018, West Virginia began using a block chain-enabled²⁰ mobile voting application, called Voatz, for overseas residents from 24 counties. Approximately 140 voters from 31 counties voted in 2018 using the application. Voters must submit a selfie and photo identification as well as go through a multi-factor authentication process to log in. However, the security of a vote would still depend greatly on the security of the device on which the vote was made.

Other notable election security resources.

States utilize a myriad of resources to protect their election infrastructure from outside attacks. These resources may include enlisting the help of the National Guard, cyber-liability insurance,²¹ white-hat hackers,²² participation in interstate information sharing programs,²³ and cybersecurity services provided by either the federal government or private entities.²⁴

Current Federal Government Activities

The DHS National Cybersecurity and Communications Integration Center (NCCIC) helps stakeholders in federal departments and agencies, state and local governments, and the private sector manage their cybersecurity risks. The NCCIC works with the Multi-State Information Sharing and Analysis Center (MS-ISAC) to provide threat and vulnerability information to state and local officials; all states are members. The MS-ISAC membership is restricted to state and local government entities. It has representatives co-located with the NCCIC to enable collaboration and access to information and services for state chief information officers.

During the 2016 election cycle, the National Protection and Programs Directorate (NPPD) within DHS offered voluntary assistance to state and local election officials and authorities from NCCIC, which helped stakeholders in federal departments and agencies, state and local governments, and the private sector manage their cybersecurity risks. In a Senate hearing, then-Secretary of Homeland Security stated 18 states accepted DHS' offer to help improve cybersecurity of their election systems prior to the 2016 election. Eleven states, including Kansas, chose not to accept DHS' offer, citing concerns with federal intrusion on state elections.

On January 6, 2017, the Secretary of Homeland Security determined election infrastructure should be designated as a critical infrastructure sub-sector. Participation in the sub-sector is voluntary and does not grant federal regulatory authority. Elections continue to be governed by state and local officials, but with additional effort by the federal government to provide

security assistance. DHS is also attempting to obtain security clearances for the top election official in each state so they will have access to classified intelligence about cybersecurity threats. According to a report from the Office of the Inspector General, as of July 2018, 87 of the 100 eligible states' election officials received their interim or full security clearance from DHS to receive information on election-related threats. Fully granted clearances were provided to 43 officials and 44 were granted on an interim status. Only 19 states have signed up for the risk assessments DHS is offering, and 14 are conducting "cyber-hygiene" scans. In July 2018, DHS announced the creation of the National Risk Management Center (Center), which will focus on evaluating threats and defending critical infrastructure against hacking. The Center will run simulations, tests, and cross-sector exercises to evaluate critical infrastructure weaknesses and threats.

In Fall 2017, the FBI established the Foreign Influence Task Force to identify and counteract the full range of foreign influence operations targeting U.S. democratic institutions. The Task Force works with personnel in all 56 FBI field offices and brings together the FBI's expertise in counterintelligence, cyber, criminal, and counterterrorism, to root out and respond to foreign influence operations.

On February 20, 2018, the U.S. Attorney General ordered the creation of the DOJ Cyber-Digital Task Force to canvass the ways the DOJ addresses the global cyber threat. The Task Force will also identify how federal law enforcement can more effectively accomplish its mission in this area. Among other areas, the Attorney General has asked the Task Force to prioritize its study of efforts to interfere with our elections. The Task Force released a report on July 19, 2018. The DOJ also issued a statement indicating the agency plans to alert American companies, private organizations, and individuals they are being covertly attacked by foreign actors attempting to affect elections or the political process.

In early July 2018, the Director of the National Security Agency (NSA) directed the NSA and the Department of Defense's (DOD) Cyber Command

to coordinate actions to counter potential Russian government-sanctioned interference in the 2018 midterm elections. The joint program is also working with the FBI, CIA, and DHS.

In July 2018, DHS announced the creation of the National Risk Management Center (NRMC) within the Cybersecurity and Infrastructure Agency. The NRMC is a centralized location for government and private sector partners to share information related to digital security.

In August 2018, DHS, EAC, DOD, NIST, NSA, Office of the Director of National Intelligence, U.S. Cyber Command, DOJ, the FBI, 44 states (including Kansas), D.C., and numerous counties participated in the Tabletop the Vote 2018, DHS' National Election Cyber Exercise which is a simulation that tested the ability of state and federal officials to work together to stop data breaches, disinformation, and other voting-related security issues.

Executive Order (EO) 13848 was issued in September 2018, declaring a national emergency regarding foreign influence and interference with election processes and equipment. The EO allows the imposition of sanctions on any person, entity, or foreign government who is found to be attempting or has interfered with U.S. election processes or equipment.

EAC current activities. The EAC adopted the Voluntary Voting Systems Guidelines (VVSG) Version 2.0 in September 2017. The VVSG Version 2.0 states a voting device must produce a VVPAT and the software or hardware cannot produce errors that could lead to undetectable changes in tallies. The EAC has also added a page to their website concerning election security preparedness, with many links to valuable information on how to secure election systems, guides on what to do during and after a cyber incident, and glossaries for commonly used terms (<https://www.eac.gov/election-officials/election-security-preparedness/>).

New HAVA funding. On March 23, 2018, the Consolidated Appropriations Act of 2018 (Act) was signed into law. The Act included \$380.0 million in grants, which were made available to

states to improve the administration of elections, including to enhance technology and make election security improvements. The majority of the funds is for election cybersecurity and to purchase new voting equipment.

Kansas Election Security Activities

In February 2018, the Center for American Progress (CAP) released an analysis of election security in all 50 states. Kansas was ranked F/D, one of five states²⁵ that received an unsatisfactory ranking. The State received fair marks for voting machine certification requirements, pre-election logic and accuracy testing, and adherence to a number of minimum cybersecurity best practices. Kansas received unsatisfactory marks for the lack of a VVPAT from all voting devices and post-election audits; the State's ballot accounting and reconciliation procedures; and for allowing voters stationed or living overseas to return voted ballots electronically. [Note: At the time of the CAP report's publication, 2018 HB 2539 had not yet been passed. See more information on HB 2539 under sections "Voting Devices" and "Post-election Audits" in this article.] Kansas received an incomplete mark for minimum cybersecurity for voter registration systems due to the absence of information from state officials on these topics.

Online voter registration system. Kansas is one of 37 states, and D.C., that offer online voter registration. The State's online voter registration system is about ten years old. The Kansas Director of Elections (Director) with the Office of the Secretary of State (Office) indicated in July 2018 there was a firewall in place to protect the voter registration system, which was continuously updated, and that Office staff had been trained on cybersecurity best practices. The Secretary of State previously had stated in 2016 the voter registration system had logging capabilities to track modifications to the database.

Electronic poll books. As of April 2016, at least 16 Kansas counties, including Johnson, Sedgwick, Shawnee, and Wyandotte, were using EPBs, though neither state statutes nor rules and regulations provide guidance on their use, security, or maintenance. According to the

Director, EPBs in Kansas are not connected to the voter registration system *via* a network. Counties are responsible for providing training on EPBs to election personnel.

Election personnel. Kansas poll workers must be a resident and registered voter in the area in which they will serve; normally at least 18 years of age, though they may be as young as 16 years old if they meet certain other requirements; and not a candidate in the current election. In Kansas, there are no requirements for poll workers to submit to and pass background checks. KSA 25-2806 requires county election officers to provide instruction concerning elections generally, voting devices, ballots, and duties for poll workers before each election. The curriculum specifics and training duration is left to the discretion of the county election officer.

Voting devices. According to the EAC, Kansas deployed a total of 6,365 voting machines for the 2018 elections; 894 DREs without VVPAT, 57 DREs with VVPAT, 4,461 BMDs, and 953 electronic scanners. As of March 2018, about 20 counties had replaced some or all of their voting devices or were in the process of purchasing new voting devices.

Johnson County (County) was one of the localities that updated its voting devices. In May 2018, the County contracted with ES&S for the purchase of 2,100 voting devices for \$10.5 million. During the August 2018 primary election, there were issues obtaining data from the computer thumb drives where votes are stored. There were also issues with poll-worker preparedness in the event of device malfunction and insufficient paper ballots as a backup.

Kansas statutes concerning electronic voting devices can be found in KSA 25-4401 through KSA 25-4416, also known as the Electronic and Electromechanical Voting Systems Act. KSA 25-4406(k) requires voting devices to be compliant with HAVA voting system standards. Logic and accuracy testing must be conducted on all voting devices five days before an election, pursuant to KSA 25-4411. County commissioners and county election officers may select the type of voting

device utilized in their voting locations, as long as it has been approved by the Secretary of State.

During the 2018 Session, the Legislature passed HB 2539, which required any electronic or electromechanical voting system purchased, leased, or rented by a board of county commissioners after the effective date of the bill to provide a paper record of each vote cast at the time the vote is cast. The bill also required voting systems have the ability to be tested before an election and prior to the canvass date.

Storage and tallying of votes. The majority of Kansas counties use some form of paper ballot and use electronic scanners to tally the votes. These paper ballots are stored in locked boxes with authorized access. Counties that use DREs without a VVPAT store votes on removable memory cards.

Transmitting of vote tallies. Vote tallies provided *via* memory cards are transported by the county election officer. KAR 7-21-2 states results are only to be sent by fax, phone, hand delivery, or encrypted electronic transfer. According to the Office, officials typically call in or e-mail results, and there is no Internet uploading of results.

Post-election audits. During the 2018 Session, the Legislature passed HB 2539, which required county election officers to conduct a manual audit or tally of each vote cast in 1.0 percent of all precincts, with a minimum of one precinct located within the county. The audit requirements apply to all counties for elections occurring after January 1, 2019. The requirement for audit or tally applies regardless of the method of voting used. The bill specified these contested races will be audited:

- In presidential election years: one federal race, one state legislative race, and one county race;
- In even-numbered, non-presidential election years: one federal race, one statewide race, one state legislative race, and one county race; and
- In odd-numbered election years: two local races, selected randomly after the election.

Other election security resources. Kansas also uses participation in interstate information sharing programs and cybersecurity services provided by private entities to safeguard elections.

Kansas federal election funding. Kansas submitted a budget in August 2019, with the majority of funds going to local jurisdictions, purchase of new equipment, and training, which has not yet been approved by the Governor or the Legislature. The Office budget totals \$6.1 million for FY 2020 and \$5.4 million for FY 2021, all from special revenue funds. The Office budgeted \$710,893 for elections and legislative matters for FY 2020 and \$492,977 for FY 2021.

Kansas received \$26.4 million in total 2002 HAVA funds. Under the Consolidated Appropriations Act of 2018, Kansas received about \$4.4 million in new HAVA funds, with a state match of \$219,180. If the revised budget request is approved, the Office would retain approximately \$3.0 million in federal funds between the 2002 HAVA Title I funds and the 2018 HAVA funds at the end of FY 2021.

More detailed information on election security in Kansas can be found in the Kansas Legislative Research Department memorandum titled “Status of Election Security in Kansas,” located at <http://www.kslegresearch.org/KLRD-web/Publications/StateLocalGovt/2018-08-08-ElectionSecurityKansas.pdf>.

- 1 Arkin, W.; Dilanian, K.; McFadden, C. *U.S. Intel: Russia compromised seven states prior to 2016 election*. (2018, February 27). Retrieved from <https://www.nbcnews.com/politics/elections/u-s-intel-russia-compromised-seven-states-prior-2016-election-n850296>.
- 2 Phishing includes forged e-mails, texts, and other messages used to manipulate users into clicking on malicious links or downloading malicious file attachments.
- 3 An injection flaw is a broad web application attack technique that attempts to send commands to a browser, database, or other system, allowing for a regular user to control behavior.
- 4 Cross-site scripting vulnerability allows threat actors to insert and execute unauthorized code in web applications.
- 5 Denial-of-service attack prevents legitimate users from accessing information or services.
- 6 Application whitelisting allows only specified programs to run while blocking all others, including malicious software.
- 7 Input validation is a method of sanitizing untrusted user input provided by users of a web application.
- 8 Penetration testing is an authorized simulated attack on a computer system, performed to evaluate the security of the system.
- 9 Secure sockets layer security is the standard security technology for establishing an encrypted link between a web server and a browser. This link ensures that all data passed between the web server and browsers remain private and integral.
- 10 A virtual private network creates a safe and encrypted connection over a less secure network.
- 11 Connecticut, Hawaii, Indiana, Kentucky, Nevada, New York, Tennessee, Texas, and Virginia.
- 12 Alabama, Arkansas, Arizona, Colorado, Illinois, Iowa, Massachusetts, Maryland, Michigan, Minnesota, Missouri, New Mexico, Oregon, Pennsylvania, Rhode Island, Utah, and Wisconsin.
- 13 Delaware, Georgia, Idaho, Louisiana, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Washington, West Virginia, and Wyoming.
- 14 Alaska (the director may consider whether the FEC has certified a voting machine); California (the Secretary of State adopts testing standards that meet or exceed the federal voluntary standards set by the EAC); Kansas (requires compliance with HAVA voting system standards); and Mississippi (DREs shall comply with the error rate standards established by the FEC; *Note*: the FEC no longer sets voting system standards).
- 15 NCSL. *Voting System Standards, Testing and Certification*. (2018, August 8). Retrieved from <http://www.ncsl.org/research/elections-and-campaigns/voting-system-standards-testing-and-certification.aspx>.

- 16 Remote-access software allows someone to access a computer or a network from a remote distance.
- 17 ALBERT is a unique network monitoring solution that provides automated alerts on both traditional and advanced network threats, allowing organizations to respond quickly when their data may be at risk.
- 18 Alabama, Alaska, Arkansas, California, Connecticut, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming.
- 19 Alaska, Arizona, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.
- 20 A blockchain is resistant to modification of the data. It is an open, distributed ledger that can record transactions between two parties efficiently and in a verifiable and permanent way. For use as a distributed ledger, a blockchain is typically managed by a peer-to-peer network collectively adhering to a protocol for inter-node communication and validating new blocks.
- 21 Cyber-liability insurance is coverage for financial consequences of electronic security incidents and data breaches.
- 22 A white-hat hacker is a computer security specialist who breaks into protected systems and networks to test their security.
- 23 Interstate information sharing programs include the Multi-State Information Sharing & Analysis Center and the Election Infrastructure Information Sharing & Analysis Center, which collect, analyze, and disseminate threat information to members and provide tools to mitigate risks and enhance resiliency.
- 24 Cybersecurity services provided by private entities include The Athenian Project and Project Shield.
- 25 The other states include Arkansas, Florida, Indiana, and Tennessee.

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Elections and Ethics

D-2 Kansas Open Meetings Act

Purpose

The Kansas Open Meetings Act (KOMA), KSA 75-4317, *et seq.*, recognizes “that a representative government is dependent upon an informed electorate” and declares the policy of the State of Kansas is one where “meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public.” [KSA 75-4317.]

The Kansas Supreme Court has recognized KOMA is to be “interpreted liberally and exceptions narrowly construed” to carry out the purpose of the law. [*Mem'l Hosp. Ass'n v. Knutson*, 239 Kan. 663, 669 (Kan. 1986).]

State and Local Public Bodies Covered by KOMA

- State agencies;
- Political and taxing subdivisions of the state;
- Legislative bodies of the state or its subdivisions;
- Administrative bodies of the state or its subdivisions;
- Boards, commissions, authorities, councils, committees, and subcommittees of the state or its subdivisions, or of legislative or administrative bodies thereof; and
- Other subordinate groups of any of the above entities that receive or expend and are supported in whole or in part by public funds. [KSA 75-4318.]

State Bodies Covered by KOMA

- The Legislature, its legislative committees, and subcommittees unless rules provide otherwise;
- State administrative bodies, boards, and commissions;
- State Board of Regents;
- State Board of Education;
- Kansas Turnpike Authority;
- Supreme Court Nominating Commission (added by 2016 SB 128); and
- Other state bodies.

Local Governments Covered by KOMA

The following local governments are covered by KOMA:

- Cities;
- Drainage districts;
- Counties;
- Conservation districts;
- School districts;
- Irrigation districts;
- Townships;
- Groundwater management districts;
- Water districts;
- Watershed districts;
- Fire districts;
- Municipal energy agencies;
- Sewer districts;
- District judicial nominating commissions (added by 2016 SB 128); and
- Other special district governments.

Public Bodies Excluded from KOMA

Certain state and local bodies or entities are excluded from the requirements of KOMA, including the following:

- The Judicial Branch (except for judicial nominating commissions);
- State or local bodies when exercising quasi-judicial powers (examples include teacher due process hearings, civil service board hearings for a specific employee, or zoning amendment hearings for a specific property); and
- Certain state bodies when performing functions that are exempt from KOMA by statute (examples include committee discussion on certain Secretary of Commerce decisions regarding sales tax and revenue (STAR) bonds).

Meetings: What are They?

KOMA covers meetings, defined in KSA 75-4317a, as a gathering or assembly with the following characteristics:

- Occurs in person or through the use of a telephone or any other medium for “interactive” communication (see the following “Serial Meetings” section);
- Involves a majority of the membership of an agency or body; and
- Is for the purpose of discussing the business or affairs of the body.

The Kansas Court of Appeals has held that informal discussions before, after, or during recesses of a public meeting are subject to the requirements of the open meetings law. [*Coggins v. Pub. Emp. Relations Bd*, 2 Kan. App. 2d 416 (Kan. Ct. App. 1978).] Calling a gathering a “work session” does not exempt the event from the law if the three requirements of a meeting are met.

Social gatherings are not subject to KOMA as long as there is not a majority of the membership present or there is no discussion of business of the public body between a majority of the membership.

Serial meetings. The Attorney General has said serial communications among a majority of a quorum of a public body constitute a meeting if the purpose is to discuss a common topic of business or affairs of that body by the members. Such a meeting may occur through calling trees, e-mail, or the use of an agent (staff member) of the body. [Att’y. Gen. Op. 98-26 and 98-49.] The use of instant messaging also would qualify as a meeting. KSA 75-4318(f) now deems interactive communications in a series to be subject to open meetings requirements if the communications:

- Collectively involve a majority of the membership of the body or agency;
- Share a common topic of discussion concerning the business or affairs of the body or agency; and
- Are intended by any or all of the participants to reach agreement on a

matter that would require binding action to be taken by the body or agency.

Is Binding Action the Trigger?

In regard to discussing “the business or affairs of the body,” binding action or voting is not necessary. It is the discussion itself that triggers the requirements of KOMA (KSA 75-4317a).

Notice of Meetings, Agendas, Minutes, Conduct of Meeting, and Cameras

Notice required only when requested. KOMA does not require notice of meetings to be published. According to KSA 75-4318(b), notice must be given to any person or organization requesting it. Notice requests may expire at the end of a fiscal year, but the public body has a duty to notify the person of the pending expiration before terminating notice. The presiding officer has the duty to provide notice, but that duty may be delegated. No time limit is imposed for receipt of notice prior to the meeting.

Notice may be given in writing or orally, but it must be made individually to the person requesting it. Posting or publication in a newspaper is insufficient. A single notice can suffice for regularly scheduled meetings. There is also a duty to notify of any special meetings. No fee for notice may be charged.

Petitions for notice may be submitted by groups of people, but notice need be provided only to one person on the list, that person being designated as required by law. All members of an employee organization or trade association are deemed to

have received a notice if one is furnished to the executive officer of the organization.

Agenda not required. KSA 75-4318(d) states, “Prior to any meeting. . . , any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda.” In *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290 (Kan. Ct. App. 1986), the court concluded while the law does not require an agenda be created, if a body chooses to create an agenda, the agenda should include topics planned for discussion.

Requirements for minutes. The only KOMA requirement for minutes pertains to closed or executive sessions. KSA 75-4319(a) requires any motion to recess for a closed or executive meeting be recorded in the meeting minutes. (See “Executive Sessions: Procedure and Subjects Allowed” on the following page for additional information.)

Conduct of meetings. Any person may attend open meetings, but the law does not require the public be allowed to speak or have an item placed on the agenda. KOMA does not dictate the location of a meeting, the size of the room used (or even that a room must be used) or other accommodation-type considerations. The court has determined (see *Stevens*) a meeting is “open” if it is accessible to the public.

KSA 75-4318(a) prohibits the use of secret ballots for any binding action. The public must be able to ascertain how each member voted.

Use of cameras. Subject to reasonable rules, cameras and recording devices must be allowed at open meetings (KSA 75-4318(e)).

Subject Matter Justifying Executive Session

Pursuant to KSA 75-4319, only a limited number of subjects may be discussed in executive session. Some of these are listed below.

Personnel matters of non-elected personnel. The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure are not proper topics for executive session. This personnel exemption applies only to employees of the public agency. The Attorney General has opined the personnel exemption does not apply to appointments to boards or committees, or nomination of public officers, nor does it apply to independent contractors. [Att'y. Gen. Op. 2016-03.]

Consultation with an attorney. For the body or agency to be deemed privileged in the attorney-client relationship, all elements of privilege must be present:

- The body's attorney must be present;
- The communication must be privileged; and
- No other third parties may be present.

Additional justification for executive session are as follows:

- Employer-employee negotiations to discuss conduct or status of negotiations, with or without the authorized representative who actually is doing the bargaining;
- Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- Sensitive financial information contained within personal financial records of a judicial nomination candidate;
- Official background check of a judicial nomination candidate;
- Case reviews conducted by the Governor's Domestic Violence Fatality Review Board;
- Matters affecting an individual student, patient, or resident of a public institution;
- Preliminary discussions relating to acquisition (not sale) of real property;
- Security of a public body or agency, public building or facility, or the information system of a public body or agency, if open discussion would jeopardize security;
- Matters relating to information acquired and records of the Child Death Review Board;
- Matters relating to parimutuel racing;
- Matters relating to the care of children;
- Matters relating to patients and providers;
- Matters relating to maternity centers and child care facilities; and
- Matters relating to the Office of Inspector General.

Executive Session: Procedure and Subjects Allowed

Requirements and restrictions on closed or executive sessions are contained in KSA 75-4319. Executive sessions are permitted only for the purposes specified. First, the public body must convene an open meeting and then recess into an executive session. Binding action may not be taken in executive session. Reaching a consensus in executive session is not in itself a violation of KOMA. [*O’Hair v. United Sch. Dist. No. 300*, 15 Kan. App. 2d 52 (Kan. Ct. App. 1991).] A “consensus,” however, may constitute binding action and violate the law if a body fails to follow up with a formal open vote on a decision that normally would require a vote. The law does not require an executive session; the decision to hold an executive session is discretionary.

Generally, only the members of a public body may attend an executive session. The Attorney General indicates a public body may designate certain persons with essential information to assist in executive session deliberations. Inclusion of general observers means the meeting should be open to all members of the public.

Procedures for going into executive session include the following:

- Formal motion, seconded, and carried;
- Motion must contain a statement providing:
 - A statement describing the subjects to be discussed;
 - Justification for closure; and
 - Time and place open meeting will resume; and
- Executive session motions must be recorded in minutes. The law does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them.

Enforcement of KOMA

The law requires the Attorney General to provide and coordinate Kansas Open Records Act (KORA) and KOMA training throughout the state, including coordination with appropriate organizations. Further, the law gives the Attorney General or county or district attorney various subpoena and examination powers in KORA and KOMA investigations.

Among other enforcement provisions, the law allows the Attorney General or a county or district attorney to accept a consent judgment with respect to a KORA or KOMA violation, in lieu of filing an action in district court, and allows the Attorney General to enter into a consent order with a public agency or issue a finding of violation to the public agency upon discovery of a KORA or KOMA violation.

HB 2290 (2019) provides for repayment by a state agency to the Tort Claims Fund of the cost of defense or indemnification provided for the agency or employee arising out of an alleged violation of KOMA.

For questions regarding application or suspected violations of KOMA, please contact the Office of the Attorney General. Limitations under Kansas law do not allow the Kansas Legislative Research Department to provide legal advice, interpretation of statute, or the legislative intent of a statute.

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Elections and Ethics

D-3 Kansas Open Records Act

Purpose

The Kansas Open Records Act (KORA) declares it is the public policy of Kansas that “public records shall be open for inspection by any person unless otherwise provided” (KSA 45-216). The burden of proving an exemption from disclosure is on the agency not disclosing the information (*SRS v. Public Employee Relations Board*, 249 Kan. 163 (1991)).

Who Is Covered by KORA?

KORA applies to those entities considered a “public agency” under the law (KSA 2019 Supp. 45-217).

Included in this definition are:

- The State;
- Any political or taxing subdivision of the State or any office, agency, or instrumentality thereof; and
- Any other entity receiving or expending and supported in whole or in part by public funds that are appropriated by the State or its political and taxing subdivisions.

The definition covers all state agencies, cities, counties, townships, school districts, and other special district governments, as well as any agencies or instrumentalities of these entities, and officers of the above public entities in connection with their official duties.

In addition, although not included in KORA itself, KSA 2019 Supp. 45-240 requires nonprofit entities, except health care providers, that receive public funds of at least \$350 per year to adhere to certain open records requirements. The 2005 Legislature added this provision to require such nonprofit entities to document the receipt and expenditure of public funds and make this information available to the public. Like public agencies, nonprofit entities may charge a reasonable fee to provide this information.

Exclusions from Open Records Requirement

Certain entities and individuals are expressly excluded from the definition of “public agency” (KSA 2019 Supp. 45-217(f)(2)):

- Entities included only because they are property, goods, or services paid for with public funds;¹ and
- Any municipal, district, or appellate judge or justice.

What Is a Public Record?

“Public record” is defined broadly under KORA to mean “any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of any public agency; or . . . any officer or employee of a public agency pursuant to the officer’s or employee’s official duties and which is related to the functions, activities, programs or operations of any public agency” (KSA 2019 Supp. 45-217(g) (1)). Specifically excluded from the definition of “public record” are:

- Records owned by a private person or entity that are not related to functions, activities, programs, or operations funded by public funds, but “private person” shall not include an officer or employee of a public agency who is acting pursuant to the officer’s or employee’s official duties;
- Records kept by individual legislators or members of governing bodies of political and taxing subdivisions; or
- Employers’ records related to certain individually identifiable employee records (KSA 2019 Supp. 45-217(g)(2) and (3)).

The Attorney General opined in 2015 (Op. Atty. Gen. 2015-010) that under certain specific conditions and the law in effect at the time, an e-mail sent by a state employee from his or her private e-mail account related to work funded by public funds is not within the meaning of “public record.” However, in 2016, the definition of and

exclusions from “public record” were amended to broaden the definition of “public record” and apply it more specifically to state officers and employees, regardless of location of the record (KSA 2019 Supp. 45-217 (g)(1)). Additionally, audio and video recordings made and retained by law enforcement using a body camera or vehicle camera were added to the definition of a criminal investigation record (open only under specific circumstances) (KSA 2019 Supp. 45-254).

Right of Public to Inspect and Make or Obtain Copies of Records

All public records are open for inspection unless closed pursuant to specific legal authority (KSA 45-218(a) and (b)). Members of the public have the right to inspect public records during regular office hours and any established additional hours; the agency may require a written request but shall not require a request to be made in a particular form (KSA 2019 Supp. 45-220(a) and (b)). If the agency has business days on which it does not have regular office hours, it must establish reasonable hours when persons may inspect records and may not require a notice of desire to inspect more than 24 hours in advance of the hours established for inspection and obtaining copies; the agency also may not require the notice to be in writing (KSA 2019 Supp. 45-220(d)).

Any person may make abstracts or obtain copies of a public record. If copies cannot be made in the place where the records are kept, the records custodian must allow the use of other copying facilities (KSA 2019 Supp. 45-219(b)). Members of the public cannot remove a record without written permission of the custodian (KSA 45-218(a)).

KSA 2019 Supp. 75-3520 requires any document or record that contains any portion of an individual’s Social Security number be redacted before it is made available for public inspection or copying. This does not apply to documents recorded in the official records of any county recorder of deeds or in the official records of the courts. An agency also is required to give notice, offer credit monitoring service at no cost, and provide certain information to individuals if

the agency becomes aware of the unauthorized disclosure of their personal information.

Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. The agency is not required to acquire or design a special program to produce information in a desired form, but it has discretion to allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form. (Op. Atty. Gen. 1988-152 [voter registration lists]; Op. Atty. Gen. 1989-106; and Op. Atty. Gen. 1987-137).

However, KORA explicitly states a public agency is not required to allow a person to obtain the electronic copies by attaching a personal device to the agency's computer equipment (KSA 2019 Supp. 45-219(g)).

A public agency is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, or illustrations unless the items were shown or played at a public meeting. Regardless, the agency is not required to provide items copyrighted by someone other than the public agency (KSA 2019 Supp. 45-219(a)).

Duties of Public Agencies

Under KORA, public agencies are required to:

- Appoint a freedom of information officer to assist the public with open records requests and disputes. That officer is to provide information on the open records law, including a brochure stating the public's basic rights under the law (KSA 45-226 and KSA 45-227);
- Adopt procedures to be followed to request and obtain documents (KSA 2019 Supp. 45-220(a));
- Respond to requests where it is possible to determine the records to which the requester desires access (KSA 2019 Supp. 45-220(b)); and

- Provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records (KSA 2019 Supp. 45-220(f)).

Rights of Public Agencies

The public agency may:

- Require written certification the requester will not use names or addresses obtained from the records to solicit sales to those persons whose names or addresses are contained in the list (KSA 2019 Supp. 45-220(c));
- Deny access if the request places an unreasonable burden in producing the record or is intended to disrupt essential functions of the agency (KSA 45-218(e)); and
- Require payment of allowed fees in advance. Fees may include costs of any computer services and staff time, but may not exceed such costs (KSA 45-218(f); KSA 2019 Supp. 45-219(c)). [Note: Executive Order 18-05 waives any charge or fee for the copying of documents, up to and including the first 100 pages, for all executive branch departments, agencies, boards, and commissions under the jurisdiction of the Office of the Governor in response to a KORA request made by any resident of Kansas.]

Prohibited Uses of Lists of Names and Addresses

With some specified exceptions, a list of names and addresses cannot be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed (KSA 2019 Supp. 45-220(c)(2) and KSA 2019 Supp. 45-230). This provision does not prohibit commercial use generally; it just applies to use of the names to sell or offer to sell property or a service. This provision does not prohibit the agency from using names and addresses in its public records for a purpose related to that

agency's services or programs (Op. Atty. Gen. 2006-026).

Any person, including the records custodian, who knowingly violates this provision of the law and gives or receives records for this purpose can be penalized with a civil fine not to exceed \$500 in an action brought by the Attorney General or a county or district attorney (KSA 2019 Supp. 45-230).

Records That Must Be Closed

Some public records are required to be closed by federal law, state statute, or Supreme Court rule. These types of public records must be closed and are broadly referenced in KSA 2019 Supp. 45-221(a)(1). Approximately 280 different statutes require closure of certain public records. A few examples include:

- Child in need of care records and reports, including certain juvenile intake and assessment reports (KSA 2019 Supp. 38-2209);
- Unexecuted search or arrest warrants (KSA 2019 Supp. 21-5906);
- Grand jury proceedings records (KSA 2019 Supp. 22-3012);
- Health care provider peer review records (KSA 2019 Supp. 65-4915(b)); and
- Certain records associated with the Kansas Department of Health and Environment's investigation of maternal death cases (2018 HB 2600).

Records That May Be Closed

KSA 2019 Supp. 45-221(a)(1) to (55) lists other types of public records that are not required to be disclosed. The public agency has discretion to decide whether to make these types of records available. However, the burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. The types of records that may be closed include:

- Records of a public agency with legislative powers, when the records

pertain to proposed legislation or amendments. This exemption does not apply when such records are:

- Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
- Distributed to a majority of a quorum of any body with the authority to take action or make recommendations to the public agency with regard to the matters to which these records pertain;
- Records of a public legislative agency, when the records pertain to research prepared for one or more members of the agency. Again, this exemption does not apply (*i.e.*, the records would be open) when such records are:
 - Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
 - Distributed to a majority of a quorum of any body that has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain;
- Records that are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure;
- Medical, psychiatric, psychological, and alcohol or drug treatment records that pertain to identifiable individuals;
- Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies;
- Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual and not related to the appointment of persons to fill a vacancy in an elected office;
- Information that would reveal the identity of any undercover agent or any informant reporting a specific violation of law;
- Criminal investigation records;

- Records of emergency or security information or procedures of a public agency; plans, drawings, specifications, or related information for any building or facility used for purposes requiring security measures in or around the building or facility; or for the generation or transmission of power, water, fuels, or communications, if disclosure would jeopardize security of the public agency, building, or facility;
- Attorney work product;
- Records of public agencies that identify home addresses of certain public officials such as judges, certain officers of the courts, and county and city attorneys; and
- Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy.

Limited Disclosure Provisions

Some statutes provide for disclosure of limited information in response to KORA requests, rather than disclosure of the complete record requested. Recently created limited disclosure provisions include those concerning body-worn and vehicle camera recordings and certain records of the Department for Children and Families (DCF) regarding child fatalities.

Body-worn and Vehicle Camera Recordings

Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera must be considered a “criminal investigation record,” as defined in KORA, thereby bringing such recordings within the exception to disclosure for criminal investigation records. This provision will expire July 21, 2021, unless reviewed and reenacted prior to that date (KSA 2019 Supp. 45-254).

In addition to any disclosures generally authorized for such recordings as criminal investigation records under KORA, the law allows

certain persons to request to listen to an audio recording or to view a video recording. The law enforcement agency must allow access to these certain persons, within 20 days of the request, subject to a reasonable fee. The persons who may make such a request include the subject of the recording, any parent or legal guardian of a person under the age of 18 years who is a subject of the recording, an heir-at-law of a deceased subject of a recording, or an attorney for any of the previous persons listed (KSA 2019 Supp. 45-254(c)).

Child Fatality Information

House Sub. for SB 336 (2018), among other provisions, added a requirement that the Secretary for Children and Families (Secretary), as allowed by applicable law, release within seven days the following information when child abuse or neglect results in a child fatality and a request is made under KORA: age and sex of the child; date of the fatality; a summary of any previous reports of abuse or neglect received by the Secretary involving the child, along with the findings of such reports; and any service recommended by DCF and provided to the child (KSA 2019 Supp. 38-2212(f)(3)).

The bill added a similar provision requiring the Secretary, as allowed by applicable law, to release the following information within seven days when a child fatality occurs while the child was in the custody of the Secretary and a request is made under KORA: age and sex of the child, date of the fatality, and a summary of the facts surrounding the death of the child (KSA 2019 Supp. 38-2212(f)(4)).

Sunset of Exceptions

A sunset provision for all exceptions added in 2000 required review of any exception within five years, or the exception would expire. It also required any exceptions continued after legislative review to be reviewed again five years later (KSA 2019 Supp. 45-229).

In 2013, the Legislature modified the review requirement in KSA 2019 Supp. 45-229 so that

exceptions will no longer be subject to review and expiration if the Legislature has twice reviewed and continued the exemption or reviews and continues the exemption during the 2013 Session or thereafter (2013 HB 2012; L. 2013, ch. 50).

In 2019, HB 2290 (L. 2019 ch. 62) continued 19 exemptions present in 17 statutes. Topics included, but were not limited to, certain reports prepared by the State Bank Commissioner, Health Care Stabilization Fund payments, Kansas Bureau of Investigation biological sample records, personal information of judges, certain affidavits, records relating to certain investigation by various state boards, certain student data, and various records for peer review related to technical professions.

Enforcement of the Open Records Law

HB 2256 (L. 2015, ch. 68) changed enforcement of both KORA and Kansas Open Meetings Act (KOMA). The law requires the Attorney General to provide and coordinate KORA and KOMA training throughout the state, including through coordination with appropriate organizations (KSA 75-761). Further, the statute gives the Attorney General or a county or district attorney various

subpoena and examination powers in KORA and KOMA investigations (KSA 2019 Supp. 45-228; KSA 75-4320b).

Among other enforcement provisions, the bill allows the Attorney General or a county or district attorney to accept a consent judgment with respect to a KORA or KOMA violation, in lieu of filing an action in district court, and allows the Attorney General to enter into a consent order with a public agency or issue a finding of violation to the public agency upon discovery of a KORA or KOMA violation (KSA 75-4320d; KSA 2019 Supp. 45-4320f).

Finally, HB 2290 provides for repayment by a state agency to the Tort Claims Fund of the cost of defense or indemnification provided for the agency or employee arising out of an alleged violation of KORA.

Criminal Penalty for Altering Public Record

Altering, destroying, defacing, removing, or concealing any public record is a class A nonperson misdemeanor (KSA 2019 Supp. 21-5920).

- 1 See Ted Frederickson, *Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act*, 33 Kan. L. Rev. 216-7. This analysis was utilized as recently as the 2017 Kansas Court of Appeals decision in *State v. Great Plains of Kiowa County, Inc.* (53 Kan. App. 2D 609, 389 P3d 984).

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Elections and Ethics

D-4 Post-election Audits

According to the National Conference of State Legislatures, 37 states and the District of Columbia currently require some form of a post-election audit.¹

What Is a Post-election Audit?

A post-election audit verifies the equipment and procedures used to count votes during an election worked properly, and the election yielded the correct outcome. Most audits look at a fixed percentage of voting districts or voting machines and compare the paper record to the results produced by the voting system.

In states that conduct post-election audits, most have included audit requirements and processes in statute.

Post-election Audit vs. Recount

Audits differ from recounts in that they are conducted regardless of the margins of victory, though audits can lead to a recount if errors are detected. A recount is a repeat tabulation of votes cast in an election that is used to determine the correctness of an initial count. Recounts will often take place in the event the initial vote tally during an election is extremely close.

What Is Audited?

Paper records used in an audit may include voter-marked paper ballots, voter-verified paper audit trails produced by direct-recording electronic voting machines (DREs), or paper ballot records produced by ballot-marking devices.

Types of Post-election Audits

There are three main types of audits implemented by states: traditional audits, risk-limiting audits, and procedural audits. See the chart at the end of this article for information on the type of audit each state has implemented.

Traditional Post-election Audits

Thirty-two states² and the District of Columbia conduct traditional audits, which are usually conducted manually by hand counting a portion of the paper records and comparing them to the electronic results produced by electronic voting machines. Some states, however, have a process where all or part of the audit can be conducted electronically. Additionally, some states that have implemented traditional audits use a tiered system,³ which means a different number of ballots are reviewed for each election contest, depending on the margin of victory for the race.

Risk-limiting Audits

Four states, Colorado, Nevada, Rhode Island, and Virginia, require risk-limiting audits, while California, Ohio, Oregon, and Washington provide counties with the option to utilize risk-limiting audits if they so chose.

A risk-limiting audit makes use of statistical principles and methods and is designed to limit the risk of certifying an incorrect election outcome. Election systems that use paperless, touchscreen ballots and do not require voter-verifiable paper records cannot be audited using this method.

Jurisdictions using this type of audit establish a risk limit, which is the largest chance that an incorrect reported tabulation outcome of a contest will not be corrected by the audit. For example, a risk limit of 10 percent means there is a 90 percent chance the audit will correct a wrong tabulation outcome. The chance that the audit will correct a wrong outcome is called the confidence interval. The larger the margin is in a race, the fewer ballots need to be counted to reach a given confidence interval. If the race is tighter, more ballots must be audited. In this way, risk-limiting audits are similar to traditional audits using a tiered system. Additionally, the lower the confidence interval, the more ballots must be counted to reach a given confidence interval.

If a risk-limiting audit meets a confidence interval and finds strong evidence that the reported outcome was correct, the audit is complete. If the

audit does not meet the confidence interval, the audit evolves into a full hand-count of ballots.

Procedural Audits

A procedural audit is a process for ensuring the correct processes and procedures were followed during the course of the election and may be conducted instead of or in addition to any other post-election audit. Procedural audits vary in their scope and comprehensiveness, but almost always include a ballot accounting and reconciliation process.

Post-election Audits under Certain Circumstances

Some state laws do not require a post-election audit to be conducted after every election, but only require them in certain circumstances. For example:

- Idaho conducts a post-election audit only when a recount is required (IC §34-2313); and
- Indiana requires a procedural audit if the total number of votes cast and the total number of voters in a precinct's poll book differ by five or more. A county chairman for a major political party may also request an audit for confirmation of votes cast (IC §3-11-13-37 *et seq.*, §3-12-3.5-8).

States with No Post-election Audits

Seven states do not conduct any type of audit. These states are: Alabama, Delaware, Louisiana, Maine, Mississippi, New Hampshire, and South Dakota.

Post-election Audits in Kansas

During the 2018 Legislative Session, the Legislature passed HB 2539, which required county election officers to conduct a manual audit or tally of each vote cast in 1.0 percent of all precincts, with a minimum of one precinct located

within the county. The audit requirements apply to all counties for elections occurring after January 1, 2019. The requirement for audit or tally applies regardless of the method of voting used. The bill specified these contested races will be audited:

- In presidential election years: one federal race, one state legislative race, and one county race;
- In even-numbered, non-presidential election years: one federal race, one statewide race, one state legislative race, and one county race; and
- In odd-numbered election years: two local races, selected randomly after the election.

A temporary rule and regulation concerning the conduct of post-election audits (KAR 7-47-1) was approved by the State Rules and Regulations Board at its meeting and became effective on June 26, 2019; a temporary rule and regulation may be effective for no more than 120 days. The Joint Committee on Administrative Rules and Regulations reviewed proposed KAR 7-47-1 at its meeting on August 6, 2019, and a public hearing on this proposed rule and regulation was scheduled for September 4, 2019. KAR 7-47-1 was published in the *Kansas Register* as a final rule and regulation on September 12, with an effective date of September 27, 2019. The rule and regulation contains the following provisions:

- Local question elections and mail ballot elections pursuant to KSA 25-431 are exempt from post-election audits;
- Defines “unofficial election night returns”;

- The Office of the Secretary of State (Office) will provide training to county election officers and county election officers will provide training to the election board;
- The random selection of races and precincts must be conducted in a public place and the randomized selection procedure will be determined solely by county election officers and the Office;
- Audit results must be submitted to the Office and county election office no later than 48 hours before the meeting of the county board of canvassers;
- In even-year elections, the list of randomly selected races to be audited must be transmitted from the Office to county election officers within 24 hours of the closing of the final polling location in Kansas;
- Once a county election officer has determined an auditable race, 1.0 percent of the total county precincts will be randomly selected from the subset of auditable precincts;
- If there is no contested race, the election board will audit the first race listed;
- In odd-year elections, county election officers will randomly select the races and precincts to be audited; and
- Ballot images may be used for a manual audit if such imaging technology exists during the tabulation process on election night.

Table of Post-election Audits by State		
<i>Note: Table only contains information on states that conduct post-election audits.</i>		
State	Audit Type	Statutes
Alaska	Traditional	AS § 15.15.420 - § 15.15.450; § 15.10.170
Arizona	Traditional	ARS § 16-602; State of Arizona Elections Procedures Manual
California	Traditional with option to conduct risk-limiting beginning 2020	CEC § 336.5; § 15360; § 15365 <i>et. seq.</i>
Colorado	Risk-limiting	CRSA § 1-7-515; Colorado Secretary of State Election Rule 25; 8
Connecticut	Traditional	CGSA § 9-320f
District of Columbia	Traditional	DCCA § 1-1001.09a
Florida	Traditional	FSA § 101.591
Georgia	Traditional	GCA § 21-2-498
Hawaii	Traditional	HRS § 16-42, Hawaii Administrative Rules § 3-172-102

Table of Post-election Audits by State		
<i>Note: Table only contains information on states that conduct post-election audits.</i>		
State	Audit Type	Statutes
Idaho	Other	IC § 34-2313
Illinois	Traditional	10 ILCS § 5/24A-15; § 5/24C-15
Indiana	Other	IC § 3-12-13; § 3-12-14; § 13-12-3.5-8
Iowa	Traditional	ICA § 50.51
Kansas (a)	Traditional	KSA § 25-3009
Kentucky	Traditional	KRS § 117.305; § 117.383; § 117.275(9)
Maryland	Traditional	MD Code, Election Law § 11-3093; Code of Maryland Regulations § 33.08.05.00 <i>et seq.</i>
Massachusetts	Traditional	MGLA 54 § 109A
Michigan	Traditional and Procedural	MCLA § 168.31a; Post-election Audit Manual
Minnesota	Traditional	MSA § 206.89
Missouri	Traditional	15 CSR § 30-10.090; § 30-10.110
Montana	Traditional	MCA § 13-17-501 - § 13-17-509
Nebraska (b)	Other	Nebraska Secretary of State's Office
Nevada	Traditional	2019 SB 123; NAC 293.255
New Jersey (c)	Traditional	NJSA § 19:61-9
New Mexico	Traditional, with a tiered system based on the margin of victory	NMSA § 1-14-13.2 <i>et seq.</i> ; NMAC 1.10.23
New York	Traditional	NY Elect. § 9-211; 9 NYCRR 6210.18
North Carolina	Traditional	NCGSA § 163-182.1
North Dakota	Other	NDCC § 16.1-06-15
Ohio	Traditional, with risk-limiting audits recommended	Secretary of State Directive 2017-14; OH ST § 3506.14;
Oklahoma	Traditional	OKC § 26-3-130
Oregon	Traditional, with a tiered system based on the margin of victory	ORS § 254.529; ORS § 254.535
Pennsylvania	Traditional	25 PS § 3031.17 § 2650
Rhode Island	Risk-limiting	RI ST § 17-19-37.4
South Carolina	Other	South Carolina Election Commission – Description of Election Audits in South Carolina
Tennessee	Traditional	TCA § 2-20-103
Texas	Traditional	VTCA § 127.201; Election Advisory No. 2012-03
Utah	Traditional	Election Policy Directive from the Office of the Lieutenant Governor; UCA § 20A-3-201
Vermont	Traditional	17 VSA § 2493; § 2581 - § 2588
Virginia	Risk-limiting	VCA § 24.2-671.1
Washington	Traditional, with option of conducting a risk-limiting audit	RCW § 29A.60.170; § 29A.60.185; WAC 434-262-105
West Virginia	Traditional	WVC § 3-4A-28
Wisconsin	Traditional	WSA § 7.08(6); Wisconsin Elections Commission 2018 Voting Equipment Audits
Wyoming	Other	WS 22-11-104; Wyoming Administrative Rules Secretary of State Election Procedures, Chapter 25
(a) <i>Note:</i> These provisions apply to Kansas elections held after January 1, 2019.		
(b) <i>Note:</i> Nebraska does not have a statutory requirement or rules and regulations for post-election audits, but they may be conducted by the Office of the Secretary of State.		
(c) <i>Note:</i> New Jersey currently does not have machines that produce a paper record and therefore cannot yet conduct an audit.		

- 1 Post-Election Audits. (2019, August 5). Retrieved from <http://www.ncsl.org/research/elections-and-campaigns/postelection-audits635926066.aspx>.
- 2 Alaska, Arizona, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.
- 3 New Mexico and Oregon.

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D-3
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D-4
Post-election Audits

D-5
Voter Registration and
Identification

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Elections and Ethics

D-5 Voter Registration and Identification

Voter Registration Requirements

National Voter Registration Requirements

Federal and state elections in the United States are generally run by the states themselves, according to Article I and Article II of the *U.S. Constitution*. Nevertheless, there are some federal requirements that impact voter registration in the states.

The Voting Rights Act of 1965 allows all U.S. citizens to vote at any election in any state, so long as they are otherwise qualified by law to vote in that election (42 USC §1971).

The National Voter Registration Act of 1993 (NVRA), also known as the “Motor Voter” law, expanded the locations where a person may register to vote by requiring states to allow driver’s license applications to also serve as an application for voter registration. The NVRA requires a voter registration application made as part of a driver’s license application to include a statement containing each eligibility requirement (including citizenship) for that state (42 USC § 1993gg-3).

Finally, the Help America Vote Act (HAVA) (Public Law 107-252, § 303) requires applicants to provide one of the following when registering to vote:

- The applicant’s driver’s license number, if the person possesses a current and valid driver’s license;
- The last four digits of the applicant’s Social Security number, if the person does not possess a driver’s license; or
- The applicant’s state assigned identification number for voter registration purposes, for those applicants with neither a driver’s license nor a Social Security number.

State Voter Registration Requirements

Every state except North Dakota requires voter registration.

Generally, state voter registration laws require applicants to:

- Be 18 years old on or before the next election;
- Be a resident of the state where they are registering;
- Not be in jail and not have been convicted of a felony (or have had civil rights restored);
- Be mentally competent/not declared incapacitated; and
- Not be registered to vote in another state.

Same-day Voter Registration

Most states also have registration deadlines applicants must comply with to qualify to vote in an upcoming election. As of June 2019, 21 states and the District of Columbia have laws that allow same-day voter registration. Twenty of these states and the District of Columbia allow same-day registration on Election Day. One state (North Carolina) allows same-day registration only during the early voting period.

New Mexico enacted legislation in the 2019 Legislative Session, allowing qualified voters to register on Election Day beginning January 1, 2021.

During the 2019 Kansas Legislative Session, HB 2092, which would have enacted same-day voter registration in the state, was introduced and referred to the House Committee on Elections. The bill had a hearing and was worked by the Committee, but was not passed out for consideration by the full House of Representatives.

Online Voter Registration

As of October 2018, 37 states and the District of Columbia have laws allowing for online voter registration. Arizona was the first state to use online voter registration in 2002. Oklahoma is the most recent state to adopt the practice, passing authorizing legislation in 2018. The states that

have not provided for the use of online voter registration are Arkansas, Maine, Michigan, Mississippi, Montana, New Hampshire, New Jersey, North Carolina, North Dakota (no registration required), South Dakota, Texas, and Wyoming.

Preregistration

The minimum age to vote in all federal and state elections is 18 years old. However, many states allow persons who are not yet 18 years old to register to vote before they turn 18 so they will be added to the voter rolls and able to vote as soon as they reach the required age. This practice is commonly referred to as preregistration and is administered by states in a variety of ways.

Twenty-seven states allow an individual to register to vote if they will turn 18 on or before the next election, usually referring to the next general election. Fourteen states and the District of Columbia begin preregistration at 16 years of age, and 4 states allow such registrations beginning at 17 years of age. Five other states have their own unique age requirements: Alaska—90 days before 18th birthday; Georgia, Iowa, and Missouri—17 years, 6 months old; Texas—17 years, 10 months old.

North Dakota does not require voters to register, but specifies that qualified electors must be 18 years of age.

Automatic Voter Registration

The NVRA of 1993 required states to allow individuals to register to vote when applying for or renewing their driver's licenses. Some states have taken this requirement a step further and adopted automatic voter registration (AVR). AVR is a process by which individuals are automatically registered to vote and must opt out if they do not wish to be on the voter rolls. As of April 2019, 16 states and the District of Columbia have implemented AVR.

Voter Identification Requirements

As of January 2019, 35 states have enacted laws requiring or requesting voters to provide some form of identification (ID) before voting. However, there are many variations as to which forms of ID are accepted, whether the ID is required to include a photo, and what happens if a voter does not provide the required or requested ID upon arriving at the polling place.

Kansas Law

Prior to the 2011 Legislative Session, Kansas law required persons voting for the first time in a county to provide ID unless they had done so when they registered. At that time, acceptable ID forms included a current, valid Kansas driver's license or nondriver's ID card, utility bill, bank statement, paycheck, government check, or other government document containing the voter's current name and address as indicated on the registration book. A voter's driver's license copy or number, nondriver's ID card copy or number, or the last four digits of the voter's Social Security number were acceptable when the voter was applying for an advance ballot to be transmitted by mail.

In 2011, the law changed significantly through the passage of HB 2067. Effective January 1, 2012, all those voting in person were required to provide photo ID at every election (with the exception of certain voters, such as active duty military personnel, absent from the country on Election Day), and all voters submitting advance ballots by mail were required to include the ID number on, or a copy of, a specified form of photo ID for every election. Free nondriver's ID cards and free Kansas birth certificates were available to anyone 17 or older for the purposes of meeting the new photo voter ID requirements. Each applicant for a free ID had to sign an affidavit stating he or she plans to vote and possesses no other acceptable ID form. The individual also had to provide evidence of being registered to vote. Relatively minor amendments were also made in 2012 SB 129, including adding an ID card issued by a Native American tribe to the list of photo ID documents acceptable for proving a voter's identity when voting in person.

A U.S. District Court judge issued an order striking down Kansas' Voter ID law as it applies to registration for federal elections on June 18, 2018. [*Fish v. Kobach*, 309 F. Supp.3d 1048 (D. Kan, 2018).]

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E-5
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Federal and State Affairs

E-1 Carrying of Firearms

Background

Prior to 2006, open carry of firearms was legal in the state except where prohibited by local ordinance. The State also had no provisions for concealed carry of firearms until 2006 when the Personal and Family Protection Act was enacted.

Personal and Family Protection Act (2006 SB 418)

Enactment made Kansas the 47th state to allow concealed carry, and made it the 36th state that “shall issue” concealed carry permits. In other words, under the new law, Kansas would be required to issue a concealed carry permit to any person who met the education requirements, could lawfully possess a firearm, and who paid the licensing fee. Permits were issued beginning on January 1, 2007.

2013 Legislative Changes (Senate Sub. for HB 2052 and SB 21)

The 2013 Legislature passed Senate Sub. for HB 2052, which added new sections to the Personal and Family Protection Act (PFPA), primarily authorizing concealed carry of handguns by licensees into certain public buildings enumerated in the legislation. Also passed was SB 21, which enacted firearms-related amendments.

2015 Legislative Changes (SB 45)

SB 45 (2015) allowed the concealed carry of a firearm without a concealed carry license issued by the State as long as the individual carrying the firearm is not prohibited from possessing a firearm under either federal or state law.

2017 Legislative Changes (Senate Sub. for HB 2278)

Senate Sub. for HB 2278 (2017) exempted the following institutions from a general requirement in law that public buildings have

adequate security measures in place before the concealed carry of handguns can be prohibited:

- State- or municipal-owned medical care facilities and adult care homes;
- Community mental health centers;
- Indigent health care clinics; and
- Any buildings located in the health care district associated with the University of Kansas Medical Center.

2018 Legislative Changes (HB 2145)

HB 2145 (2018) amended the definition of “criminal use of weapons” by adding possession of a firearm by any of the following: fugitives from justice; aliens illegally or unlawfully in the United States; persons convicted of a misdemeanor for a domestic violence offense within the past five years; and persons subject to court orders restraining them from harassing, stalking, or threatening an intimate partner, child, or child of an intimate partner.

The bill also specified possession of a device or attachment designed, used, or intended for use in suppressing the report of any firearm shall be exempt from the definition of “criminal use of weapons” if the device or attachment satisfies the description of a Kansas-made firearm accessory in current law. The exemption applies to any “criminal use of weapons” violation that occurred on or after April 25, 2013.

Carrying of Concealed Weapons

Prior to the enactment of 2015 SB 45, Kansas citizens who wished to carry a concealed firearm in the state were required to possess a permit issued by the Kansas Attorney General. However, after January 1, 2014, any person who could lawfully possess a handgun in the state could carry it concealed without a permit. This makes Kansas a “constitutional carry” state. If a Kansas resident desires to carry a concealed handgun in a different state, they would need a Kansas concealed carry permit, provided the state recognizes Kansas-issued permits.

Permit Qualifications

The applicant must:

- Be 21 years of age or older;
- Live in the county in which the license is applied for;
- Be able to lawfully possess a firearm;
- Successfully complete the required training course; and
- Pay application and background check fees (\$132.50).

Unlicensed Concealed Carry

Since the enactment of 2015 SB 45, citizens have been able to carry concealed firearms in the state without a permit. However, the law provides some exceptions. Private property owners can exclude weapons from their premises. Additionally, state or municipal buildings must allow citizens to carry concealed firearms, unless adequate security is present. “Adequate security,” as defined by law, includes armed guards and metal detectors at every public access entrance to a building. Furthermore, state or municipal employers may not restrict the carry of concealed firearms by their employees, unless adequate security is present at each public access entrance to the building. Correctional facilities, jails, and law enforcement agencies may exclude concealed weapons in all secured areas, and courtrooms may be excluded, provided that adequate security is present at each public access entrance.

Public Buildings Exceptions

Under the PFPA, several types of public buildings are excluded and are allowed to ban concealed firearms for a period of four years.

State- or Municipal-owned Medical Care Facilities, Adult Care Homes, and Community Mental Health Centers

Senate Sub. for HB 2278 (2017) exempted the following institutions from a general requirement in law that public buildings have adequate

security measures in place before the concealed carry of handguns can be prohibited: state- or municipal-owned medical care facilities and adult care homes, community mental health centers, indigent health care clinics, and any buildings located in the health care district associated with the University of Kansas Medical Center.

Public College Campuses

Under the PFPA, Board of Regents institutions were able to exclude concealed firearms from their campuses until July 1, 2017. Now, Board of Regents institutions must allow concealed firearms in buildings in which adequate security is not provided. The Board of Regents adopted a policy that stated those who carry on campus must be 21 years of age. Further, they must completely conceal their weapon, and the safety must be engaged. Each university has adopted

its own concealed weapons policy in accordance with the law. Kansas is 1 of 12 states where state public universities must allow concealed weapons on their campuses; however, Oregon, Virginia, and Wisconsin limit such carry to the open areas of campus. Eighteen states have law that restricts the carrying of concealed weapons on college and university campuses. The laws of nine states are silent to the topic, allowing colleges and universities to develop their own policies.

State Capitol Building

Under the PFPA, the State Capitol Building is excluded from the definition of state and municipal building. Furthermore, the law states citizens may carry a concealed firearm within the State Capitol, provided they are lawfully able to possess a firearm.

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Federal and State Affairs

E-2 Legalization of Medical and Recreational Marijuana and Industrial Hemp

Although the use of medical or recreational marijuana is not legal in Kansas, several bills have been introduced to change the law. Medical marijuana use is legal in 33 states and the District of Columbia. Recreational use of marijuana is legal in 14 states and the District of Columbia. This article summarizes the bills that have been introduced in Kansas and provides an overview on the legalization and decriminalization that has occurred in other states.

Medical Use of Marijuana

History of Legislation in Kansas

In the last 15 years, 19 bills have been introduced in the Kansas Legislature addressing the topic of medical marijuana or cannabidiol; two of these bills have been enacted. The 2019 Legislature passed SB 28, also known as “Claire and Lola’s Law,” which prohibits state agencies and political subdivisions from initiating child removal proceedings or child protection actions based solely upon the parent’s or child’s possession or use of cannabidiol treatment preparation in accordance with the affirmative defense established by the bill. Additionally, the 2018 Legislature amended the definition of marijuana to exempt cannabidiol in SB 282. Three bills which would have legalized the use of medical cannabis were introduced in the 2019 Legislative Session (SB 113, HB 2163, and HB 2413). The Senate Committee on Public Health and Welfare held a hearing on SB 113 but failed to take any further action on the bill.

Sub. for SB 155 (2017) would have amended law concerning nonintoxicating cannabinoid medicine (NICM). Under the bill, no person could have been arrested, prosecuted, or penalized in any manner for possessing, utilizing, dispensing, or distributing any NICM or any apparatus or paraphernalia used to administer the medicine. The bill would have specified the physicians issuing recommendation orders for NICM and pharmacists dispensing or distributing NICM could not have been subject to arrest, prosecution, or any penalty, including professional discipline. The bill was recommended for passage by the Senate Committee on Federal and State Affairs. At the beginning of the 2018 Session, the bill was rereferred to the Senate Committee and died in Committee.

Slight variations of a bill that would allow for the creation of not-for-profit centers and for these facilities to issue registration certificates, registry identification cards, and marijuana to patients have been introduced every year since 2010 with the exceptions of 2014 and 2016. This bill would have allowed patients and caregivers to possess certain amounts of marijuana plants, usable marijuana, and seedlings of unusable marijuana. Also, the legislation would have provided patients and caregivers with certain levels of immunity from arrest, prosecution, or other civil penalties. Finally, the bill would have prohibited discrimination against patients from schools, landlords, employers, and other entities.

Other States

Thirty-three states and the District of Columbia have laws legalizing medical marijuana and cannabis programs. The laws in these states meet the following criteria: protection from criminal penalties for using marijuana for a medical purpose; access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented; allowance for a variety of strains; and allowance of either smoking or vaporization of marijuana products, plant material, or extract.

Another 13 states allow use of low tetrahydrocannabinol (THC), high cannabidiol products for specific medical conditions or as a legal defense. Four states, including Missouri and Oklahoma, enacted comprehensive medical marijuana laws in 2019 after previously legalizing low THC products.

Recreational Use of Marijuana

Other States

Eleven states (Alaska, California, Colorado, Illinois, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington) and the District of Columbia have legalized the recreational use of marijuana as of September 2019.

Illinois and Vermont legalized recreational marijuana through the legislative process, while the remaining states used a ballot initiative. Nine states had bills before their legislatures in 2019 to advance or allow the use of recreational marijuana for adults.

Commercial and Industrial Use—Hemp

In 2018, SB 263 enacted the Alternative Crop Research Act (Act), which allows the Kansas Department of Agriculture (KDA), either alone or in coordination with a state institution of higher education, to grow and cultivate industrial hemp and promote the research and development of industrial hemp, in accordance with federal law. The bill allows individuals to participate in the research program under the authority of the KDA. The bill amends KSA 2019 Supp. 21-5701, dealing with criminal law, and KSA 2019 Supp. 65-4101, dealing with controlled substances, excluding “industrial hemp” from the definition of “marijuana,” when cultivated, possessed, or used for activities authorized by the Act.

In 2019, Senate Sub. for HB 2167 created the Commercial Industrial Hemp Act (Act), which requires the KDA, in consultation with the Governor and Attorney General, to submit a plan to the USDA under which the KDA would monitor and regulate the commercial production of industrial hemp within Kansas in accordance with federal law and any adopted rules and regulations. The bill includes “industrial hemp” as an exception to the definition of “marijuana” in the definition sections of crimes involving controlled substances. The bill also excludes from the Schedule I controlled substances list any THC in:

- Industrial hemp, as defined by the Act;
- Solid waste and hazardous waste, as defined in continuing law, that is the result of the cultivation, production, or processing of industrial hemp, as defined in the Act, and the waste contains a THC concentration of not more than 0.3 percent; or
- Hemp products as defined in the Act, unless otherwise considered unlawful.

Penalties and Decriminalization

Kansas

SB 112 (2017) reduced the severity level for unlawful possession of drug paraphernalia from a class A to a class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

Local Ordinances

On June 13, 2017, the Wichita City Council voted to approve an ordinance passed by Wichita voters in April 2015 that would reduce the penalty for first-time marijuana possession. The ordinance would impose up to a \$50 fine for first-time

offenders 21 years of age and older who possess less than 32 grams of marijuana.

On March 19, 2019, the Lawrence City Commission voted to decrease the penalty for first- and second-time offenders 18 years of age or older who possess less than 32 grams of marijuana to \$1.00.

Other States

Twenty-six states and the District of Columbia have decriminalized the use of small amounts of marijuana. Additional decriminalization efforts were introduced in 19 states in 2019.

In addition to legalization and decriminalization, efforts to reduce penalties related to marijuana were before 17 state legislatures in 2019.

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Federal and State Affairs

E-3 Liquor Laws

Kansas laws concerning intoxicating liquor are included in the Liquor Control Act, the Cereal Malt Beverage Act, the Club and Drinking Establishment Act, the Nonalcoholic Malt Beverages Act, the Flavored Malt Beverages Act, the Beer and Cereal Malt Beverages Keg Registration Act, farm winery statutes, microbrewery statutes, and microdistillery statutes.

State and Local Regulatory Authority

The Division of Alcoholic Beverage Control (ABC) and the Director of ABC within the Kansas Department of Revenue (KDOR) have the primary responsibility for overseeing and enforcing Kansas intoxicating liquor laws. As part of its regulatory authority under the different liquor acts, ABC issues 17 different licenses and 5 different permits for the manufacture, distribution, and sale of alcoholic liquor.

County and city governments also have considerable regulatory authority over the sale of intoxicating and alcoholic liquors and cereal malt beverages in the State of Kansas. Article 15 §10 of the *Kansas Constitution* allows the Legislature to regulate intoxicating liquor. Cities and counties have the option to remain “dry” and exempt themselves from liquor laws passed by the State, or local units of government can submit a referendum to voters proposing the legalization of liquor in the local jurisdiction. If such a referendum is passed by a majority of the locality’s voters, alcoholic liquor becomes legal in the city or county and will be subject to state, county, and city laws, ordinances, and regulations.

Liquor Control Act

The Liquor Control Act grants the State its regulatory power to control the manufacture, distribution, sale, possession, and transportation of alcoholic liquor and the manufacturing of beer. Cities and counties are able to regulate certain aspects, such as the time and days for the sale of alcoholic liquor, but local governments cannot adopt laws that conflict with the provisions of the Liquor Control Act.

Farm wineries, farm winery outlets, microbreweries, microbrewery packaging and warehousing facilities, and microdistilleries also are regulated by the Liquor Control Act.

Cereal Malt Beverage Act

Local governments have additional authority under the Cereal Malt Beverage (CMB) Act. According to law, applications for CMB licenses are made either to the city or county government, depending on where the business is located.

As long as any local regulations and ordinances adopted are consistent with the CMB Act, the board of county commissioners or the governing body of a city may set hours and days of operation, closing time, standards of conduct, and adopt rules and regulations concerning the moral, sanitary, and health conditions of licensed premises. If the local government does not set hours and days of operation, the default hours and days provided in the CMB Act govern the sale of CMBs. Counties and cities also may establish zoning requirements that regulate establishments selling CMBs and that may limit them to certain locations.

The CMB Act also allows local governments some discretion in revoking licenses and requires such action by local governments in specific situations.

Club and Drinking Establishment Act

In Kansas, the sale of alcoholic liquor by the drink is controlled by the Club and Drinking Establishment Act.

The board of county commissioners may submit a proposition to voters to (1) prohibit the sale of individual alcoholic drinks in the county, (2) permit the sale of individual alcoholic drinks only if an establishment receives 30.0 percent of its gross receipts from food sales, or (3) permit the sale of individual alcoholic drinks only if an establishment receives some portion of gross receipts from food sales. If a majority of voters in the county vote in favor of the proposition, the Director of ABC must

respect the local results when issuing or denying licenses in that county.

Additionally, the county commissioners are required to submit a proposition to the voters upon receiving a petition if the petition is signed by at least 10.0 percent of voters who voted in the election for the Secretary of State the last time that office was on the ballot in a general election. The petition must contain the language required in KSA 41-2646(3)(b), and the petition must be filed with the county election officer.

Nonalcoholic Malt Beverages Act

Retail sales of nonalcoholic malt beverages are controlled by the Liquor Control Act, the Club and Drinking Establishment Act, or the CMB Act, depending on which act the retailer is licensed under for selling or providing the nonalcoholic malt beverage.

Flavored Malt Beverage Act

Kansas adopted the federal definitions of flavored malt beverages (FMB). However, the federal government does not offer FMB licenses or impose penalties in Kansas. The ABC is responsible for FMB regulation and penalties associated with FMBs in the state. Because FMBs are CMBs, they are regulated under the CMB Act.

Beer and Cereal Malt Beverage Keg Registration Act

Retailers selling kegs are regulated under the Liquor Control Act or the CMB Act, depending on the type of alcoholic beverage(s) the retailer is selling.

Although local governments have delegated authority under the CMB Act, city and county ordinances that conflict with the Beer and Cereal Malt Beverage Keg Registration Act are void.

Liquor Taxes

Currently, Kansas imposes three levels of liquor taxes. For more information, see [article L-3 Liquor Taxes](#).

2019 Changes to Liquor Laws—SB 70, HB 2035

SB 70

Temporary permit holders. The bill allows a temporary permit holder to serve alcohol for consumption on licensed or unlicensed premises, or on premises subject to a separate temporary permit.

Common consumption areas. The bill allows a drinking establishment licensee, public venue, hotel, hotel caterer, or drinking establishment caterer to extend its licensed premises into a city, county, or township street, alley, road, sidewalk, or highway under certain circumstances.

Delivery of liquor. The bill requires every express company or other common carrier that delivers alcohol from outside the state to consumers within the state to prepare a monthly report of shipments.

Sale of farm wine by producer licensees. The bill allows producers of certain fermentative products to sell wine made at a farm winery with certain minimum Kansas content requirements.

HB 2035

The bill, among other things, makes notice and procedural requirements for violations of the CMB Act the same as for violations of the Liquor Control Act and the Club and Drinking Establishment Act and places violations of the CMB Act under the authority of the ABC. The bill makes the enforcement authority for violations involving beer up to 6.0 percent alcohol by volume uniform across state liquor laws. The bill also clarifies all retail sales of liquor, CMB, and nonalcoholic malt beverage are subject to the liquor enforcement tax described in KSA 79-4101.

2018 Changes to Liquor Laws—HB 2362

Microbreweries production and packaging. The bill allows microbreweries in Kansas to contract with other microbreweries for production and packaging of beer and hard cider. The contracting Kansas microbrewery will be held to all applicable state and federal laws concerning manufacturing, packaging, and labeling and will be responsible for payment of all state and federal taxes on the beer or hard cider. Production of beer or hard cider will count toward production limits in current law for both the microbreweries involved in such a contract. The bill allows the beer or hard cider to be transferred to the microbrewery on whose behalf the beer or hard cider was produced, after production and packaging.

Sale of alcoholic candy. The bill defines “alcoholic candy” and includes the term in the existing definition of “alcoholic liquor.” Alcoholic candy is subject to regulation by the ABC and a retailer is required to have a liquor license to sell such products.

Sale of domestic beer in refillable containers. The bill allows a microbrewery licensee to sell beer manufactured by the licensee in refillable and sealable containers to consumers for off-premises consumption. Such containers may not contain less than 32 fluid ounces or more than 64 fluid ounces of beer. Licensees are required to affix labels to all containers sold, which includes the licensee’s name and the name and type of beer in the container.

Hours of sale and service for alcohol. The bill increases the length of time that certain businesses may serve or sell alcohol:

- Establishments licensed to serve alcohol may begin serving alcohol at 6:00 a.m.; and
- Farm wineries, microbreweries, and microdistilleries are allowed to sell their respective alcoholic products in their original containers between 6:00 a.m. and 12:00 a.m. on any day.

Self-service beer from automated devices. The bill allows licensed public venues, clubs, and

drinking establishments to provide self-service beer to customers from automated devices in the same manner as is permitted for wine under continuing law, so long as the licensee monitors the dispensing of beer and can control such dispensing. The bill requires any licensee offering self-service beer or wine from any automated device to provide constant video monitoring of the automated devices at all times the licensee is open to the public and maintain the footage for at least 60 days. The bill also sets out requirements for prepaid access cards that contain a fixed monetary amount that can be directly exchanged for beer or wine from an automated device.

2017 Changes to Liquor Laws—House Sub. for SB 13, Sub. for HB 2277

House Sub. for SB 13

Expanded sale of strong beer. The bill allows convenience, grocery, and drug stores licensed to sell CMBs, defined as any fermented but undistilled beverage with an alcohol weight of 3.2 percent or less, to sell beer containing not more than 6.0 percent alcohol by volume on and after April 1, 2019. Also effective April 1, 2019, any person with a retailer's license to sell alcoholic liquor (beer, wine, and distilled spirits) may sell CMB. Liquor retailers may sell other goods or services, provided the amount of nonalcoholic sales—excluding the sales of lottery tickets, cigarettes, and other tobacco products—does not exceed 20.0 percent of the retailer's total gross sales. Liquor retailers may continue to provide product for resale by bars, restaurants, clubs, and caterers. Distributors may establish minimum quantities and dollar amounts for orders of CMB and alcoholic liquor. Ten years after the bill's effective date, the Director of ABC must conduct a market impact study on the sale of beer by persons holding CMB licenses, which must be reported in the 2029 Legislative Session.

Sub. for HB 2277

Common consumption areas. The bill allows a city or county to establish one or more common consumption areas by ordinance or resolution

and designate the boundaries of these areas. Common consumption area permits can be issued to cities, counties, Kansas residents, or organizations with a principal place of business in Kansas and approved by the respective city or county. Common consumption area permit holders are liable for liquor violations occurring within the common consumption area the permit identifies. Licensees are liable for violations on their individual premises.

Class B clubs. The bill also removes from current law a ten-day waiting period for an applicant to become a member of a class B club.

2016 Changes to Liquor Laws—SB 326

Microbrewery production limits. The legislation increased the allowable amount of beer manufactured with a microbrewery license to 60,000 barrels of domestic beer in a calendar year for each microbrewery license issued in the state. If a licensee has a 10.0 percent or greater ownership interest in one or more entities that also hold a microbrewery license, the aggregate amount of beer manufactured by all licenses under such common ownership cannot exceed 60,000 barrels.

The legislation allowed microbrewery licensees also licensed as a club or drinking establishment to sell and transfer domestic beer to that club or drinking establishment. Microbrewery licensees also are able to remove hard cider produced by the licensee from the licensed premises for delivery to licensed wine distributors.

Hard cider. The legislation allowed a microbrewery to manufacture and distribute not more than 100,000 gallons of hard cider, as defined by the bill. Under prior law, microbreweries could manufacture only beer.

Residency requirements. The legislation amends the Liquor Control Act to remove the one-year residency requirement for microbrewery, microdistillery, and farm winery licensees. Microbrewery, microdistillery, and farm winery licensees still are required to be Kansas residents.

2015 Changes to Liquor Laws—HB 2223

Infusion. The legislation allowed drinking establishments to sell and serve alcoholic liquor infused with spices, herbs, fruits, vegetables, candy, or other substances intended for human consumption if no additional fermentation occurs during the process.

Citations. In addition to making changes to the required contents of citations, the legislation specified when issuing a citation for a violation of the liquor laws, agents of the ABC must deliver the citation issued to a person in charge of the licensed premises at the time of the alleged violation.

Previously, the law required delivery of the citation to the person allegedly committing the violation.

Powdered alcohol. The legislation banned clubs, drinking establishments, caterers, holders of temporary permits, and public venues from selling, offering to sell, or serving free of charge any form of powdered alcohol.

Automated wine devices. The legislation allowed public venues, clubs, and drinking establishments to offer customer self-service of wine from automated devices on licensed premises. Licensees are required to monitor and have the ability to control the dispensing of wine from the automated devices.

Eligibility for licensure. The legislation added to the list of persons who cannot receive liquor licenses any person who, after a hearing before the Director of ABC, is found to have held an undisclosed beneficial interest in a liquor license obtained through fraud or a false statement on the application for the license. The legislation also established requirements for limited liability companies applying for a liquor license.

Alcohol consumption on Capitol premises. The legislation allowed consumption of alcoholic liquor on the premises of the Capitol for official state functions that are nonpartisan in nature. Any such function must be approved by the Legislative Coordinating Council before the consumption of alcoholic liquor may begin.

Alcohol consumption on unlicensed premises. The legislation provided that patrons and guests of unlicensed businesses will be allowed to consume alcoholic liquor and CMB on the premises of unlicensed business property if the following conditions are met:

- The business, or any owner of the business, has not had a license issued under the Kansas Liquor Control Act or the Club and Drinking Establishment Act revoked for any reason;
- No charge is made by the business for the privilege of possession or consumption of alcohol on the premises or for mere entry onto the premises; and
- Any alcoholic liquor remains in the personal possession of the patron; it is not sold, offered for sale, or given away by the owner or employees of such business; and no possession or consumption takes place between 12 a.m. and 9 a.m.

Alcohol consumption for catered events. The legislation allowed the consumption of alcoholic liquor at catered events held on public property where the caterer has provided 48-hour notice to the ABC.

Notification requirements. The legislation changed the required notification caterers must give to the ABC by requiring electronic notice 48 hours before an event. Previously, the law required a caterer to provide notice to the ABC ten days before any event and provide notice to the Chief of Police or Sheriff where the event was to occur.

Distributor sampling. The legislation allowed alcoholic beverage distributors to provide samples of spirits, wine, and beer or CMBs to alcoholic beverage retailers and their employees and other alcoholic beverage distributors and their employees in the course of business or at industry seminars.

Vineyard permits. The legislation allowed any person engaged in business as a Kansas vineyard with more than 100 vines to apply for an annual

permit. The permit authorizes the following on the premises specified in the permit:

- The sale of wine in the original, unopened container;
- The serving of wine by the drink; and
- Conducting wine tastings in accordance with current law.

Location of certain licensees. The legislation allowed cities to pass ordinances allowing liquor retailers, microbreweries, microdistilleries, and farm wineries to locate within 200 feet of any public or parochial school, college, or church in a core commercial district.

Temporary permits—State Fair. The legislation allowed the Director of ABC, on or after July 1, 2016, to issue a sufficient number of temporary permits for the sale of wine in unopened containers and the sale of beer, wine, or both by the glass on the State Fairgrounds. The number of permits issued must be consistent with the requirements of the State Fair Board.

Farmers' market permits. The legislation allowed farm wineries to sell wine at farmers' markets. Applications for these permits must include the location(s) of the farmers' markets at which wine will be sold.

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Carrying of Firearms

E-2
Legalization of Medical
and Recreational
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Lottery, State-owned
Casinos, Parimutuel
Wagering, and Tribal
Casinos

E-5
Red Flag Laws

E-6
Sports Wagering

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Federal and State Affairs

E-4 Lottery, State-owned Casinos, Parimutuel Wagering, and Tribal Casinos

Article 15, Section 3 of the *Kansas Constitution* prohibits lotteries and the sale of lottery tickets forever. The prohibition was adopted by convention, approved by voters in 1859, and approved by the Legislature in 1861. Exceptions to the prohibitions were added in 1974 to allow for bingo and bingo games, and in 1986 to allow for the Kansas Lottery (including State-owned casinos, since 2007) and parimutuel wagering on dog and horse races.

Revenue. Kansas laws provide for the allocation of Lottery revenues to the State Gaming Revenues Fund (SGRF), State General Fund (SGF), Expanded Lottery Act Revenues Fund (ELARF), and Problem Gambling and Addictions Grant Fund. In fiscal year (FY) 2019, these funds received a total of \$173.6 million.

Kansas Regular Lottery

In 1986, Kansas voters approved a constitutional amendment to provide for:

- A State-owned lottery; and
- A sunset provision prohibiting the operation of the State Lottery unless a concurrent resolution authorizing such operation was adopted by the Kansas Legislature. The 2007 Legislature extended the Lottery until 2022 and required a security audit of the Kansas Lottery be completed at least once every three years.

The 1987 Kansas Legislature approved implementing legislation that:

- Created the Kansas Lottery to operate the State Lottery;
- Established a five-member Lottery Commission to oversee operations;
- Required at least 45.0 percent of the money collected from ticket sales to be awarded as prizes and at least 30.0 percent of the money collected to be transferred to the SGRF;

- Exempted lottery tickets from sales tax; and
- Allowed liquor stores, along with other licensed entities, to sell lottery tickets.

Lottery games receipts from the sale of tickets and online games are deposited by the Executive Director of the Kansas Lottery into the Lottery Operating Fund in the State Treasury. Moneys in that fund are used to:

- Support the operation of the Lottery;
- Pay prizes to lottery winners by transfers to the Lottery Prize Payment Fund;
- Provide funding for veterans and individuals suffering from problem gambling, alcoholism, drug abuse, and other addictive behaviors; and
- Provide funding for correctional facilities, juvenile facilities, economic development, and the SGF *via* transfers.

Vending machines. The 2018 Legislature passed Sub. for HB 2194, which authorizes the Kansas Lottery to use lottery ticket vending machines (LTVM) to sell lottery tickets and instant bingo vending machines to sell instant bingo tickets.

The bill further provided that the first \$4.0 million in revenue in FY 2019 and \$8.0 million in FY 2020 and each fiscal year thereafter from the sale of lottery tickets through LTVM be used for transfers to the Community Crisis Stabilization Centers Fund and the Clubhouse Model Program Fund of the Kansas Department for Aging and Disability Services. Due to delays in implementation of LTVM, the revenue for FY 2019 was derived from other sources.

The Lottery purchased 544 LTVM in 2 groups of 272 machines. The first group of machines began testing in July 2019. The Lottery was directed to pay for the LTVM from existing Lottery proceeds, thereby reducing the transfer to the SGF from Lottery proceeds by roughly \$5.0 million per year for FY 2019 and FY 2020.

Veterans Benefit Lottery Game. The 2003 Legislature passed HB 2400, authorizing the Kansas Lottery to sell an instant ticket game,

year-round, benefiting veterans' programs. Pursuant to KSA 209 Supp. 74-8724, net profits are distributed accordingly:

- 40.0 percent for Kansas National Guard educational scholarships and for other purposes directly benefiting members of the Kansas Army and Air National Guard and their families;
- 30.0 percent for the use and benefit of the Kansas Veterans' Home, Kansas Soldiers' Home, and Veterans Cemetery System; and
- 30.0 percent for the Veterans Enhanced Service Delivery Program.

Starting in FY 2019, the Veterans Benefit Lottery was converted from a net profit distribution to a fixed distribution starting at \$1.2 million and increasing by 5.0 percent per year.

State-owned Casinos

The 2007 Legislature passed SB 66, commonly referred to as the Kansas Expanded Lottery Act (KELA), authorizing a State-owned and operated lottery involving electronic gaming and racetrack gaming facilities. A proviso in KELA stated any action challenging the constitutionality of KELA shall be brought in Shawnee County District Court.

In *State ex rel. Morrison v. Kansas Lottery* 07C-001312, the Shawnee County District Court ruled KELA was constitutional because the State's selection of casino managers and electronic games, monitoring of managers' daily activities, ownership of gaming software, and control over revenue distribution demonstrate ownership and operation of a lottery involving electronic gaming. In *State ex rel. Six v. Kansas Lottery*, 186 P.3d 183 (Kan. 2008), the Kansas Supreme Court upheld the district court's ruling on the constitutionality of KELA.

Revenue. In FY 2019, revenue from the Kansas Regular Lottery was transferred from the SGRF in the following manner:

Veterans' Programs	\$ 1,200,000
Economic Development Initiatives Fund	42,364,000
Juvenile Detention Fund	2,496,000
Correctional Institutions Building Fund	4,932,000
Problem Gambling Grant Fund	80,000
State General Fund	23,837,328 ¹
Total	\$ 74,909,328

¹ Kansas statute allows no more than \$50.0 million from online games, ticket sales, and parimutuel wagering revenues can be transferred to the SGRF in any fiscal year. Amounts in excess of \$50.0 million are credited to the SGF, except when otherwise provided by law.

Where Can State Casinos Be Located in Kansas?

KELA created gaming zones for expanded gaming.

One casino may be built in each zone:

- Wyandotte County (Northeast Kansas Gaming Zone);
- Crawford and Cherokee counties (Southeast Kansas Gaming Zone);
- Sedgwick and Sumner counties (South Central Kansas Gaming Zone); and
- Ford County (Southwest Kansas Gaming Zone).

Who Owns and Operates the Casinos?

The Kansas Lottery Commission has ownership and operational control lottery gaming facilities.

In addition, the Lottery is authorized to enter into contracts with the gaming managers for gaming at the exclusive and nonexclusive (parimutuel locations) gaming zones.

Who Is Responsible for Regulation?

The Kansas Racing and Gaming Commission (KRGC) is responsible for oversight and regulation of lottery gaming facility operations.

What Are the Required Provisions of Any Lottery Gaming Facilities Contract?

KSA2019 Supp. 74-8734 details the requirements of gaming facility contracts. Among other things, the contracts must include an endorsement from local governments in the area of the proposed facility and provisos that place ownership and operational control of the gaming facility with the Kansas Lottery, allow the KRGC complete oversight of operations, and distribute revenues pursuant to statute. The contracts also must include provisions for the payment of a privilege fee and investment in infrastructure. The 2014 Legislature passed HB 2272, which lowered the privilege fee in the Southeast Gaming Zone from \$25.0 million to \$5.5 million and lowered the investment in infrastructure in the Southeast Gaming Zone from \$225.0 million to \$50.0 million.

The Lottery solicits proposals, approves gaming zone contracts, and submits the contracts to the Lottery Gaming Facility Review Board for consideration and determination of the contract for each zone. The Board is responsible for determining which lottery gaming facility management contract best maximizes revenue, encourages tourism, and serves the best interests of Kansas. The KRGC provides administrative support to the Board.

Revenue. Pursuant to KSA 2019 Supp. 74-8768, expanded gaming revenues deposited into the ELARF may only be used for state infrastructure improvements, the University Engineering Initiative Act, and reductions of state debt, the local *ad valorem* tax, and the unfunded actuarial liability of the Kansas Public Employees Retirement System (KPERS). In FY 2019, expenditures and transfers from the ELARF included:

KPERS Bonds Debt Service	\$ 35,701,595
Public Broadcasting Council Bonds	437,375
KPERS School Employer Contributions	40,084,000
Kan-Grow Engineering Fund	10,500,000
State General Fund Transfer	3,743,144
Total	\$ 90,466,114

In addition to funds deposited in the ELARF, \$8.2 million was transferred to the Problem Gambling and Addictions Grant Fund and \$12.3 million was transferred to local cities and counties from expanded gaming in FY 2019.

Parimutuel Wagering

In 1986, voters approved a constitutional amendment authorizing the Legislature to permit, regulate, license, and tax the operation of horse and dog racing by bona fide non-profit organizations and to conduct parimutuel wagering. The following year, the Kansas Parimutuel Racing Act was passed:

- Creating the Kansas Racing Commission, later renamed the KRGC, which is authorized to license and regulate all aspects of racing and parimutuel wagering;
- Permitting only non-profit organizations to be licensed and allowing the licenses to be for an exclusive geographic area;

- Creating a formula for taxing the wagering;
- Providing for simulcasting of both interstate and intrastate horse and greyhound races in Kansas and allowing parimutuel wagering on simulcast races in 1992; and
- Providing for the transfer from the State Racing Fund to the SGRF of any moneys in excess of amounts required for operating expenditures.

There are currently no year-round parimutuel racetracks operating in Kansas; therefore, there was no revenue transfer to the SGRF from parimutuel racing.

Racetrack Gaming Facilities

Who Decides Who Receives the Racetrack Gaming Facility Management Contract?

The Kansas Lottery is responsible for considering and approving proposed racetrack gaming facility management contracts with one or more prospective racetrack gaming facility managers.

The prospective managers must have sufficient financial resources and be current in filing taxes to the state and local governments. The Lottery is required to submit proposed contracts to KRGC for approval or disapproval.

What Are the Required Provisions of Any Racetrack Gaming Facilities Contract?

A person who is the manager of a lottery gaming facility is ineligible to be a manager of a racetrack facility in the same gaming zone. KSA 2019 Supp. 74-8741 details the requirements of racetrack gaming facility contracts. Among other things, the contract must include language that allows the KRGC complete oversight of operations and the distribution of revenue pursuant to statute.

What Racetrack Facilities Are Permitted to Have Slot Machines?

The passage of 2007 SB 66 created gaming zones for casinos and parimutuel racetracks housing electronic gaming machines. Currently, there are no racetrack facilities operating in Kansas. In the future, the Kansas Lottery can negotiate a racetrack gaming facility management contract to place electronic gaming machines at one parimutuel license location in each of the gaming zones, except for the Southwest Gaming Zone and Sedgwick County in the South Central Gaming Zone (voters in these gaming zones did not approve the placement of electronic gaming machines at parimutuel locations).

Tribal-State Gaming

In 1995, the State of Kansas and each of the four resident tribes in Kansas entered into tribal state gaming compacts to allow Class III (casino) gaming at tribal casinos.

In accordance with the federal Indian Gaming Regulatory Act (IGRA), all four of the compacts approved by the Kansas Legislature were forwarded to the Bureau of Indian Affairs and were approved. At the present time, all four resident tribes have opened and are operating casino gaming facilities:

- Kickapoo Tribe opened the Golden Eagle Casino in May 1996;
- Prairie Band Potawatomi Nation opened a temporary facility in October 1996 and then Harrah's Prairie Band Casino in January 1998 (in 2007, Harrah's relinquished operation of the casino to the Prairie Band Potawatomi Nation);
- Sac and Fox Tribe opened the Sac and Fox Casino in February 1997; and
- Iowa Tribe opened a temporary facility in May 1998 and then Casino White Cloud in December 1998.

Revenue. Financial information concerning the operation of the four casinos is confidential. Under the existing compacts, the State does not receive revenue from the casinos, except for its oversight activities.

State Gaming Agency. The State Gaming Agency (SGA) was created by executive order in August 1995, as required by the tribal-state gaming compacts. Passage of the Tribal Gaming Oversight Act during the 1996 Legislative Session attached the SGA to the KRGC for budget purposes. All management functions of the SGA are administered by the Executive Director of SGA.

The gaming compacts define the relationship between the SGA and the tribes; regulation of the gaming facilities is performed by the tribal gaming commission, but enforcement agents of the SGA also work in the facilities on a daily basis and have free access to all areas of the gaming facility. The compacts also require the SGA to conduct background investigations on all gaming employees, manufacturers of gaming supplies and equipment, and gaming management companies and consultants. The SGA is funded through an assessment process, established by the compacts, to reimburse the State of Kansas for the costs it incurs for regulation of the casinos.

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Federal and State Affairs

E-5 Red Flag Laws

What Are Red Flag Laws?

Red flag laws, sometimes called extreme risk protection order laws or gun violence restraining order laws, allow a judge to issue an order that enables law enforcement to confiscate firearms from individuals deemed a risk to themselves or others. Prior to the enactment of red flag laws, in most states, law enforcement had no authority to remove firearms from individuals unless they had been convicted of specific crimes, even if their behavior was deemed unsafe.

Depending on state laws, family members, household members, law enforcement, or a mixture of these groups can ask the court for an order that would allow police to remove the firearm or firearms from the individual's home and restrict their ability to purchase firearms. Typically, the person seeking the order must provide evidence of behavior that presents a danger to others or themselves; then the court holds an expedited hearing. If a judge agrees the individual is a threat, the individual's firearms will be removed for a temporary period that can last from a few weeks to a year. Notice for scheduled hearings is provided for orders that could result in a firearm divestment for a specific period of time. Defendants may participate in such hearings.

What Actions Constitute a 'Red Flag?'

While each state defines what constitutes a "red flag" differently, the following are some examples:

- Recent threats or acts of violence by such person directed toward themselves or other persons;
- The reckless use, display, or brandishing of a firearm by such person;
- History of documented evidence that would give rise to a reasonable belief the individual has a propensity for violent or emotionally unstable conduct;
- History of the use, attempted use, or threatened use of physical force by such person against other persons;

- History of mental illness or prior involuntary confinement of such person in a hospital for persons with psychiatric disabilities; and
- The illegal use of controlled substances or abuse of alcohol by such person.

State Actions

Enacted

Before 2018, only five states had enacted red flag laws: Connecticut, Indiana, California, Washington, and Oregon.

In 1999, Connecticut became the first state to enact a law permitting law enforcement the legal authority to temporarily remove firearms from individuals when there is probable cause to believe they are a risk to themselves or others (C.G.S.A. §29-38c).

Indiana enacted the state's red flag law in 2005 (IC §35-47-14 *et seq.*).

California became the first state to allow family members to file a petition for firearms to be removed from an individual's possession when the state enacted their red flag law in 2014. The California Legislature passed a measure in 2016 to allow high school and college employees, co-workers, and mental health professionals to file such petitions, but this legislation was vetoed by Governor Brown (CA Penal Code §18100 *et seq.*).

Washington also enacted a similar red flag law in 2016. Washington, like California, allows family members to petition for the removal of firearms (Chapter 7.94 RCW, Extreme Risk Protection Order Act).

In 2017, Oregon enacted its red flag law (O.R.S. §166.525 *et seq.*).

As of September 2019, an additional 12 states have enacted red flag laws. These states are Colorado, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New York, Rhode Island, and Vermont.

Federal Legislation

Numerous bills concerning extreme risk protection orders have been introduced in the 116th Congress. Most proposed legislation would establish a method of obtaining an extreme risk protection order in a federal district court. Legislation would allow both *ex parte* and long-term protection orders. *Ex parte* orders would result in a protection order that begins immediately upon issuance and would expire after a set term, sometimes 14 days or less. A long-term order would expire after a definite period of time, but would require notice and a hearing.

Kansas Legislation

Red flag legislation has been considered by the Kansas Legislature several times in recent years, most recently in 2019.

HB 2129 (2019) (currently in the House Committee on Federal and State Affairs) would create the "Gun Safety Red Flag Act" and would allow plaintiffs to seek a gun safety protective order. Plaintiffs would be required to file a petition in the district court of the county where the defendant resides and would be required to include information such as:

- The number, types, and locations of any firearms and ammunition the defendant is believed to possess;
- Whether a current or prior protective order has been issued against the defendant; and
- Whether there are any pending legal matters between the parties.

The court would be required to set a hearing within 14 days, and notice of the hearing would be required to be served upon the defendant.

The bill would also allow for *ex parte* protective orders to be issued before a hearing. Such orders would require detailed allegations to be included in the plaintiff's petition that the defendant poses an "immediate and present danger" to either self or others if such person were to continue

to possess firearms and ammunition. The court would be required to issue an *ex parte* order if it finds reasonable cause the defendant is an immediate threat to self or others if such person were to continue to possess firearms and ammunition. The court would also be directed to set a hearing within 14 days to determine whether a full gun safety protective order is necessary.

Additionally, a judge would also be able to issue an emergency order at any time the court is unavailable, and such judge believes the defendant is an immediate threat to self or others if such person were to continue to possess firearms and ammunition. The order would expire at 5:00 p.m. on the next day the court is in business.

All above orders would not allow the person subject to the order to possess firearms or

ammunition while such order is in effect. The bill would also require when law enforcement serves any of the above orders, the defendant be requested to turn over firearms and ammunition at that time. Persons subject to an order who later purchase, possess, receive or attempt to purchase or receive firearms or ammunition could be charged with a class C misdemeanor and would be subject to a five-year prohibition on firearm or ammunition ownership.

SB 183 (2019) (currently in the Senate Committee on Federal and State Affairs) contains similar provisions to HB 2129, except the bill would allow the issuance of extreme risk protection orders that would prohibit persons subject to the order from possessing firearms and ammunition for a period of one year.

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Carrying of Firearms

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Casinos

E-5
Red Flag Laws

E-6
Sports Wagering

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Federal and State Affairs

E-6 Sports Wagering

Background and Overview: Recent U.S. Supreme Court Decision

In *Murphy v. NCAA* 584 US ____ (2018), the U.S. Supreme Court struck down a 1992 law prohibiting states from allowing betting on sporting events. The Professional and Amateur Sports Protection Act (PASPA) (28 USC §§ 3701-3704) had prohibited all sports lotteries except those allowed under state law at the time PASPA was passed. Delaware, Montana, Nevada, and Oregon all had state laws providing for sports wagering in 1992; however, Nevada was the only one of those states conducting sports wagering in a meaningful way between 1992 and 2018.

In 2011, New Jersey passed a law authorizing sports betting. This law was struck down by the courts as a violation of PASPA as part of a challenge brought by five professional sports leagues. New Jersey later repealed the state law expressly authorizing sports wagering, but did not replace it with language expressly prohibiting sports betting. Again, the sports leagues sued New Jersey, claiming that by not expressly prohibiting sports wagering, the state law effectively authorized sports gambling by implication. In 2018, the U.S. Supreme Court issued a ruling striking down PASPA on the grounds that the federal law prohibited the modification or repeal of state law prohibitions and unlawfully regulated the actions of state legislatures.

State Action Since *Murphy v. NCAA*

As a result of the U.S. Supreme Court's declaring PASPA to be unconstitutional, states can legally regulate gambling on sporting events. Nineteen states have legalized sports wagering and several other states have considered legislation related to legalizing the practice since the Supreme Court's decision was released in May 2018.

According to ESPN, as of August 2019, sports gambling is legal in 19 states and the District of Columbia, with sports wagers being accepted with 13 states having operational sports wagering platforms.

Of the states that have laws authorizing sports betting, Arkansas, Delaware, Indiana, Iowa, Mississippi, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, and West Virginia have passed both laws and regulations and are currently accepting such wagers. Colorado, Illinois, Montana, New Hampshire, North Carolina, Tennessee, and the District of Columbia have statutes authorizing sports gambling, but have not yet fully implemented those statutes. Of the states without legal sports wagering, seven have not considered sports wagering legislation since the *Murphy* decision: Alaska, Florida, Idaho, Nebraska, Wisconsin, and Wyoming.

Notable State Policies

In nearly every state with legal sports wagering, gamblers must be age 21 or older to place a wager. However, in Montana, New Hampshire, and Rhode Island, persons age 18 or older may place sports wagers.

Out of the 19 states with legal sports wagering, 10 states restrict wagering on either local collegiate teams or on amateur sports: Delaware, Illinois, Iowa, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Tennessee.

Two states, Illinois and Tennessee, will require the use of official league data by operators who offer proposition and in-play wagers.

Kansas Legislation

The Kansas Legislature considered a number of measures related to the legalization of sports wagering during the 2019 Legislative Session: SB 23, SB 222, HB 2032, HB 2068, and HB 2390.

SB 222 and HB 2390 would create the Kansas Sports Wagering Act (Act). Among other things, the Act would authorize the Kansas Lottery to contract to offer sports wagering at lottery and racetrack gaming facilities and through online sports wagering platforms. Each facility manager

would be allowed to contract with one platform per facility.

Lottery and racetrack facility managers would be required to remit 6.75 percent of the sports wagering revenues (total revenue from sports wagering less fees, federal taxes, and prize payments). Remittances would be placed in the Expanded Lottery Act Revenues Fund.

Sports wagering operators would be required to:

- Cooperate with investigations by the KRGC, sports governing bodies, or law enforcement agencies, including:
 - Immediately report to the Kansas Racing and Gaming Commission any criminal or disciplinary proceedings; and
 - Abnormal wagering activity;
- Potential breaches of the sports governing body's rules and codes of conduct; and
- Any other conduct that corrupts a betting outcome of a sporting event and suspicious or illegal wagering activities.

This bill does not include a sports betting right and integrity fee, which is an amount paid to sports leagues out of gross wagers. Leagues have requested fees ranging from 0.25 percent to 1.0 percent of gross wagers.

SB 23 and HB 2068 contain many of the same provisions as SB 222 and HB 2390 but would also include a sports betting right and integrity fee of 0.25 percent to be paid to sports governing bodies quarterly.

HB 2032 would require any sports betting in Kansas to be conducted solely on the premises of a racetrack gaming facility.

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**F-4
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Financial Institutions and Insurance

F-1 Consumer Credit Reports and Security Freezes

Identity theft is a fast-growing crime in the United States. Consumers can combat identity theft by placing a security freeze on their credit reports (known as “consumer reports” under Kansas law), making it more difficult for identity thieves to open new accounts in the consumer’s name. In recent years, various states, including Kansas, and the federal government have taken action to allow consumers to place and remove security freezes on their credit reports for free.

Security Freezes

The Federal Trade Commission (FTC) provides consumer information on security freezes. A consumer may place a security freeze, also known as a credit freeze, on the consumer’s credit report. The security freeze allows a consumer to restrict access to the credit report (the credit report or any consumer information contained in the report cannot be released without authorization from the consumer), which makes it more difficult for identity thieves to open new accounts in the consumer’s name. A security freeze does not affect the consumer’s credit score or prevent the consumer from obtaining a free annual credit report. However, if the consumer wants to open a new account, apply for a job, rent an apartment, or buy insurance, the consumer will need to temporarily lift the freeze.

Consumer Reporting Agencies and Credit Reports

Consumer reporting agencies (CRAs), also known as credit bureaus or credit reporting companies, compile and sell credit reports. According to the Consumer Financial Protection Bureau (CFPB), CRAs collect credit account information about consumer borrowing and repayment history, including the original amount of a loan; the credit limit on a credit card; the balance on a credit card or other loan; the payment status of the account, including whether the consumer has repaid loans on time; items sent for collection; and public records, such as judgments and bankruptcies. Credit reports also contain personal information, including the consumer’s name and any name used in the past in connection with a credit account, including nicknames; current and former addresses; birth date; Social Security number; and phone numbers.

CRAs sell the information in a consumer's report to creditors, insurers, employers, and other businesses. Lenders use these reports to help determine whether they will loan a consumer money, what interest rates to offer, and to determine whether the consumer will meet the terms of a credit account. Other businesses might use these credit reports to determine whether to offer the consumer insurance; rent a home to a consumer; or provide the consumer with cable television, Internet, utilities, or cellphone service. The FTC specifies CRAs may not provide information about the consumer to the employer or a prospective employer without the consumer's written consent. (*Note:* Kansas law contains provisions governing release of consumer report information to employers; see KSA 50-705 and 50-712.)

The FTC protects consumers and promotes competition. The FTC enforces the Fair Credit Reporting Act (FCRA) with respect to CRAs. The FCRA is a federal law that provides directions and limits on how CRAs disclose credit report information. The FCRA requires each of the nationwide CRAs (Equifax, Experian, and TransUnion) to provide a consumer with a free copy of the consumer's credit report, at the consumer's request, every 12 months. A consumer may order reports from each of the three nationwide CRAs at the same time or separately. Equifax, Experian, and TransUnion have set up a central website, a toll-free telephone number, and a mailing address through which a consumer may obtain a free annual report.

Additionally, a consumer is entitled to a free credit report if a company takes adverse action against the consumer, such as denying an application for credit, insurance, or employment, and the consumer asks for the report within 60 days of receiving notice of action. The consumer is also entitled to one free report a year, if the consumer is unemployed and plans to look for a job within 60 days; the consumer is on public assistance; or the report is inaccurate because of fraud or identity theft. Otherwise, a CRA may charge the consumer a reasonable amount for another copy of the report within a 12-month period.

Kansas also has a state version of the FCRA, codified at KSA 50-701 *et seq.*

Equifax Data Breach and Subsequent Action by Kansas and the Federal Government

On July 29, 2017, Equifax learned of a cybersecurity incident potentially impacting approximately 143.0 million U.S. consumers. According to Equifax, criminals exploited a U.S. website application vulnerability to gain access to certain files from May 13, 2017, through July 30, 2017. The information accessed primarily includes names, Social Security numbers, addresses, and, in some instances, driver's license numbers. Criminals also accessed credit card numbers for approximately 209,000 U.S. consumers and certain dispute documents with personal identifying information for approximately 182,000 U.S. consumers. As part of Equifax's investigation into application vulnerability, Equifax identified unauthorized access to limited personal information for certain United Kingdom and Canadian residents.

Kansas Law

In 2018, the Kansas Attorney General requested introduction of a bill that would prohibit CRAs from charging consumers for placing or removing a security freeze in light of the Equifax data breach. The Kansas Legislature passed 2018 HB 2580, which amended the state's FCRA to clarify that continuing statutes governing security freezes on consumer reports fall within the FCRA. The legislation also amended KSA 2019 Supp. 50-723 to remove a provision allowing a \$5 fee to place, temporarily lift, or remove a freeze, and instead prohibited CRAs from charging a fee for these services.

Further, the bill amended KSA 2019 Supp. 50-725 governing security freezes for "protected consumers" (defined under the state's FCRA as an individual under 16 years of age when the request for a security freeze is made or an individual for whom a guardian or conservator has

been appointed) to remove a provision allowing a \$10 fee to place or remove a security freeze.

Federal Law

In May 2018, President Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155). The bill, among other things, amended the FCRA to require a CRA to provide consumers with free credit freezes and to notify consumers of their availability, established provisions related to placement and removal of these freezes, and created requirements related to the protection of the credit records of minors.

As of September 21, 2018, CRAs may not charge a fee for the placement or removal of a security freeze on consumer credit reports. If a consumer requests a security freeze online or by phone, the CRA must place the freeze within one business day. If the consumer requests a freeze to be lifted,

the CRA must lift the freeze within one hour. If the consumer makes the request by mail, the agency must place or lift the freeze within three business days after the CRA receives the request.

Equifax Settlement

In July 2019, the CFPB, FTC, 48 states (including Kansas), the District of Columbia, and Puerto Rico announced a \$425.0 million settlement with Equifax as the result of an investigation into the 2017 data breach. Under the settlement, all U.S. consumers may request up to six free copies of their Equifax credit report during any 12-month period, starting in January 2020 and extending for 7 years. These reports are in addition to the free reports consumers are entitled to under current law. For information about filing a claim, consumers should visit <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>.

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Financial Institutions and Insurance

F-2 Kansas Health Insurance Mandates

This memorandum provides an overview of benefit, provider, and other coverage requirements placed on certain health insurance companies in Kansas. Also discussed is the impact of the federal Patient Protection and Affordable Care Act (commonly referred to as the ACA) and recent trends in enacted requirements in Kansas law.

Mandates in Kansas Law

Health insurance mandates in Kansas law apply to:

- Individual health insurance policies issued or renewed in Kansas; and
- Group health insurance policies issued or renewed in Kansas. (*Note:* Individual and group health policies are often referred to as accident and health or accident and sickness insurance policies in Kansas law.) Exceptions are noted below.

Health maintenance organizations (HMOs) are included in the listing of policy issuers.

These mandates do not apply to:

- Self-insured health plans (Employee Retirement Income Security Act of 1974 [ERISA] plans). Self-insured plans are governed by federal laws and are enforced by the U.S. Department of Labor. States cannot regulate these self-insured plans; and
- Supplemental benefit policies. Examples include dental care, vision (eye exams and glasses), and hearing aids.

Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefit (benefit mandates). The Legislature more recently authorized the study of proposed benefit mandates. (*Note:* See Table A on the next page for a comprehensive list of enacted mandates.)

Provider mandates. The first mandates enacted in Kansas were on behalf of health care providers. In 1973, optometrists, dentists,

chiropractors, and podiatrists sought and secured legislation directing insurers to pay for services the providers performed if those services would have been paid for by an insurance company if they had been performed by a practitioner of the healing arts (medical doctors and doctors of osteopathy). In 1974, psychologists sought and received approval of reimbursement for their services on the same basis. In that same year, the Legislature extended the scope of mandated coverages to all policies renewed or issued in Kansas by or for an individual who resides in or is employed in this state (extraterritoriality). Licensed special social workers obtained a mandate in 1982. Advanced nurse practitioners received recognition for reimbursement for services in 1990. In a 1994 mandate, pharmacists gained inclusion in the emerging pharmacy network approach to providing pharmacy services to insured persons.

Benefit mandates. The first benefit mandate was passed by the 1974 Legislature to require coverage for newborn children. The newborn coverage mandate has been amended to include adopted children and immunizations, as well as a mandatory offer of coverage for the expenses of a birth mother in an adoption. The Legislature began its first review into coverage for alcoholism, drug abuse, and nervous and mental conditions in 1977. The law enacted that year required insurers to make an affirmative offer of such coverage, which could be rejected only in writing. This mandate also has been broadened over time, first by becoming a mandated benefit and then as a benefit with minimum dollar amounts of coverage specified by law.

In 1988, mammograms and pap smears were mandated as cancer patients and various cancer interest groups requested mandatory coverage by health insurers. In 1998, male cancer patients

<i>Provider Mandates</i>	<i>Year</i>	<i>Benefit Mandates</i>	<i>Year</i>
Optometrists	1973	Newborn and Adopted Children	1974
Dentists	1973	Alcoholism	1977
Chiropractors	1973	Drug Abuse	1977
Podiatrists	1973	Nervous and Mental Conditions	1977
Psychologists	1974	Mammograms and Pap Smears	1988
Social Workers	1982	Immunizations	1995
Advanced Practice Registered Nurses	1995	Maternity Stays	1996
Pharmacists	1994	Prostate Screening	1998
		Diabetes Supplies and Education	1998
		Reconstructive Breast Surgery	1999
		Dental Care in a Medical Facility	1999
		Off-Label Use of Prescription Drugs*	1999
		Osteoporosis Diagnosis, Treatment, and Management	2001
		Mental Health Parity for Certain Brain Conditions	2001
		Autism Spectrum Disorder	2014

* Off-label use of prescription drugs is limited by allowing for use of a prescription drug (used in cancer treatment) that has not been approved by the federal Food and Drug Administration (FDA) for that covered indication if the prescription drug is recognized for treatment of the indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

and cancer interest groups sought and received similar mandated coverage for prostate cancer screening. After several attempts, supporters of coverage for diabetes were successful in securing mandatory coverage for certain equipment used in the treatment of the disease, as well as for educational costs associated with self-management training.

Legislative Review

Kansas law (KSA 40-2249a) requires the Legislature to periodically review all State-mandated health insurance coverage. KSA 40-2248 requires the person or organization seeking a mandated coverage for specific health services, specific diseases, or certain providers of health care services as part of individual, group, or blanket health insurance policies to submit an impact report that assesses both the social and financial effects of the proposed mandated coverage to the legislative committees assigned to review the proposal. The law also requires the Commissioner of Insurance (Commissioner) to cooperate with, assist, and provide information to any person or organization required to submit an impact report.

The social and financial impacts to be addressed in the impact report are outlined in KSA 40-2249.

Social impact factors include:

- The extent to which the treatment or service is generally utilized by a significant portion of the population;
- The extent to which such insurance coverage is already generally available;
- If coverage is not generally available, the extent to which the lack of coverage results in persons being unable to obtain necessary health care treatment;
- If coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- The level of public demand for the treatment or service;

- The level of public demand for individual or group insurance coverage of the treatment or service;
- The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and
- The impact of indirect costs (other than premiums and administrative costs) on the question of the costs and benefits of coverage.

The financial impact factors include the extent to which the proposal would change the cost of the treatment or service; the extent to which the proposed coverage might increase the use of the treatment or service; the extent to which the mandated treatment or service might serve as an alternative for a more expensive treatment or service; the extent to which insurance coverage of the health care service or provider can reasonably be expected to increase or decrease the insurance premium and administrative expenses of the policyholders; and the impact of proposed coverage on the total cost of health care.

State Employee Health Plan Study. KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature would only apply to the state health care benefits program (State Employee Health Plan [SEHP]) for a period of at least one year beginning with the first anniversary date of implementation of the mandate following its approval. On or before March 1, after this one-year period has been applied, the Health Care Commission is to report to the President of the Senate and the Speaker of the House of Representatives the impact the new mandate has had on the SEHP, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation of whether the mandated coverage should be continued by the Legislature to apply to the SEHP or whether additional utilization and cost data are required.

Recent Review and Legislative Trends

Table B illustrates recent legislation and enacted law with coverage requirements and related provisions placed on health insurance companies in Kansas.

2009 Session—Mandates Review

Kansas legislative review (KSA 40-2249a).

The Senate Committee on Financial Institutions and Insurance and the House Committee on Insurance received briefings during the regular session from committee staff on the current and recently considered health insurance mandates. Testimony was also received from interested parties.

2010 Session—An Emerging Trend: the Study Directive

The study before the law. The Legislature's review and response to health insurance mandates has recently included a new direction: the study before the mandate is considered and passed by the Legislature. As prescribed by the 1999 statute, a mandate is to be passed by the Legislature, applied to the SEHP for at least one year, and then a recommendation is made about continuation in the SEHP or statewide (KSA 40-2249a). Legislation in 2008 (HB 2672) directed the Kansas Health Policy Authority (KHPA) to conduct a study on the impact of extending coverage for bariatric surgery in the SEHP (corresponding mandate legislation in 2008: SB 511, HB 2864). No legislation requiring treatment for morbid obesity (bariatric surgery) was introduced during the 2009-2010 Biennium.

In addition, Sub. for HB 2075 (2009) would have directed the KHPA to study the impact of providing coverage for colorectal cancer screening in the SEHP, the affordability of the coverage in the small business employer group, and the state high risk pool (corresponding legislation in 2009: SB 288, introduced as HB 2075).

During the 2010 Session, the House Committee on Insurance considered the reimbursement of services provided by certain Behavioral

Sciences Regulatory Board licensees (SB 104; HB 2088 and HB 2546). The House Committee recommended a study by KHPA on the topic of requiring this reimbursement. The study design would have included determining the impact that coverage has had on the SEHP, providing data on utilization of such professionals for direct reimbursement for services provided, and comparing the amount of premiums charged by insurance companies that provide reimbursement for these provider services to the amounts of premiums charged by insurers that do not provide direct reimbursement. Under SB 388, KHPA would also have been required to conduct an analysis to determine if proactive mental health treatment results in reduced expenditures for future mental and physical health care services. SB 388 died in Conference Committee. The study requirement was also included as a proviso to the Omnibus appropriations bill; the proviso was vetoed by the Governor and the veto was sustained.

Autism benefit and oral anticancer medications study and law.

The 2010 Legislature considered mandating coverage for certain services associated with the treatment of Autism Spectrum Disorder (ASD). Senate Sub. for HB 2160 required the Health Care Commission, which administers the SEHP, to provide for the coverage of services for the diagnosis and treatment of ASD in any covered individual whose age was less than 19 years during Plan Year 2011. The services provided and limitations on benefits also were prescribed. The Health Care Commission was required to submit on or before March 1, 2012, a report to the Senate President and the House Speaker that included information (e.g., cost impact utilization) pertaining to the mandated ASD benefit coverage provided during the 2011 Plan Year. The Legislature was permitted to consider in the next session following the receipt of the report whether to require the coverage for ASD to be included in any individual or group health insurance policy, medical service plan, HMO, or other contract that provided for accident and health services and was delivered, issued for delivery, amended, or renewed on or after July 1, 2013.

Senate Sub. for HB 2160 also required all individual or group health insurance policies or

Table B Kansas Provider and Benefit Mandates			
Legislation	Proposed Mandate	Mandate Type	Action Status
2009 SB 12/HB 2387; 2010 SB 554	Autism, coverage of	Benefit	See Senate Sub. for HB 2160 (study only).
2009 SB 195; 2010 SB 390	Anticancer medications, orally-administered; genetic testing (introduced version, SB 390)	Benefit	See Senate Sub. for HB 2160 (study only).
2009 SB 288; Sub. for HB 2075	Colorectal cancer screening	Benefit (substitute bill contained a study only)	Referred to Senate Committee on Financial Institutions and Insurance. Died in Committee (SB 288); substitute bill passed. Re-referred to House Committee on Insurance; no action taken by 2010 Legislature.
2009 SB 104/HB 2088; 2010 HB 2546	Clinical professional counselors, therapists, psychotherapists	Provider	Hearings held (SB 104, HB 2546). Died in Committee.
2009 HB 2344	Dietary formulas	Benefit	Hearing held. Died in Committee.
2009 SB 49/SB 181/HB 2244/HB 2231	Mental health, substance abuse	Benefit	See HB 2214 (modifies existing Mental Health Parity Act/mandate)
2009 HB 2329	Procedures, implants approved by the FDA	Benefit	Died in Committee.
2010 HB 2424	Telemedicine, payment for (telecommunications services).	Benefit	Jointly referred, later separately referred. Died in Committee.
2011 SB 226; HB 2216; HB 2764	Autism Spectrum Disorder, coverage of	Benefit	SB 226 and HB 2216 died in Committee. HB 2764 passed the House; died in Senate Committee. *The bills exempted the proposed mandate from the test track requirements (study).
2011 HB 2228	Hearing Aids, coverage of	Benefit	Died in Committee.
2013 SB 175, HB 2317, HB 2395; 2014 HB 2704; HB 2759; HB 2744	Autism Spectrum Disorder, coverage of	Benefit	See HB 2744 (benefit mandate).
2014 HB 2690	Telemedicine mental health services, coverage of	Benefit	Died in Committee.

Table B Kansas Provider and Benefit Mandates			
<i>Legislation</i>	<i>Proposed Mandate</i>	<i>Mandate Type</i>	<i>Action Status</i>
2015 SB 303	Autism Spectrum Disorder, coverage of	Benefit	See HB 2352 (modified existing mandate).
2017 SB 165	Abuse-deterrent opioid analgesic drug products; emergency opioid antagonists	Benefit	Hearing held. Died in Committee.
2017 HB 2103	Amino acid-based elemental formula	Benefit	Hearing held. Study requested.
2017 HB 2119; HB 2255	Dental services	Contract/ Network	Hearing held. Died in Committee.
2017 HB 2021	Hearing aids	Benefit	Hearing held. Died in Committee.
2017 HB 2254; HB 2206; 2018 HB 2674	Telehealth; telemedicine	Benefit	See Senate Sub. for HB 2028
2018 SB 417; HB 2679	Contraceptives	Benefit	Died in Committee.
2019 SB 163; HB 2124	Contraceptives	Benefit	In Committee (Senate Financial Institutions and Insurance; House Insurance).
2019 HB 2307	Dental services	Contract/ Network. Establishes non-covered dental benefits and plan limitations.	Passed House. In Senate Committee (Public Health and Welfare).
2019 HB 2074	Pre-existing conditions	Contract (individual market only).	Hearing held. In Committee (House Insurance).

contracts (including the municipal group-funded pool and the SEHP) that provide coverage for prescription drugs, on and after July 1, 2011, to provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits. The Health Care Commission, pursuant to KSA40-2249a, was required to submit a report to the Senate President and the House

Speaker that indicated the impact the provisions for orally administered anticancer medications had on the SEHP, including data on the utilization and costs of such coverage. The report also was required to include a recommendation on whether the coverage should continue for the SEHP or whether additional utilization and cost data was required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

The Health Care Commission opted to continue ASD coverage in the SEHP, as had been required under the 2010 law for Plan Year 2011, for both Plan Year 2012 and Plan Year 2013. In June 2013, the Health Care Commission authorized a permanent ASD benefit. The 2014 Legislature again considered ASD coverage in HB 2744. Following amendments in the House Committee on Insurance and House Committee of the Whole, the bill passed the Senate and was signed into law on April 16, 2014. The bill required, subject to limitations on benefits and services provided, health insurance coverage for the diagnosis and treatment of ASD in children under the age of 12 years and also created the Applied Behavior Analysis (ABA) Licensure Act. The SEHP updated its benefits coverage for Plan Year 2015 to reflect the changes enacted in HB 2744.

2017-2018 Biennium Study, Special Committee

The House Committee on Insurance held hearings on two benefit mandate bills: HB 2103 (amino acid-based elemental formula) and HB 2021 (hearing aids). No formal committee action was taken during the 2017 Session; however, a SEHP study was requested relating to HB 2103 to provide more information on economic and social impact factors associated with the requirements of KSA 40-2249. Telehealth and telemedicine legislation, including proposed insurance coverage requirements, were assigned to the 2017 Interim Special Committee on Health.

Amino acid-based elemental formula. Following receipt of the SEHP report, the House Committee on Insurance recommended a substitute bill limiting the coverage of formula to the SEHP enrollees for a one-year (“test track”) period in Plan Year 2019 and requiring a report to the 2020 Legislature. These provisions ultimately were enacted in 2018 SB 348.

Telemedicine. The 2017 Interim Special Committee on Health did not recommend the 2017 legislation (HB 2206 and HB 2254), but did recommend the introduction of comprehensive telemedicine legislation in the 2018 Session.

The Kansas Telemedicine Act (Senate Sub. for HB 2028) provides that coverage for a health care service delivered *via* telemedicine is not mandated if such service is not already covered when delivered by a health care provider and subject to the terms and conditions of the covered individual’s health benefits plan.

ACA Requirements—Essential Health Benefits

The ACA does not directly alter or preempt Kansas or other states’ laws that require coverage of specific benefits and provider services. However, the law (Section 1302(b) of the ACA and subject to future federal regulations by the U.S. Department of Health and Human Services [HHS]), directs the Secretary of HHS to determine the “essential health benefits” to be included in the “essential health benefits” package that qualified health plans (QHPs) in the Exchange marketplaces are required to cover (coverage effective beginning in 2014). “Essential health benefits,” as defined in Section 1302(b), include the required coverage of at least the following ten general categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness and chronic disease management; and
- Pediatric services, including oral and vision care.

Insurance policies are required to cover these benefits in order to be certified and offered in Exchanges. Women’s preventive health services were separately defined by federal regulation in August 2011 (*Federal Register*, Vol. 76, No. 149: 46621-46626) and required that “a group

health plan or health insurance issuer must cover certain items and services, without cost-sharing.” Coverages included annual preventive care medical visits and exams, contraceptives (products approved by the FDA), mammograms, and colonoscopies.

Under the ACA, QHPs are not barred from offering additional benefits. However, starting in 2014, if a state law mandates coverage not included in the final HHS “essential benefits” list of coverages, the State must defray any additional costs for those benefits for Exchange enrollees.

Benchmark. HHS issued a bulletin on December 16, 2011, to provide information about the approach the agency plans to take in its rule-making for defining “essential benefits.” The bulletin outlined a “benchmark approach” allowing states the ability to choose from the following benchmark health plans (a benchmark plan would reflect the scope of benefits and services offered by a “typical employer plan”):

- One of the three largest small group health plans in the state by enrollment;
- One of the largest state employee health plans by enrollment;
- One of the three largest federal employee health plans by enrollment; or
- The largest HMO plan offered in the state’s commercial market by enrollment.

Should a state choose not to select a benchmark, the default option would become the small group plan with the largest enrollment in the state. In 2010, the Kansas Insurance Department

contracted with Milliman, Inc., to analyze plans and related benefits and services available in Kansas. “The Milliman Report” analyzed nine plans, and its findings were included in a September 2012 public hearing on essential benefits and selection of a benchmark for Kansas.

The Commissioner submitted the following recommendations and conclusions to the Governor for consideration of a state essential health benefits benchmark: selection of the largest small group plan, by enrollment (the Blue Cross Blue Shield of Kansas Comprehensive Plan); supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas CHIP; and anticipation of further guidance from HHS on the definition of “habilitative services” later in Fall 2012. No specific recommendation was made by the Commissioner.

Including Kansas, 25 states did not provide a recommendation on a benchmark plan to HHS by the September 30, 2012, deadline; therefore, HHS assigned those states the largest small group plan as the benchmark for 2013-2016 (in August 2015, HHS extended the plans to 2017).

Recent developments. On April 9, 2018, the Centers for Medicare and Medicaid Services finalized its Benefits and Payment Parameters rule for 2019. Among changes prescribed in the rule, beginning in the 2020 Plan Year, states are given additional flexibility to define their benchmark plan and can update plans on an annual basis. States will also be permitted to maintain their current 2017 benchmark plan without taking any action.

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Financial Institutions and Insurance

F-3 Privilege Tax on Certain Financial Institutions

The Kansas Privilege Tax

Statutory citation. Chapter 79, Article 11, *Kansas Statutes Annotated*.

Enacted. In 1963, effective January 1, 1964, in lieu of the former 5 mill intangibles tax on banks, savings and loan associations, and trust companies. The tax is imposed on these institutions “for the privilege of doing business within the state” (KSA 79-1106 and 1107).

The privilege tax is not a tax on income; rather, the tax is measured by income earned in the preceding year. These financial institutions are exempted from the payment of a corporate income tax (KSA 79-32,113).

History. Prior to January 1, 1964, shares of stock issued by national banks, state banks, savings and loans, or other banking or trust organizations were subject to an *ad valorem* tax, assessed to the individual shareholders at the place where the bank was located.

Collection requirements and tax base. The privilege tax is due by the 15th day of the fourth month following the close of the institution’s federal tax year, but estimated payments have been required since tax year 1993 (similar to requirements on corporations paying income tax).

Tax base. Tax base is considered net income, as defined by the law, for the preceding taxable year. (*Note:* Legislation enacted in 1996 provided an apportionment formula for the income of multi-state institutions. Additionally, 1998 law required institutions to file consolidated returns with any subsidiaries owning, holding, or managing part of the institutions’ securities portfolios.)

Net income. Kansas law defines “net income” as “the Kansas taxable income of corporations as defined in K.S.A. 79-32,138, and amendments thereto, determined without regard to the provisions of K.S.A. 79-32,139, and amendments thereto, and the provisions of paragraph (xiv) of subsection (c) of K.S.A. 79-32,117, and amendments thereto, plus income received from obligations or securities of the United States or any authority, commission or instrumentality of the United States and its possessions to the

extent not included in Kansas taxable income of a corporation and income received from obligations of this state or a political subdivision thereof which is exempt from income tax under the laws of this state; less dividends received from stock issued by Kansas Venture Capital, Inc. to the extent such dividends are included in the Kansas taxable income of a corporation, interest paid on time deposits or borrowed money and dividends paid on withdrawable shares of savings and loan associations to the extent not deducted in arriving at Kansas taxable income of a corporation” (KSA 79-1109).

Deduction. The law further states “[s]avings and loan associations shall be allowed as a deduction from net income, as hereinbefore defined, a reserve established for the sole purpose of

meeting or absorbing losses, in the amount of 5% of such net income determined without benefit of such deduction, but no further deduction shall be allowed for losses when actually sustained and charged against such reserve, unless such reserve shall have been fully absorbed thereby; or, in the alternative, a reasonable addition to a reserve for losses based on past experience, under such rules and regulations as the secretary of revenue may prescribe” (KSA 79-1109).

Present rates. Banks—2.25 percent plus 2.125 percent surtax on taxable income over \$25,000; Savings and Loan Associations and Trust Companies—2.25 percent plus 2.25 percent surtax on taxable income over \$25,000. (*Note:* Calculation is discussed following information on historical rates and credits.)

Historical Rates (1963-Present)					
Beginning in Tax Year	1963	1970	1972	1979	1998
Banks – Taxable Income					
First \$25,000	5.00%	5.50%	5.00%	4.25%	2.25%
\$25,001 +	5.00%	7.75%	7.25%	6.375%	4.375%
Savings and Loans and Trust Companies – Taxable Income					
First \$25,000	5.00%	5.00%	4.50%	4.50%	2.25%
\$25,001 +	5.00%	7.25%	6.75%	6.75%	4.50%

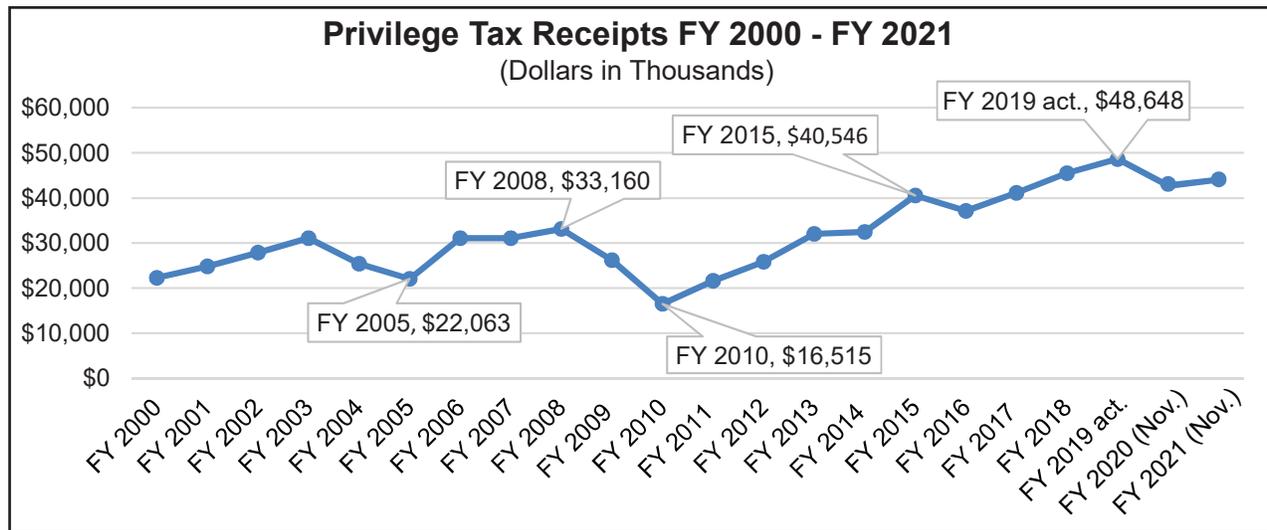
Credits against tax liability. Taxpayers may be allowed nonrefundable credits against the tax for expenditures for certain historic preservation expenditures, expenditures to ensure access of disabled individuals, contributions to certain community service organizations, contributions to organizations granting scholarships to certain low-income students, and under the Kansas High Performance Incentive Program. Taxpayers may be allowed refundable credits against the tax for providing child day care assistance and for a portion of contributions to certain community service organizations. Beginning in tax year 2019, taxpayers may be allowed to claim a nonrefundable credit against the tax for certain contributions to the Kansas Center for Entrepreneurship (2019 SB 90).

Privilege Tax Calculation

The following provides a high-level illustration of the calculation of a financial institutions’ privilege tax liability.

Federal Taxable Income + U.S. Interest + Other net additions (losses) = Apportionable Tax Base × Apportionment Percent = Kansas Tax Base × 2.25% + 2.125% of amount over \$25,000 (S&Ls: 2.25%) = Privilege Tax Liability

Net collections. The following table illustrates actual privilege tax receipts for state fiscal years (FY) 2001-2019 and also includes the Consensus November Revenue Estimate Group’s estimates for FY 2020 and FY 2021.



Privilege tax filer data. The following chart outlines tax filer data, published by the Kansas Department of Revenue (KDOR), for tax years 2002-2016.

KDOR Annual Report (Year)	Filing Year	Tax Year	Banking	Savings and Loans	Total Filers
2018	2017	2016	339	25	364
2017	2016	2015	347	25	372
2016	2015	2014	365	40	405
2015	2014	2013	371	30	401
2014	2013	2012	391	31	422
2013	2012	2011	416	40	456
2012	2011	2010	436	45	481
2011	2010	2009	402	29	431
2010	2009	2008	421	31	452
2009	2008	2007	434	44	478
2008	2007	2006	425	26	451
2007	2006	2005	462	36	498
2006	2005	2004	398	38	436
2005	2004	2003	386	45	431
2004	2003	2002	251	15	266

Source: KDOR, Annual Reports.

Prior Legislative Study and Response

Legislative Budget Committee, 1997 interim report. Included comment on the financial institutions' privilege tax. During the 1997 Interim, the Legislative Budget Committee received updates on the financial institutions' privilege tax from representatives of Kansas Department of Revenue, the Office of the State Bank Commissioner (OSBC), and the Kansas Bankers Association (KBA).

The KDOR representative provided general information on the tax and the estimate of privilege tax revenues by the Consensus Revenue Estimating Group. It was noted the estimate was revised downward by \$18.0 million in FY 1998 to "reflect the ability for state banks to establish subsidiaries for the purpose of managing the bank's securities. Moving U.S. securities to these subsidiaries results in the interest earned on U.S. assets not being taxed, thus reducing privilege tax revenue." The revised estimate of financial institutions privilege tax receipts for FY 1998 was \$20.0 million and \$10.0 million in FY 1999.

The State Bank Commissioner reviewed Special Order 1995-6 (issued by a prior commissioner in 1995), noting special orders were issued based upon a finding of competitive inequality between state and national banks. The OSBC records indicated, at the time, there were 69 of 290 state banks that had investment subsidiaries. The Commissioner testified given the benefits derived by the establishment of an investment subsidiary, many state-chartered banks may have chosen to convert to a national charter if the special order on subsidiaries had not been issued in 1995.

The representative of the KBA testified state-chartered banks should be treated equally to national banks for tax purposes in order for them to remain competitive in the banking industry. The representative indicated the decreasing revenue trends in the financial institutions' privilege tax were not mainly the result of investment subsidiaries being formed, but was the result of the sizable increases in Federal Deposit Insurance Company premiums last year for savings and loans, the possibility of reduced tax liability for non-Kansas financial institutions

that had banking operations in Kansas, and the increased use of the tax credit for community service program contributions.

SB 6 (1998) and privilege tax estimate. The 1998 Legislature considered and passed SB 6 requiring banks and their subsidiaries to file a consolidated or combined return (restoring the federal securities income to the tax base for the privilege tax by including income from both the bank and its investment subsidiary). The bill also reduced the financial institutions' tax rate. (*Note:* Historical tax rate analysis is provided earlier in this article.) In May 1998, the estimate was raised by \$15.5 million to reflect the passage of SB 6.

Special Committee on Financial Institutions and Insurance, 1998 interim report. During the 1998 Interim, the Committee was convened to consider topics assigned by the Legislative Coordinating Council. Among the topics, the Committee considered the taxation of state banks. (*Note:* The Committee also considered another topic affecting financial institutions—the reorganization of state regulatory supervision of the Executive Branch applicable to financial institutions, including banks, credit unions, securities, and consumer credit.)

The Committee received testimony from representatives of KDOR, the KBA, Heartland Community Bankers Association, and the Kansas Association of Community Bankers, as well as information provided by staff in response to member requests. Among information presented by staff was comparative bank data in the United States, Kansas, Colorado, Missouri, Nebraska, and Oklahoma and a review of the estimates of the Consensus Revenue Estimating Group for the privilege tax for FY 1994-FY 1999.

The KDOR representative presented a study of bank taxes, comparative information between the privilege tax and the corporation income tax, and the recent history of the privilege tax rate. The KDOR representative also described the apportionment of multistate bank income to Kansas (*e.g.*, based on factors of property, payroll, and receipts).

The Committee concluded it “recognizes that comparison of the taxation of financial institutions is difficult because of the variety of tax structures used by the states. Nevertheless, the Committee concludes that Kansas financial institutions are not unduly taxed based on the most meaningful comparisons. Recognizing that estimated privilege tax revenues for FY 1999 were reduced by approximately \$12.5 million or about 33 percent, the Committee recommends

that the issue of privilege tax rates be referred to the appropriate legislative committees for further consideration during the 1999 Session. The Committee recognizes a need for continued diligence to the subject. The Committee makes no recommendation on this study.”

The interim report was presented to both a House subcommittee and Senate Committee during the 1999 Session.

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Financial Institutions and Insurance

F-4 Payday Loan Regulation and Update on Small Dollar Lending in Kansas

The Kansas Legislature began its review of payday lending during the 1991 Session. At that time, the Consumer Credit Commissioner requested legislation, citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner violating the Kansas Uniform Consumer Credit Code (generally referred to as either the UCCC or Code). The unregulated entities were advancing money and agreeing to hold a post-dated check for a specified, short period of time and were collecting charges exceeding those allowed under the UCCC.

The Consumer Credit Commissioner indicated to the Senate Committee on Financial Institutions and Insurance (Senate Committee) there appeared to be both a need for this type of service and a need to regulate the activity in a manner that allowed the activity to take place lawfully while at the same time providing protection to consumers utilizing the check-cashing service. The Attorney General, concurring such practice violated the UCCC, had taken action to enforce the law against the payday lenders. The financial records of seven companies were subpoenaed and examined, and all but one of those companies closed their businesses in Kansas.

SB 363 (1991) addressed the concern about excessive interest charges and fees. In some instances, the annual percentage rate on these short-term loans ranged from 600.0 percent to 1,600.0 percent. Despite these rates, neither the Consumer Credit Commissioner nor the Office of the Attorney General had received many complaints. When the companies closed, the Attorney General received a number of telephone calls from consumers asking when those companies would reopen. Although the bill was recommended favorable for passage by the Senate Committee, it was defeated on final action by a vote of 6-32. The Senate later reconsidered its action and sent the bill back to the Senate Committee for possible action at a later date.

Review of payday loan regulation continued for a second year. During the 1992 Session, the Senate Committee further considered SB 363, and the House Committee on Commercial and Financial Institutions reviewed HB 2749. The House Committee recommended its bill favorable for passage. On final action in the House, a member reported in his vote explanation

that passage of such legislation would burden poor consumers as it would raise the interest rate tenfold from 36.0 percent to 360.0 percent. Several members changed their votes, and the legislation was killed. When the Senate returned to its consideration of payday loan regulation, the Consumer Credit Commissioner explained the House action on HB 2749 and rebutted the conclusion that the bill raised interest rates. The Senate Committee received favorable testimony from both the Office of the Attorney General and the payday loan industry and voted to amend SB 363 by inserting the provisions of HB 2749. SB 363, as amended, passed the Senate 40-0 and was referred to the House Committee, which recommended it favorable for passage after considerable discussion. Ultimately, the bill died at the end of the 1992 Session.

In the Legislature's third year of consideration of payday loan legislation, the House and Senate agreed on 1993 HB 2197, and the bill was signed by the Governor with an effective date of April 8, 1993. This new law, made supplemental to and a part of the UCCC, applied to short-term consumer loan transactions with a single repayment schedule, for which cash is advanced in an amount equal to or less than the maximum allowed to a supervised lender (\$680) and subject to the following conditions:

- On any amount up to and including \$50, a finance charge of \$5.50 could be charged; on amounts in excess of \$50 but not more than \$100, the finance charge could be 10.0 percent of the amount, plus a \$5.00 administrative fee;
- On amounts in excess of \$100 but not more than \$250, the finance charge could be 7.0 percent of the amount with a \$10 minimum, plus a \$5.00 administrative fee; and
- For amounts in excess of \$250 but less than the maximum amount, the finance charge could be 6.0 percent of the amount with a minimum of \$17.50, plus a \$5.00 administrative fee.

The law also provided:

- The maximum term of the loan cannot exceed 30 days;
- The contract interest rate after maturity cannot be more than 3.0 percent per month;
- No charge for insurance or any other charge can be made of any nature except as provided, including cashing the loan proceeds if given in a check;
- No loan made under this section may be repaid with the proceeds of another loan made by the same lender;
- If cash is advanced in exchange for a personal check and the check is returned for insufficient funds, only a return check charge provided in the UCCC is allowed; and
- Certain loans made under this section may be unconscionable conduct—the Consumer Credit Commissioner is to consider in making such a finding the ability of the borrower to repay the loan and whether the loan meets the amount and terms limitations of this section.

Kansas was one of the first states to enact legislation specific to the regulation of payday loans.

The payday loan statute remained substantively unchanged for a number of years. There have been attempts, however, to amend the law. During the 1999 Session, for example, a model act drafted by the Consumer Federation of America was introduced in Kansas as SB 272. The proponent of SB 272 explained at the time of its introduction that it was “legislation addressing the exorbitant interest rates charged by payday loan companies and how such consumer issues fall under the auspices of the UCCC.” At the time of the hearing on the bill, other than the sponsor, there were no proponents present to testify on its behalf. The Acting Consumer Credit Commissioner commented to the Senate Committee the bill “would substantially alter the rates charged by payday loan companies.” In testimony on another UCCC bill (SB 301) before the Senate Committee, the Attorney General

advised that while the “Office does not take complaints on consumer credit, the Attorney General is of the opinion that the payday loan industry is not in the best interest of society as it spirals people into bankruptcy.” Opponents of the bill, several operators of payday loan shops in the state, argued that reducing the allowable interest rate charge to 36.0 percent would have the effect of putting them out of business. The Senate Committee took no action on the measure.

SB 301, as enacted during the 1999 Session, made several significant changes to the UCCC. Among those changes was the transfer for the enforcement of the UCCC from the Consumer Credit Commissioner to a newly designated position of Deputy Commissioner for Consumer and Mortgage Lending and the elimination of interest rate caps on consumer loans.

During the 2001 Session, the Deputy Commissioner (who is the Code Administrator) requested the passage of HB 2193, which would limit the number of loans a consumer could have from a single payday lender to two at any one time and require a “Notice to Borrower” appear on each loan agreement stating that Kansas law prohibits a lender and its related interest from having more than two loans outstanding to the same borrower at any one time. While the bill was amended by the House Committee of the Whole, those amendments were removed from the bill, and the bill passed as proposed by the Deputy Commissioner. During the 2002 Session, HB 2877 was introduced, which would have reduced the allowable charges permitted on payday loans. On loan amounts up to and including \$50, the charge would have been reduced from \$5.50 to \$4.00; on amounts in excess of \$50 but not more than \$100, the charge would have been reduced from 10.0 percent to 8.0 percent; on amounts in excess of \$100 but not more than \$250, the charge would have been reduced from 7.0 percent to 5.0 percent and the minimum allowable charge would have been reduced from \$10 to \$8; and on amounts of \$250 but not greater than \$860, the charge would have been reduced from 6.0 percent to 4.0 percent and the minimum reduced from \$17.50 to \$12.50.

HB 2877 did not have a hearing and died in the House Committee on Financial Institutions at the end of the 2002 Session. The Chairpersons of the House Committee on Financial Institutions and the Senate Committee requested, and the Legislative Coordinating Council created, an interim Special Committee on Financial Institutions and Insurance to study, among other topics, the regulation of payday loans and entities making such loans, including allowable loan rates and charges; loan terms and conditions and collection issues; and appropriate levels of regulation of lenders, including the activities of some lenders to associate with federally chartered financial institutions and then claim exemption from state regulation. The Special Committee on Financial Institutions and Insurance did not meet during the 2002 Interim, nor complete a report on its assigned subject matter.

The 2004 Legislature passed a measure, HB 2685, addressing the regulation of payday loans. The bill:

- Revised the maximum cash advance from \$860 to \$500;
- Established a seven-day minimum term for any loan;
- Limited the number of loans to three for any borrower within a 30-day period and required lenders to keep a journal of all loan transactions, which includes the name, address, and telephone number of the borrower, and the date each loan is made and the date each is due;
- Required the lender, upon receipt of a check from the borrower, to immediately stamp the check with an endorsement that states: “Negotiated as part of a loan made under KSA 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution”;
- Allowed a borrower, under the terms specified, to rescind the transaction without cost not later than the end of the business day following the day on which the transaction was made; and

- Outlined a list of acts or practices prohibited in connection with a payday loan.

The Senate Committee also reviewed a payday loan bill, SB 439, that would have created a maximum loan amount (\$500, rather than \$860, which was adopted in HB 2685) and a flat fee (not more than \$15 per \$100 loaned). The bill received a hearing, but no action was taken on the bill, and the bill died in Committee.

Finance Charge, Protections for Military Borrowers

The Office of the State Bank Commissioner's (OSBC) representatives brought legislation to the 2005 Legislature to enhance enforcement of both mortgage brokers under the Kansas Mortgage Business Act and supervised lenders under the Code. Senate Sub. for HB 2172 contained the provisions of another measure, Sub. for SB 223, which included provisions for both mortgage brokers and supervised lenders. In addition to the new enforcement powers and penalties created by the bill, the legislation also amended the finance charges for payday loans under the UCCC (KSA 16a-2-404). The finance charge for cash advances equal to or less than \$500 is to be an amount not to exceed 15.0 percent of the amount of the cash advance. The bill also required publication of the notice in payday loan agreements in Spanish.

In addition, Senate Sub. for HB 2172 enacted new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the U.S. Armed Forces;
- Defer all collection activity against a borrower who is deployed to combat or combat support posting for the duration of such posting;
- Not contact any person in the military chain of command of a borrower in an attempt to make collection;
- Honor all terms of the repayment agreement; and

- Not make any loan to any military borrower whenever the base commander has declared such person's place of business off limits to military personnel.

A "military borrower" is defined as any member of the U.S. Armed Forces, any member of the National Guard, or any member of the Armed Forces Reserve.

The Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the UCCC. A proposed non-depository lending model, a closed-end installment loan (proposed in 2005 HB 2278 and 2006 SB 376), was reviewed by the Committee. A hearing was held on SB 376 during the 2006 Session, but no action was taken on the bill and it died in Committee.

Legislative Proposals (2007-2010)

The regulation of payday lending again was addressed during the 2007, 2008, and 2010 Sessions. SB 217 (2007) and HB 2244 (2007) would have added requirements to the law regulating payday lenders. Under the proposals, consumers would not be allowed to have more than two outstanding loans at any one time and they would not be allowed more than five consecutive loans with the same lender. Under terms of both bills, a statewide database would have been developed to ensure compliance. The House Committee on Insurance and Financial Institutions held a hearing on HB 2244 and a related bill, HB 2245 (addressing vehicle title loans), during the 2007 Session; no action was taken on either bill. The 2008 Legislature introduced an additional measure to address payday lending, HB 2717 (a bill similar to HB 2244), without the database requirements. No action was taken on the payday lending legislation or the vehicle title legislation during the 2007-2008 Biennium. Similar legislation was not introduced during the 2009 Session.

The 2010 Legislature introduced legislation (SB 503) that would have required a \$1 surcharge to be assessed on each payday and title loan. The surcharge would have been paid by the

borrower to the lender and then remitted to the OSBC. The moneys would have been transferred to the Professional Development Fund (Kansas State Department of Education) and expended to fund professional development programs or topics that dealt with personal financial literacy. The OSBC had indicated in the fiscal note the bill would generate approximately \$1.2 million from the estimated 1.2 million payday and title loans that would be issued in FY 2011. The bill was referred to the Senate Committee; the bill died in Committee.

Recent Legislative Proposals (2013-2019)

The 2013 Legislature introduced legislation (SB 30 and HB 2036) that would have amended the UCCC to prevent lenders from making payday loans to a consumer who already has two outstanding loans with any lender. Restrictions would have been established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would have permitted the Code Administrator to establish an Internet database; a verification fee of up to \$1 could be charged by the OSBC or its vendor to each lender that would be required to access the database prior to making a new loan. SB 30 was referred to the Senate Committee and HB 2036 was referred to the House Committee on Financial Institutions. The bills died in their respective committees.

The 2015 Legislature introduced SB 100, which would have set a single finance charge not to exceed 36.0 percent for closed-end credit consumer loans. SB 100 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in the Committee.

During the 2016 Legislative Session, HB 2695 was introduced and referred to the House Committee on Insurance and Financial Institutions. HB 2695 would have added a new section to the UCCC, to be known as the “Respectful Lending to Kansas Seniors Act.” The bill would have placed a 36.0 percent interest cap on payday loans for senior citizen consumers, as well as allowed a modification for a senior citizen’s federal adjusted

gross income for the taxable year. A hearing was not held on the bill, and it died in Committee.

The 2017 Legislature introduced SB 234, which would have set a 36.0 percent cap and restricted the terms of payday loans. The bill was referred to the Senate Committee on Federal and State Affairs. A hearing was not held on the bill, and the bill died in the Committee. (*Note:* The Senate Committee on Federal and State Affairs held an informational briefing on payday lending during the 2017 Session, but did not hold a hearing on a specific piece of legislation.) The 2017 Legislature also introduced HB 2267, which would have, among other things, amended provisions in the Code relating to consumer loans and would impose a cap of 36.0 percent annual percentage rate on all consumer loans with open-end credit, including all fees, interest, and charges. The bill would have amended the definition of “consumer loan” and rules relating to how consumer loans can be repaid by borrowers and how many consumer loans a single borrower can have outstanding from a single lender. The bill was originally referred to the House Committee on Financial Institutions and Pensions, but was re-referred to the House Committee on Federal and State Affairs.

HB 2267 and related regulatory review was assigned by the Legislative Coordinating Council to the interim Special Committee on Financial Institutions and Insurance (Special Committee). The Special Committee met in October 2017. As part of the Report of the Special Committee to the 2018 Legislature, the Special Committee noted its discussion on HB 2267, the UCCC and its present structure, and the update and comments submitted by stakeholders on the small dollar lending Final Rule published by the Consumer Financial Protection Bureau (CFPB). The Special Committee also encouraged the OSBC to hold regular stakeholder meetings to assist in drafting changes to the UCCC and requested regular updates during the 2018 Session.

No further action was taken on HB 2267 during the 2018 Session. In addition, the 2018 Legislature introduced SB 402, which would have established the Kansas Veterans Loan Act and added a new section to the UCCC regarding

consumer loan transactions made with veterans. SB 402 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in Committee.

2019-2020 Biennium. The House Committee on Veterans and Military introduced HB 2363, which would require certain lenders under the Code to inquire about any potential borrower's veteran status on loan applications. Lenders who extend loans to veterans would be required to provide veterans with the pamphlet "Protecting Our Kansas Veterans." The pamphlet is to be published by the OSBC and would explain the veteran's rights under the Code. Fines could be assessed on lenders violating provisions of the bill. The bill was referred to the House Committee on Financial Institutions and Pensions.

HB 2254 would address the broader topic of small dollar lending and supervised loans by requiring state-chartered banks to provide subprime loans totaling at least 5.0 percent of the bank's capital. The bill would define "subprime loan" as a loan made to a borrower that has "either a nonexistent credit score or a credit score lower than 620." In addition, the bill would exempt banks from any penalties under the State Banking Code for providing subprime loans. The bill was referred to the House Committee on Financial Institutions and Pensions.

Small Dollar Lending Activity in Kansas

During the 2017 Interim Special Committee meeting, the Deputy Commissioner addressed trends in small dollar lending, noting some lenders have moved away from the traditional payday loan model into an installment loan product (also permitted under the UCCC) and a growing challenge in unlicensed lenders that operate primarily, or only, online.

Data provided by the Deputy Commissioner in October 2019 summarized small dollar loans provided by licensees: payday only (41); payday only branches (67); payday and title (9); payday and title branches (116); title only (3); and title only branches (36). The number of locations for these loans totals 272 (53 companies, 219 branches).

The calendar year (CY) 2018 loan volume for payday loans was an estimated \$266.7 million (in CY 2013, the volume was an estimated \$396.0 million).

The OSBC—Division of Consumer and Mortgage Lending maintains an online database available to the public of entities that are authorized to engage in the practice of consumer lending or mortgage business entities, as well as those lenders. The searchable database contains the license number, company name, company location, date of next renewal, and notes the status of each license. This information is accessible on the OSBC's website at <https://online.osbckansas.org/Lookup/LicenseLookup.aspx>.

Federal Financial Regulatory Reform, Consumer Protections and Payday Loans

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law ("Dodd-Frank Act," PL 111-203). Title X of the Dodd-Frank Act, entitled the Consumer Financial Protection Act of 2010, established the CFPB within the Federal Reserve System with rulemaking, enforcement, and supervisory powers over a number of financial products and services and the entities selling them (including payday and student loans). The law also transferred to the CFPB the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The CFPB does not, however, have the authority to establish usury limits (such as a cap on interest rates) on payday loans. Among the provisions applicable to the use of payday loans (short-term loan products) is Title XII of the Dodd-Frank Act, the Improving Access to Mainstream Financial Institutions Act of 2010.

The CFPB has been evaluating what rules may be appropriate to address the "sustained use of short-term, high-cost credit products" (various types of small dollar loans). In June 2016, it proposed a rule intended to require lenders to "take steps to make sure consumers have the ability to repay their loans" and include other borrower protections to address debit fees

assessed on payday loans. The comment period closed on October 7, 2016 (see *Federal Register* for the Final Rule, 12 CFR part 1041). On October 5, 2017, the CFPB issued its Final Rule. The implementation period would be 21 months following the formal publication of the Final Rule. The Final Rule covers short-term loans less than 45 days in duration that are open-end or closed-end, as well as longer-term loans more than 45 days in duration that are either open-end or closed-end and have a balloon payment feature.

CFPB actions. On January 16, 2018, the CFPB issued the following statement:

“January 16, 2018 is the effective date of the Bureau of Consumer Financial Protection’s Final Rule entitled “Payday, Vehicle Title, and Certain High-Cost Installment Loans” (“Payday Rule”). The Bureau intends to engage in a rulemaking process so that the Bureau may reconsider the Payday Rule.”

In February 2019, the CFPB issued proposed rules to rescind the mandatory underwriting provisions of the 2017 Final Rule and to delay the August 19, 2019, compliance date for those provisions to November 19, 2020. Public comment was sought on both proposals (the Final Rule delaying the compliance date was issued in June 2019).

The provisions of the Final Rule the CFPB proposes to rescind: (1) provide that it is an unfair and abusive practice for a lender to make a covered short-term or longer-term balloon-payment loan, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay those loans according to their terms; (2) prescribe mandatory underwriting requirements for making the ability-to-repay determination; (3) exempt certain loans from the underwriting requirements; and (4) establish related definitions, reporting, and recordkeeping requirements.

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Health and Social Services

G-1 Foster Care

Foster care services are provided when the court finds a child to be in need of care pursuant to the Revised Kansas Code for the Care of Children (KSA 2019 Supp. 38-2201 to 38-2283). Child in Need of Care (CINC) proceedings can be divided into two categories: those concerning children who lack adequate parental care or control, or have been abused or abandoned; and those concerning children who commit certain offenses listed in KSA 2019 Supp. 38-2202(d) (6)-(10). This article focuses on the first category.

Foster care services in Kansas were privatized in 1997 due in part to long-standing concerns about the quality of services for children in state custody, in addition to a 1989 class action lawsuit alleging the Department of Social and Rehabilitation Services (SRS), now known as the Department for Children and Families (DCF), failed to care adequately for children who may have been victims of abuse or neglect. The court approved a settlement in 1993 containing 153 requirements with which SRS was required to comply within certain time frames. SRS did not achieve compliance with many of the settlement requirements for handling cases, and in early 1996, SRS officials informed the Legislature they were moving toward privatization to improve the quality and efficiency of services. After what contractors conceded was a chaotic transition, SRS was found to have successfully completed its settlement terms in 2002.

In February 2019, DCF announced the state's grants awarded in November 2018 for family preservation, with the goal to avoid foster care, would be terminated and rebid due to a lack of transparency in the awards process, and negotiations on the grants for foster care case management and adoptions would be reopened. To allow time to complete the request for proposal process and additional negotiations, the existing family preservation and foster care contracts set to expire on June 30, 2019, were extended by six months and three months, respectively.

Currently, DCF contracts for foster care placements and adoptions with four service providers in four regions divided into eight catchment areas: Saint Francis Ministries provides service to the West region and catchment area 7 in the Wichita region; KVC Health Systems, Inc., provides service to catchment area 3 in the East region and catchment area 6 in the Kansas City region; TFI Family Services provides service in catchment area 4 in the East region and catchment area 8 in the Wichita region; and Cornerstones of

Care provides service in catchment area 5 in the Kansas City region.

The service providers subcontract with other providers. Several other agencies throughout the state are involved with foster care, such as the Kansas Children's Service League and the Children's Alliance of Kansas. These agencies and others provide a variety of services, including information and resources for current and prospective foster parents.

In September 2019, family preservation grants were awarded to DCCA to provide services in the Kansas City and Wichita regions, to TFI Family Services to provide services in the West region, and to Cornerstones of Care to provide services in the East region. The family preservation grant period runs January 1, 2020, through June 30, 2024.

Preliminary Issues for CINC Proceedings

CINC proceedings typically begin with a report to DCF, which may be made by anyone who suspects a child may be in need of care.

Additionally, the following are required to report any suspicion of abuse or neglect:

- Persons providing medical care or treatment;
- Persons licensed by the State to provide mental health services;
- Teachers and other employees of educational institutions;
- Licensed child care providers;
- Firefighters, emergency medical services personnel, and law enforcement officers;
- Juvenile intake and assessment workers, court services officers, and community corrections officers;
- Case managers and mediators appointed to help resolve any contested issue of child custody, residency, visitation, parenting time, division of property, or other issue; and

- Persons employed by or working for an organization that provides social services to pregnant teenagers.

Reports can be made to local law enforcement when DCF is not open for business. Once a report is received, KSA 2019 Supp. 38-2226 requires DCF and law enforcement to investigate the validity of the claim and determine whether action is required to protect the child. When a report indicates there is serious physical harm to, serious deterioration of, or sexual abuse of the child and action may be required to protect the child, DCF and law enforcement conduct a joint investigation. If there are reasonable grounds to believe abuse or neglect exist, DCF must take immediate steps to protect the health and welfare of the child, as well as that of other children under the same care.

KSA 2019 Supp. 38-2231 requires law enforcement to place a child in protective custody when an officer reasonably believes the child will be harmed if not immediately removed from the situation where the child was found or the child is a missing person. A court that determines a child's custody may not remove a child from parental custody unless it finds there is probable cause to believe the child is likely to be harmed if not immediately removed from the home; allowing the child to remain in the home is contrary to the welfare of the child; or immediate placement is in the child's best interests. The court also must find there is probable cause to believe reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home, or an emergency exists that threatens the child's safety.

To issue an *ex parte*¹ order for protective custody, the court also must find there is probable cause to believe the child is in need of care. An *ex parte* order must be served on the child's parents and any other person having legal custody of the child. Along with the order, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental, or emotional abuse from residing in the child's home; visiting, contacting, harassing, or intimidating the child, another family member, or witness; or attempting to visit, contact, harass, or intimidate the child, another family member, or

witness. A restraining order must be served on the alleged perpetrator.

The court may place the child in the protective custody of a parent or other person having custody of the child; another person, who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary for Children and Families (Secretary). Once issued, an *ex parte* order typically will remain in effect until the temporary custody hearing.

When a court evaluates what custody, visitation, or residency arrangements are in the best interests of a child no longer residing with a parent, KSA 2019 Supp. 38-2286 requires substantial consideration of a grandparent who requests custody, which must be included in the record. The court must consider the wishes of the parents, child, and grandparent; the extent to which the grandparent has cared for the child; the intent and circumstances under which the child is placed with the grandparent; and the physical and mental health of all involved individuals. If the court places the child in the custody of the Secretary for placement (rather than a grandparent), the law requires substantial consideration of a grandparent who requests placement in the evaluation for placement. If the grandparent is not selected, the Secretary must prepare and maintain a written report with specific reasons for the finding.

Court Proceedings

CINC Petition

If DCF determines it is not otherwise possible to provide services necessary to protect the interests of the child, it must recommend that the county or district attorney file a CINC petition. Pursuant to KSA 2019 Supp. 38-2233, the county or district attorney will then review the facts, recommendations, and any other evidence available and determine whether the circumstances warrant filing a petition. If warranted, KSA 2019 Supp. 38-2214 provides the county or district attorney prepares and files the

petition, the contents of which are outlined in KSA 2019 Supp. 38-2234, and appears and presents evidence at all subsequent proceedings. KSA 2019 Supp. 38-2233 also allows an individual to file a CINC petition and be represented by the individual's own attorney in the presentation of the case.

Once filed, if the child is in protective custody, KSA 2019 Supp. 38-2235 allows the court to serve a copy of the petition on all parties and interested parties in attendance at the temporary custody hearing or issue summons to all those persons if not present. Otherwise, KSA 2019 Supp. 38-2236 instructs the court to serve the guardian *ad litem*² (GAL) appointed to the child, custodial parents, persons with whom the child is residing, and any other person designated by the county or district attorney with a summons and a copy of the petition, scheduling a hearing within 30 days of when the petition was filed. Grandparents are sent a copy of the petition by first class mail.

Interested Parties and Attendance at Court Proceedings

In addition to receiving notice of hearings, KSA 2019 Supp. 38-2241 gives parties and interested parties the right to present oral or written evidence and argument, call and cross-examine witnesses, and be represented by an attorney. Grandparents are interested parties in CINC proceedings and have participatory rights, subject to the court's restriction on participation if it is in the child's best interests. Other interested parties may include persons with whom the child has resided or shares close emotional ties and other persons as the court allows based on the child's best interests.

KSA 2019 Supp. 38-2247 allows anyone to attend CINC proceedings leading up to and including adjudication, unless the court determines closed proceedings or the exclusion of an individual would be in the child's best interests or is necessary to protect the parents' privacy rights. Dispositional proceedings for a child determined to be in need of care, however, may be attended only by the GAL, interested parties and their attorneys, officers of the court, a court-appointed

special advocate, the custodian, and any other person the parties agree to or the court orders to admit. Likewise, the court may exclude a person if it determines it would be in the best interests of the child or the conduct of the proceedings.

Temporary Custody Hearing

KSA 2019 Supp. 38-2243 governs temporary custody hearings, which must be held within three business days of a child being placed in protective custody. Notice of the hearing must be provided to all parties and nonparties at least 24 hours prior to the hearing. After the hearing, the court may enter a temporary custody order if there is probable cause to believe the child is a danger to self or others, is not likely to be available within the jurisdiction of the court for future proceedings, or the child's health or welfare may be endangered without further care. The court may modify this order during the pendency of the proceedings to best serve the child's welfare and can enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. The court may place the child with a parent or other person having custody of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary.

Order of Informal Supervision

At any time after the petition is filed and prior to an adjudication, a court can enter an order for continuance and informal supervision pursuant to KSA 2019 Supp. 38-2244, placing conditions on the parties and entering restraining orders as needed. The order can continue for up to six months and may be extended for an additional six months. If the child is not placed with a parent, the court must give substantial consideration to a grandparent who requests custody, as discussed above.

Adjudication and Disposition

KSA 2019 Supp. 38-2251 requires the court to enter a final adjudication or dismissal of a CINC petition within 60 days of the filing of the petition,

unless good cause for a continuance is shown on the record. KSA 2019 Supp. 38-2250 specifies the petitioner must prove by clear and convincing evidence the child is in need of care. Otherwise, KSA 2019 Supp. 38-2251 requires the court to dismiss the proceedings. If the child is found to be in need of care, however, pursuant to KSA 2019 Supp. 38-2253, the court will receive and consider information concerning the child's safety and well-being and enter orders concerning custody and a case plan, which governs the responsibilities and time lines necessary to achieve permanency for the child.

Prior to entering an order of disposition, KSA 2019 Supp. 38-2255 requires the court to consider the child's physical, mental, and emotional condition and need for assistance; the manner in which the parent participated in the abuse, neglect, or abandonment of the child; any relevant information from the intake and assessment process; and evidence received at disposition concerning the child's safety and well-being. Based on these factors, the court may place the child with a parent; a relative of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; any other suitable person; a shelter facility; a youth residential facility; or, under certain circumstances, the Secretary. This placement will continue until further order of the court. Along with the dispositional order, the court may grant reasonable visitation rights upon finding visitation would be in the child's best interests or may enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse.

Permanency

If the child is placed with a parent, KSA 2019 Supp. 38-2255 allows the court to impose terms and conditions to assure the proper care and protection of the child, including supervision of the child and parent, participation in available programs, and any special treatment the child requires. If permanency is achieved with one parent without terminating the other's parental rights, the court may enter child custody orders, including residency and parenting time, determined to be in the child's best interests and

must complete a parenting plan pursuant to KSA 2019 Supp. 23-3213.

If the child is not placed with a parent, a permanency plan must be developed and submitted to the court within 30 days of the dispositional order by the person with custody of the child or a court services officer, ideally in consultation with the child's parents. KSA 2019 Supp. 38-2263 outlines the required contents of the plan, including descriptions of the child's needs and services to be provided in addition to whether the child can be "reintegrated" (*i.e.*, reunited with a parent or parents). If there is disagreement among the persons necessary to the success of the plan, a hearing will be held to consider the merits of the plan.

KSA 2019 Supp. 38-2255 lists the relevant factors in determining whether reintegration is a viable alternative, including, among others, whether the parent has committed certain crimes, previously been found unfit, and worked towards reintegration. If reintegration is not a viable alternative, within 30 days, proceedings will be initiated to terminate parental rights, place the child for adoption, or appoint a permanent custodian. A hearing on the termination of parental rights or appointment of a permanent custodian will be held within 90 days. An exception exists when the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

KSA 2019 Supp. 38-2269 allows courts to terminate parental rights if it finds by clear and convincing evidence the parent is unfit by reason of conduct or condition that renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future. Further, it lists factors the court can consider to determine parental unfitness and provides a parent may be found unfit if the court finds the parent has abandoned the child; custody of the child was surrendered or the child was left under such circumstances that the identity of the parents is unknown and cannot be determined, in spite of diligent searching; and the parents have not come forward to claim the child within three months after the child is found.

Finally, KSA 2019 Supp. 38-2271 outlines circumstances that create a presumption of unfitness, including a previous finding of unfitness; two or more occasions in which a child in the parent's custody has been adjudicated a child in need of care; failure to comply with a reasonable reintegration plan; and conviction of certain crimes. Parents bear the burden of rebutting these presumptions by a preponderance of the evidence. When the court finds a parent is unfit, it can authorize an adoption if parental rights were terminated, appoint a permanent custodian, or continue permanency planning. Preference for placement is given to relatives and persons with whom the child has close emotional ties.

A permanency plan may be amended at any time upon agreement of the plan participants. If the permanency goal changes, however, a permanency hearing will be held within 30 days, as outlined in KSA 2019 Supp. 38-2264 and 2018 Supp. 38-2265. Even without a change in the permanency goal, KSA 2019 Supp. 38-2264 requires a permanency hearing be held within 12 months after a child is removed from the home and at least annually thereafter. If parental rights are terminated or relinquished, the requirements for permanency hearings will continue until the child is adopted or a permanent custodian is appointed. When permanency has been achieved with either a parent or nonparent to the satisfaction of the court, the court will close the case.

Fiscal Year 2019 Statewide Foster Care Statistics

An average of 344 children were removed from the home and placed into foster care each month, with a total number of 4,125 children placed during fiscal year (FY) 2019. An average of 340 children exited foster care placement outside of their home each month, with a total of 4,083 children exiting during FY 2019. In 74 percent of cases, the primary reason for removal was abuse or neglect. A majority of children in out-of-home settings were placed in family foster homes, and the most common permanency goal was reunification. The total average out-of-home placement length of stay was 21.4 months, with

reunification as the leading reason for ending placement. Further information on statistics, as well as current figures and regional data, can be found at <http://www.dcf.ks.gov/services/PPS/Pages/FosterCareDemographicReports.aspx>.

Recent Legislation and Reform Efforts

In addition to many existing work groups, task forces, and committees that consider possible reforms to the CINC process and the delivery of foster care services, standing and special legislative committees also have considered changes in recent years. Most recently, the 2017 Legislature established the Child Welfare System Task Force. More details regarding these efforts follow.

Legislation

Beginning in 2011, the Legislature made changes to the law to expand the rights of grandparents, designating them as interested parties (2011 House Sub. for SB 23) and requiring substantial consideration of grandparents who request custody when a child is removed from parental custody (2012 SB 262).

In 2014, a foster parents' bill of rights, Sub. for SB 394, was introduced, considered, and ultimately referred to the Judicial Council and to the Special Committee on Judiciary for interim study. The Special Committee recommended introduction of a bill proposed by the Judicial Council and that additional consideration be given to the grievance process. That bill was introduced in 2015 as SB 37, which was heard by the Senate Judiciary Committee; however, the Committee did not take action on the bill.

In 2016, the House and Senate Judiciary Committees discussed variations on legislation introduced in 2015 concerning use of a power of attorney to delegate care and custody of a child to another, which had been referred to the Judicial Council for further study. The 2016 Legislature ultimately passed SB 418, the Host Families Act, which allows a child placement agency or charitable organization to provide temporary care of children by placing a child with a host

family. Host families are subject to screening and background checks and do not receive payment other than reimbursement for actual expenses. The Act also allows DCF to provide information about respite care, voluntary guardianship, and support services, including organizations operating programs under the Act, to families experiencing financial distress, unemployment, homelessness, or other crises and to parents or custodians during a child protective investigation that does not result in an out-of-home placement due to abuse of a child.

Placement must be voluntary and shall not be considered an out-of-home placement, supersede any court order, or preclude any investigation of suspected abuse or neglect. A parent may place a child by executing a power of attorney that delegates to a host family any powers regarding the care and custody of the child, except power to consent to marriage or adoption, performance or inducement of an abortion, or termination of parental rights. The power of attorney may not be executed without the consent of all individuals with legal custody of the child, and execution is not evidence of abandonment, abuse, or neglect.

The power of attorney may not exceed one year but may be renewed for one additional year. The bill includes an exception, however, for parents serving in the military, who may delegate powers for a period longer than one year if on active duty service, but no more than the term of active duty service plus 30 days. A parent executing a power of attorney under the Act can revoke or withdraw the power of attorney at any time. Upon such withdrawal or revocation, the child must be returned to the parent as soon as reasonably possible.

Additionally, 2016 SB 418 specified nothing in the CINC Code compels a parent to medicate a child if the parent is acting in accordance with a physician's medical advice, and in these circumstances, absent a specific showing of a causal relation between the actions and harm to the child, a parent's actions do not constitute a basis for determination that a child is a CINC, removal of custody of a child, or termination of parental rights. Further, the bill allowed county or district attorneys from another jurisdiction to

access the official file and social file in a CINC proceeding when involved with a pending CINC case involving any of the same parties or interested parties.

In 2019, HB 2103 amended the CINC Code and created statutory provisions to meet the requirements of the federal Family First Prevention Services Act (FFPSA). The FFPSA allows for an enhanced federal match rate toward the use of Social Security Act Title IV-E funds for certain child welfare system evidence-based prevention services and programs to provide support to children at risk of entering foster care. FFPSA limits foster care maintenance payments to two weeks for placements that are not foster homes or qualified residential treatment programs (QRTPs). The bill established notice and hearing requirements when a child is placed in a QRTP, required certain action to be taken by the court when QRTP placement occurs, and places additional documentation requirements on the court in a permanency hearing involving a child placed in a QRTP. The bill also required that a copy of any prevention plan for a child be attached to a CINC petition.

The 2019 Legislature passed SB 28, Claire and Lola's law, which prohibits state agencies and political subdivisions from initiating child removal proceedings or child protection actions or proceedings based solely upon the parent's or child's possession or use of certain cannabidiol treatment preparations for a debilitating medical condition in accordance with the affirmative defense established by the bill.

In 2019, the Legislature also passed SB 77, creating law in the CINC Code requiring DCF to take certain actions when reports of abuse or neglect are received, the subject of which is a "child with sexual behavior problems," and DCF determines a joint investigation with law enforcement is required in accordance with the CINC Code. The required actions include referral to a child advocacy center or other mental health provider and offer of additional services to the child and the child's family, as needed. With the exception of certain circumstances set forth in the bill, the services are voluntary. The bill requires DCF to document specific action taken by the

agency, attempts to provide voluntary services, reasons the services are important to reduce the risk of future sexual behavior problems by the child, whether services are accepted and provided, and the outcome for the child and family.

Special Committee on Foster Care Adequacy

The Legislative Coordinating Council created a Special Committee on Foster Care Adequacy in 2015 and again in 2016 to study DCF oversight of foster care contractors; whether a working group would aid in addressing foster care concerns; and the selection, qualification, and responsibilities of foster parents. The 2015 Special Committee recommended evidence-based, peer-reviewed research on family structure be given high priority when considering best interests and making foster care placement decisions. Additionally, it recommended introduction of legislation creating a joint committee to oversee foster care or alternatively, that a Senate committee and a House committee be charged with reviewing the topic of foster care.

The 2016 Special Committee studied similar issues and considered a two-part report of DCF released by the Legislative Division of Post Audit (LPA). The 2016 Special Committee identified a number of concerns and recommended:

- Reintroduction of a bill establishing a foster care oversight task force;
- Expanded use of citizen review boards in CINC cases;
- Affirmation of the right of biological parents and grandparents to visitation;
- The Legislature address the LPA findings on foster care and adoption and concerns raised by the audit;
- DCF investigate the value of additional vendors for foster care programs;
- DCF report annually to Senate and House standing committees; and
- The LPA committee consider addressing concerns regarding the low response rate to LPA's survey of public employees and contractor employees.

LPA Report on Foster Care and Adoption

Parts 1, 2, and 3 of the report, entitled “Foster Care and Adoption in Kansas: Reviewing Various Issues Related to the State’s Foster Care and Adoption System,” are available on LPA’s website. Search “foster care” at <https://www.kslpa.org/> to find the report.

Part 1 identified concerns and made recommendations related to ongoing efforts to improve child protective services; failure to consistently perform background checks for foster parents and to conduct monthly in-person visits; and foster homes with insufficient sleeping space and insufficient financial resources.

Part 2 looked at compliance with state and federal law and found DCF had not followed some of the safety and living condition requirements reviewed in Part 1. Further, it found DCF had materially complied with most, but not all, federal requirements in 2014 and 2015 and had exceeded half of the federal outcome requirements in FY 2016 but did not meet others. Finally, it found DCF must implement a program improvement plan to address issues identified by a 2015 federal review.

Part 3 examined whether the Kansas foster care system has had sufficient capacity to provide necessary foster care services, finding issues with staffing shortages, large caseloads, and low morale among caseworkers. Children in foster care received most of the physical and mental health services they needed, with exceptions. Many counties and cities did not appear to have enough licensed foster homes, although there were sufficient open beds statewide. DCF could be more proactive in monitoring and collecting management information about the foster care system, but has recently begun to expand its use of data in overseeing the foster care system. LPA identified several instances in which children were placed in foster homes that did not comply with licensing standards, but noted that DCF is making significant changes to the inspection process.

Part 3 also looked at Kansas’ performance on federal outcomes for children and families over

time, finding no significant change from 2000 to 2013 and noting the significant limitations of these outcome measures, including for comparison between states.

Finally, Part 3 compared the cost of the State directly providing foster care and adoption services with maintaining the current privatized system, estimating such transition would incur up to \$8 million more in ongoing costs and significant start-up costs. LPA also noted the other significant factors that would have to be considered in making such a transition.

Child Welfare System Task Force

The 2017 Legislature passed House Sub. for SB 126, which directed the Secretary for Children and Families to establish a Child Welfare System Task Force to study the child welfare system in the State of Kansas. The bill specified various entities and stakeholders to be represented on the Task Force (including six legislators) and directed the Task Force to convene working groups to study the following topics: the general administration of child welfare by DCF; protective services; family preservation; reintegration; foster care; and permanency placement. Additionally, the Task Force and each working group were directed to study the following topics:

- The level of oversight and supervision by DCF over each entity that contracts with DCF to provide reintegration, foster care, and adoption services;
- The duties, responsibilities, and contributions of state agencies, nongovernmental entities, and service providers that provide child welfare services in the State of Kansas;
- The level of access to child welfare services, including, but not limited to, health and mental health services and community-based services, in the State of Kansas;
- The increasing number of children in the child welfare system and contributing factors;

- The licensing standards for case managers working in the child welfare system; and
- Any other topic the Task Force or working group deems necessary or appropriate.

The appointments of Task Force members were completed in July 2017, and the Task Force began meeting in August 2017. Working group appointments were completed in September 2017 and began meeting in October 2017.

In accordance with SB 126 requirements, the Task Force submitted a preliminary progress report to the 2018 Legislature. The Task Force and Working Groups continued meeting in 2018, with the Working Groups submitting their reports and recommendations to the Task Force in August and September 2018.

As required by SB 126, the Task Force submitted a final report to the 2019 Legislature. The Task Force adopted 23 recommendations, organized by priority into three tiers. The following were adopted by the Task Force as its highest priority recommendations:

- **Workforce.** The State of Kansas should invest in the child welfare system workforce by increasing funding for recruitment, retention, and support to effectively attract and retain high-quality staff;
- **Data infrastructure.** The State of Kansas should create a single, cross-system, web-based, integrated case management and data reporting system that can be used by DCF and all relevant agencies and stakeholders to efficiently and effectively share information (e.g., education, dental, medical, behavioral);
- **FFPSA.** The State of Kansas should fund and institute the federal FFPSA in Kansas and follow the federal guidelines;
- **Access to care.** The State of Kansas should require access to high-quality and consistent medical and behavioral health care for Medicaid-eligible high-risk youth through the Medicaid state

plan or other appropriate sources of funding; and

- **Code for the Care of Children.** The Judicial Council should review the CINC Code, especially with regard to a) the way DCF's definition of "non abuse neglect" relates to cases under the CINC Code and b) modifications to meet the child's ongoing best interests for permanency.

The final report of the Task Force is available at <http://www.kslegresearch.org/KLRD-web/Committees/2018Committees/Committees-ChildWelfareSysTF.html>.

Crossover Youth Working Groups

The 2019 Omnibus Appropriations bill, House Sub. for SB 25 (Section 87), included two provisos requiring DCF to establish working groups to study the impact of 2016 SB 367, which included a prohibition on the placement of youth in a juvenile detention center in certain circumstances and removed juvenile detention facilities as a placement option under the CINC Code unless the child is also alleged to be a juvenile offender and the placement is authorized under the Juvenile Code.

The first proviso required DCF to establish a working group to gather data and issue a report by June 30, 2019, related to the impact of 2016 SB 367 on youth with offender behaviors entering into foster care placement or already in foster care placement and to evaluate the services being offered and identify needed services. The second proviso required DCF to study the impact of 2016 SB 367 on crossover youth, specifically youth at risk of being placed in foster care due in whole or in part to conduct that has resulted or could result in juvenile offender allegations, and youth placed in foster care engaging in conduct that has resulted or could result in juvenile offender allegations. DCF was required to establish a working group, with membership as outlined in the proviso, to assist with the production, data collection, and analysis of the report, which is to be submitted to select House and Senate standing committees and a joint committee by November 1, 2019.

- 1 *Ex parte* orders are orders issued involving one party, usually for temporary or emergency relief.
- 2 For more information on the role of the GAL, see KSA 2019 Supp. 38-2205.

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Health and Social Services

G-2 Medicaid Waivers

This article provides information related to the history of Medicaid waivers in the United States, Medicaid waivers specific to Kansas, and the history of waiver integration proposals.

The History of Medicaid

Medicaid is a partnership between the federal government and the states with shared authority and financing, created by Congress in 1965 (Title XIX of the Social Security Act). The program was designed to finance health care services for low-income children, their parents, the elderly, and people with disabilities. Medicaid has become the nation's largest source of funding to provide health services to low-income people.

State participation in Medicaid is optional. However, the federal government's financial share of Medicaid financing creates an incentive for the states. To date, no state has declined to participate. All 50 states, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands participate and administer their own Medicaid plans. Although all states participate, eligibility varies widely because the states can choose to cover additional people and services above and beyond the federal minimum requirements.

Medicaid Expansion

Provisions of the federal Patient Protection and Affordable Care Act (referred to throughout this article as the ACA) expanded Medicaid to all Americans under age 65 whose family income is at or below 138 percent of the federal poverty level (FPL) by January 1, 2014. (*Note:* This amount has been cited as 133 percent FPL. However, because of modified adjusted gross income calculations, this threshold is effectively 138 percent FPL). Under the provisions of the ACA, if a state did not expand Medicaid, the state risked losing its entire federal Medicaid allotment.

The Medicaid expansion provision led to challenges in the U.S. Supreme Court. On June 28, 2012, the Supreme Court ruled in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012), that Congress may not make a state's entire existing Medicaid funding contingent upon

the state's compliance with the ACA provision regarding Medicaid expansion. Consequently, Medicaid expansion is voluntary and has become a highly discussed topic in state legislatures across the country.

As of September 10, 2019, 36 states and the District of Columbia have expanded Medicaid, and 14 states, including Kansas, have not participated in expansion.

KanCare: Medicaid in Kansas

Kansas participates in Medicaid, but it has not expanded the program under the ACA. In 2017, legislative action was taken to expand Medicaid through HB 2044. The bill passed the Legislature, but was vetoed by the Governor. The House of Representatives sustained the Governor's veto. In 2019, a Medicaid expansion bill (HB 2066) passed the House. The bill remains in the Senate Committee on Public Health and Welfare.

Kansas administers Medicaid through the program known as KanCare, which was launched in January 2013 and currently serves more than 415,000 Kansans. Some of the services provided under KanCare include doctor's office visits and hospital care, behavioral health services, dental and vision care, medicine, non-emergency medical transportation, nursing facility services, weight-loss surgery, and contractor specific value-added services.

The Kansas Department of Health and Environment (KDHE) and the Kansas Department for Aging and Disability Services (KDADS) administer the KanCare program.

KDHE maintains financial management and contract oversight as the single state Medicaid agency, while KDADS administers the Medicaid waiver programs for disability services, mental health, and substance abuse and operates the state hospitals and institutions. Additionally, Kansas contracts with three managed care organizations (MCOs) to coordinate health care for nearly all Medicaid beneficiaries. In June 2018, KDHE awarded contracts to Sunflower State Health Plan, UnitedHealthcare Community

Plan of Kansas, and Aetna Better Health of Kansas, Inc., to serve as the State's MCOs. These new contracts began January 1, 2019, and end December 31, 2023.

Each Medicaid consumer is enrolled with one of the KanCare health plans. Consumers have the option during open enrollment once a year to change to a different KanCare health plan if they wish to do so.

KDHE submitted a request to extend the KanCare program under a Section 1115 waiver to the Centers for Medicare and Medicaid Services (CMS). CMS approved a one-year extension of the current KanCare demonstration, which was set to expire December 31, 2018. The State submitted an application to renew KanCare through 2023. The application was approved by CMS December 18, 2018.

Types of Medicaid Waivers Approved by CMS

Sections 1115 and 1915(b) and (c) of the Social Security Act give the U.S. Secretary of Health and Human Services (HHS) authority to waive provisions of the law to encourage states to test new or existing ways to deliver and pay for health care services in Medicaid and the Children's Health Insurance Program (CHIP). A state must apply for and receive approval from CMS in order to operate a waiver.

Section 1115 Research and Demonstration Projects

Section 1115 of the Social Security Act gives the Secretary of HHS authority to approve experimental, pilot, or demonstration projects. These demonstrations can give states additional flexibility to design and improve their Medicaid programs. The purpose of these demonstrations is to demonstrate and evaluate state-specific policy approaches to better serve Medicaid populations. See the CMS website for more information: <https://www.medicaid.gov/medicaid/section-1115-demo/about-1115/index.html>.

CMS performs a case-by-case review of each state's Medicaid proposal. CMS has invited states to propose reforms that promote Medicaid's objectives, such as reforms that would:

- Improve access to high-quality, person-centered services that produce positive health outcomes for individuals;
- Promote efficiencies that ensure Medicaid's sustainability for beneficiaries over the long term;
- Support coordinated strategies to address certain health determinants that promote upward mobility, greater independence, and improved quality of life among individuals;
- Strengthen beneficiary engagement in their personal health care plan, including incentive structures that promote responsible decision making;
- Enhance alignment between Medicaid policies and commercial health insurance products to facilitate smoother beneficiary transition; and
- Advance innovative delivery system and payment models to strengthen provider network capacity and drive greater value for Medicaid.

In general, Section 1115 waivers are approved for an initial five-year period and can be extended for an additional three to five years. Demonstrations must be "budget neutral" to the federal government, which means during the course of the project, federal Medicaid expenditures cannot be more than federal spending without the waiver.

Currently, there are 32 states that have approved Section 1115 waivers with CMS. Those states are Alabama, Alaska, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Washington, and Wisconsin. Additionally, several states had Section 1115 waivers listed as "pending" approval with CMS. According to

a search of the CMS website on September 10, 2019, KanCare was listed by CMS as pending approval, although the KanCare demonstration was extended until December 31, 2023. See <https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/index.html> to search for the current status of states' waiver authority.

In January 2018, CMS posted new guidance for state Section 1115 waiver proposals to condition Medicaid on meeting work requirements. According to the Kaiser Family Foundation, Arizona, Indiana, Michigan, Ohio, Utah, and Wisconsin have approved Section 1115 Medicaid waivers containing work requirements, but, with the exception of Indiana, these waivers are not yet implemented. Section 1115 waivers with work requirements are pending in Alabama, Mississippi, Oklahoma, South Carolina, South Dakota, Tennessee, and Virginia. Waivers in Arkansas, Kentucky, and New Hampshire have been set aside by courts.

Section 1915(b) Managed Care Waivers

Section 1915(b) waivers are one of several options available to states that allow the use of managed care in the Medicaid program. Under the 1915(b) waiver, states have the following four options:

- 1915(b)(1): restricts Medicaid enrollees from receiving services within the managed care network (freedom of choice);
- 1915(b)(2): utilizes a "central broker" (enrollment broker);
- 1915(b)(3): uses cost savings to provide additional services to beneficiaries (non-Medicaid services waiver); and
- 1915(b)(4): restricts the provider from whom the Medicaid eligible may obtain services (selective contracting waiver).

Thus, the 1915(b) waivers allow a state to provide Medicaid services through managed care delivery systems, effectively limiting the consumer's choice of providers. CMS has started the process of "modularizing" its current 1915(b)

waiver application to separate the various statutory authorities. See <https://www.medicaid.gov/medicaid/managed-care/authorities/index.html> for more information.

Currently, there are 38 states that have approved Section 1915(b) waivers with CMS. Those states are Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Section 1915(c) Home and Community Based Services Waivers

The Medicaid Home and Community Based Services (HCBS) Waiver program is authorized under Section 1915(c) of the Social Security Act. Through the HCBS Waiver, states can assist Medicaid beneficiaries by providing a wide range of services that permit individuals to live in their homes or communities and avoid institutionalization. Programs can provide a combination of standard medical services and non-medical services. Standard services include, but are not limited to, case management (supports and service coordination), homemaker, home health aide, personal care, adult day health services, habilitation (both day and residential), and respite care. States can propose other services that may assist in diverting or transitioning individuals from institutional settings to their homes or communities.

Currently, 47 states, including Kansas, and the District of Columbia have 1915(c) waivers approved with CMS. The only states that currently do not have an approved 1915(c) waiver with CMS are Arizona, Rhode Island, and Vermont.

Section 1332 State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver (Section 1332

waiver, now also referred to as a State Relief and Empowerment Waiver). Guidance was issued in 2015 related to these new waivers, and waivers were available beginning January 1, 2017. According to the National Conference of State Legislatures, at least 35 states have considered legislation to begin the Section 1332 waiver application process as of late October 2018. However, on October 22, 2018, CMS, HHS, and the Department of the Treasury published new guidance intended to “expand state flexibility, empowering states to address problems with their individual insurance markets and increase coverage options for their residents, while at the same time encouraging states to adopt innovative strategies to reduce future overall health care spending.” The comment period for the rule ended December 24, 2018. On May 3, 2019, CMS, HHS, and the Department of the Treasury published a request for information regarding State Relief and Empowerment Waivers. The comment period closed July 2, 2019. For more information, see:

- <http://www.ncsl.org/research/health/state-roles-using-1332-health-waivers.aspx>;
- <https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers>; and
- <https://www.federalregister.gov/documents/2019/05/03/2019-09121/request-for-information-regarding-state-relief-and-empowerment-waivers>.

Medicaid Waivers in Kansas

Current Medicaid Waivers

KanCare allows the State to provide all HCBS through managed care. Currently, Kansas operates seven separate 1915(c) waivers alongside a Section 1115 waiver. The seven 1915(c) waivers are Autism (AU), Frail Elderly (FE), Intellectual and Developmental Disability (I/DD), Physical Disability (PD), Serious Emotional Disturbance (SED), Technology Assisted (TA), and Brain Injury (BI).

To participate in a 1915(c) waiver, the individual requiring services must be financially and functionally eligible for Medicaid. Individuals with income above \$1,177 a month must share in the cost of care, called the “client obligation.” The client obligation is paid to a medical provider, not to the State of Kansas or to a KanCare MCO. Additional information for each of the seven 1915(c) waivers follows.

Autism

The Autism (AU) Waiver provides services to children from the time of diagnosis of Autism Spectrum Disorder, Asperger syndrome, or pervasive developmental disorder not otherwise specified until the child’s sixth birthday. Autism services are limited to three years; however, an additional year may be submitted for approval. To qualify for an additional year of service, the child must meet eligibility based on the level of care assessment at the annual review on the third year of services, and data collected by the MCO must demonstrate a need for continued AU Waiver services.

To apply for the AU Waiver, a parent or guardian must complete an application. The application requests basic information about the child and the child’s family. Also, the application requires the parent or guardian to indicate the screening tool used in the child’s diagnosis and documentation of an autism diagnosis or a signature of a licensed medical doctor or psychologist.

The program manager pre-screens for the autism diagnosis and places the child on the proposed recipient list. As of July 31, 2019, there were 304 children on the proposed recipient list. Once a position becomes available, the program manager contacts the family to offer them the potential position. As of August 13, 2019, there were 49 children eligible to receive services under this waiver.

Kansas received direction from CMS to move consultative clinical and therapeutic services, intensive individual supports, and interpersonal communication therapy from the AU Waiver to the Medicaid State Plan Amendment. The three

services that will continue to be part of the Autism Waiver are respite care, family adjustment counseling, and parent support and training. The Autism Waiver amendments were approved by CMS in June 2017.

Frail Elderly

The Frail Elderly (FE) Waiver provides home and community based services to Kansas seniors as an alternative to nursing facility care. The waiver serves those individuals 65 and older who meet the Medicaid nursing facility threshold score and are financially eligible for Medicaid. If applying for the FE Waiver, the individual should contact their local Aging and Disability Resource Center (ADRC). There are 11 ADRCs in the state. Services and supports included under the FE Waiver are adult day care, assistive technology, personal care services, comprehensive support, financial management services, home telehealth, medication reminder, nursing evaluation visit, oral health services, personal emergency response, enhanced care services (previously referred to as sleep cycle support), and wellness monitoring.

As of August 13, 2019, there were 4,571 individuals eligible to receive services under this waiver.

Intellectual and Developmental Disability

The Intellectual and Development Disability (I/DD) Waiver provides services to individuals five years of age and older who meet the definition of intellectual disability, have a developmental disability, or are eligible for care in an intermediate care facility for individuals with intellectual disabilities. Those with a developmental disability may be eligible if their disability was present before age 22 and they have a substantial limitation in three areas of life functioning.

The point of entry into the I/DD Waiver is an individual’s local community developmental disability organization. The program manager provides final approval of program eligibility. As of August 13, 2019, there were 4,035 individuals on the I/DD waiting list.

Services and supports under the I/DD Waiver may include assistive services, adult day supports, financial management services, medical alert rental, overnight respite, personal care services, residential supports, enhanced care services, specialized medical care, supported employment, supportive home care, and wellness monitoring. As of August 13, 2019, there were 8,975 individuals eligible to receive services under this waiver.

Physically Disability

The Physically Disability (PD) Waiver provides services to individuals 16 to 64 years of age who meet the criteria for nursing facility placement due to their physical disability. The individual must be determined disabled by the Social Security Administration, need assistance to perform activities of daily living, and meet the Medicaid nursing facility threshold score.

The point of entry for the PD Waiver is an individual's local ADRC. The program manager provides final approval of program eligibility. As of August 13, 2019, there were 1,805 individuals on the PD waiting list. Services and supports under the PD Waiver may include assistive services, financial management services, home-delivered meals, medication reminder services, personal emergency response systems and installation, personal care services, and enhanced care services. As of August 13, 2019, there were 5,660 individuals eligible to receive services under this waiver.

Serious Emotional Disturbance

The Serious Emotional Disturbance (SED) Waiver provides services to individuals ages 4 to 18 who have been diagnosed with a mental health condition that substantially disrupts the individual's ability to function socially, academically, emotionally, or all. The waiver is designed to divert the individual from psychiatric hospitalization to intensive home and community based supportive services.

Services and supports under the SED Waiver may include attendant care, independent living and skills building, short-term respite care, parent support and training, professional resource family care, and wraparound facilitation. As of August 13, 2019, there were 3,327 individuals eligible to receive services under this waiver.

Technology Assisted

The Technology Assisted (TA) Waiver provides services to people through the age of 21 who require substantial and ongoing daily care by a nurse comparable to the level of care provided in a hospital.

The individual is determined TA program-eligible if he or she is 0 through 21 years of age, is chronically ill or medically fragile, requires one or more of the identified primary medical technologies and meets the minimum technology score for the specified age group, and meets the minimum nursing acuity level of care threshold for the specified age group. The point of contact for the program is the Children's Resource Connection.

Services and supports under this waiver may include financial management services, health maintenance monitoring, intermittent intensive medical care, specialized medical care, medical respite, personal care services, and home modification. As of August 13, 2019, there were 565 individuals eligible to receive services under this waiver.

Brain Injury

The Brain Injury (BI) Waiver is a habilitative/rehabilitation and independent living program with an emphasis on the development of new independent living skills and/or relearning of lost independent living skills due to an acquired or traumatic brain injury.

A legislative proviso in the 2018 Omnibus Appropriations Bill, House Sub. for SB 109, required KDADS to implement a change to the Traumatic Brain Injury (TBI) Waiver to allow coverage for individuals with documented acquired

brain injuries from a cause not already covered under the waiver and eliminate the requirement that individuals on the waiver must be at least 16 years old. On August 5, 2019, the TBI Waiver transitioned to a BI Waiver upon approval by CMS of a request for a waiver amendment to add acquired brain injuries for the adult population. However, a new functional assessment tool for BI youth under the age of 16 had to be developed and be ready for implementation before KDADS could submit a waiver amendment to CMS to include the new youth population. KDADS indicated a target date of October 28, 2019, to submit the waiver amendment to add the youth population to the BI Waiver.

As of August 5, 2019, to be eligible for the BI Waiver, the individual must be 16 to 65 years of age, be determined disabled or have a pending determination by the Social Security Administration, have active habilitation or rehabilitation needs for BI therapies, and have a documented medical diagnosis of a traumatic or acquired brain injury. Brain injuries due to a chromosomal or congenital diagnosis do not qualify for the BI Waiver.

The point of entry for an individual is the local ADRC. Services and supports under this waiver may include assistive services; financial management services; home-delivered meals; medication reminder services; personal emergency response system and installation; personal care services; rehabilitation therapies, including behavior therapy, cognitive rehabilitation, physical therapy, speech-language therapy, and occupational therapy; enhanced care services; and transitional living skills. As of August 13, 2019, there were 400 individuals eligible to receive services under this waiver.

Waiver Integration

In Summer 2015, KDHE and KDADS announced a plan to fully integrate the seven 1915(c) waivers into the 1115 waiver. Under this waiver integration plan, entrance to HCBS would remain the same, but services would fall into two broader categories: children's services and adults' services. The new integrated waiver would be called KanCare Community Care. KDHE and KDADS planned

for this waiver integration to begin on January 1, 2017, if approved by CMS.

KDHE and KDADS held public information sessions and stakeholder work groups regarding the planned integration and continued forward with the proposal. However, the House Committee on Health and Human Services (House Committee) appointed a subcommittee to study the issue during the 2016 Legislative Session. The subcommittee issued a report proposing a bill to be considered by the House Committee requiring legislative approval of waiver integration and prohibiting implementation of waiver integration prior to January 1, 2018. The subcommittee also recommended KDHE report on the status of waiver integration planning to the Legislature in January 2017 and March 2017.

HB 2682 (2016) was introduced by the House Committee. The bill would have prohibited any state agency from making any changes to waiver services without express legislative authorization. The bill was heard by the House Committee, but died in that Committee. However, in the 2016 Omnibus Appropriations Bill (House Sub. for SB 249), language was added directing no expenditures could be made during fiscal year (FY) 2016 and FY 2017 to proceed with waiver integration if the proposed integration was planned to occur prior to FY 2019.

In 2017, a HCBS integration proviso was added to the Omnibus Appropriations Bill, Senate Sub. for HB 2002. The proviso would have prohibited the integration, consolidation, or otherwise altering the structure of HCBS waivers, or submitting a proposal to combine, reassign, or otherwise alter the designated responsibilities to provide intake, assessment, or referral services for medical services, behavioral health services, transportation, nursing facilities, other long-term care, or HCBS waivers prior to FY 2020. This proviso was line-item vetoed by the Governor. In his veto message, Governor Brownback stated concern over the broad nature of the proviso language and its potential to limit changes to non-HCBS programs within KDADS. The veto message also stated the Brownback administration would not integrate or consolidate HCBS waivers, nor make any substantive changes to the intake, assessment, and referral

system for the I/DD Waiver without meaningful engagement with stakeholders and approval of the Legislature.

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Health and Social Services

G-3 Recent Changes to Health Professions' Scope of Practice

This article provides information related to the legislative changes made to scopes of practice for health professions from 2015 to 2019. The health professions affected include acupuncturists, addiction counselors, advanced practice registered nurses, applied behavior analysis service providers, emergency medical services attendants, mental health technicians, naturopathic doctors, nurse-midwives, pharmacists, pharmacy students or interns, pharmacy technicians, physical therapists, physician assistants, podiatrists, professional counselors, psychiatrists, and social workers. A brief summary of the Nurse Licensure Compact (2018 HB 2496) and changes related to the Behavioral Sciences Regulatory Board (BSRB), the Healing Arts Act, and the Radiologic Technologists Practice Act that affected the licensure of multiple health professions are also included. (*Note:* For historical purposes, Table A contains changes to scopes of practice made from 2011 to 2014.)

Acupuncturists

HB 2615 (2016) created the Acupuncture Practice Act, which provides for the licensure of acupuncturists by the Board of Healing Arts (active, exempt, and inactive licenses are created); exempts licensed physical therapists from the Acupuncture Practice Act when performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act; and exempts licensed acupuncturists from the Physical Therapy Practice Act. The Board of Healing Arts has adopted the required rules and regulations applicable to dry needling by physical therapists. (*Note:* See the "Physical Therapists" section in this article for additional information.)

The practice of acupuncture includes, but is not limited to, the following: techniques sometimes called "dry needling," "trigger point therapy," "intramuscular therapy," "auricular detox treatment," and similar terms; mechanical, thermal, pressure, suction, friction, electrical, magnetic, light, sound, vibration, manual, and electromagnetic treatment; the use, application, or recommendation of therapeutic exercises, breathing techniques, meditation, and dietary and nutritional counseling; and the use and recommendation of herbal products and nutritional supplements, according to the acupuncturist's level of training and certification by the National

Certification Commission for Acupuncture and Oriental Medicine, or its equivalent.

The practice of acupuncture does not include prescribing, dispensing, or administering any controlled substances as defined in KSA 2019 Supp. 65-4101 *et seq.* or any prescription-only drugs, or the practice of the following: medicine and surgery, including obstetrics and the use of lasers or ionizing radiation; osteopathic medicine and surgery or osteopathic manipulative treatment; chiropractic; dentistry; or podiatry.

Additionally, the Acupuncture Practice Act provides a detailed list of the health professions exempt from acupuncture licensure.

Addiction Counselors

HB 2615 also created a new category of licensure for master's level addiction counselors, who engage in the practice of addiction counseling limited to substance use disorders. Such a counselor is allowed to diagnose substance use disorders only under the direction of a licensed clinical addiction counselor (LCAC), a licensed psychologist, a person licensed to practice medicine and surgery, or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of substance use disorders or mental disorders.

Effective September 1, 2016, pursuant to HB 2615, no person may engage in the practice of addiction counseling or represent oneself as a licensed master's addiction counselor, a master's addiction counselor, master's substance abuse counselor, or a master's alcohol and drug counselor without having first obtained a license as a master's addiction counselor. The requirement to practice only in a facility licensed by the Kansas Department for Aging and Disability Services (KDADS) was eliminated by the bill.

HB 2615 further grandfathered credentialed or registered alcohol and other drug counselors who complied with specific requirements prior to July 1, 2017. (*Note:* See the BSRB section later in this article for changes to the regulatory statutes

administered by the BSRB that impact multiple professions, including those involved in addiction counseling.)

Advanced Practice Registered Nurses

HB 2615 also authorized the Independent Practice of Midwifery Act by certified nurse-midwives who were licensed as advanced practice registered nurses (APRNs). Further information is included in the section on nurse-midwives.

Applied Behavior Analysis Service Providers

HB 2744 (2014) created the Applied Behavior Analysis (ABA) Licensure Act for the licensure of ABA service providers by the BSRB, with effective dates in 2015 and 2016 for some provisions. ABA means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

The bill established the licensed assistant behavior analyst and the licensed behavior analyst. The bill established a January 1, 2015, effective date of Autism Spectrum Disorder (ASD) coverage by large health insurance plans and extended the requirement to grandfathered individual and small group plans effective July 1, 2016. The licensure requirements for ABA providers were phased in and certain providers were exempt from licensure.

The bill also outlined a broader range of providers allowed to receive reimbursement for ABA services from January 1, 2015, through June 30, 2016. Reimbursement narrowed beginning July 1, 2016, to services provided by an autism services provider licensed or exempt from licensure under the ABA Licensure Act, except reimbursement is allowed for services provided by an autism specialist, an intensive service provider, or any other individual qualified to provide services

under the Home and Community Based Services Autism Waiver administered by KDADS.

The bill required the BSRB to adopt rules and regulations for the implementation and administration of the ABA Licensure Act by July 1, 2016. The BSRB has established these rules and regulations (KAR 102-8-1 through 102-8-12).

In 2015, the ABA Licensure Act was amended by HB 2352 with regard to the number of employees constituting a large and small employer, terms used in connection with group health benefit plans, and the ASD coverage requirement. HB 2615 (2016) clarified the duties, powers, and functions of the BSRB as involving the regulation of individuals under several named acts, including the ABA Licensure Act.

Emergency Medical Services Attendants

In 2016, HB 2387 made changes to the authorized activities of those who have certain emergency medical services (EMS) certifications. Under continuing law, each classification of EMS attendant is authorized to perform the interventions of the lower levels of certified attendants. The bill changed authorized activities by an emergency medical technician-intermediate (EMT-I) transitioning to an advanced emergency medical technician (AEMT) and updated and changed authorized activities by emergency medical technicians (EMTs) and emergency medical responders. The terms EMT, EMT-I, EMT-defibrillator (EMT-D), mobile intensive care technician (MICT), EMT-I/Defibrillator, AEMT, and paramedic were removed from the list of those individuals of whom at least one must be on each vehicle providing EMS and the list was replaced with a reference to an attendant certified under statutes applicable to those listed categories.

In 2018, SB 311 added EMS attendants to the list of mandatory reporters of abuse, neglect, exploitation, or need of protective services as it pertains to a resident or certain adults (as defined in continuing law). The applicable definition in continuing law for “resident” is found in KSA 2018 Supp. 39-1401(a) and for “adult” in KSA

2019 Supp. 39-1430(a). The definition of “adult” excludes residents of adult care homes.

Mental Health Technicians

In 2017, HB 2025 amended the Mental Health Technician’s Licensure Act. The bill changed the description of services in the definition of “practice of mental health technology” by deleting “responsible nursing for patients with mental illness or intellectual disability” and inserting “participation and provision of input into the development of person-centered treatment plans for individuals or groups of individuals specified in paragraph (b)” (those specified in paragraph (b) are “the mentally ill, emotionally disturbed, or people with intellectual disability”) and by including facilitating habilitation of individuals. The bill also replaced the term “patient” with “individual.”

Naturopathic Doctors

SB 15 (2019) revised the Naturopathic Doctor Licensure Act to amend the definition of “naturopathic medicine” to include ordering diagnostic imaging studies, including, but not limited to, x-ray, ultrasound, mammogram, bone densitometry, computed tomography, magnetic resonance imaging, and electrocardiograms. However, the bill requires naturopathic doctors to refer patients to an appropriately licensed and qualified healthcare professional to conduct diagnostic imaging studies and interpret the results of such studies. The bill also amended the definition of a “licensed practitioner” in the Radiologic Technologists Practice Act to include, among other professions, a licensed Kansas naturopathic doctor.

Nurse-Midwives

The Independent Practice of Midwifery Act (Midwifery Act) was created by 2016 HB 2615. Effective January 1, 2017, the Midwifery Act allows certified nurse-midwives to practice without a collaborative practice agreement under specific conditions set forth below and requires

the certified nurse-midwife to hold a license from the Board of Nursing as an APRN and the Board of Healing Arts for the independent practice of midwifery. The bill required the Board of Healing Arts, in consultation with the Board of Nursing, to promulgate rules and regulations no later than January 1, 2017, pertaining to certified nurse-midwives engaging in the independent practice of midwifery and governing the ordering of tests, diagnostic services, prescribing of drugs, and referral or transfer to physicians in the event of complications or emergencies.

Proposed regulations related to the practice of certified nurse-midwives agreed to by the Board of Healing Arts and the Board of Nursing were submitted for consideration. In an August 28, 2019, letter to the Board of Healing Arts, the Office of the Attorney General noted it could not approve 11 of the proposed regulations at that time. Seven proposed regulations were approved by the Division of the Budget, the Department of Administration, and the Attorney General. A December 10, 2019, public hearing is scheduled on the seven proposed regulations.

“Independent practice of midwifery” means the provision of clinical services by a certified nurse-midwife without the requirement of a collaborative practice agreement with a person licensed to practice medicine and surgery. The clinical services are limited to those associated with a normal, uncomplicated pregnancy and delivery, including the prescription of drugs and diagnostic tests; the performance of an episiotomy or a repair of a minor vaginal laceration; the initial care of the normal newborn; and family planning services, including treatment or referral of a male partner for sexually transmitted infections.

The standards of care in the ordering of tests, diagnostics services, and the prescribing of drugs shall be those standards that protect patients and are comparable to those for persons licensed to practice medicine and surgery providing the same services.

The bill also prohibited nurse-midwives engaged in the independent practice of midwifery from performing or inducing abortions or from prescribing drugs for an abortion.

Pharmacists, Pharmacy Students or Interns, and Pharmacy Technicians

Senate Sub. for HB 2055 (2017) amended the Pharmacy Act to add another exception to the requirement prescriptions be filled in strict conformity with any directions of the prescriber concerning biological products. The bill allows a pharmacist to exercise brand exchange (substitution) without prior approval from the prescriber, unless certain conditions exist. A pharmacist who receives a prescription order for a biological product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser, unless the prescriber has instructed the prescription be dispensed as written or as communicated or the biological product is not an interchangeable biological product for the prescribed biological product. The bill required pharmacists to notify the patient and prescriber of the substitution of a biological product after the exchange has occurred and established recording requirements for biological product substitutions.

The bill also defined “biological product” and “interchangeable biological product” and clarified the definition of a “brand exchange” to distinguish between a brand exchange for a prescribed drug product and brand exchange for a prescribed biological product, provided for emergency refills of biological products by pharmacists, and addressed allowable charges for brand exchange of biological products.

Additionally, the bill required the Board of Pharmacy to adopt rules and regulations restricting the tasks a pharmacy technician may perform prior to passing any required examinations and required every pharmacy technician registered after July 1, 2017, to pass a certified pharmacy technician examination approved by the Board of Pharmacy. The Board of Pharmacy established rules and regulations addressing the certification of required examinations and requests for extension (KAR 68-5-17). However, the Board of Pharmacy determined additional practice limitations prior to passage of the certification exam should not be imposed because it would place too many restrictions on on-the-job training.

The Pharmacy Act was amended by 2017 HB 2030 to change, from 18 to 12 years of age, the minimum age for a person to whom a pharmacist, or a pharmacy student or intern working under the direct supervision and control of a pharmacist, is authorized to administer a vaccine, other than the influenza vaccine, pursuant to a vaccination protocol and with the requisite training. Continuing law requires immunizations provided under the authorization of the Pharmacy Act be reported to appropriate county or state immunization registries. The bill allowed the person vaccinated or, if the person is a minor, the parent or guardian of the minor, to opt out of the registry reporting requirement.

HB 2119 (2019) amended the Pharmacy Act to permit a licensed pharmacist to administer a drug by injection that, in the judgment of the prescriber, could safely be self-administered by a patient, to a patient pursuant to a prescription order, unless the prescription order includes the words “not to be administered by a pharmacist,” or words of like effect. The bill defined “medication order” to mean an order by a prescriber for a registered patient of a Kansas licensed medical care facility. Nothing in the provisions of the bill replaces, repeals, or supersedes requirements of KSA 65-4a10, which states, among other things, no abortion shall be performed or induced by any person other than a physician licensed to practice medicine in Kansas.

Physical Therapists

In 2016, HB 2615 amended the Physical Therapy Practice Act to include the practice of dry needling within the scope of practice for licensed physical therapists, exempted licensed physical therapists from the Acupuncture Practice Act when performing dry needling, and exempted licensed acupuncturists from the Physical Therapy Practice Act. The Board of Healing Arts has adopted the required rules and regulations applicable to dry needling (KAR 100-29-18 through 100-29-21).

Physician Assistants

In 2015, Senate Sub. for HB 2225 amended the Physician Assistant Licensure Act to set the statutory limitation on the number of physician assistants (PAs) a physician may supervise to two until January 11, 2016. The Board of Healing Arts had previously been directed, pursuant to 2014 HB 2673, to establish regulations imposing limits appropriate to different care settings.

The effective date of a PA's expanded authority to dispense prescription-only drugs when authorized by a supervising physician, established by 2014 HB 2673, was amended by Senate Sub. for HB 2225 (2015) to an effective date of January 11, 2016.

Senate Sub. for HB 2225 (2015) amended the Physician Assistant Licensure Act to create the designations of “exempt license” and “federally active license.” The “federally active license” designation had been eliminated by 2014 HB 2673.

An “exempt license” may be issued to a licensed PA who is not regularly engaged in PA practice in Kansas and does not hold himself or herself out publicly to be engaged in such practice. An exempt licensee is entitled to all privileges of a PA, is subject to all provisions of the Physician Assistant Licensure Act, and is allowed to be a paid employee of a local health department or an indigent health care clinic.

The Board of Healing Arts may issue a “federally active license” to a licensed PA who practices as a PA solely in the course of employment or active duty with the federal government. Under this designation, a person may engage in limited practice outside the course of federal employment consistent with the scope of practice of the exempt licensees, except the scope is limited to performing administrative functions; providing direct patient care services gratuitously or providing supervision, direction, or consultation for no compensation (payment for subsistence allowances or actual and necessary expenses incurred in providing such services is allowed); and rendering professional services as a charitable health care provider.

Senate Sub. for HB 2225 (2015) also allowed a PA to write do-not-resuscitate (DNR) orders if delegated the authority by a physician, and revised the DNR statutory form to include a PA signature line.

It should be noted, with the enactment of 2017 Sub. for SB 85 (Simon's Law), a DNR or similar physician's order cannot be instituted for an unemancipated minor unless at least one parent or legal guardian of the minor has been informed, orally and in writing, of the intent to institute the order. A reasonable attempt to inform the other parent must be made if the other parent is reasonably available and has custodial or visitation rights. The information need not be provided in writing if, in reasonable medical judgment, the urgency of the decision requires reliance on providing the information orally. The bill provided that either parent or the unemancipated minor's guardian may refuse consent for a DNR or similar order, either orally or in writing. Further, the bill provided that no DNR or similar order can be instituted, orally or in writing, if there is a refusal of consent.

Senate Sub. for HB 2225 also changed "written protocol" to "written agreement" and "responsible physician" to "supervising physician" with regard to the authority of a PA to prescribe drugs. The bill reverted to the use of the terms in law prior to July 1, 2014, but only until January 11, 2016, when the new terms became effective. Supervising physician means a physician who has accepted responsibility for the medical services rendered and the actions of the PA while performing under the direction and supervision of the supervising physician. The Board of Healing Arts has adopted the required rules and regulations governing the practice of PAs (KAR 100-28a-1 *et seq.*).

Podiatrists

SB 28 (2019) adds doctors of podiatric medicine who have completed a two-year post-doctoral surgical residency program prior to July 1, 2007, in reconstructive rearfoot/ankle surgery to the podiatrists who may perform surgery on the ankle, provided such grandfathered podiatrists are also either board-certified or board-qualified

progressing to board certification in reconstructive rearfoot/ankle surgery by a nationally recognized certifying organization acceptable to the Board of Healing Arts. These grandfathered podiatrists were inadvertently excluded in a 2014 statutory revision.

Professional Counselors

SB 386 (2018) amended the Professional Counselors Licensure Act with regard to educational requirements for licensure as a professional counselor. In continuing law, an applicant to the BSRB for licensure as a professional counselor is required, among other things, to have earned a graduate degree in counseling. The bill allows licensure for an applicant who earned a graduate degree in a counseling-related field if the remaining qualifications set forth in statute are met. The change applies to individuals applying for initial licensure and to individuals applying for licensure who are licensed to practice professional counseling in another jurisdiction.

The bill also clarified the licensure requirement of 45 graduate semester hours in various areas set forth in statute is counseling coursework. (*Note:* See the BSRB section on the following page for changes to the regulatory statutes administered by the BSRB relating to licensure by reciprocity and provisional licenses impacting multiple professions, including professional counselors.)

Psychiatrists

HB 2615 (2016) provided for a temporary license, not to exceed two years, to be issued to persons who have completed all requirements for a doctoral degree approved by the BSRB, but have not received such degree conferral, and who provide documentation of such completion.

Social Workers

SB 15 (2019), as it pertains to social workers, provided for licensure by reciprocity for social workers at the baccalaureate, master's, and

specialist clinical levels; provided for provisional licenses for applicants deficient in the qualifications or in the quality of educational experience required for licensure to allow the applicants time to fulfill remedial or other requirements prescribed by the BSRB; amended provisions related to temporary licenses for applicants who met all requirements except for taking the required examination; clarified the use of professional titles; and amended licensure requirements for a specialist clinical social worker to reduce the number of hours of postgraduate supervised professional experience required to 3,000 hours and the number of hours of clinical supervision to not less than 100 hours. The bill also amended a statute pertaining to an exemption from the examination requirement for licensure as a social worker to require only that the applicant has taken and passed an examination similar to that for which the exemption is sought, as determined by the BSRB.

Additionally, the bill amended requirements for licensure by reciprocity for other professions licensed by the BSRB, which are discussed in the section below on BSRB changes.

Other Changes Related to Licensure of Health Professions

Changes made from 2015 to 2019 related to the Board of Nursing, the BSRB, the Healing Arts Act, and the Radiologic Technologists Practice Act that affected multiple health professions are outlined as follows.

Board of Nursing

HB 2496 (2018) enacted the Nurse Licensure Compact (Compact) and amended the Kansas Nurse Practice Act to enable the Board of Nursing to carry out the provisions of the Compact and establish the duties of registered nurses (RNs) and licensed practical nurses (LPNs) under the Compact. The Compact allows RNs and LPNs to have one multi-state license, with the privilege to practice in the home state of Kansas and in other Compact states physically, electronically, telephonically, or any combination of those. All provisions of the bill took effect by July 1, 2019.

Behavioral Sciences Regulatory Board

HB 2615 (2016) standardized regulatory statutes administered by the BSRB that apply to psychologists, professional counselors, social workers, addiction counselors, and marriage and family therapists. The bill clarified the duties, powers, and functions of the BSRB as involving the regulation of individuals under the Social Workers Licensure Act, the Licensure of Master's Level Psychologists Act, the ABA Licensure Act, the Marriage and Family Therapists Licensure Act, and the Addiction Counselor Licensure Act. The standardized provisions pertain to licensure by reciprocity, the reasons for disciplinary action against a licensee, and the licensure fees charged by the BSRB.

The bill allows the BRSB to require fingerprinting and background checks on licensees, places licensed psychologists and social workers under the Kansas Administrative Procedure Act, establishes supervisory training standards for professional counselors and marriage and family therapists, and creates a new category of licensure for master's level addiction counselors.

Additionally, the bill requires a two-thirds majority vote of the BSRB to issue or reinstate the license of an applicant with a felony conviction. The bill updated several statutes by deleting the terms "state certified alcohol and drug abuse counselor" and "counselor" from applicable statutes and inserting "licensed addiction counselor," "licensed master's addiction counselor," and "licensed clinical addiction counselor" into applicable statutes.

In addition to the changes previously discussed regarding licensure for social workers at baccalaureate, master's, and specialist clinical levels, SB 15 (2019) made several changes to the requirements for licensure across other professions licensed by the BSRB. The bill amended requirements for licensure by reciprocity to create uniform requirements for reciprocal licensure across the professions licensed by the BSRB. SB 15 also reduced the number of months an applicant needs to be registered, certified, or licensed to practice a profession in another jurisdiction. The amended

time frame, which is the same as for the practice of social work at the three levels, applies to the following: professional counseling; marriage and family therapy; addiction counseling at the baccalaureate, master's, and clinical levels; doctoral level psychologist; and master's level psychologist. The bill also provides for a provisional license to allow time for remediation of a deficiency for these same professions. Additionally, the bill allows an applicant for social work licensure and for the following professions to apply for a temporary license pending completion of the required examination: marriage and family therapists, addiction counselors, master's addiction counselors, psychologists, and doctoral and master's level psychologists.

Healing Arts Act

The Healing Arts Act was amended by 2015 Senate Sub. for HB 2225 to clarify a reentry license must be an "active" reentry license and to create a resident active license. A resident active licensee is entitled to all privileges attendant to the branch of the healing arts for which such license is used. A resident active license can be issued to a person who has successfully completed at least one year of approved postgraduate training; is engaged in a full-time, approved postgraduate training program; and has passed the examinations for licensure. The Board of Healing Arts is required to adopt rules and regulations regarding issuance, maintenance, and renewal of the license. The Board of Healing Arts submitted KAR 100-6-2a, pursuant to KSA 65-2873b, to the Department of Administration in July 2018. As of October 15, 2019, no public hearing has been scheduled on the proposed regulation.

Additionally, Senate Sub. for HB 2225 expanded the scope of the "special permit"—to include the practice of medicine and surgery—that may be issued by the Board of Healing Arts to any person who has completed undergraduate training at the University of Kansas School of Medicine who has not yet commenced a full-time approved postgraduate training program. The holder of the special permit is allowed to be compensated by a supervising physician, but is not allowed to charge patients a fee for services rendered; is not

allowed to engage in private practice; is allowed to prescribe drugs, but not controlled substances; is required to clearly identify himself or herself as a physician in training; is not deemed to be rendering professional service as a health care provider for the purposes of professional liability insurance; is subject to all provisions of the Healing Arts Act, except as otherwise provided in the bill; and is required to be supervised by a physician who is physically present within the health care facility and is immediately available.

The special permit expires the day the holder of the permit becomes engaged in a full-time approved postgraduate training program or one year from issuance. The permit may be renewed one time. The Board of Healing Arts is allowed to adopt rules and regulations to carry out the provisions related to the special permit holder. The Board has not identified a need for regulations specific to special permit holders, other than the generally applicable regulations already in existence.

In 2017, Senate Sub. for HB 2027 amended the statute in the Healing Arts Act governing institutional licenses and restrictions placed on practice privileges of these license holders. The bill reinserted the language removed by 2014 HB 2673 to allow for reinstatement of an institutional license of an individual who was issued an institutional license prior to May 9, 1997, and who is providing mental health services under a written protocol with a person who holds a Kansas license to practice medicine and surgery other than an institutional license.

HB 2119 (2019) allowed a business entity issued a certificate of authorization by the Board of Healing Arts to employ or contract with one or more licensees of the Board, for the purpose of providing professional services for which such licensee holds a valid license issued by the Board. The bill defined a "licensee" to mean a person licensed by the Board to practice medicine and surgery or chiropractic and whose license is in a full active status and has not been revoked, suspended, limited or placed under probationary conditions. Medical care facilities in compliance with Kansas Department of Health and Environment licensure requirements and defined as a hospital, ambulatory surgical

center, or recuperation center are exempt from the provisions of the bill. The provisions of the bill were added to the Kansas Healing Arts Act. The Board is required to adopt rules and regulations as necessary to implement and administer the provisions in the bill. The provisions of the bill authorizing business entities to hire physicians and chiropractors take effect March 1, 2020.

Radiologic Technologists Practice Act

SB 15 (2019), in addition to previously described changes affecting naturopathic doctors, amended the definition of “licensed practitioner” in the Radiologic Technologists Practice Act to include a Kansas-licensed PA, APRN, and naturopathic doctor.

Table A
2011-2014 Changes in Health Professions’ Scope of Practice

Year	Profession	Bill Number	Change in Scope of Practice
2011	Addiction Counselor	HB 2182	Case management was removed from the scope of addiction counseling; expanded the independent practice of licensed clinical addiction counselors (LCACs); licensed addiction counselors (LACs) were allowed to practice in exempted treatment facilities; and the independent practice of addiction counseling by individuals credentialed as alcohol and drug abuse counselors who met the requirements was allowed.
2011	Advanced Practice Registered Nurse (APRN)	HB 2182	All references in the Nurse Practice Act to an advanced registered nurse practitioner were changed to APRN and the licensure of APRNs was required.
2011	Dentist	HB 2182	The Dental Practices Act was amended to allow for the franchise practice of dentistry and for licensed dentists to practice as employees of a general hospital in counties with populations of less than 50,000.
2011	Emergency Medical Services (EMS) Attendants	HB 2182	Statutory changes made in 2010 allowing EMS attendants to transition from authorized activities to a scope of practice were amended to support the transition, provide transition options, establish conditions to be met to transition to a higher level, and establish scopes of practice for EMS attendants.
2012	Addiction Counselor	SB 290	The Addiction Counselor Act was amended to clarify the licensure requirements for LACs and LCACs and to address reciprocal licensure.
2012	Dentist	HB 2631	A special volunteer dental license was established allowing dentists retired from active practice to provide of dental care without payment or compensation to indigent and underserved persons in the state.
2012	Dental Hygienist	HB 2631	The Dental Practices Act was amended to create an extended care permit level III (ECP III) and establish the ECP III scope of practice.
2012	Optometrist	HB 2525	The optometry law was updated to reflect a single licensure level of optometrists and to clarify the minor surgical procedures optometrists may perform.

Table A			
2011-2014 Changes in Health Professions' Scope of Practice			
Year	Profession	Bill Number	Change in Scope of Practice
2012	Pharmacist	SB 211	An exemption was added to the Pharmacy Act to allow a pharmacist to provide up to a three-month supply of a prescription drug that is not a controlled substance or a psychotherapeutic drug under certain conditions.
2013	Physical Therapist (PT)	HB 2066	The Physical Therapy Act was amended to allow PTs to initiate a physical therapy treatment without referral from a licensed health care practitioner and to establish a treatment when a referral would need to be obtained to continue such treatment. PTs were also authorized to perform wound debridement services after approval by certain health care practitioners.
2014	Applied Behavior Analysis Service Provider	HB 2744	The Applied Behavior Analysis (ABA) Licensure Act was created requiring licensure of ABA service providers by the Behavioral Sciences Regulatory Board, establishing the licensed assistant behavior analyst and the licensed behavior analyst, establishing Autism Spectrum Disorder (ASD) health insurance coverage, and phasing in licensure requirements for ABA providers and exempting certain providers from licensure.
2014	Institutional License Holder providing mental health services	HB 2673	The Healing Arts Act was amended to require institutional license holders to be employed by certain mental health facilities for at least three years and to limit such licensee's practice to providing mental health services that are part of the licensee's paid duties and performed on behalf of the employer.
2014	Pharmacist	Senate Sub. for HB 2146	The "practice of pharmacy" definition was amended to include performance of collaborative drug therapy management pursuant to a written collaborative practice agreement with one or more physicians who have an established physician-patient relationship.
2014	Pharmacist Intern	Senate Sub. for HB 2146	Provisions relating to the registration, discipline, training, and direct oversight of pharmacist interns by a pharmacist were added to the Pharmacy Act.
2014	Physician Assistant (PA)	HB 2673	The Kansas Physician Assistant Licensure Act was amended to replace the statutory limitation on the number of PAs supervised by a physician; to direct the Board of Healing Arts to establish regulations imposing limits on physician supervision of PAs appropriate to different patient care settings and create new PA licensure designations; to create an "active license" and "licensure by endorsement" and eliminate a "federally active license;" and to allow PAs to dispense prescription-only drugs under certain conditions when authorized by a supervising physician. (<i>Note: See 2015 HB 2225 in the PA section of this article for subsequent changes.</i>)
2014	Podiatrist	HB 2673	The Podiatry Act was amended to expand and clarify the scope of podiatry and podiatric surgery related to surgery on the ankle and to create a Podiatry Interdisciplinary Advisory Committee to the Board of Healing Arts.

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G-1
Foster Care

G-2
Medicaid Waivers

G-3
Recent Changes to
Health Professions'
Scope of Practice

G-4
State Hospitals

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Health and Social Services

G-4 State Hospitals

The Kansas Department for Aging and Disability Services (KDADS) is responsible for the administration of Larned State Hospital (LSH) and Osawatomie State Hospital (OSH) for Kansans suffering from mental illness, and for the Kansas Neurological Institute (KNI) and Parsons State Hospital and Training Center (PSH&TC) for individuals with intellectual and developmental disabilities. An overview of issues related to the state hospitals, summaries of recent legislation, and an overview of state hospital financing are provided in this article.

Osawatomie State Hospital

OSH, established in 1855, provides services to adults diagnosed with psychiatric disorders, regardless of ability to pay or legal status. OSH is licensed by the Kansas Department of Health and Environment (KDHE) to serve a maximum of 206 patients and currently serves 143 individuals in collaboration with 12 Community Mental Health Centers. These centers refer individuals to OSH through a screening process; however, a moratorium on voluntary admissions and a limit on involuntary admissions was issued in June 2015.

In addition to being licensed by KDHE, OSH receives oversight and certification from the federal Centers for Medicare and Medicaid Services (CMS). CMS issues Medicare and Medicaid Disproportionate Share for Hospital (DSH) programs payments to OSH. In December 2015, CMS decertified OSH and subsequently suspended Medicare and DSH payments.

Decertification. In 2014, OSH began having issues with maintaining census. OSH was over-census for 9 months from March 3 through December 6, 2014. The number of patients at OSH reached an overall 10-year high on August 23, 2014, with a weekly average of 251 patients. (*Note:* OSH began maintaining census at its licensed capacity on December 13, 2014.) The increased census during this 9-month period triggered a CMS survey of OSH. On December 5, 2014, CMS sent a letter citing issues with the physical environment at OSH that had to be remediated to maintain certification. Renovations to complete a Plan of Correction for CMS began in Spring 2015. In May 2015, 60 beds were removed from use to complete the CMS-mandated construction. Approximately \$3.5

million was added for 2016 and \$3.9 million each year after to support individuals and communities impacted by the OSH reduced census during renovation.

On November 3, 2015, CMS conducted another survey at OSH amid concerns the nursing service requirements were not being met. On November 24, 2015, CMS released its survey findings stating, among other things, various nursing security protocols were not being followed. On December 21, 2015, CMS decertified OSH, citing the facility for issues related to patient health and safety. The main impact on funding was through the loss of DSH and Medicare reimbursements for any patients who would have been eligible during their treatment at OSH. (*Note:* For the period that the entire hospital was decertified, OSH was still admitting patients in accordance with the limitations of the moratorium; CMS decertification pertained to billing rather than admissions.)

On May 8th, 2017, federal CMS surveyors conducted a full recertification survey for the 60 beds of Adair Acute Care (AAC) at OSH. On June 9, 2017, CMS released a report citing OSH for sanitation issues related to the kitchen, disease control for patients, and internal policies needing revisions. KDADS took corrective actions and requested CMS to revisit. In August and November 2017, CMS returned to survey issues previously cited at AAC and found no issues with AAC for these limited scope deficiency surveys. In December 2017, CMS notified OSH the 60 beds that comprise AAC were recertified for federal reimbursements and the hospital would begin to receive partial DSH payments.

Moratorium. The Secretary for Aging and Disability Services (Secretary) declared a moratorium on OSH admissions on June 21, 2015, to control the patient census. OSH did not close, nor stop admitting new patients; rather, admission of voluntary patients was halted, the census for involuntary patients was capped at 146, and a waiting list was created. KSA 59-2968 authorizes the Secretary to notify the Kansas Supreme Court and each district court with jurisdiction over all or part of the catchment area served by a state psychiatric hospital that the census of a particular treatment program

of that state psychiatric hospital has reached capacity and no more patients may be admitted. Following notification that a state psychiatric hospital program has reached its capacity and no more patients may be admitted, any district court with jurisdiction over all or part of the catchment area served by that state psychiatric hospital, and any participating mental health center that serves all or part of that same catchment area, may request that patients needing that treatment program be placed on a waiting list maintained by that state psychiatric hospital. Patients are admitted in chronological order. In July 2017, OSH increased its patient census to 158 and at the Legislative Budget Committee (LBC) meeting on October 3, 2018, the Secretary indicated OSH had increased its staffing to accommodate 166 patients. The Secretary informed the LBC that while OSH has the capacity to provide treatment to 166 patients, the patient census had been in the range of 130 for the past fiscal year due in part to regional efforts such as crisis unit beds, and OSH was considering lifting the moratorium on voluntary admissions. As of October 2019, the moratorium at OSH remains in place.

Larned State Hospital

LSH, located in South Central Kansas, is the largest psychiatric facility in the state and serves the western two-thirds of the state. The hospital serves adults with serious and persistent mental illnesses, most of whom have been deemed a danger to themselves or others. LSH has a Sexual Predator Treatment Program (SPTP) to treat offenders who have completed their prison sentences but have been involuntarily committed because a judge or jury found they were “sexually violent predators,” which means they have a “mental abnormality or personality disorder” that makes it likely they will engage in sexual violence again if not treated. In February 2018, LSH was surveyed by The Joint Commission (TJC), and the Psychiatric Services Program (PSP) was fully accredited and certified for federal reimbursements by both TJC and CMS. The accreditation for the State Security Program (SSP) and the SPTP was discontinued. All programs are licensed for operation by the Kansas Department of Health and Environment.

In FY 2019, the average daily census for the PSP was 67 individuals and the average daily census for the SSP was 119 individuals.

The SPTP, established by statute in 1994, provides for the civil commitment of persons identified by the law as sexually violent predators. KDADS states the program's two missions are to provide for the safety of Kansas citizens by establishing a secure environment in which persons identified as sexually violent predators can reside and to offer treatment with the aim of reducing their risk for re-offending while allowing motivated persons who complete treatment to return to society. The program serves adult male patients from the state who have been adjudicated through Kansas sexually violent predator treatment laws and are committed for treatment under civil statutes. As of September 2019, there were 285 individuals in the SPTP program, including 246 individuals at the LSH main SPTP campus; 20 individuals at the reintegration units at LSH, OSH, and PSH&TC; and 19 individuals on conditional release.

Legislative Post Audits. The Legislative Division of Post Audit (LPA) completed two performance audits on the SPTP. The first, published in September 2013, looked at whether the program was appropriately managed to ensure the safety and well-being of program staff and offenders. The audit found a significant number of direct care staff positions were vacant; program staff worked a significant amount of overtime to provide safety, security, and treatment; and even with significant overtime, the program failed to meet its internal minimum staffing goals.

In April 2015, the second LPA performance audit report, "Larned State Hospital: Reviewing the Operations of the Sexual Predator Treatment Program, Part 2," considered how Kansas' SPTP compared to similar programs in other states and best practices, and what actions could be taken to reduce the number of offenders committed to the SPTP.

That audit found the Kansas program did not adhere to recommended practices for sexual predator programs to emphasize individualized treatment; residents completing the first five phases of the program were not necessarily

equipped with the skills to be successful in finding a job or basic life skills; appropriate records and documentation to effectively manage the program were not maintained; and annual reports had not been filed as required by statute.

Additionally, the audit noted an insufficient local labor force will create staffing problems for the SPTP as it grows. The audit considered six options for reducing the resident population. Copies of the full audit reports and the highlights may be accessed at <http://www.kslpa.org/>.

Following the audits by LPA, LSH made significant structural changes to the SPTP program, including modifications in the types of treatment provided, the manner of providing treatment, and the reintegration and conditional release programs.

Staffing. Staffing shortages have persisted at LSH, resulting in an increase of overtime hours worked by existing staff. KDADS reported the hospital has struggled to recruit staff in a rural area with low unemployment. At the April 18, 2016, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (KanCare Oversight Committee) meeting, LSH employees discussed staffing problems at the facility. The testimony outlined how mandatory overtime and limited time between shifts were taking a toll on workers and their families. Those testifying spoke as individuals and not as representatives of KDADS or other state agencies. The Interim Secretary said staffing concerns at LSH were valid, and he had been working to improve employee morale since he took over in December 2015. In April 2017, the Secretary reported to the KanCare Oversight Committee staffing vacancies were decreasing and overtime was diminishing. However, in August 2018, the Secretary reported to the KanCare Oversight Committee that, despite efforts to improve staffing, recruitment and retention continues to be a problem at LSH. In August 2019, the Secretary reported to the KanCare Oversight Committee that LSH is exploring plans to work with counties, courts, and others to complete forensic evaluations and provide other services at locations outside of the hospital in an effort to lower mandated overtime,

reduce wait time for evaluations, and reduce transportation costs. The Secretary reported staffing continues to be a challenge at LSH.

Parsons State Hospital and Training Center

PSH&TC is one of two residential treatment, training, and care facilities operated by the State of Kansas to serve individuals with intellectual and developmental disabilities whose circumstances require specialized residential service provisions. PSH&TC was originally opened in 1903 and primarily treats adult patients, though approximately 20 youth also receive treatment and reside at the facility. In FY 2019, the average daily census for patients in the Habilitation and Treatment Program of the hospital was 161 patients.

In May 2018, an annual survey revealed PSH&TC was out of compliance with guidelines on facility staffing for physical therapy. In July 2018, a complaint survey was conducted, and the hospital was cited for issues with treatment of a patient and was placed in immediate jeopardy. The hospital was informed it must submit an acceptable plan of correction, or a recommendation would be made that its Medicare contract be terminated, which would prohibit the hospital from receiving Medicaid or Medicare reimbursements for patient care. PSH&TC submitted plans of correction for both surveys and was informed in October 2018 that the plans had been accepted, and the hospital was no longer in immediate jeopardy of losing federal funding.

Kansas Neurological Institute

KNI, established in 1959, provides both a treatment center and residence for adults with intellectual and developmental disabilities who require a high level of ongoing support. Many residents require intensive physical and medical supports, and about one-third are unable to eat by mouth and receive their nutrition through feeding tubes. In FY 2019, the average daily census in the Program and Supported Living Program of the hospital was 140 patients.

Overtime All Funds Expenditures for the Kansas State Hospitals FY 2018 and FY 2019		
	FY 2018	FY 2019
KNI	\$ 328,028	\$ 440,245
LSH	4,585,740	4,474,756
OSH	1,068,535	1,485,996
PSH&TC	525,377	566,960

State Hospital Commission

In June 2019, the State Hospital Commission was created within KDADS to provide leadership, guidance, direction, oversight, and training and support to the four state hospitals.

Recent Legislative Action

Several bills were considered during the 2017, 2018, and 2019 Legislative Sessions.

2017 Policy

Senate Sub. for HB 2278 was enacted by the 2017 Legislature and exempted the state hospitals and other select entities from a general requirement in law that public buildings have adequate security measures in place before the concealed carry of handguns could be prohibited.

Senate Sub. for HB 2002 was enacted in 2017 and authorized a Mental Health Task Force to meet in the fall of 2017 to study certain topics related to the current status of various mental health programs in Kansas and to provide recommendations to the 2018 Legislature. The Mental Health Task Force was facilitated by the Kansas Health Institute and a report was provided to the 2018 Legislature.

2017 Fiscal

The 2017 Legislature approved \$11.8 million in FY 2017 and \$6.6 million for FY 2018 as additional operating funding for OSH, primarily because the hospital lost federal funding as a result of decertification. The Legislature also added \$4.7 million for both FY 2018 and FY 2019 to open at

least 20 additional beds for patients at OSH or in the community. The Legislature added language requiring KDADS to complete an engineering survey on the buildings at OSH to determine which buildings could be renovated and which buildings should be demolished, and the costs associated with both options. The Legislature also required KDADS to issue a request for proposal (RFP) for the construction of a 100-bed psychiatric care facility at OSH.

The 2017 Legislature added \$6.5 million in FY 2017, FY 2018, and FY 2019 for LSH to replace federal and other funding lost due to a decrease in the number of patients eligible for Medicaid and Medicare reimbursements and cost recoupment by CMS due to reconciliation of past patient categorizations.

2018 Policy

The 2018 Session passed House Sub. for SB 109 reauthorizing the Mental Health Task Force to meet in Fall 2018 to study the Kansas mental health delivery system and develop a strategic plan addressing the recommendations of the January 8, 2018, Mental Health Task Force report, including ascertaining the location and total number of psychiatric beds needed to most effectively deliver mental health services in Kansas.

2018 Fiscal

The 2018 Legislature added \$8.2 million in FY 2018 and \$16.1 million for FY 2019 for additional operating expenditures at OSH. The Legislature added \$2.5 million in FY 2018 and \$4.2 million for FY 2019 for LSH for expansion of the SPTP. Also, the Legislature added \$559,765 for PSH&TC for FY 2019 to provide funding for 12.0 additional support staff positions as a result of the facility experiencing an increased number of patients requiring one-to-one or two-to-one care for extended periods of time.

2019 Policy

In 2019, the Legislature passed House Sub. for SB 25, which included language requiring

OSH to create a comprehensive plan to end the moratorium at the hospital and to report this plan by January 2020 to the House Social Services Budget Committee, the House Health and Human Services Committee, and the Senate Public Health and Welfare Committee.

2019 Fiscal

The 2019 Legislature added funding to replace a shortfall in federal revenue at the state hospitals, including \$951,224 for PSH&TC and \$853,494 for the KNI in FY 2019. The Legislature added funding due to adjustments in the federal Disproportionate Share Hospital allotments, including \$617,164 for LSH in both FY 2019 and FY 2020; \$4.0 million for OSH in FY 2019; and \$1.1 million for OSH for FY 2020. The Legislature added funding to decrease agency salary shrinkage at the hospitals, including \$951,224 for PSH&TC for FY 2020, \$853,494 for KNI for FY 2020, \$253,867 for LSH in both FY 2019 and FY 2020, and \$1.4 million for OSH in both FY 2019 and FY 2020. Also, the Legislature added funding at LSH for an Uninterrupted Power Supply System for the Isaac Ray Building (\$54,405) and a Personal Protective Device System within the Psychiatric Services Program (\$567,850). The Legislature added \$186,931 for salary adjustments at LSH to reduce turnover and the number of vacant positions and required the agency to provide a report to the Legislative Budget Committee prior to the beginning of the 2020 Legislative session on the impact of the funding on agency staffing vacancies and turnover.

State Hospital Financing

The state hospitals are primarily funded through three basic sources. The first is the State General Fund, which consists primarily of money collected through various statewide taxes. The second is each hospital's fee fund, which includes collections from Medicare, private payments, Social Security, and insurance. The third source is federal Title XIX funding, also known as Medicaid. The federal Title XIX funding is transferred to the KDADS central pool and is redistributed among the four state hospitals.

State developmental disabilities hospitals (KNI and PSH&TC) are Medicaid certified as intermediate care facilities for persons with developmental disabilities, and nearly all of the people living in the facilities are covered by Medicaid. The state developmental disabilities hospitals submit annual cost reports that establish per diem rates they charge to Medicaid for each day a person covered by Medicaid lives in the facility.

The state mental health hospitals (LSH and OSH) establish per diem rates in much the same way as the state developmental disabilities hospitals, but are classified as institutions for

mental disease. Due to federal rules, most state mental health hospital patients are not eligible for standard Medicaid match, but these hospitals are eligible for Medicaid payments through the DSH program. This program assists all acute care hospitals that serve a disproportionately high number of indigent persons. Kansas is currently pursuing a waiver to the federal rule prohibiting a Medicaid match for institutions for mental disease. In addition, Congress is currently considering changes to federal laws that may allow funding for short periods in cases where a mental impairment is combined with a opioid use disorder.

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H-1 Adoption of Minors: Statutory Overview

Adoption establishes a legal parent-child relationship between a child and third persons and terminates existing rights and obligations between a child and his or her biological parents. In Kansas, the Adoption and Relinquishment Act (KSA 59-2111 to 59-2144) governs adoptions, including termination of parental rights and the transfer of legal custody to and creation of legal rights in the adoptive parents. Any adult or married couple may adopt.

KSA 59-2112 defines the different methods of adopting: “adult adoption,” “agency adoption,” “independent adoption,” and “stepparent adoption.” This article focuses on adoption of minors. Agency adoptions are handled by a public or private entity lawfully authorized to place children for adoption, consent to the adoption, and care for children until they are adopted or reach majority. Independent adoptions can occur directly with an adoptive family or through an intermediary such as a doctor, lawyer, or friend. Stepparent adoptions involve the adoption of a minor child by the spouse of a biological parent, which requires termination of the parental rights of only one natural parent.

Jurisdiction and Venue

In Kansas, district courts may hear adoption petitions; however, the court must have jurisdiction. Generally, Kansas will have jurisdiction if the birth mother and adoptive parents are all Kansas residents. If the child is of Native American heritage, the Indian Child Welfare Act, 25 USC §§ 1901 to 1963, may apply. Further, the parties may need to comply with the Interstate Compact for the Placement of Children (KSA 38-1201 to 38-1206) if the child is born in Kansas and is to be placed with adoptive parents in another state or is born out of state and an agency will be involved in the adoption in Kansas.

Additional requirements exist for intercountry adoptions. Kansas law provides a foreign adoption decree will have the same force and effect as an adoption filed and finalized in Kansas if the person adopting is a Kansas resident, the adoption was obtained pursuant to the laws of the foreign country, the adoption is evidenced by proof of lawful admission into the United States, and the foreign decree is filed and recorded with any county within the state. The

U.S. Department of State outlines procedures for intercountry adoptions at <https://travel.state.gov/content/travel/en/Intercountry-Adoption.html>.

Legislation enacted in 2018 (SB 284) clarifies jurisdiction over adoption proceedings, including a proceeding to terminate parental rights, is governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (KSA 23-37,101 to 37,405). If at the time the petition is filed a proceeding concerning the custody or adoption of the minor is pending in another state exercising jurisdiction pursuant to the UCCJEA, Kansas may not exercise jurisdiction unless the other state's court stays its proceeding. Similarly, if another state has issued a decree or order concerning custody, Kansas may not exercise jurisdiction unless the court of the state issuing the order does not have continuing jurisdiction, has declined to exercise jurisdiction, or does not have jurisdiction. For more information on the UCCJEA, see [Briefing Book article H-2 Child Custody and Visitation Procedures](#).

Petition

KSA 59-2128 lists the required contents of the petition and requires the following items be filed with the petition:

- Written consents to adoption;
- Background information for the child's biological parents;
- Accounting for all consideration and disbursements; and
- Any required affidavit concerning venue.

Consent

In an independent adoption, consent is required from:

- The child's living parents; one of the parents if the other's consent is unnecessary pursuant to Kansas law; the child's legal guardian if both parents are dead or their consents are unnecessary; or the court terminating parental rights under the Revised Code for the Care

of Children (the Child in Need of Care [CINC] Code), KSA 38-2201 to 38-2286;

- Any court having jurisdiction over the child pursuant to the CINC Code if parental rights have not been terminated; and
- Any child older than 14 sought to be adopted who is of sound intellect.

For stepparent adoptions, consent must be given by the living parents of a child; one of the parents if the other's consent is unnecessary; or the judge of any court having jurisdiction over the child pursuant to the CINC Code if parental rights have not been terminated, as well as any child older than 14 sought to be adopted who is of sound intellect.

KSA 59-2114 requires the consent to be in writing and acknowledged before a judge or an officer authorized to take acknowledgments, such as a notary. If acknowledged before a judge, the judge must inform the consenting person of the legal consequences of the consent. The consent is final when executed "unless the consenting party, prior to final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given." Minority of the parent does not invalidate the parent's consent; however, birth parents younger than 18 must have the advice of independent legal counsel on the consequences of execution of a consent. Unless the minor is otherwise represented, the petitioner or child placement agency must pay for the cost of independent legal counsel. The natural mother cannot give consent until 12 hours after the birth of the child. A father may give consent any time after the birth of a child and may give consent before the birth of the child if he has the advice of independent legal counsel as to the consequences prior to its execution. The attorney providing independent legal advice shall be present at the execution of the consent.

For an agency adoption, once parents relinquish their child to an agency, consent must be given by the authorized representative of the agency and any child older than 14 sought to be adopted who is of sound intellect.

Relinquishment

Relinquishments to an agency will be deemed sufficient if in substantial compliance with the form created by the Judicial Council. Like consents, the relinquishment must be in writing and acknowledged by a notary or the court. (Again, the judge must inform the person of the legal consequences of the relinquishment.) Similar to consent, the law requires independent counsel for a minor relinquishing a child and provides the natural mother cannot relinquish the child until 12 hours after the birth. A father may relinquish any time after the birth of a child. If the agency accepts the relinquishment, the agency stands *in loco parentis* for the child and has the rights of a parent or legal guardian, including the power to place the child for adoption. If a person relinquishes the child, all parental rights are terminated.

Termination of Parental Rights

When parents consent to an adoption, they agree to the termination of their parental rights, although the rights are not terminated until the judge makes the final decree of adoption. If a parent does not sign a consent, a court can terminate parental rights pursuant to a CINC proceeding. For more information on CINC proceedings, see [Briefing Book article G-1 Foster Care](#).

Additionally, KSA 59-2136 addresses circumstances where the necessity of a parent's consent or relinquishment is in question. While it frequently refers to fathers, it specifies insofar as it is practicable, those provisions applicable to fathers also apply to mothers. Absent a father's consent, his parental rights must be terminated. If a father is unknown or his whereabouts are unknown, the court must make an effort to identify the father; appoint an attorney to represent him; and, if no person is identified as the father or possible father or if the father's whereabouts are unknown, order publication notice of the hearing. If identified, he must receive notice of the termination proceedings. If no father is identified or if, after receiving notice, he fails to appear or does not claim custodial rights, the court will terminate his parental rights. If a father is identified to the

court and claims parental rights, the court must determine parentage pursuant to the Kansas Parentage Act (KSA 23-2201 to 23-2225). Further, if the father cannot employ an attorney, the court must appoint one for him. Thereafter, the court may terminate a parent's rights and find the consent or relinquishment unnecessary if it determines by clear and convincing evidence:

- The father abandoned or neglected the child after having knowledge of the child's birth;
- The father is unfit or incapable of giving consent;
- The father has made no reasonable efforts to support or communicate with the child after having knowledge of this child's birth;
- The father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;
- The father abandoned the mother after having knowledge of the pregnancy;
- The birth of the child was the result of the rape of the mother; or
- The father has failed to assume the duties of a parent for two consecutive years immediately preceding the filing of the petition to adopt.

In determining whether to terminate parental rights, the court must consider all of the relevant surrounding circumstances and may disregard incidental visitations, contacts, communications, or contributions.

Assessments

Petitioners must obtain an assessment performed by a person meeting statutory qualifications and file a report of the assessment with the court before the hearing on the petition, including the results of the investigation of the adoptive parents, their home, and their ability to care for the child. The assessment and report are valid only if performed within a year of filing the petition for adoption.

Temporary Custody Order

In an independent or agency adoption, the court may issue a temporary custody order pending the hearing. If the court places the child in a home not licensed to provide such care, it must first be assessed by a person or agency authorized to make assessments, or the court may “expeditiously” conduct an evidentiary hearing, including testimony by the petitioners, prior to making the placement.

Adoption Hearing and Final Decree

KSA 59-2133 requires the court to set the hearing within 60 days from the date of filing the adoption petition. Additionally, in independent and stepparent adoptions, it requires notice be given to parents or possible parents at least ten calendar days before the hearing unless parental rights have been terminated or waived, and to any person who has physical custody of the child, unless waived. The court may designate others to be notified. In agency adoptions, notice must be served upon the consenting agency, the parents or possible parents, any relinquishing party, and any person who has physical custody of the child at least ten calendar days before the hearing, unless waived. After the hearing of the petition, the court considers the assessment and all evidence and, if the adoption is granted, makes a final decree of adoption.

An adopted child is entitled to the same personal and property rights as a birth child of the adoptive parents, who likewise are entitled to exercise all the rights of a birth parent and are subject to all the liabilities of that relationship. Both KSA 59-2118 and KSA 59-2136 allow children to inherit from their birth parents after parental rights have been terminated, although the birth parents’ right to inherit is severed at that time.

Recent Legislation

Legislation enacted in 2018, SB 284, created the Adoption Protection Act (codified at KSA 2019 Supp. 60-5322), which states, notwithstanding any other provision of state law and to the extent

allowed by federal law, no child placement agency (CPA) shall be required to perform, assist, counsel, recommend, consent to, refer, or otherwise participate in placement of a child for foster care or adoption when the proposed placement of the child violates the CPA’s sincerely held religious beliefs. The bill also prohibits taking the following actions against a CPA, if taken solely because of the CPA’s objection to providing any of the services described above on the grounds of such religious beliefs:

- State agency or political subdivision denial of a license, permit, or other authorization or denial of renewal, revocation, or suspension of the same;
- Denial of participation in a Department for Children and Families (DCF) program in which CPAs are allowed to participate;
- Denial of reimbursement for performing foster care placement or adoption services on behalf of an entity that has a contract with DCF as a case management contractor; or
- Imposition of a civil fine or other adverse administrative action or any claim or cause of action under any state or local law.

The CPA’s sincerely held religious beliefs must be described in the CPA’s organizing documents, written policies, or such other written document approved by the CPA’s governing body. The provisions of the bill do not apply to an entity while the entity has a contract with DCF as a case management contractor.

The bill also made numerous amendments to the Adoption and Relinquishment Act based on Kansas Judicial Council recommendations.

Legislation introduced in 2019, HB 2164, would repeal the Adoption Protection Act. The bill was referred to the House Committee on Federal and State Affairs. No further action was taken on the bill during the 2019 Session.

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H-2 Child Custody and Visitation Procedures

Kansas defines “legal custody” as “the allocation of parenting responsibilities between parents, or any person acting as a parent, including decision-making rights and responsibilities pertaining to matters of child health, education and welfare” (KSA 2019 Supp. 23-3211). Within that context, Kansas law distinguishes between “residency” and “parenting time.” Residency refers to the parent with whom the child lives, while parenting time consists of any time a parent spends with a child. The term “visitation” is reserved for time nonparents are allowed to spend with a child.

Initial Determination

The standard for awarding custody, residency, parenting time, and visitation is what is in the “best interests” of the child. Courts can determine these issues when a petition is filed for divorce, paternity, a protection order, guardianship of a minor, or adoption.

To determine custody, a court must have authority under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), KSA 2019 Supp. 23-37,101 to 23-37,405. The first time custody is considered, only a court in the child’s “home state” may make a determination. Exceptions apply when there is no home state, there is a “significant connection” to another state, or there is an emergency, *e.g.*, the child has been abandoned or is in danger of actual or threatened mistreatment or abuse. After a court assumes home state jurisdiction, other states must recognize any orders it issues.

Legal custody can be joint, meaning the parties have equal rights, or sole, when the court finds specific reasons why joint legal custody is not in the child’s best interests (KSA 2019 Supp. 23-3206). After awarding legal custody, the court will determine residency, parenting time, and visitation.

Residency may be awarded to one or both parents, or, if the child is a Child in Need of Care (CINC) and neither parent is found to be fit, to a third party. In determining residency, KSA 2019 Supp. 23-3207 requires parents to prepare either an agreed parenting plan or, if there is a dispute, proposed parenting plans for the court to consider. For more information on parenting plans, see

KSA 2019 Supp. 23-3211 to 23-3214. Based on the principle that fit parents act in the best interests of their children, an agreed parenting plan is presumed to be in a child's best interests. Absent an agreement, however, or if the court finds specific reasons why the parenting plan is not in the child's best interests, it will consider all relevant factors, including those outlined in KSA 2019 Supp. 23-3203.

Though not required, a court may appoint or authorize a lawyer or guardian *ad litem*, especially in contested cases, to ensure a child's interests are being represented. Guardians *ad litem*, regulated by Kansas Supreme Court Rules, serve as advocates for the child's best interests and present cases in the same manner as any other attorney representing a client.

Additionally, in determining child custody, residency and parenting time, a 2017 amendment to KSA 23-3203 allows courts to order a parent to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and to follow all of the program's recommendations.

Modification

Courts may modify custody, residency, visitation, and parenting time orders, subject to provisions of the UCCJEA, when a material change of circumstances is shown (KSA 23-3218). A state that previously exercised jurisdiction will have continuing authority over subsequent motions until it determines the child, child's parents, and any person acting as a parent either:

- No longer have a significant connection with that state and substantial evidence is no longer available in that state concerning the child's care, protection, training, and personal relationships; or
- A court of that state or of another state determines the child, child's parents, and any person acting as a parent do not presently reside in that state.

While a state exercises continuing jurisdiction, no other state may modify the order. If the state loses

continuing jurisdiction, another state can modify an order only if it qualifies as a "home state" (KSA 23-37,202; KSA 23-37,203).

To modify a final child custody order, the party filing the motion must list all known factual allegations that constitute the basis for the change of custody. If the court finds the motion establishes a *prima facie* case, it will consider the facts of the situation to determine whether the order should be modified. Otherwise, it must deny the motion. In an alleged emergency situation where the nonmoving party has an attorney, the court must first attempt to have the attorney present before taking up the matter. Next, the court is required to set the matter for review hearing as soon as possible after issuance of the *ex parte* order, but within 15 days after issuance. Third, the court must obtain personal service on the nonmoving party of the order and the review hearing. Finally, the court cannot modify the order without sworn testimony to support a showing of the alleged emergency. Similarly, no *ex parte* order can change residency from a parent exercising sole *de facto* residency of a child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances (KSA 23-3218; KSA 23-3219).

Custodial Interference and the Kansas Protection from Abuse Act

KSA 2019 Supp. 21-5409 outlines the crimes of "interference with parental custody" and "aggravated interference with parental custody." "Interference with parental custody" is defined as "taking or enticing away any child under the age of 16 years with the intent to detain or conceal such child from the child's parent, guardian, or other person having the lawful charge of such child." Joint custody is not a defense. This crime is a class A person misdemeanor if the perpetrator is a parent entitled to joint custody of the child; in all other cases, it is a severity level 10 person felony. Certain circumstances raise the crime to "aggravated" interference, a severity level 7 person felony.

If a noncustodial parent believes the child needs protection from the custodial parent, the parent

can take action under the Kansas Protection from Abuse Act (KSA 2019 Supp. 60-3101 to 60-3111), which allows a parent of a minor child to file a petition alleging abuse by another intimate partner or household member. The court must hold a hearing within 21 days of the petition's filing. Prior to this hearing, the parent who originally filed the petition may file a motion for temporary relief, to which the court may grant an *ex parte* temporary order with a finding of good cause shown. The temporary order remains in effect until the hearing on the petition, at which time the parent who filed the petition must prove abuse by a preponderance of the evidence. The other parent also has a right to present evidence. At the hearing, the court can grant a wide variety of protective orders it believes are necessary to protect the child from abuse, including awarding temporary custody.

Typically, the protective order remains in effect for a maximum of one year, but, on motion of the parent who originally filed the petition, may be extended for one additional year. Additionally, KSA 2019 Supp. 60-3107 requires courts to extend protection from abuse orders for at least two years and allows extension up to the lifetime of a defendant if, after the defendant has been personally served with a copy of the motion to extend the order and has had an opportunity to present evidence at a hearing on the motion and cross-examine witnesses, it is determined by a preponderance of the evidence the defendant has either previously violated a valid protection order or been convicted of a person felony or conspiracy, criminal solicitation, or attempt of a person felony, committed against the plaintiff or any member of the plaintiff's household.

Violation of a protection order is a class A person misdemeanor, and violation of an extended protection order is a severity level 6 person felony.

Military Child Custody and Visitation

There are additional legal considerations if either parent is a member of the military. For instance, the Servicemembers Civil Relief Act (50 USC App. §§ 501 to 596), a federal law meant to allow

deployed service members to adequately defend themselves in civil suits, may apply.

Additionally, if either parent is a service member, KSA 2019 Supp. 23-3213 requires the parenting plan to include provisions for custody and parenting time upon military deployment, mobilization, temporary duty, or an unaccompanied tour. Further, KSA 2019 Supp. 23-3217 specifies those circumstances do not necessarily constitute a "material change in circumstances," such that a custody or parenting time order can be modified. If an order is modified because of those circumstances, however, it will be considered a temporary order.

When the parent returns and upon a motion of the parent, the court is required to have a hearing within 30 days to determine whether a previous custody order should be reinstated. In the servicemember's absence, the servicemember may delegate parenting time to a family member or members with a close and substantial relationship to the child if it is in the best interests of the child, and requires the nondeploying parent to accommodate the servicemember's leave schedule and facilitate communication between the servicemember and his or her children.

Third Party Custody and Visitation

Custody

KSA 2019 Supp. 38-141 recognizes the rights of parents to exercise primary control over the care and upbringing of their children. This stance is consistent with the U.S. Supreme Court's recognition that a parent's fundamental right to establish a home and raise children is protected and will be disturbed only in extraordinary circumstances. *Troxel v. Granville*, 530 U.S. 57 (2000); *Meyer v. Nebraska*, 262 U.S. 390 (1923). As such, parents generally are awarded custody unless they have been determined unfit under the Revised Kansas Code for the Care of Children (CINC Code), KSA 2019 Supp. 38-2201 to 38-2286.

Aside from a proceeding conducted pursuant to the CINC Code, a judge in a divorce case may

award temporary residency to a nonparent if the court finds there is probable cause to believe the child is in need of care or neither parent is fit to have residency. To award residency, the court must find by written order the child is likely to sustain harm if not immediately removed from the home, allowing the child to remain in the home is contrary to the welfare of the child, or immediate placement of the child is in the best interest of the child.

The court also must find reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or an emergency exists that threatens the safety of the child. In awarding custody to a nonparent under these circumstances and to the extent the court finds it is in the child's best interests, the court gives preference first to a relative of the child, whether by blood, marriage, or adoption, and then to a person with whom the child has close emotional ties. The award of temporary residency does not terminate parental rights; rather, the temporary order will last only until a court makes a formal decision of whether the child is in need of care. If the child is found not to be in need of care, the court will enter appropriate custody orders as explained above (KSA 2019 Supp. 23-3207).

If the child is found to be in need of care, custody will be determined pursuant to the CINC Code. For more information on CINC proceedings, see [G-1 Foster Care in this Briefing Book](#).

Visitation

Courts may grant grandparents and stepparents visitation rights as part of a Dissolution of Marriage proceeding. Further, Kansas law gives grandparents visitation rights during a grandchild's minority if a court finds visitation would be in the child's best interests and a substantial relationship exists between the child and the grandparent (KSA 2019 Supp. 23-3301).

Kansas courts applying these statutes have placed the burden of proof for these two issues on the grandparents and, absent a finding of unreasonableness, weigh grandparents' claims

against the presumption that fit parents act in their child's best interests. [See *In re Creach*, 155 P.3d 719, 723 (Kan. App. 2007).]

Host Families Act

The Host Families Act (KSA 2019 Supp. 38-2401 *et seq.*) allows a child placement agency or charitable organization to provide temporary care of children by placing a child with a host family. Host families are subject to screening and background checks and do not receive payment other than reimbursement for actual expenses. The Act also allows the Kansas Department for Children and Families (DCF) to provide information about respite care, voluntary guardianship, and support services, including organizations operating programs under the Act, to families experiencing financial distress, unemployment, homelessness, or other crises and to parents or custodians during a child protective investigation that does not result in an out-of-home placement due to abuse of a child.

Placement must be voluntary and shall not be considered an out-of-home placement, supersede any court order, or preclude any investigation of suspected abuse or neglect. A parent may place a child by executing a power of attorney that delegates to a host family any powers regarding the care and custody of the child, except power to consent to marriage or adoption, performance or inducement of an abortion, or termination of parental rights. The power of attorney may not be executed without the consent of all individuals with legal custody of the child, and execution is not evidence of abandonment, abuse, or neglect.

The power of attorney may not exceed one year, but may be renewed for one additional year. The bill includes an exception, however, for parents serving in the military who may delegate powers for a period longer than one year if on active duty service, but no more than the term of active duty service plus 30 days. A parent executing a power of attorney under the Act can revoke or withdraw the power of attorney at any time. Upon such withdrawal or revocation, the child must be returned to the parent as soon as reasonably possible.

Child Support and Enforcement

KSA 2019 Supp. 23-3001 and 23-3002 require courts to determine child support in any divorce proceeding using the Kansas Child Support Guidelines, which KSA 2019 Supp. 20-165 requires the Kansas Supreme Court to adopt. Additional information about the Supreme Court guidelines is available at <http://www.kscourts.org/Rules-procedures-forms/Child-Support-Guidelines/>. Courts can order either or both parents to pay child support, regardless of custody. Child support also can be ordered as part of a paternity proceeding. Once established, enforcement of support orders is governed by the Income Withholding Act (KSA 2019 Supp. 23-3101 to 23-3118 and 39-7,135).

DCF has privatized Child Support Services (CSS), contracting with four vendors who began providing services on September 16, 2013.

Contractor information is available at <http://www.dcf.ks.gov/services/CSS/Pages/Contractor-Information.aspx>. CSS' responsibilities include establishing parentage and orders for child and medical support, locating noncustodial parents and their property, enforcing child and medical support orders, and modifying support orders as appropriate. CSS automatically serves families receiving Temporary Assistance for Needy Families, foster care, medical assistance, and child care assistance. Assistance from CSS is also available to any family who applies for services, regardless of income or residency.

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H-3 Civil Asset Forfeiture

Civil asset forfeiture is the process through which a law enforcement agency may seize and take ownership of property used in the commission of a crime. This article provides an overview of the civil forfeiture laws in Kansas.

Overview of Kansas Civil Forfeiture Laws

Property and Conduct Subject to Civil Forfeiture

KSA Chapter 60, Article 41 is titled the Kansas Standard Asset Seizure and Forfeiture Act (SASFA). Under KSA 2019 Supp. 60-4104, certain conduct can lead to civil asset forfeiture even without prosecution or conviction. This conduct includes, but is not limited to, theft, prostitution, human trafficking, and forgery. Under KSA 2019 Supp. 60-4105, every kind of property used during conduct giving rise to forfeiture, or obtained as a result of conduct giving rise to forfeiture, is subject to forfeiture.

There are certain exceptions under KSA 2019 Supp. 60-4106. For example, under KSA 2019 Supp. 60-4106(a)(1), real property or interests in real property cannot be seized unless the conduct leading to forfeiture is a felony. Under KSA 2019 Supp. 60-4106(a)(3), property is not subject to forfeiture if the owner received the property before or during the conduct giving rise to forfeiture and did not know about the conduct or made reasonable efforts to prevent the conduct.

Kansas Forfeiture Procedure

Law enforcement officers may seize property with a warrant issued by the court, without a warrant if they have probable cause to believe the property is subject to forfeiture under the statutes, or constructively, with notice (KSA 2019 Supp. 60-4107). Under KSA 2019 Supp. 60-4107(d), the seizing agency must make reasonable efforts within 30 days to give notice of the seizure to the owner, interest holder, or person who had possession of the property.

Typically, the county or district attorney, the Attorney General, or an attorney approved by one of the two, will represent the Kansas law

enforcement agency in a forfeiture action. KSA 2019 Supp. 60-4107(g)-(j) provides a procedure the law enforcement agency must follow to secure representation in such a proceeding. The 2018 Legislature amended this section to provide in those cases where the county or district attorney approves another attorney to represent a local agency in the forfeiture proceeding, the county or district attorney is prohibited from approving an attorney with whom the county or district attorney has a direct or indirect financial interest. Similarly, for state agencies, the Attorney General is prohibited from approving an attorney with whom the Attorney General has a direct or indirect financial interest. A county or district attorney and the Attorney General are prohibited from requesting or receiving any referral fee or personal financial benefit from any proceeding under SASFA.

Under KSA 2019 Supp. 60-4109(a), a civil forfeiture proceeding commences when the attorney representing the law enforcement agency (the plaintiff's attorney) files a notice of pending forfeiture or a judicial forfeiture action.

If the plaintiff's attorney does not initiate the forfeiture proceeding or the law enforcement agency does not pursue the forfeiture proceeding within 90 days against the property seized, and the property's owner or interest holder (the claimant) files a timely claim, the court must release the property to the owner (on the owner's request) pending further proceedings (KSA 2019 Supp. 60-4109(a)(1)).

Under KSA 2019 Supp. 60-4109(a)(1), the seized property cannot stay in the owner's possession more than 90 days without a court-authorized extension. Under KSA 2019 Supp. 60-4109(a)(2), if the owner files a petition for exemption to forfeiture under KSA 2019 Supp. 60-4110, the plaintiff's attorney can delay filing the judicial forfeiture proceeding for up to 180 days. To delay filing, the plaintiff's attorney must provide notice of exemption to any interest holders who filed petitions to have their interests exempt from forfeiture within 60 days after the effective date of the notice of pending forfeiture.

The plaintiff's attorney is also allowed, under KSA 2019 Supp. 60-4109(b), to file a lien on the forfeited property to cover necessary court costs, and the lien will constitute notice to any person claiming an interest in the property as along as it contains certain information.

Burden of Proof and Court Findings

Under KSA 2019 Supp. 60-4113(h), in a civil forfeiture proceeding, the plaintiff's attorney has the initial burden of proof and must prove, by a preponderance of the evidence, the property is subject to civil forfeiture. Then the burden of proof shifts to the claimant (the property owner or interest holder) to prove, by a preponderance of the evidence, the claimant's property interest is not subject to forfeiture. If the court finds the property is not subject to forfeiture, the property must be returned to the claimant. If the court finds the property is subject to forfeiture, the property is forfeited to the law enforcement agency that seized the property (KSA 2019 Supp. 60-4113(i)). However, under KSA 2019 Supp. 60-4106(c), the court must restrict the scope of the forfeiture to ensure it is proportionate with the conduct that gave rise to the seizure.

In February 2019, in the case *Timbs v. Indiana*, 139 S. Ct. 682 (2019), the U.S. Supreme Court held the excessive fines clause of the Eighth Amendment is an incorporated protection applicable to states under the Fourteenth Amendment's due process clause and, based on its previous decision in *Austin v. United States*, 113 S. Ct. 602 (1993), rejected Indiana's argument that civil *in rem* forfeitures do not fall within the excessive fines clause. Thus, a state civil forfeiture may not violate the Eighth Amendment prohibition on excessive fines. However, the *Timbs* decision did not address what level of civil forfeiture would constitute an excessive fine, and it is not yet clear how the analysis of this question would compare to the proportionality analysis required under KSA 2019 Supp. 60-4106(c).

Use of Forfeited Property

When property is forfeited, the law enforcement agency can keep the property, transfer it to any government agency, destroy it, or use it for training purposes (KSA 2019 Supp. 60-4117(a)(1) and (a)(2)). The law enforcement agency also may sell the property. KSA 2019 Supp. 60-4117(a)(3)(A) requires property, other than real property, to be sold at public sale to the highest bidder. Real property may be sold at a public sale or through a real estate company (KSA 2019 Supp. 60-4117(a)(3)(B)).

Under KSA 2019 Supp. 60-4117(c)-(d), after the proceeds have been used to satisfy certain security interests or liens, expenses of the proceedings, reasonable attorney fees, and repayment of certain law enforcement funds, the remaining proceeds will go to the law enforcement agency's state forfeiture fund if the law enforcement agency is a state agency.

The 2018 Legislature amended this section to provide an exclusive list of 12 special, additional law enforcement purposes for which proceeds from forfeiture may be used. Moneys in the funds containing forfeiture proceeds must be separated and accounted for in a manner that allows accurate tracking and reporting of deposits and expenditures of proceeds from forfeiture credited to the fund, proceeds from pending forfeiture actions under SASFA, and proceeds from federal forfeiture actions.

Forfeiture Repository and Reporting Requirements

Legislation passed in 2018 (HB 2459) required the Kansas Bureau of Investigation (KBI) to establish, on or before July 1, 2019, the Kansas Asset Seizure and Forfeiture Repository, which will gather information concerning each seizure for forfeiture made by a seizing agency pursuant to SASFA. The information gathered will include, but not be limited to:

- The name of the seizing agency, or name of the lead agency if part of a multi-jurisdictional task force, and any

applicable agency or district court case numbers for the seizure;

- The location, date, and time of the seizure and a description of the initiating law enforcement activity leading to the seizure;
- Descriptions of the type of property and contraband seized and the estimated values of the property and contraband;
- Whether criminal charges were filed for an offense related to the forfeiture, and court and case number information of such charges;
- A description of the final disposition of the forfeiture action, including any claim or exemption asserted under SASFA;
- Whether the forfeiture was transferred to the federal government for disposition;
- Total cost of the forfeiture action, including attorney fees; and
- Total amount of proceeds from the forfeiture action, specifying the amount received by the seizing agency and the amount received by any other agency or person.

The KBI will monitor compliance, and agencies not in compliance will be unable to seek forfeiture proceedings. Each year, the KBI must report to the Legislature any agencies not in compliance with the reporting requirements.

The KBI has established a website, <https://kasfr.kbi.ks.gov>, to facilitate the submission of the required reports and to make information from the reports publicly available.

Recent Kansas Legislation

HB 2459

The 2018 Legislature amended several provisions within SASFA to adjust procedural and timing requirements and created a new section of law that requires the KBI to establish a repository to gather information concerning each seizure for forfeiture made by a seizing agency pursuant to SASFA (detailed previously in this article).

Background of 2018 HB 2459. Following a 2016 Legislative Division of Post Audit (LPA) report (detailed later in this article) and the introduction of five House bills and three Senate bills in 2017 on the topic of civil asset forfeiture, the chairpersons of the House and Senate Judiciary Committees requested the Kansas Judicial Council study the topic. Following its study, the Judicial Council issued its report, including a draft of recommended legislation, in December 2017. The report and recommended legislation is available on the Judicial Council website. The bill, based on the Judicial Council's recommended legislation, was introduced by the House Committee on Judiciary at the request of the Judicial Council.

2013-2016 Legislation

In 2016, HB 2460 created the crime of violation of a consumer protection order, related to door-to-door sales, and added the crime to conduct giving rise to civil forfeiture. In 2014, Kansas enacted legislation concerning civil forfeiture as it pertains to certain firearms (2014 HB 2578). That bill added language to KSA 2013 Supp. 22-2512 as to how seized firearms could be disposed and specifications for notifying the owner of a seized weapon how to retrieve it if the weapon can be returned. In 2013, the Legislature passed HB 2081, which added certain offenses to the conduct giving rise to civil forfeiture (indecent solicitation of a child, aggravated indecent solicitation of a child, and sexual exploitation of a child). It also added electronic devices to the list of items that could be seized.

LPA Report

In July 2016, LPA released a report, "Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked,

Used, and Reported," which compared Kansas' forfeiture process with those of four other states and the federal government. It also examined the seizure and forfeiture processes of two statewide and four local law enforcement agencies, finding that the agencies generally complied with major state laws and best practices, with few exceptions.

The report found the agencies generally complied with state laws for liquidating forfeited property, but several agencies were missing important controls. LPA also found the six agencies lacked important controls for tracking forfeiture proceeds, but appeared to have good processes for appropriate use of forfeiture proceeds. Also, while the state agencies complied with reporting requirements in state law, the local agencies did not. The report noted additional findings, including that broad discretion over the use of forfeiture proceeds could create a risk of use for operating funds, that certain agencies had conflicts of interest or lacked controls for drug buys, and that none of the agencies had complete and written policies and procedures for seized and forfeited property.

The report noted numerous specific recommendations had been made to the various agencies based upon the findings. It recommended the Legislature consider legislation clarifying KSA 2015 Supp. 60-4117(d) (3) and the use of forfeiture funds for operating expenses. The report also recommended the House and Senate Judiciary Committees consider introducing legislation to either create a more centralized reporting structure or consider eliminating the reporting requirement altogether.

The highlights and full report may be found on LPA's website: <https://www.kslpa.org/audit-report-library/seized-and-forfeited-property-evaluating-compliance-with-state-law-and-how-proceeds-are-tracked-used-and-reported/>.

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Background

On June 29, 1972, the U.S. Supreme Court, in *Furman v. Georgia*, 408 U.S. 238 (1972), held the imposition and execution of the death penalty, or capital punishment, in the cases before the court constituted cruel and unusual punishment in violation of the Eighth Amendment and Fourteenth Amendment to the *U.S. Constitution*. Justice Stewart remarked the death penalty was “cruel and unusual in the same way that being struck by lightning is cruel and unusual.” That case nullified all capital sentences imposed without statutory guidelines.

In the following four years, states enacted new death penalty laws aimed at overcoming the Court’s *de facto moratorium* on the death penalty. Several statutes mandated bifurcated trials, with separate guilt and sentencing phases, and imposed standards to guide the discretion of juries and judges in imposing capital sentences. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Court upheld the capital sentencing schemes of Florida, Georgia, and Texas. The Court found these states’ capital sentencing schemes provided objective criteria to direct and limit the sentencing authority’s discretion, provided mandatory appellate review of all death sentences, and allowed the judge or jury to take into account the character and record of an individual defendant.

The death penalty was reenacted in Kansas, effective July 1, 1994. Governor Finney allowed the bill to become law without her signature.

The Kansas Supreme Court, in *State v. Marsh*, 278 Kan. 520, 534–535 (2004), held the Kansas death penalty statute was facially unconstitutional. The Court concluded the statute’s weighing equation violated the Eighth Amendment and Fourteenth Amendment to the *U.S. Constitution* because, “[i]n the event of equipoise, *i.e.*, the jury’s determination that the balance of any aggravating circumstances and any mitigating circumstances weighed equal, the death penalty would be required” (*Id.*, at 534).

The U.S. Supreme Court reversed the Kansas Supreme Court’s judgment and held the Kansas capital sentencing statute is

constitutional. In June 2006, the Court found the death penalty statute satisfies the constitutional mandates of *Furman* and its progeny because it “rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination. It does not interfere, in a constitutionally significant way, with a jury’s ability to give independent weight to evidence offered in mitigation.”

Kansas Capital Murder Crimes

In Kansas, the capital murder crimes for which the death penalty may be invoked include the following:

- Intentional and premeditated killing of any person in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with the intent to hold the person for ransom;
- Intentional and premeditated killing of any person under a contract or agreement to kill that person or being a party to the contract killing;
- Intentional and premeditated killing of any person by an inmate or prisoner confined to a state correctional institution, community correctional institution, or jail, or while in the custody of an officer or employee of a state correctional institution, community correctional institution, or jail;
- Intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, the crime of rape, criminal sodomy, or aggravated criminal sodomy, or any attempt thereof;
- Intentional and premeditated killing of a law enforcement officer;
- Intentional and premeditated killing of more than one person as a 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; or
- Intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with the intent that the child commit or submit to a sex offense.

According to Kansas law, upon conviction of a defendant of capital murder, there will be a separate proceeding to determine whether the defendant shall be sentenced to death. This proceeding will be conducted before the trial jury as soon as practicable. If the jury finds beyond a reasonable doubt that one or more aggravating circumstances exist and that such aggravating circumstances are not outweighed by any mitigating circumstances that are found to exist, then by unanimous vote the defendant will be sentenced to death. The Kansas Supreme Court will automatically review the conviction and sentence of a defendant sentenced to death.

If mitigating circumstances outweigh the aggravating circumstances, a defendant convicted of capital murder will not be given a death sentence, but will be sentenced to life without the possibility of parole. A defendant sentenced to life without the possibility of parole is not eligible for parole; probation; assignment to a community correctional services program; conditional release; postrelease supervision; or suspension, modification, or reduction of sentence.

Costs

Costs in Kansas death penalty cases have been examined in a 2003 Performance Audit by the Legislative Division of Post Audit (LPA) and in 2004 and 2014 reports by the Kansas Judicial Council Death Penalty Advisory Committee. Each of these studies indicates costs for death penalty cases tend to be higher than non-death penalty cases at the trial and appellate stages. For instance, the 2014 Judicial Council report indicated Kansas Board of Indigents’ Defense Services’ costs in death penalty trial cases filed between 2004 and 2011 averaged \$395,762

per case, as compared to \$98,963 per trial case where the death penalty could have been sought but was not. More detail regarding the costs in death penalty cases may be found in the 2003 Performance Audit report and in the 2004 and 2014 Judicial Council reports, which are available on the LPA and Judicial Council websites, respectively.

The Board of Indigents' Defense Services (BIDS) has a capital defense unit for the defense of capital cases, which is composed of five offices: the Death Penalty Defense Offices in both Topeka and Wichita, the Capital Appeals Office, the Capital Appeals and Conflicts Office, and the Capital *Habeas* Office. Actual expenditures for the unit in fiscal year (FY) 2019 were \$2,966,671. The approved budget for this unit in FY 2020 is \$3,185,601. The agency's revised estimate in FY 2020 for capital defense expenditures is \$3,693,483. When BIDS is required to utilize outside counsel for capital cases due to conflicts, outside counsel is compensated an average of \$150 per hour plus expenses. Actual expenditures for outside counsel in FY 2019 were \$590,624. The agency estimates FY 2020 expenditures of \$900,000 for outside counsel in capital cases.

Death Penalty and Intellectual Disability

At the national level, the U.S. Supreme Court in a line of cases beginning with *Atkins v. Virginia*, 536 U.S. 304 (2002), has held that capital punishment of those with intellectual disability is cruel and unusual punishment under the Eighth Amendment to the *U.S. Constitution*. Various states subsequently attempted to draft legislation that would comply with the *Atkins* decision.

Kansas law defines "intellectual disability" in the death penalty context to mean a person having significantly subaverage general intellectual functioning to an extent that substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law. [See KSA 21-6622(h).]

In 2016 Senate Sub. for 2049, the Legislature amended the definition of "significantly subaverage general intellectual functioning." This

legislation was introduced in response to the U.S. Supreme Court's decision in *Hall v. Florida*, 134 S. Ct. 1986 (2014).

Under Kansas law, counsel for a defendant convicted of capital murder, or the warden or sheriff having custody of the defendant, may request the court to determine if the defendant has an intellectual disability. The court shall then conduct proceedings to determine if the defendant has an intellectual disability. If the court determines the defendant has an intellectual disability, no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed. [See KSA 21-6622.]

Death Penalty and Minors

In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court invalidated the death penalty for all juvenile offenders. The majority opinion pointed to teenagers' lack of maturity and responsibility, greater vulnerability to negative influences, and incomplete character development, concluding juvenile offenders assume diminished culpability for their crimes.

KSA 21-6618 mandates, if a defendant in a capital murder case was less than 18 years of age at the time of the commission of the crime, the court shall sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed. Thus, the death penalty or capital punishment cannot be imposed on a minor in Kansas.

Method of Carrying Out Death Penalty

The method of carrying out a sentence of death in Kansas must be by intravenous injection of a substance or substances in sufficient quantity to cause death in a swift and humane manner, pursuant to KSA 22-4001. No death penalty sentence has been carried out in Kansas since the death penalty was reenacted in 1994.

On November 17, 2004, the death sentence of Stanley Elms of Sedgwick County was vacated pursuant to a plea agreement. He was removed

Inmates in Kansas under Sentence of Death					
Defendant's Name	Race	Date of Birth	Date Capital Penalty Imposed	County	Case Status
Kyle Trevor Flack	White	6/18/1985	5/18/2016	Franklin	Appeal Pending.
Frazier Glen Cross, Jr.	White	11/23/1940	11/10/2015	Johnson	Appeal Pending.
James Kraig Kahler	White	1/15/1963	10/11/2011	Osage	See below.
Justin Eugene Thurber	White	3/14/1983	3/2/2009	Cowley	Conviction upheld; remanded for redetermination of intellectual disability; see below.
Scott Dever Cheever	White	8/19/1981	1/23/2008	Greenwood	Sentence upheld; see below.
Sidney John Gleason	Black	4/22/1979	8/28/2006	Barton	Sentence upheld; see below.
John Edward Robinson, Sr.	White	12/27/1943	1/21/2003	Johnson	Sentence upheld; see below.
Jonathan Daniel Carr	Black	3/30/1980	11/15/2002	Sedgwick	See below.
Reginald Dexter Carr, Jr.	Black	11/14/1977	11/15/2002	Sedgwick	See below.
Gary Wayne Kleypas	White	10/8/1955	3/11/1998	Crawford	Sentence upheld; see below.

from administrative segregation and sentenced to the Hard 40 term, which is life in prison with no possibility of parole for 40 years.

On April 3, 2009, the death sentence of Michael Marsh of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences, with parole eligibility after 55 years, but with 85 months to serve for additional convictions if paroled.

On March 24, 2010, the death sentence of Gavin Scott of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences.

In 2010, a Shawnee County district judge granted Phillip D. Cheatham, Jr., who was under sentence of death, a new sentencing hearing. In January 2013, before this hearing was held, the Kansas Supreme Court found Cheatham's trial counsel was ineffective, reversed Cheatham's convictions, and remanded the case for a new trial.

In January 2015, Cheatham legally changed his name to King Phillip Amman Reu-El. During jury selection for his retrial in February 2015, Amman Reu-El pleaded no-contest to capital murder and attempted murder charges. At a sentencing

hearing in March 2015, the district court denied Amman Reu-El's request to withdraw his pleas and sentenced Amman Reu-El to the Hard 25 term (life in prison with no possibility of parole for 25 years) for the capital counts and 13 years, 9 months for the attempted murder count, to be served consecutively. In May 2015, Amman Reu-El filed an appeal of the district court's denial of his motion to withdraw his pleas. The Kansas Supreme Court affirmed the district court's denial in May 2017. In September 2015, Amman Reu-El filed a pleading in district court claiming he received ineffective assistance of counsel in making his pleas, and repeated these claims in a supporting affidavit and KSA 60-1507 *habeas* motion filed with the district court in August 2017. This motion was denied by the district court in October 2017. As of September 2019, an appeal from this denial was pending in the Kansas Court of Appeals.

In August 2012, the Kansas Supreme Court reversed the capital murder convictions of Scott Dever Cheever and ordered the case remanded for a new trial. Cheever was under sentence of death for the convictions. The State appealed the case to the U.S. Supreme Court, which issued an opinion December 11, 2013, vacating the judgment of the Kansas Supreme Court and remanding the case for further consideration by Kansas courts of possible error under the Fifth Amendment or Kansas evidentiary rules.

The Kansas Supreme Court heard further oral argument in September 2014, but stayed release of a decision pending the U.S. Supreme Court's review of the *Gleason* and *Carr* cases (see below). Following the U.S. Supreme Court's release of the decisions in those cases, the Kansas Supreme Court released, in July 2016, a decision upholding Cheever's convictions and death sentence. As in the Robinson decision (see below), Justice Johnson was the lone dissenting justice. Cheever's petition for writ of *certiorari* was denied by the U.S. Supreme Court in December 2017. As of September 2019, Cheever was being held in special management at Lansing Correctional Facility. Cheever's direct appeals are now exhausted, but there may be further state or federal court proceedings on collateral issues.

In July 2014, the Kansas Supreme Court vacated death sentences in three cases. The Court vacated Sidney John Gleason's death sentence and remanded for resentencing. In the appeals of Jonathan Daniel Carr and Reginald Dexter Carr, Jr., the Court reversed all but one of each defendant's capital murder convictions, vacated each defendant's death sentence for the remaining capital murder conviction, and remanded to the district court for further proceedings. However, the U.S. Supreme Court granted the Kansas Attorney General's petition for writ of *certiorari* in all three cases and heard oral argument in the cases in October 2015. In January 2016, the U.S. Supreme Court released decisions in all three cases reversing the Kansas Supreme Court's judgments (thereby reinstating the death sentences) and remanding to the Kansas Supreme Court for further proceedings. In February 2017, the Kansas Supreme Court affirmed Gleason's death sentence. Gleason's direct appeals are now exhausted, but there may be further state or federal court proceedings on collateral issues. As of September 2019, further proceedings are pending before the Kansas Supreme Court on additional issues in the Carr brothers' cases.

In November 2015, the Kansas Supreme Court upheld a capital murder conviction and death sentence of John Edward Robinson, Sr., for one of the counts of capital murder charged against

him. This marked the first death sentence upheld by the Court since the reenactment of the death penalty in Kansas. The Court reversed two other murder convictions as multiplicitous and affirmed remaining convictions. The lone dissent from the Court's decision was by Justice Johnson, who disagreed the State had properly charged and proven the count of capital murder upheld by the Court. The dissent also stated the death penalty is both "cruel" and "unusual" and therefore violates Section 9 of the *Kansas Constitution Bill of Rights*.

The Court subsequently denied Robinson's motion for rehearing and modification of judgment, and Robinson's petition for writ of *certiorari* was denied by the U.S. Supreme Court in October 2016. Robinson's direct appeals are now exhausted, but there may be further state or federal court proceedings on collateral issues.

In October 2016, the Kansas Supreme Court upheld Gary Kleypas' capital murder conviction and death sentence. It reversed a conviction for attempted rape and remanded the case for resentencing on a conviction of aggravated burglary. Justice Johnson dissented, citing his dissenting opinions in *Robinson* and *Cheever*.

In February 2018, the Kansas Supreme Court upheld James Kahler's capital murder conviction and death sentence. Justice Johnson dissented, stating he would vacate and remand for resentencing based upon cumulative guilt-phase errors that undermined the jury's death sentence determination. Citing his *Robinson* dissent, he again stated the death penalty is an unconstitutional cruel or unusual punishment. In March 2019, the U.S. Supreme Court granted Kahler's petition for writ of *certiorari*. In this case, the Supreme Court will hear oral argument during its October 2019 term on the issue of whether Kansas' replacement of the traditional insanity defense with a statute providing a defense of lack of mental state violates constitutional due process and Eighth Amendment protections for criminal defendants.

In June 2018, the Kansas Supreme Court upheld Justin Thurber's convictions for capital murder and aggravated kidnapping, but reversed the district

court’s determination that there was not reason to believe Thurber was intellectually disabled such that Thurber could not be sentenced to death. The Supreme Court remanded the issue of the determination of Thurber’s intellectual disability to the district court for reconsideration in light of U.S. Supreme Court decisions and Kansas statutory changes that had occurred while Thurber’s case was on appeal. Justice Rosen dissented, stating he would uphold the district court’s intellectual disability determination and proceed to other penalty phase issues. In a separate dissent, Justice Johnson stated he would reverse Thurber’s death sentence and resentence to life in prison on the cruel and unusual punishment grounds he has outlined in previous cases or on the basis of the majority’s finding that the intellectual disability statute in effect when Thurber was sentenced was

unconstitutionally restrictive. As of September 2019, the district court’s competency hearing on remand is scheduled for May 2020.

As of September 2019, ten inmates under a death penalty sentence are being held in administrative segregation because Kansas does not technically have a death row. Inmates under sentence of death (other than Cheever) are held in administrative segregation at the El Dorado Correctional Facility.

State-to-State Comparison

Kansas is one of 29 states that has a death penalty. The following tables show the states with a death penalty and the 21 states without such penalty. According to the Death Penalty

Jurisdictions with the Death Penalty				
Alabama	Idaho	Montana	Pennsylvania	Wyoming
Arizona	Indiana	Nebraska	South Carolina	U.S. Government
Arkansas	Kansas*	Nevada	South Dakota	U.S. Military*
California	Kentucky	North Carolina	Tennessee	
Colorado	Louisiana	Ohio	Texas	
Florida	Mississippi	Oklahoma	Utah	
Georgia	Missouri	Oregon	Virginia	

*Indicates jurisdiction with no executions since 1976.

Jurisdictions without the Death Penalty (year abolished in parentheses)		
Alaska (1957)	Massachusetts (1984)	North Dakota (1973)
Connecticut (2012)	Michigan (1846)	Rhode Island (1984)
Delaware (2016)	Minnesota (1911)	Vermont (1964)
Hawaii (1948)	New Hampshire (2019)*	Washington (2018)
Illinois (2011)	New Jersey (2007)	West Virginia (1965)
Iowa (1965)	New Mexico (2009)	Wisconsin (1853)
Maine (1887)	District of Columbia (1981)	
Maryland (2013)	New York (2007)	

*In May 2019, the New Hampshire Legislature overrode a gubernatorial veto of legislation abolishing the death penalty. The repeal was not retroactive, leaving one person on the state’s death row.

Source: Death Penalty Information Center.

Information Center, as of September 2019, four states with a death penalty (California, Colorado, Oregon, and Pennsylvania) also had an existing gubernatorial moratorium on the death penalty.

Recent Developments

In March 2009, the Senate Committee on Judiciary held a hearing on SB 208 to repeal the

death penalty in Kansas. The bill was amended and passed out of the Committee. The Senate Committee of the Whole re-referred the bill to the Senate Committee on Judiciary for study by the Judicial Council during the 2009 Interim. The Judicial Council formed the Death Penalty Advisory Committee to study SB 208 and concluded the bill presented a number of technical problems that could not be resolved by amending the bill. Instead, the Committee drafted a new bill, which was introduced in the 2010 Session as SB 375. SB 375 was passed, as amended, out of the Senate Committee on Judiciary. However, the bill was killed on final action in the Senate Committee of the Whole.

Bills that would abolish the death penalty were again introduced in both chambers in 2011, 2013, 2015 (House only), 2016, 2017, and 2019. With the exception of 2017 HB 2167 and 2019 HB 2282, which received hearings in the House Committee on Corrections and Juvenile Justice, no further action was taken on these bills.

The 2012 House Committee on Corrections and Juvenile Justice held an “informational” hearing on the death penalty.

In 2013, HB 2388 was introduced and heard in the House Committee on Corrections and Juvenile Justice. This bill would have amended KSA 21-6619 to limit Kansas Supreme Court review in death penalty cases to properly preserved and asserted errors and allowing the Court to review unpreserved and unassigned errors only to correct manifest injustice (as defined in the bill). Proponents of the bill indicated it was introduced in response to the Kansas Supreme Court’s decision in *State v. Cheever*, 295 Kan. 229

(2012). A motion in the Committee to recommend the bill favorably as amended failed, and no further action was taken on the bill.

The 2013 Legislature passed Senate Sub. for HB 2043, which allows the Attorney General to file notice of intent to seek the death penalty in those cases where the county or district attorney or a court determines a conflict exists.

In 2014, the Senate Judiciary Committee introduced SB 257, which would have amended the procedure for direct appeals in death penalty cases by establishing statutory time limits and appellate brief page limits and limiting the scope of review. The bill would also have imposed additional requirements and limitations on both KSA 60-1507 motions generally, as well as KSA 60-1507 motions specifically filed by prisoners under sentence of death. The Senate Judiciary Committee slightly modified the language of SB 257 and recommended a substitute bill for HB 2389 containing this language. Senate Sub. for HB 2389 passed the Senate with these provisions, but they were removed by the Conference Committee and the bill was passed without any specific death penalty-related provisions.

In 2016, the Legislature passed Senate Sub. for 2049, amending the definition of “significantly subaverage general intellectual functioning.” This legislation was introduced in response to the U.S. Supreme Court’s decision in *Hall v. Florida*, 134 S. Ct. 1986 (2014), holding that Florida’s threshold requirement for submission of intellectual disability evidence in the context of capital sentencing was unconstitutional.

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Judiciary, Corrections, and Juvenile Justice

H-5 Juvenile Services

The Division of Juvenile Services within the Kansas Department of Corrections (KDOC) oversees juvenile offenders in Kansas. Individuals as young as 10 years of age and as old as 17 years of age may be adjudicated as juvenile offenders. KDOC may retain custody of a juvenile offender in a juvenile correctional facility (JCF) until the age of 22.5 and in the community until the age of 23.

Juvenile Services leads broadly based state and local, public, and private partnerships to provide the State's comprehensive juvenile justice system, including prevention and intervention programs, community-based graduated sanctions, and JCFs.

Juvenile Services' operations consist of two major components:

- **Community-based prevention, immediate interventions, and graduated sanctions programs for nonviolent juvenile offenders.** Juvenile Services administers grants to local communities for juvenile crime prevention and intervention initiatives. In addition to providing technical assistance and training to local communities, the division is responsible for grant oversight and auditing all juvenile justice programs and services; and
- **A juvenile correctional facility for violent juvenile offenders.** At present, the only JCF in Kansas is the Kansas Juvenile Correctional Complex (KJCC) located in Topeka. Previously, JCFs were also located in Atchison, Beloit, and Larned.

The 2016 Legislature passed SB 367, which made substantial reforms to the Kansas juvenile justice system in both the community-based services and the JCF operations for which Juvenile Services is responsible. KDOC's Juvenile Services program is tasked with implementing many of the provisions of SB 367, either alone or in conjunction with other partners in the juvenile justice system. The 2017 Legislature passed House Sub. for SB 42, which made further amendments to the system as a follow-up to SB 367.

Further detail regarding SB 367 and House Sub. for SB 42 is provided on the following pages.

Kansas Juvenile Justice Authority's History and Community Focus

The juvenile justice reform process implemented in Kansas from 1997 to 2000 focused on prevention, intervention, and community-based services, with the premise that a youth should be placed in a JCF for rehabilitation and reform only as a last resort and that youth are more effectively rehabilitated and served within their own community. Prior to the transition, juvenile justice functions were the responsibility of several state agencies, including the Office of Judicial Administration (OJA); the Department of Social and Rehabilitation Services (SRS), which is now the Department for Children and Families (DCF); and KDOC. Other objectives included separating juvenile offenders from children in need of care in the delivery of services.

Due to the focus on serving youth in their own community, each county or group of cooperating counties is required by statute to make themselves eligible to receive state funding for the development, implementation, operation, and improvement of juvenile community correctional services. Each county, or the designee of a group of counties, is referred to as an administrative county and directly receives funding from the agency for operation of community juvenile justice services.

SB 367 will adjust the focus and funding mechanisms for some of this funding over the next several years.

Pivotal roles of the Community Programs Division include ensuring the community service continuum is efficient and effective in addressing the needs of the youth, building upon established collaborations with local units of government and other key stakeholders, and monitoring programs along the continuum of services from prevention and intervention to rehabilitative service delivery.

Juvenile Justice Reform Time Line

1993 and 1994. Research began on the proposed transition with a legislative review of juvenile crime and the creation of the Criminal Justice

Coordinating Council, which was charged to study and develop policies and recommendations regarding juvenile justice reform.

1995. The Kansas Youth Authority (KYA) and the Kansas Juvenile Justice Authority (JJA) were created with the enactment of 1995 SB 312.

The mission of KYA was to develop policies related to the scope and function of the JJA. Specific areas studied included confinement, diversion, fines, restitution, community service, standard probation, intensive supervision, house arrest programs, electronic monitoring, structured school, day reporting centers, community residential care, treatment centers, and sanctions.

The JJA was assigned to:

- Control and manage the operation of the state youth centers (now referred to as JCFs);
- Evaluate the rehabilitation of juveniles committed to the JJA and prepare and submit periodic reports to the committing court;
- Consult with the state schools and courts on the development of programs for the reduction and prevention of delinquency and the treatment of juvenile offenders;
- Cooperate with other agencies that deal with the care and treatment of juvenile offenders;
- Advise local, state, and federal officials, public and private agencies, and lay groups on the need for and possible methods of reduction and prevention of delinquency and the treatment of juvenile offenders;
- Assemble and distribute information relating to delinquency and report on studies relating to community conditions that affect the problem of delinquency;
- Assist any community within the state by conducting a comprehensive survey of the community's available public and private resources, and recommend methods of establishing a community

program for combating juvenile delinquency and crime; and

- Direct state money to providers of alternative placements in local communities, such as supervised release into the community, out-of-home placement, community services work, or other community-based service; provide assistance to such providers; and evaluate and monitor the performance of such providers relating to the provision of services.

1996. HB 2900, known as the Juvenile Justice Reform Act of 1996, outlined the powers and duties of the Commissioner of Juvenile Justice.

The bill also addressed the areas of security measures, intake and assessment, dual sentencing, construction of maximum security facility or facilities, child support and expense reimbursement, criminal expansion, disclosure of information, immediate intervention programs, adult presumption, parental involvement in dispositional options, parental responsibility, school attendance, parental rights, and immunization.

Further, the bill changed the date for the transfer of powers, duties, and functions regarding juvenile offenders from SRS and other state agencies to July 1, 1996. The bill stated KYA must develop a transition plan that included a juvenile placement matrix, aftercare services upon release from a JCF, coordination with SRS to consolidate the functions of juvenile offender and children in need of care intake and assessment services on a 24-hour basis, recommendations on how all juveniles in police custody should be processed, and the transfer from a state-based juvenile justice system to a community-based system according to judicial districts.

1997. The Legislature amended the Juvenile Justice Reform Act of 1996 with House Sub. for SB 69, including changes in the administration of the law. In addition, the amendments dealt with juvenile offender placements in an effort to maximize community-based placements and reserve state institutional placements for the most serious, chronic, and violent juvenile offenders.

Also included in this bill was the creation of the Joint Committee on Corrections and Juvenile Justice and the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention, which took the place of KYA. On July 1, JJA began operations and assumed all the powers, duties, and functions concerning juvenile offenders from SRS.

2013. Executive Reorganization Order (ERO) No. 42 abolished the JJA and transferred the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to KDOC and the Secretary of Corrections, effective July 1, 2013. All officers and employees of the JJA engaged in the exercise of the powers, duties, and functions transferred by the ERO were transferred to the KDOC, unless they were not performing necessary services.

Recent Reform Efforts

2014

Following an informational hearing on juvenile justice reform initiatives, the House Committee on Corrections and Juvenile Justice charged a subcommittee with evaluating reform proposals and recommending legislation on the topic. Various proposals were consolidated and passed by the Legislature in Senate Sub. for HB 2588. The provisions included:

- Requiring a standardized risk assessment tool or instrument be included as part of the pre-sentence investigation and report following an adjudication;
- Prohibiting the prosecution of any juvenile less than 12 years of age as an adult;
- Restructuring the placement matrix to make commitment to a JCF a departure sentence requiring a hearing and substantial and compelling reasons to impose such sentence for certain lower level offense categories;
- Allowing juvenile offenders serving minimum-term placement sentences

under the matrix to receive “good time” credit;

- Requiring the Secretary of Corrections to take certain measures to evaluate youth residential centers (YRCs) and develop fee schedules and plans for related services;
- Prohibiting a child alleged or found to be a child in need of care from being placed in a juvenile detention facility unless certain conditions are met; and
- Creating a new alternative adjudication procedure for misdemeanor-level juvenile offenses to be utilized at the discretion of the county or district attorney with jurisdiction over the offense.

2015

Additional reform efforts continued with the passage of HB 2336, which required the court to administer a risk assessment tool or review a risk assessment tool administered within the past six months before a juvenile offender can be placed in a juvenile detention center, under house arrest, or in the custody of the KDOC or can be committed to a sanctions house or to a JCF.

Further, to examine Kansas’ juvenile justice system, leaders of the executive, judicial, and legislative branches of government established a bipartisan, inter-branch Juvenile Justice Workgroup. In cooperation with the Pew Charitable Trusts’ Public Safety Performance Project, the Workgroup was charged with a comprehensive examination of the system to develop data-driven policies based upon research and built upon consensus among key stakeholders from across the state. The Workgroup recommendations were presented at its November 17, 2015, meeting. A complete list of the Workgroup’s recommendations can be found at <https://www.doc.ks.gov/juvenile-services/Workgroup/overview>.

2016

The recommendations from the 2016 Workgroup were drafted into legislation and introduced as SB 367 in the 2016 Session.

While substantial changes were made to the bill during committee action and the conference committee process, the enacted bill nevertheless represented a comprehensive reform of the Kansas juvenile justice system.

Major provisions of the bill include the following.

Juveniles in custody. The bill narrows the persons authorized to take a juvenile into custody and makes delivery of a juvenile to the juvenile’s parent the default in most instances. The bill also requires both release and referral determinations once a juvenile is taken into custody to be made by juvenile intake and assessment workers, who must be trained in evidence-based practices.

Immediate interventions and community-based programs. The bill requires KDOC and OJA to develop standards and procedures for an immediate intervention process and programs and alternative means of adjudication. The bill requires KDOC to plan and fund incentives for the development of immediate intervention programs, removes limitations on eligibility for such programs, requires immediate intervention be offered to certain juveniles, and requires juveniles making a first appearance without an attorney to be informed of the right to an immediate intervention.

Further, courts must appoint a multidisciplinary team to review cases when a juvenile does not substantially comply with the development of an immediate intervention plan.

Eligibility for alternative means of adjudication is changed from a juvenile committing a misdemeanor to a juvenile with fewer than two adjudications. The bill establishes overall case length and probation length limits for all juvenile offenders except those adjudicated of the most serious felonies.

The bill also requires KDOC to consult with the Kansas Supreme Court in adopting rules and regulations for a statewide system of structured, community-based, graduated responses for technical probation violations, conditional release violations, and sentence condition violations, which community supervision officers will use based on the results of a risk and needs assessment. The community supervision officer must develop a case plan with the juvenile and the juvenile's family. Probation revocation may be considered only for a third or subsequent technical violation, subject to additional limitations. KDOC is required to develop an earned-time calculation system for the calculation of sentences. Similarly, the Kansas Supreme Court and KDOC must establish a system of earned discharge for juvenile probationers.

Criteria for detention and alternatives. KDOC and OJA are required to develop, implement, and validate a statewide detention risk assessment tool for each youth under consideration for detention.

The criteria for detention are amended to require certain detention risk assessment results or grounds to override such results. Courts must establish a specific term of detention when placing a juvenile in detention, which may not exceed the overall case length limit.

The bill prohibits placement in a juvenile detention center in certain circumstances and removes juvenile detention facilities as a placement option under the Revised Kansas Code for Care of Children, unless the child also is alleged to be a juvenile offender and the placement is authorized under the Juvenile Code. The permissible justifications for extended detention are narrowed, and a detention review hearing is required every 14 days a juvenile is in detention, except for juveniles charged with the most serious offenses.

The bill requires OJA and KDOC to adopt a single, uniform risk and needs assessment to be administered and used statewide in the post adjudication and predisposition process.

The bill narrows and eliminates some alternatives and amends the alternative allowing commitment

to a JCF to allow placement in a JCF or YRC. Effective January 1, 2018, the Secretary of Corrections may contract for up to 50 non-foster home beds in YRCs for placement of juvenile offenders. The bill limits commitment to detention and adds certain short-term placement options if a juvenile has been adjudicated of certain sexual or human trafficking-related offenses. Further, KDOC must develop community integration programs for juveniles ready to transition to independent living.

The bill amends the placement matrix for commitment to a JCF to require a written finding before such placement, remove a departure sentence provision, create a serious offender category, remove two chronic offender categories, and create a rebuttable presumption certain offenders will be placed in a YRC instead of a JCF. The bill also requires a case plan be developed for every juvenile sentenced to a JCF, with input from the juvenile and the juvenile's family.

Adult prosecution. The bill limits extended jurisdiction juvenile prosecution to cases involving the most serious offenses and raises the age for adult prosecution from 12 to 14.

Implementation. The bill establishes a 19-member Kansas Juvenile Justice Oversight Committee to oversee implementation of reforms in the juvenile justice system and requires annual reports. (*Note:* The Oversight Committee is separate from the Joint Committee on Corrections and Juvenile Justice Oversight, established by KSA 46-2801 and charged in that statute with certain ongoing oversight duties related to the juvenile justice system. Additional members and duties were added to the Oversight Committee by 2017 House Sub. for SB 42, discussed in the following paragraph.) The bill adds a juvenile defense representative member to the previously existing juvenile corrections advisory boards and requires the boards to adhere to the goals of the Juvenile Code and coordinate with the Oversight Committee. The boards must annually consider the availability of treatment programs, alternative incarceration programs, mental health treatment, and development of risk assessment tools, and report annually to KDOC and the Oversight

Committee the costs of programs needed in its judicial district to reduce out-of-home placement and recidivism.

The bill requires KDOC and OJA to provide at least semiannual training on evidence-based programs and practices to individuals who work with juveniles. OJA is required to designate or develop a training protocol for judges, county and district attorneys, and defense attorneys who work in juvenile court. Further, the bill requires the Attorney General to collaborate with the Kansas Law Enforcement Training Center and the State Board of Education (KSBE) to create skill development training for responding effectively to misconduct in school, while minimizing student exposure to the juvenile justice system, and directs KSBE to require school districts to develop and approve memorandums of understanding with guidelines for referral of school-based behaviors to law enforcement or the juvenile justice system.

Funding. The bill creates the Kansas Juvenile Justice Improvement Fund (renamed the “Evidence-Based Programs Account of the State General Fund” by 2017 House Sub. for SB 42, discussed below), administered by KDOC, for the development and implementation of evidence-based community programs and practices for juvenile offenders and their families by community supervision offices. Each year, the Secretary of Corrections is required to certify actual or projected cost savings in state agency accounts from decreased reliance on incarceration in a JCF or YRC, and these amounts are then transferred to the fund.

2017

The Legislature passed House Sub. for SB 42, which adjusted changes made by 2016 SB 367 and made further modifications to the juvenile justice system. Major provisions of this bill include the following.

Absconding from supervision. Among other changes regarding absconding from supervision, the bill allows a court to issue a warrant after reasonable efforts to locate a juvenile who has absconded are unsuccessful and to toll the

probation term limits and overall case length limits (established by SB 367) while a juvenile has absconded.

Immediate intervention programs. The bill requires KDOC to establish and maintain a statewide searchable database containing information regarding juveniles who participate in an immediate intervention program.

The bill establishes that immediate intervention does not have to be offered to a juvenile charged with a misdemeanor sex offense, a juvenile who has previously participated in immediate intervention, or a juvenile who was originally charged with a felony but had the charge amended to a misdemeanor as a result of a plea agreement.

Sentencing and placement. The bill amends the sentencing alternatives and placement matrix to allow a court to commit a juvenile directly to a JCF or YRC placement for a term of 6-18 months, regardless of the risk level of the juvenile, upon a finding that a firearm was used in the commission of a felony offense by the juvenile.

The bill removes a three-month limit on short-term alternative placement allowed when a juvenile is adjudicated of certain sex offenses and certain other conditions are met.

Juvenile Justice Oversight Committee. The bill adds two members to the Oversight Committee—a youth member of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention (appointed by the chairperson of the Group) and a director of a juvenile detention facility (appointed by the Attorney General)—bringing its total membership to 21. The bill also provides two additional duties for the Oversight Committee: 1) study and create a plan to address the disparate treatment of and availability of resources for juveniles with mental health needs in the juvenile justice system, and 2) review portions of juvenile justice reform that require KDOC and OJA to cooperate and make recommendations when there is no consensus between the two agencies.

2018*Further Adjustments*

The Legislature passed HB 2454, which made further adjustments to the juvenile justice system as reformed by SB 367. Major provisions of this bill include the following.

Detention hearings. The bill amended the statute in the Revised Kansas Juvenile Justice Code (Code) governing detention hearings to expand the permitted use of two-way electronic audio-visual communication between the juvenile and the judge. The bill further amended law related to detention review hearings by adding a provision stating such hearings are not required for a juvenile offender held in detention awaiting case disposition. The bill amended the Code statute governing post-adjudication orders and hearings to require, if a juvenile offender is being held in detention, that a dispositional hearing for sentencing take place within 45 days after the juvenile has been adjudicated.

Tolling of probation term and case length limits. The bill amended the statute governing probation term limits and overall case length limits in the Code to clarify that when such limits are tolled due to the offender absconding from supervision while on probation, the limits shall not begin to run again until the offender is located and brought back to the jurisdiction. The bill also clarified, if the juvenile fails to appear for the dispositional hearing, such limits shall not apply until the juvenile is brought before the court for disposition.

Duties of Oversight Committee. The bill amended one of the statutory duties of the Kansas Juvenile Justice Oversight Committee (Oversight Committee) to require the Oversight Committee to “monitor,” rather than “calculate,” any state expenditures that have been avoided by reductions in the number of youth placed in out-of-home placements. A corresponding requirement that a summary of such averted costs be included in the Oversight Committee’s annual report was changed from “calculated by the committee” to “determined.”

Juvenile Crisis Intervention Centers

The 2018 Legislature also passed House Sub. for SB 179, establishing a framework for juvenile crisis intervention centers, which will provide short-term observation, assessment, treatment, and case planning, in addition to referral, for juveniles experiencing a mental health crisis who are likely to cause harm to self or others. The bill provides intervention center requirements in several areas, including access to various services, construction and environmental features, and policies and procedures for operation and staff monitoring of entrances and exits. The bill also outlines circumstances for admission, prohibits admission for more than 30 days, and allows a parent with legal custody or a legal guardian of a juvenile to remove the juvenile from the center at any time.

The bill allows the Secretary of Corrections to enter into a memorandum of agreement with other cabinet agencies to provide funding for juvenile crisis intervention services of up to \$2.0 million annually from the Evidence-Based Programs Account created by SB 367.

2019

In 2019 House Sub. for SB 25, the Legislature added language in FY 2019 to require DCF to establish a working group that will (1) gather data and issue a report on the impact of 2016 SB 367 on youth with offender behaviors entering into foster care placement or in a foster care placement; (2) evaluate services being offered and identify services needed; and (3) include representatives from DCF, child welfare organizations, mental health organizations, the Judicial Branch, law enforcement, and any other organizations with information on services as determined by the Secretary for Children and Families.

The Legislature added additional language for FY 2020 to require DCF to study the impact of 2016 SB 367 on crossover youth, who are defined as youth in foster care or at risk of being in foster care due to conduct that resulted in, or could result in, juvenile offender allegations. The agency submitted its findings November 1, 2019, to the

relevant enumerated legislative committees. The topics the study will be required to cover include comparing crossover youth with the broader juvenile offender population, a qualitative and quantitative analysis of what happens after crossover youth are taken into custody by public safety agencies or placed into the foster care

system, and gaps in intervention services for crossover youth. A working group of 11 members, consisting of the Secretary of Corrections and Secretary for Children and Families, or their designees, as well as appointees by enumerated health, public safety, judicial, and religious organizations, assisted with the study.

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Judiciary, Corrections, and Juvenile Justice

H-6 Kansas Prison Population, Capacity, and Related Facility Issues

Background

Historically, the Kansas Department of Corrections (KDOC) and state policymakers have had to address the issue of providing adequate correctional capacity for steady and prolonged growth in the inmate population. In 1863, the Kansas State Penitentiary, later known as Lansing Correctional Facility, opened as Kansas' first correctional facility under the administration of the Board of Directors of the Penitentiary. Currently, the KDOC administers eight adult correctional facilities identified in the table below.

Correctional Facility	Year Opened	Capacity as of FY 2019
El Dorado CF	1991	1,837
Ellsworth CF	1987	915
Hutchinson CF	1895	1,869
Lansing CF	1863	1,910
Larned CMHF	1996	598
Norton CF	1987	996
Topeka CF	1961	953
Winfield CF	1984	804

The State gained control of its second correctional facility in 1911 when the Board of Penal Institutions took control of the Kansas State Industrial Reformatory, later known as Hutchinson Correctional Facility, which had originally opened in 1895. In 1961, the State opened the Kansas State Reception and Diagnostic Center, followed by the Kansas Correctional Vocational Training Center in 1972. These two facilities were combined in 1990 to create the Topeka Correctional Facility.

In the 1980s, capacity at the correctional facilities did not keep pace with populations, which led to the Legislature establishing Winfield Correctional Facility in 1984 and Ellsworth, Norton, Osawatomie, and Stockton Correctional Facilities in 1987. A 1989 federal court order limited inmate populations at Lansing and Hutchinson and required improved conditions for inmates with mental health issues. The direct result of this order was construction of a new facility that

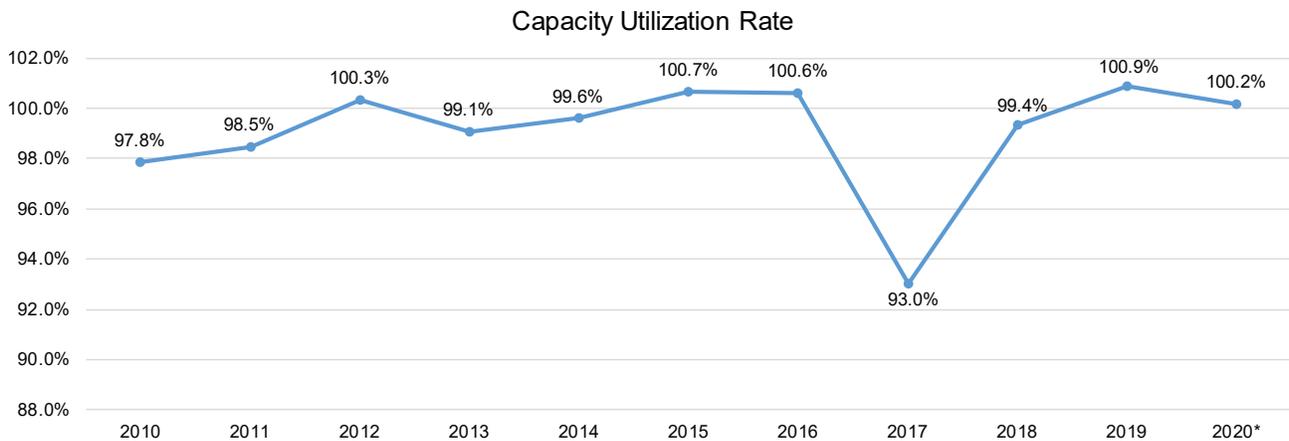
became El Dorado Correctional Facility (EDCF) in 1991. The court order was terminated in 1996 following numerous changes to the correctional system, including the construction of Larned Correctional Mental Health Facility (LCMHF).

Budget reductions in fiscal year (FY) 2009 prompted KDOC to suspend operations at three smaller minimum-custody facilities (Osawatomie, Stockton, and Toronto) and close the men’s and women’s conservation camps in Labette County. Additionally, the Kansas Department for Aging and Disability Services took control over the Osawatomie facility. Due to the increasing inmate population, the 2010 Legislature included a State General Fund appropriation for FY 2011, which allowed the reopening of Stockton Correctional Facility as a satellite unit of Norton Correctional Facility on September 1, 2010.

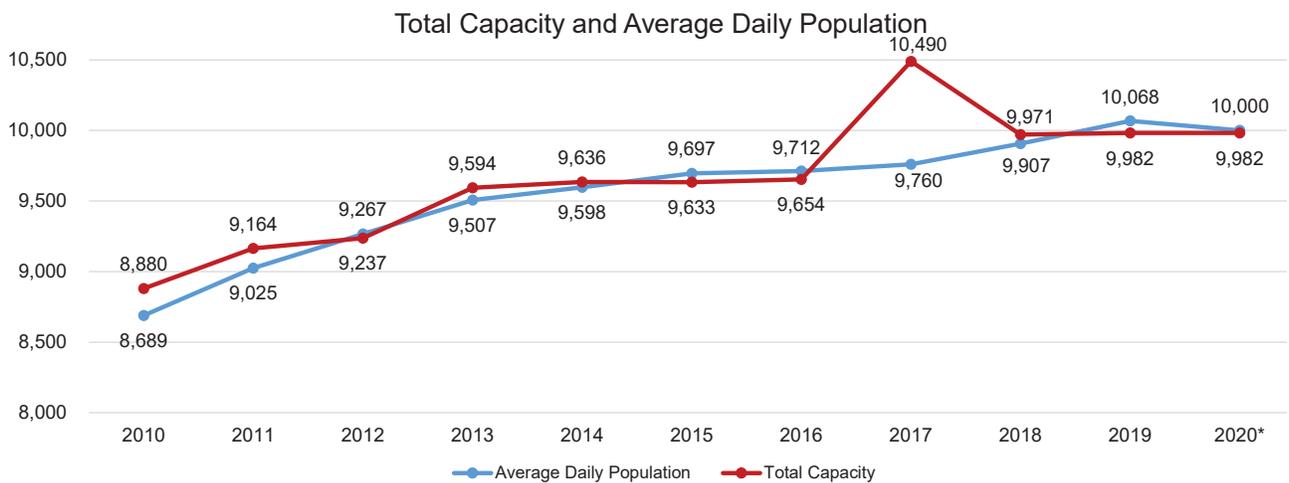
LCMHF has traditionally provided mental health services to inmates in need, but in May 2017, KDOC announced its intention to convert LCMHF into a prison for 18- to 25-year-old inmates. KDOC intends to move the inmates receiving mental health services to EDCF in the coming years. On November 1, 2017, the Secretary of Corrections stated 62 high-acuity behavioral beds were open at EDCF, and expressed KDOC’s intent to open another 124 high-acuity behavioral health beds in EDCF’s Individualized Reintegration Unit.

Calculating Capacity; Illustrations

KDOC calculates the capacity utilization rate by dividing the average daily population (ADP) by total capacity in order to analyze the percentage of beds that are in use on an average day during



*FY 2020 numbers are as of August 31, 2019



*FY 2020 numbers are as of August 31, 2019

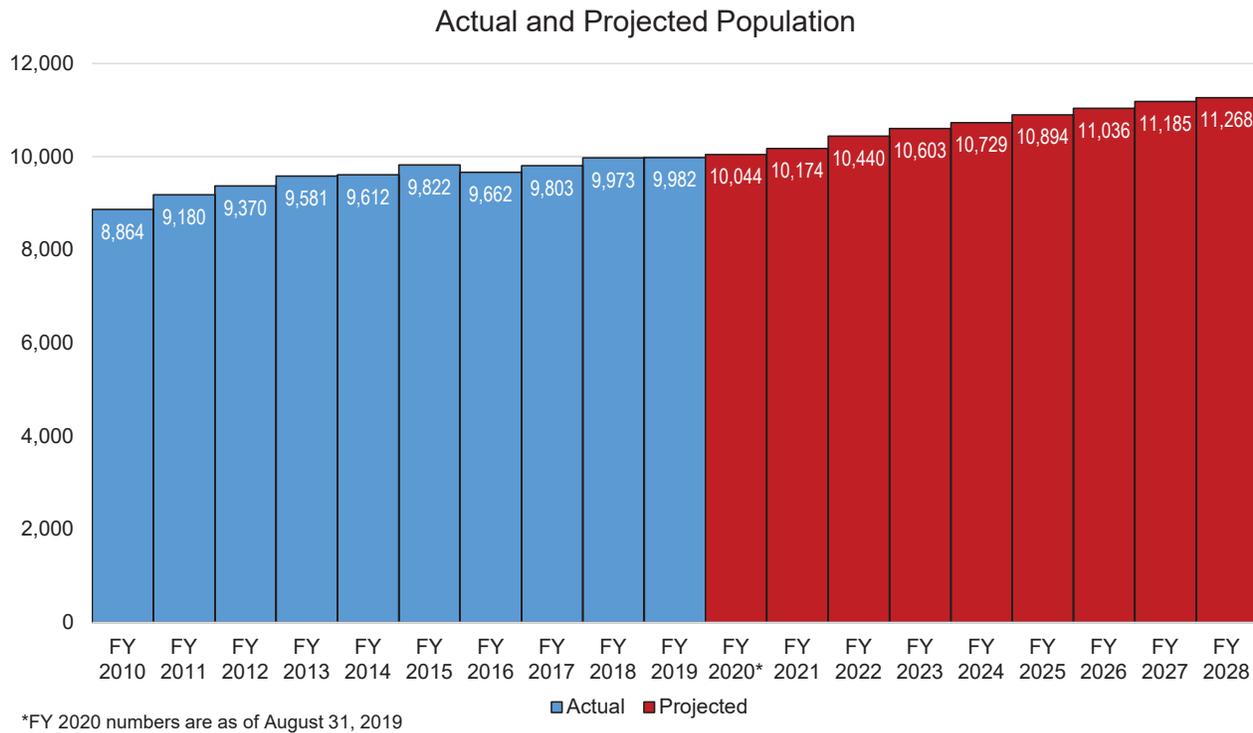
a given fiscal year. In the past ten years, ADP has steadily risen every year, while total capacity has also generally followed that trend. During that time, the capacity utilization rate saw a peak of 100.6 percent in both FY 2015 and FY 2016, which was then followed by its lowest point of 93.0 percent in FY 2017. This 7.6 percent decline was due to the expansion of 800 double-bunked cells at EDCF, LCMHF, and the Norton Correctional Facility during FY 2017. However, the double-bunking did not continue to the end of FY 2018, when the total capacity fell by 519 beds from its highest point in FY 2017. On August 31, 2018, the ADP in FY 2019 was 10,009 inmates, and the capacity utilization rate was 100.4 percent, which are increases from FY 2018 of 36 inmates and 1.0 percent.

KDOC has a limited number of prison beds that are not counted in the official capacity, such as infirmary beds, which allows the population to exceed the official capacity. The September 16, 2019, inmate ADP included 100 inmates held in non-KDOC facilities, which were primarily county jails and Larned State Hospital.

Actual and Projected Populations

The FY 2020 prison population projections released by the Kansas Sentencing Commission (KSC) anticipate the inmate population will be 258 more than the total capacity by the end of FY 2019 and will exceed capacity by 1,512 inmates by the end of FY 2029.

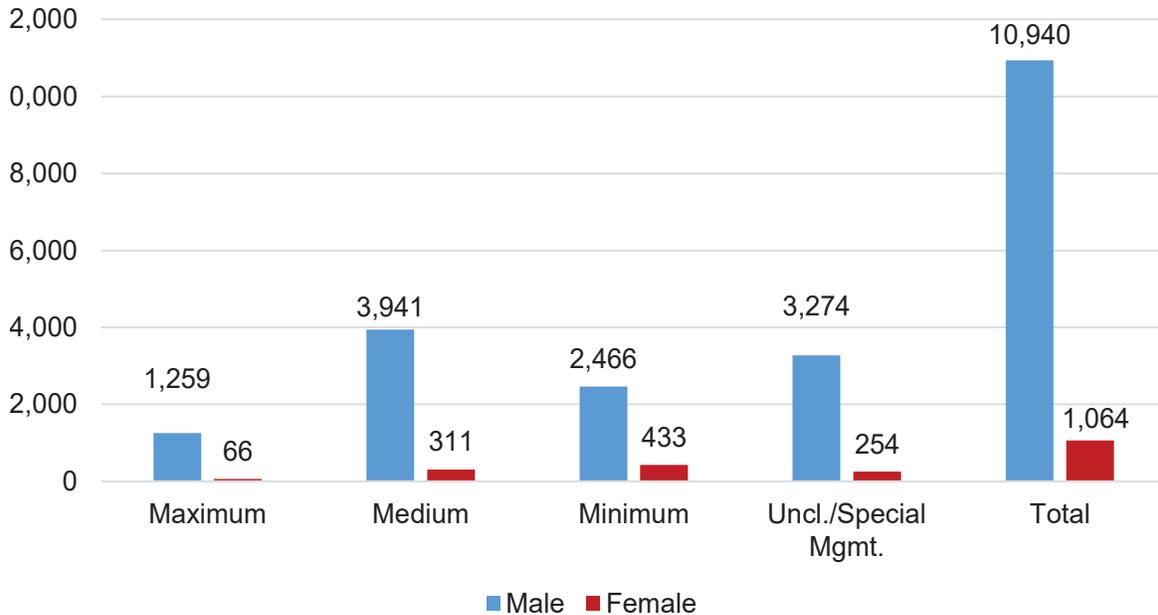
In addition to total capacity, gender and custody classifications are tracked by KDOC. Issues with inadequate capacity are more common among the higher custody levels of inmates. This is due to the fact that higher custody level inmates cannot be placed in a lower custody level cell (e.g., maximum inmates cannot be placed in medium or minimum cells). That is not the case for the lower custody level inmates, who can be placed in higher custody level cells. In addition, capacity in all-male or all-female facilities are not available for housing inmates of the opposite gender. The Population by Gender and Custody Classification chart on the following page displays the total inmate population by gender and custody classification for FY 2020, as of August 31, 2019.



The FY 2019 prison population projections released by the KSC anticipate the male inmate population will be over capacity by 214 inmates in FY 2019 and will increase for every year in its ten-year projection, when there will be 10,399 inmates, or 1,386 over capacity, in FY 2028.

The FY 2019 prison population projections show the female inmate population exceeding capacity by 44 inmates. The KSC projects over ten years, the female population will steadily rise to 1,075 in 2025, then fall off to 1,029, or 126 above capacity, in FY 2029.

Population by Gender and Custody Classification as of September 16, 2019



Consequences of Operating Close to Capacity

According to KDOC, the following illustrates some of the consequences of operating close to capacity:

- Excessive inmate movement;
- More emergencies and separate inmates with conflicts (e.g., gangs, grudges);
- Greater reliance on segregation and contract jail beds; and
- Inability to keep inmates near their families, which creates more problematic releases.

Increasing Capacity through New Construction

During the 2007 Legislative Session, KDOC received bonding authority totaling \$40.5 million

for new construction, including adding cell houses at El Dorado, Stockton, and Ellsworth Correctional Facilities and a new facility in Yates Center. KDOC issued \$1.7 million in bonds for architectural planning at the four proposed sites, but the balance of the bonding authority was rescinded during the 2008 and 2009 Legislative Sessions. KDOC completed planning for expansion of EDCF and beginning in FY 2017, included plans for construction on two new cell houses at EDCF in its five-year capital improvement plan at a total cost of \$24.9 million. Each cell house would contain up to 256 beds depending on the combination of single- and double-occupancy cells.

During the October 4, 2016, meeting of the Joint Committee on State Building Construction, KDOC asked the Committee to recommend its requests to finance the construction of two facilities at EDCF, then totaling \$27.2 million all from the State General Fund for FY 2019, be deleted

from its five-year capital improvement plan while alternate plans were finalized. KDOC anticipated, based on population projections, the construction of the facilities may be needed by FY 2020.

Construction on Medium and Maximum Unit at Lansing Correctional Facility

During the 2017 Legislative Session, KDOC brought plans before the Legislature to demolish an existing medium-security unit at Lansing Correctional Facility (LCF) and construct a new facility in its place. KDOC asserts the new facility will reduce the need for staff, generating savings over time.

Provisions in 2017 Senate Sub. for HB 2002 allow KDOC to enter into a lease-purchase agreement for the demolition, design, and construction of a new facility at LCF or, if more cost effective, allow the agency to bond with the Kansas Development Finance Authority to demolish, design, and construct a correctional institution at LCF, capping expenditures related to the project at \$155.0 million. The provisions also require the Secretary of Corrections to advise and consult the State Building Advisory Commission for the use of an alternative project delivery procurement process and require KDOC to appear before the State Finance Council for approval of the decision.

On January 24, 2018, the State Finance Council approved a lease-to-own plan where a private

company would build the 2,432-bed facility, and the State would purchase the facility through a 20-year lease for a total of \$362 million. Ground broke on the new facility in April 2018; the maximum and minimum security facilities have anticipated completion dates of October 2019 and November 2019, respectively.

Inmate Outsourcing

In order to reduce inmate overcrowding and eliminate mandatory 12-hour shifts at EDCF, KDOC has contracted 130 beds in county jails. KDOC also submitted a request for proposal at the end of March 2019 regarding out-of-state beds. A contract for medium and maximum security beds with CoreCivic was entered into in August 2019 for the Saguaro Correctional Center in Eloy, Arizona. This is a one-year contract with two one-year renewal options. There are 240 beds available in August 2019, with an additional 120 beds available by December 2019, at a cost of \$74.76 per inmate per day. KDOC's inmate cost per day was \$72.35 in FY 2018.

The 2018 Legislature passed SB 328, which requires prior legislative authorization if any agency wants to outsource the security operations of any state-run correctional facility. The bill further defined security operations as the supervision of inmates at a correctional facility by a correctional officer or warden.

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Judiciary, Corrections, and Juvenile Justice

H-7 Mental Health and the Criminal Justice System

Considerations for incarcerated and detained persons with mental health issues have become increasingly common in the criminal justice system in Kansas. An overview of recent legislation and available services, including crisis intervention, mental health courts, and Kansas Department of Corrections (KDOC) mental health services follows.

Recent Legislation

Kansas Youth Suicide Prevention Coordinator and Kansas Criminal Justice Reform Commission—2019 HB 2290

The 2019 Legislature passed HB 2290, which creates and amends several laws related to public agencies. Among these provisions, the bill creates a position of Kansas Youth Suicide Prevention Coordinator within the Office of the Attorney General and creates the Kansas Criminal Justice Reform Commission (Commission) to study and make recommendations on various aspects of the criminal justice system, including several topics related to mental health.

Kansas Youth Suicide Prevention Coordinator

The bill requires the Attorney General to appoint a Kansas Youth Suicide Prevention Coordinator and additional support staff (as appropriations allow) to identify, create, and coordinate and support youth suicide awareness and prevention efforts throughout the state. The coordinator may:

- Lead the development, implementation, and marketing of a website, online application, and mobile phone application to facilitate communication with youth for the purpose of promoting youth safety and well-being;
- Develop and promote multidisciplinary and interagency strategies to help communities, schools, mental health professionals, medical professionals, law enforcement, and others work together and coordinate efforts to prevent and address youth suicide;

- Organize events that bring together youth, educators, and community members from across the state to share information and receive training to prevent and address youth suicide in their communities;
- Gather, disseminate, and promote information focused on suicide reduction; and
- Perform any other duty assigned by the Attorney General to carry out the provisions of the bill.

Kansas Criminal Justice Reform Commission

The Commission is comprised of 18 voting members and 3 non-voting members, and is required to, in relevant part:

- Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards;
- Study specialty courts and make recommendations for the use of specialty courts throughout the state;
- Survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming; and
- Study the policies of the KDOC for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare, and substance abuse facilities.

The bill requires one member of the Commission to be a mental health professional appointed by the Kansas Community Mental Health Association. The bill requires the Commission to prepare and submit its preliminary report to the Legislature on or before December 1, 2019,

and a final report and recommendations to the Legislature on or before December 1, 2020. The preliminary report can be found at <http://www.kslegresearch.org/KLRD-web/Committees/Committees-KS-CriminalJustRefmComm.html>.

Juvenile Crisis Intervention Centers—2018 House Sub. for SB 179

The 2018 Legislature created and amended law to establish juvenile crisis intervention centers and procedures for admission of juveniles to such centers. For more information on 2018 House Sub. for SB 179, see article [H-5 Juvenile Services in this Briefing Book](#).

Competency to Stand Trial—2018 HB 2549

The 2018 Legislature amended law related to the competency of a defendant to stand trial, expanding the list of places where a defendant may be committed for evaluation and treatment. The bill provides a court, in both misdemeanor and felony cases, may commit a defendant to the state security hospital or any appropriate state, county, or private institution or facility for a psychiatric or psychological examination and report to the court for determination of competency to stand trial. The bill also provides if a defendant is found incompetent to stand trial, the court must commit the defendant for evaluation and treatment to any appropriate state, county, or private institution or facility.

Under prior law, a defendant charged with a felony could be committed only to a state security hospital or any county or private institution for examination and report to the court and, if found incompetent to stand trial, could be committed only to a state security hospital or any appropriate county or private institution for evaluation and treatment. Under prior law, a defendant charged with a misdemeanor could be committed only to any appropriate state, county, or private institution for examination and report and, if found incompetent to stand trial, could be admitted only to these same institutions for evaluation and treatment.

Crisis Intervention Act—2017 Senate Sub. for HB 2053

The 2017 Legislature passed legislation related to the care and treatment of persons with mental illness and problems with substance abuse through Senate Sub. for HB 2053, also known as the Crisis Intervention Act (Act). The Act outlines requirements for the use of emergency observation and treatment (EOT) in a “crisis intervention center” (center), defined as an entity licensed by the Kansas Department for Aging and Disability Services that is open 24 hours a day, 365 days a year; equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse, or a co-occurring condition; and uses certified peer specialists. EOT does not mean the person loses any civil right, property right, or legal capacity, except as ordered by a court. Admission alone does not create a presumption that a person is in need of a guardian or conservator, or both.

An individual may be admitted voluntarily or involuntarily based on the belief and factual circumstances supporting the belief that the person needs EOT due to mental illness or substance abuse and he or she is likely to cause harm to self or others if not immediately detained. Law enforcement can transport a person needing EOT to a center, and the center cannot refuse to accept a person for evaluation if the center is within the officer’s jurisdiction.

The person’s need for EOT must be evaluated within 4 hours after admission by the head of the center and no later than 23 hours after admission by a different behavioral health professional. If the head of the center determines the need for EOT exists after 48 hours, the head of the center must file an affidavit to that effect for review in the district court in the county where the center is located. If the head of the center determines the need for EOT exists after 72 hours, the head of the center must immediately file a petition to find appropriate placement for the person.

The Act outlines the rights of every patient being treated in a center and requires the head of the center to advise any person in custody of his or her rights under the Act.

KDOC Mental Health and Behavioral Health Services

KDOC facilities provide comprehensive health care through private companies under contract with KDOC. Each facility provides 24-hour mental health care for inmates, including on-site crisis intervention, use of designated hospital rooms or appropriate health facilities, and emergency on-call mental health professional services when the emergency health facility is not located nearby. Mental health services are provided to inmates based upon psychiatric assessments. Specific programs and services are outlined below.

Larned Correctional Mental Health Facility

Historically, Larned Correctional Mental Health Facility has housed the most severely mentally ill adult male inmates within KDOC, along with a significant number of inmates with behavioral disorders that make them an unacceptable risk for housing in another facility. The Central Unit serves as a transitional unit for inmates who are not able to function in the general population of a traditional correctional institution for mental health reasons, but are not in need of psychiatric hospitalization. Inmates are assigned to this facility by mental health staff at other correctional institutions. In May 2017, KDOC announced plans to convert the 150-bed maximum-security Central Unit to a medium-security unit to house certain offenders aged 18-25 with high recidivism potential. The 150 mental health inmates previously housed in Central Unit were subsequently transferred to the behavioral health unit at El Dorado Correctional Facility in Summer 2017.

Larned State Hospital

At Larned State Hospital, 115 beds are reserved for KDOC offenders who need a higher level of psychiatric care. There, inmates are provided mental health care and treatment in either the acute care or the residential rehabilitation program (RRP). The purpose of RRP is to provide psychiatric rehabilitation and vocational services to adult males referred from KDOC with the intent of preparing these individuals for successful reintegration into the community or

back into KDOC services as determined on an individual basis.

El Dorado Correctional Facility

Fundamental Lessons in Psychology (FLIP).

Directed at segregation inmates, FLIP consists of various psychological topics, including anger management; anxiety; assertiveness; cognitive self-change; depression; general mental health; grief; loss and forgiveness; men's issues, adjustment, or both; and self-esteem.

Behavior Modification Program (BMP).

BMP is designed to deal with transitioning segregation inmates in a stratified behavior modification program based on increased steps of privileges for demonstrated appropriate behavior and program compliance. The nine-month, cognitive-based program integrates inmates in a three-step process that includes portions of Thinking for a Change, Motivation for Change, Positive Attitude Development, and anger management programs. An additional three months of monitoring under intensive supervision is required under the program.

Ellsworth Correctional Facility

A variety of services are available, including mental health group counseling, intensive groups, individual counseling, psychiatric intervention, crisis intervention, psychological evaluations, activity therapy, discharge planning, and tele-psychiatry, to assist in the management of inmates on psychotropic drugs and on-call services. In addition, mental health professionals provide staff instruction on the assessment and management of the inmate population.

Norton Correctional Facility

The Behavioral Health Department provides individual and group therapy for inmates, including therapy groups for anger management and dialectical behavior therapy, and covering topics such as lifestyle changes, relationships, and parenting.

Alternative Sentencing Courts

Alternative sentencing courts, or specialty courts, are established as an alternative to incarceration for persons with mental health issues, substance abuse issues, or both, who are convicted of misdemeanors. These courts offer treatment, support, and counseling. Many times, those who suffer from mental health disorders also suffer from addiction to drugs, such as opioids. For some mental health courts, diagnosis of a major mental health disorder is required for participation. However, if the participant is also addicted to drugs, treatment for that addiction will coincide with treatment for the underlying mental health disorder. Kansas has not established a statewide program for drug treatment or mental health courts. However, ten judicial districts have established drug courts and two judicial districts have established a behavioral or mental health court. Additionally, the cities of Topeka and Wichita have developed their own municipal-level programs. Further detail regarding some of these programs follows.

Wyandotte County sets aside a care and treatment docket for those who would benefit from the program. Judges can decide to mandate outpatient treatment or order a trip to Osawatimie State Hospital. In Douglas County, the county commission developed a behavioral health program for its courts, which opened in January 2017. More than \$440,000 was set aside to fund the mental health court in 2016. The mission of the behavioral health court is to connect defendants with community support services and reduce criminal involvement of defendants who suffer from serious mental illness and co-occurring disorders, thereby enhancing public health and safety.

The City of Topeka developed its alternative sentencing court in 2015 with a \$91,000 grant from the U.S. Department of Justice and \$25,000 from the Kansas Health Foundation. The court provides treatment, rather than jail time, for those charged with misdemeanor offenses and who are mentally ill or addicted to drugs or alcohol. The City of Wichita developed its mental health court in 2009 with a federal grant. The program

is said to have improved the quality of life for its graduates, diminished recidivism, and saved taxpayers millions of dollars (<https://www.khi.org/news/article/advocates-of-kansas-mental-health-courts-say-lives-improved-taxpayer-dollar>).

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Judiciary, Corrections, and Juvenile Justice

H-8 Sentencing Overview and Criminal Justice Reform Issues

The Kansas Sentencing Guidelines Act (KSGA) became effective July 1, 1993. Two grids containing the sentencing range for drug crimes and nondrug crimes were developed for use as a tool in sentencing. (*Note: The source for the attached sentencing range grids for drug offenses and nondrug offenses is the Kansas Sentencing Commission Guidelines, Desk Reference Manual, 2019. These sentencing grids are provided at the end of this article.*)

The sentencing guidelines grids provide practitioners with an overview of presumptive felony sentences.

The determination of a felony sentence is based on two factors: the current crime of conviction and the offender's prior criminal history. The sentence contained in the grid box at the juncture of the severity level of the crime of conviction and the offender's criminal history category is the presumed sentence. [See KSA 21-6804(c).]

Off-Grid Crimes

The crimes of capital murder (KSA 2019 Supp. 21-5401), murder in the first degree (KSA 2019 Supp. 21-5402), terrorism (KSA 2019 Supp. 21-5421), illegal use of weapons of mass destruction (KSA 2019 Supp. 21-5422), and treason (KSA 2019 Supp. 21-5901) are designated as off-grid person crimes.

Kansas law provides for the imposition of the death penalty, under certain circumstances, for a conviction of capital murder (KSA 2019 Supp. 21-5401 and KSA 2019 Supp. 21-6617). Where the death penalty is not imposed, a conviction of capital murder carries a life sentence without possibility of parole (KSA 2019 Supp. 21-6620(a)).

The remaining off-grid person crimes require life sentences with varying parole eligibility periods. Persons convicted of premeditated first-degree murder committed prior to July 1, 2014, are eligible for parole after serving 25 years of the life sentence, unless the trier of fact finds there were aggravating circumstances justifying the imposition of the Hard 50 sentence (requiring 50 years to be served before parole eligibility).

Persons convicted of premeditated first-degree murder committed on or after July 1, 2014, are eligible for parole after serving 50 years of the life sentence, unless the sentencing judge, after a review of mitigating circumstances, finds substantial and compelling reasons to impose the Hard 25 sentence instead (KSA 2019 Supp. 21-6620(c)).

Persons convicted of felony murder committed prior to July 1, 2014, are parole eligible after serving 20 years of the life sentence. Persons convicted of felony murder convicted on or after July 1, 2014, are parole eligible after serving 25 years of the life sentence.

Persons convicted of terrorism, illegal use of weapons of mass destruction, or treason are parole eligible after serving 20 years of the life sentence (KSA 2019 Supp. 22-3717(b)(2)).

Also included in the off-grid group are certain sex offenses against victims under the age of 14: aggravated human trafficking (KSA 2019 Supp. 21-5426(b)), rape (KSA 2019 Supp. 21-5503), aggravated indecent liberties (KSA 2019 Supp. 21-5506(b)), aggravated criminal sodomy (KSA 2019 Supp. 21-5504(b)), commercial sexual exploitation of a child (KSA 2019 Supp. 21-6422), and sexual exploitation of a child (KSA 2019 Supp. 21-5510). Offenders sentenced for these off-grid crimes are parole eligible after 25 years in confinement for the first offense, parole eligible after 40 years in confinement for the second offense, or sentenced to life without parole if they have been convicted of two or more of these offenses in the past.

Drug Grid and Nondrug Grid

The drug grid is used for sentencing on drug crimes described in KSA Chapter 21, Article 57. The nondrug grid is used for sentencing on other felony crimes. In both grids, the criminal history categories make up the horizontal axis and the crime severity levels make up the vertical axis.

Each grid contains nine criminal history categories ([2019 Drug Grid \(PDF\)](#); [2019 Nondrug Grid \(PDF\)](#)).

The drug grid contains five severity levels; the nondrug grid contains ten severity levels. A thick, black dispositional line cuts across both grids. Above the dispositional line are unshaded grid boxes, which are designated as presumptive prison sentences. Below the dispositional line are shaded grid boxes, which are designated as presumptive probation sentences.

The grids also contain boxes that have a dark shaded color through them, which are referred to as “border boxes.” A border box has a presumptive prison sentence, but the sentencing court may choose to impose an optional nonprison sentence, which will not constitute a departure. The nondrug grid contains three border boxes, in levels 5-H, 5-I, and 6-G. The drug grid contains seven dark-shaded border boxes, in levels 4-E, 4-F, 4-G, 4-H, 4-I, 5-C, and 5-D. [See KSA 2019 Supp. 21-6804 and KSA 2019 Supp. 21-6805.]

Grid Boxes

Within each grid box are three numbers, which represent months of imprisonment. The three numbers provide the sentencing court with a range for sentencing. The sentencing court has discretion to sentence within the range. The middle number in the grid box is the standard number and is intended to be the appropriate sentence for typical cases. The upper and lower numbers should be used for cases involving aggravating or mitigating factors sufficient to warrant a departure, as explained in the next paragraph. [See KSA 2019 Supp. 21-6804 and KSA 2019 Supp. 21-6805.]

The sentencing court may depart upward to increase the length of a sentence up to double the duration within the grid box. The court also may depart downward to lower the duration of a presumptive sentence. [See KSA 2019 Supp. 21-6815, 21-6816, and 21-6817.] The court also may impose a dispositional departure, from prison to probation or from probation to prison (KSA 2019 Supp. 21-6818).

In *State v. Gould*, 271 Kan. 394, 23 P.3d 801 (2001), the predecessor to KSA 21-6815 was found to be “unconstitutional on its face” for

the imposition of upward durational departure sentences by a judge and not a jury. In the 2002 Legislative Session, the departure provisions were amended to correct the upward durational departure problem arising from *Gould*. This change became effective June 6, 2002. The jury now determines all of the aggravating factors that might enhance the maximum sentence, based upon the reasonable doubt standard. The trial court determines if the presentation of evidence regarding the aggravating factors will be presented during the trial of the matter or in a bifurcated jury proceeding following the trial (KSA 2019 Supp. 21-6817).

Probation

Probation is a procedure by which a convicted defendant is released after sentencing, subject to conditions imposed by the court and supervision by the probation service of the court or community corrections, generally without serving a period of imprisonment (although a felony offender may be sentenced to up to 60 days in county jail as a condition of probation). As noted above, a number of boxes on the sentencing grids are designated “presumptive probation,” which means probation will be granted unless a departure sentence is imposed. An underlying prison sentence is still imposed in felony cases where probation is granted, and if the defendant is subsequently found to have violated a condition of probation, probation may be revoked and the defendant required to serve the underlying prison term. Other possible actions a court may take upon a violation of probation include continuation of probation, modification of probation conditions, or various periods of confinement in a county jail. In some cases, where a defendant has waived the right to a hearing on a probation condition violation, court services or community corrections may impose two- or three-day “quick dip” periods of confinement in a county jail.

Recommended probation terms range from under 12 to 36 months, depending on the severity level of the crime of conviction.

Sentencing Considerations

The sentencing court should consider all available alternatives in determining the appropriate sentence for each offender. The sentencing guidelines seek to establish equity among like offenders in similar case scenarios. Rehabilitative measures are still an integral part of the corrections process, and criminal justice professionals continue efforts to reestablish offenders within communities. The guidelines do not prohibit sentencing courts from departing from the prescribed sentence in atypical cases. The sentencing court is free to choose an appropriate sentence, or combination of sentences, for each case (KSA 2019 Supp. 21-6604).

Good Time and Program Credits

While incarcerated, offenders may earn (and forfeit) “good time” credits based upon factors like program and work participation, conduct, and the inmate’s willingness to examine and confront past behavioral patterns that resulted in the commission of crimes. Depending on the severity level of the offender’s crime, the offender may earn up to 15 percent or 20 percent of the prison part of the sentence in good time credits.

Additionally, offenders serving only a sentence for a nondrug severity level 4 or lower crime or a drug severity level 3 or lower crime may earn up to 120 days of credit that may be earned by inmates “for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender’s risk after release.”

With a few exceptions for certain sex-related offenses, any good time or program credits earned and subtracted from an offender’s prison sentence are not added to the postrelease supervision term (KSA 2019 Supp. 21-6821).

Postrelease Supervision

Once offenders have served the prison portion of a sentence, most must serve a term of postrelease supervision. For certain sex-related offenses, the postrelease supervision term is increased by the amount of any good time or program credits earned and subtracted from the prison portion of the offender's sentence. For crimes committed on or after July 1, 2012, offenders sentenced for drug severity levels 1-3 or nondrug severity levels 1-4 must serve 36 months of postrelease supervision, those sentenced for drug severity level 4 or nondrug severity levels 5-6 must serve 24 months, and those sentenced for drug severity level 5 or nondrug severity levels 7-10 must serve 12 months. These periods may be reduced based on an offender's compliance and performance while on postrelease supervision (KSA 2019 Supp. 22-3717(d)(1)).

While on postrelease supervision, an offender must comply with the conditions of postrelease supervision, which include reporting requirements; compliance with laws; restrictions on possession and use of weapons, drugs, and alcohol; employment and education requirements; restrictions on contact with victims or persons involved in illegal activity; and other conditions. A "technical violation" of the conditions of postrelease supervision (such as failure to report) will result in imprisonment for six months, reduced by up to three months based upon the offender's conduct during the imprisonment. A violation based upon conviction of a new felony or a new misdemeanor will result in a period of confinement as determined by the Prisoner Review Board, up to the remaining balance of the postrelease supervision period (KSA 75-5217).

Recent Notable Sentencing Guidelines Legislation

In 2010, the Kansas Criminal Code, including the sentencing guidelines, was recodified. The recodification took effect July 1, 2011. Citations in this article are to the recodified code.

In 2012, the Legislature passed Senate Sub. for Sub. for HB 2318, which changed the drug grid

from a four-level grid to a five-level grid, adding a new level 2 with penalties falling between the existing first and second levels of the grid. The new grid also expanded the presumptive imprisonment boxes and the border boxes.

In 2013, the Legislature passed HB 2170, which represented the recommendations of the Justice Reinvestment Working Group, a statutorily created body charged with analyzing the Kansas criminal justice system and, based upon that analysis, providing evidence-based policy options that would reduce recidivism and, at the same time, the increasing prison population. Among other provisions, the bill implemented a series of graduated sanctions for probation violators, including 2- or 3-day jail stays and 120- or 180-day prison stays. [Note: 2019 SB 18 eliminated the 120- or 180-day prison stay sanctions.]

In June 2013, the U.S. Supreme Court's decision in *Alleyne v. U.S.*, 570 U.S. 2151, 133 S. Ct. 2151, 186 L. Ed. 2D 314 (2013), called the constitutionality of Kansas' Hard 50 sentencing statute (KSA 21-6620) into doubt. Since 1994, in cases where a defendant was convicted of premeditated first-degree murder, the statute had allowed the sentencing court to impose a life sentence without eligibility for parole for 50 years when the judge found one or more aggravating factors were present. The *Alleyne* decision indicated such determinations must be made by the trier of fact (usually a jury) using a reasonable doubt standard, rather than by the sentencing judge.

In response to the *Alleyne* decision, the Kansas Attorney General requested Governor Brownback call the Kansas Legislature into Special Session "for the purpose of repairing" the Hard 50 sentence. The Governor subsequently called the Legislature into Special Session starting September 3, 2013, to respond to *Alleyne*.

Before the 2013 Special Session, the Special Committee on Judiciary met to review *Alleyne*, receive testimony, and report preliminary findings to the House and Senate Judiciary Committees at the commencement of the Special Session. The Special Committee recommended language

for a bill that would institute a jury procedure for the Hard 50 determination.

At the Special Session, the Legislature considered and passed HB 2002, which was an amended version of the language proposed by the Special Committee. HB 2002 went into effect upon its publication in the *Kansas Register* (September 6, 2013).

In 2014, the Legislature passed HB 2490, which included amendments to the sentencing provisions for premeditated first-degree murder, attempted capital murder, and felony murder.

The bill increased the default sentence for premeditated first-degree murder committed on or after July 1, 2014, from the Hard 25 sentence to the Hard 50 sentence. The sentencing judge may impose the Hard 25 sentence if the judge reviews mitigating factors and finds substantial and compelling reasons to impose the lesser sentence.

The bill also imposed the Hard 25 sentence for attempted capital murder (previously a severity level 1 felony) and felony murder (previously a Hard 20 sentence).

If a defendant's criminal history when sentenced for any of these crimes would subject the defendant to imprisonment for a term exceeding the Hard 50 or Hard 25 sentence (as applicable), the defendant will be required to serve the mandatory minimum term equal to the sentence established under the sentencing guidelines.

In 2015, the Legislature passed HB 2051, which increased the amount of good time inmates sentenced for post-July 1, 2012, drug severity level 3 crimes may earn, to try to restore the general good time eligibility criteria to a similar state as it existed before the 2012 changes to the drug grid. The bill also increased the amount of time from 60 days to 90 days that may be earned by any eligible inmate for program credits.

In 2016, the Legislature passed three bills related to sentencing: HB 2151, HB 2447, and HB 2463. HB 2151 authorized the Secretary of Corrections (Secretary) to transfer certain low-to-moderate-risk

offenders to house arrest pursuant to community parenting release if the conditions listed in the bill are met and the Secretary determines the offender's placement in the program is in the child's best interests. The Secretary can return an offender to a correctional facility to serve the remaining sentence if the offender fails to comply with release requirements.

HB 2447 increased the maximum number of days an inmate's sentence may be shortened for earning program credits from 90 days to 120 days.

The bill also permitted the dismissal of parole, conditional release, or postrelease supervision violation charges to be conditioned upon the released inmate agreeing to credit being withheld for the period of time from the date the Secretary issued a warrant to the date the offender was arrested or returned to Kansas.

HB 2463 amended statutes governing the determination of criminal history to add nongrid felonies, nondrug severity level 5 felonies, and any drug severity level 1 through 4 felonies committed by an adult to the list of juvenile adjudications that will decay if the current crime of conviction is committed after the offender reaches age 25. The bill also allowed a court to continue or modify conditions of release for, or impose a 120- or 180-day prison sanction on, an offender who absconds from supervision, without having to first impose a 2- or 3-day jail sanction. Finally, the bill made a violation or an aggravated violation of the Kansas Offender Registration Act a person offense if the underlying crime (for which registration is required) is a person crime. If the underlying crime is a nonperson crime, the registration offense is a nonperson crime. Previously, a violation or aggravated violation of the Kansas Offender Registration Act was a person crime regardless of the designation of the underlying crime.

Legislation passed by the 2017 Legislature involving sentencing included SB 112 and HB 2092. SB 112, among other changes, enacted the Law Enforcement Protection Act. This act created a special sentencing rule with enhanced penalties if a trier of fact finds beyond a reasonable doubt

that an offender committed a nondrug felony offense (or an attempt or conspiracy to commit such offense) against a law enforcement officer while the officer was performing the officer's duty or solely due to the officer's status as a law enforcement officer.

HB 2092, among other changes, amended law related to mandatory minimum sentences. The bill clarified mandatory minimum sentences will not apply if, due to criminal history, the offender would be subject to presumptive imprisonment for a severity level 1 crime for a term longer than the mandatory minimum. In such case, the offender would serve a sentence equal to the longer term and would not be eligible for parole until the entire sentence is completed. In addition, the sentence could not be reduced by good time credits.

In 2019, the Legislature passed SB 18, which makes numerous amendments regarding crimes, punishments, and criminal procedure. Among its provisions are the following.

The bill removes the ability of the sentencing court to specifically withhold authority from supervising court services or community corrections officers to impose certain probation violation sanctions of confinement in a county jail for a 2-day or 3-day period or an additional 18 days of confinement in a county jail.

The bill also removes probation violation sanctions allowing the court to remand the defendant to the custody of the Secretary for periods of 120 or 180 days and removes and modifies other related provisions.

The bill amends a mitigating factor that may be applied when the victim was an aggressor or participant in the criminal conduct associated with the crime of conviction, to prohibit the application of this factor to a sexually violent crime or to electronic solicitation, when: a) the victim is less than 14 years old and the offender is at least 18 years old, or b) the offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act.

The bill also amends law related to correction of an illegal sentence by specifying such sentences may only be corrected while the defendant is serving the sentence.

The bill also amends law related to classification of out-of-state criminal history of a defendant by listing certain factors or circumstances that would result in the out-of-state crime being considered a person felony for Kansas criminal history classification purposes, if such factors or circumstances are elements of the crime as defined by the convicting jurisdiction.

Criminal Justice Reform Issues

During the 2018 and 2019 Legislative Sessions, legislation aimed at targeting specific criminal justice reform issues has been passed.

Wrongful Conviction Compensation

In 2018, the Legislature passed HB 2579, concerning wrongful conviction compensation.

The bill creates a civil cause of action entitling claimants to recover damages from the State for wrongful conviction if the claimants can establish, by a preponderance of the evidence, several elements specified in the bill. Claimants must bring suit within two years of the the criminal charges' dismissal, finding of not guilty on retrial, or pardon of a claimant. Claimants convicted, imprisoned, and released from custody before July 1, 2018, are required to commence an action no later than July 1, 2020.

Claimants entitled to damages will receive \$65,000 for each year of imprisonment and not less than \$25,000 for each additional year a claimant served on parole or postrelease supervision or was required to register as an offender under the Kansas Offender Registration Act, whichever is greater. The court must order the award be paid as a combination of an initial payment not to exceed \$100,000 or 25 percent of the award, whichever is greater, and the remainder as an annuity not to exceed \$80,000 per year. (Claimants may designate a beneficiary for the annuity.) Alternatively, the court may order

one lump-sum payment if it is in the claimant's best interests.

The court may also award other non-monetary relief, including counseling, housing assistance, and personal financial literacy assistance. Further, claimants are entitled to reasonable attorney fees and costs incurred in an action brought under the bill of not more than \$25,000, unless the court authorizes a greater reasonable total upon a showing of good cause; tuition assistance; and participation in the state health care benefits program.

The bill outlines additional details regarding procedure, claim payment, tuition assistance, and health care benefits. It also provided for a certificate of innocence for the claimant, an expungement order, and destruction of biological samples held by the Kansas Bureau of Investigation.

As of August 2019, the State has agreed to pay compensation to two exonerated persons under the provisions of the bill. The State agreed to pay \$1.10 million to Richard Jones, who was incarcerated for nearly 17 years. The State also agreed to pay \$1.03 million to Floyd Bledsoe, who was incarcerated for 16 years.

Criminal Justice Reform Commission

In 2019, the Legislature passed HB 2290, which, among other provisions, established the Kansas Criminal Justice Reform Commission.

The bill establishes a 19-member Criminal Justice Reform Commission (Commission), composed of legislators, Judicial Branch personnel, prosecutors and defense attorneys, and other stakeholders, and requires the Commission to analyze, review, and study various criminal justice topics specified by the bill. The Commission must submit an interim report to the Legislature by December 1, 2019, and a final report and recommendations to the Legislature by December 1, 2020.

Kansas Closed Case Task Force

HB 2290 also establishes a 15-member Kansas Closed Case Task Force, composed of legislators, executive branch officials, and stakeholders, and requires the Task Force to develop a plan to ensure uniform statewide policies and procedures related to the handling, reporting, investigation, and sharing of information regarding hits to the state-combined DNA index system (CODIS) related to solved and unsolved cases. The Task Force is required to complete the plan by October 1, 2020, and submit a report by December 1, 2020. The Task Force will expire December 30, 2020.

SENTENCING RANGE- DRUG OFFENSES

Categories→ Severity Level ↓	A 3 + Person Felonies	B 2 Person Felonies	C 1 Person & 1 Nonperson Felony	D 1 Person Felony	E 3 + Nonperson Felonies	F 2 Nonperson Felonies	G 1 Nonperson Felony	H 2 + Misdemeanors	I 1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10
Presumptive Probation Border Box									
Presumptive Imprisonment									

• Fines not to exceed \$500,000 (SL-1-SL2), \$300,000 (SL3-SL4), \$100,000 (SL5)

• Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or win 1000 ft of any school property.

Levels	Distribute or Possess w/ intent to Distribute									
	Cocaine	Meth & Heroin	Marjuana	Manufacture (all)	Cultivate	Dosage Units	Postrelease	Probation	Good Time	
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	36	36	15%	
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	36	36	15%	
III	3.5 g - 100 g	1 g - 3.5 g	25 g - 450 g		5-49 plants	10-99	36	36	**20%	
IV	< 3.5 g	< 1 g	< 25 g			<10	24	*≤18	20%	
V	Possession	Possession	Possession-3rd offense				12	*≤12	20%	

* ≤ 18 months for 2003 SB123 offenders

** Retroactive application for offense committed on or after July 1, 2012

*** Severity Level increases one level if on or win 1000 ft of any school property

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	88 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	48 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:
 36 months recommended for felonies classified in Severity Levels 1-5
 24 months recommended for felonies classified in Severity Levels 6-7
 18 months (up to) for felonies classified in Severity Level 8
 12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:
 36 months for felonies classified in Severity Levels 1-4
 24 months for felonies classified in Severity Levels 5-6
 12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:
 24 months for felonies classified in Severity Levels 1-6
 12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

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**Adoption of Minors:
Statutory Overview**

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H-9
**Sex Offenders and
Sexually Violent
Predators**

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Judiciary, Corrections, and Juvenile Justice

H-9 Sex Offenders and Sexually Violent Predators

In recent years, the Kansas Legislature has made significant amendments to the Kansas Offender Registration Act (Act or KORA) [KSA 2019 Supp. 22-4901 to 22-4911 and KSA 2019 Supp. 22-4913] to comply with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). The purpose of the federal law is to protect the public, particularly children, from violent sex offenders by using a more comprehensive, nationalized system for registration of sex offenders. It calls for state conformity to various aspects of sex offender registration, including the information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. Failure of a jurisdiction to comply would result in a 10 percent reduction in Byrne Law Enforcement Assistance grants. Eighteen states, Kansas included, substantially have implemented SORNA. The other states are Alabama, Colorado, Florida, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and Wyoming.

The Act outlines registration requirements for “offenders,” which is defined to include sex offenders, violent offenders, and drug offenders, in addition to persons required to register in other states or by a Kansas court for a crime that is not otherwise an offense requiring registration. The definitions of sex offenders, violent offenders, and drug offenders are based on the commission and conviction of designated crimes (KSA 2019 Supp. 22-4902). A first conviction of failure to comply with the provisions of the Act is a severity level 6 felony, a second conviction is a level 5 felony, and a third or subsequent conviction is a level 3 felony. Additionally, failure to comply with the Act for more than 180 consecutive days is considered an aggravated violation—a level 3 felony. Lower severity levels apply for violations that consist only of failure to pay the sheriff’s office the required registration fee. Designation of these offenses as person or nonperson crimes depends on the designation of the underlying offense requiring registration (KSA 2019 Supp. 22-4903).

Several entities collaborate to enforce the provisions of the Act. KSA 2019 Supp. 22-4904 lists the duties of each entity in its own subsection as follows:

- (a) Courts (at the time of conviction or adjudication);
- (b) Staff of a correctional facility;
- (c) Staff of a treatment facility;
- (d) Registering law enforcement agencies;
- (e) Kansas Bureau of Investigation (KBI);
- (f) Attorney General;
- (g) Kansas Department of Education;
- (h) Secretary of Health and Environment; and
- (i) The clerk of any court of record.

Registration Requirements

KSA 2019 Supp. 22-4905 describes registration requirements. An offender must register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Exceptions exist for anyone physically unable to register in person, at the discretion of the registering law enforcement agency. Additionally, sex offenders must report in person four times per year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment, or is attending school. Violent offenders and drug offenders, at the discretion of the registering law enforcement agency, are required to report in person three times each year and by certified letter one time each year. An offender must register during the month of the offender's birth, and every third, sixth, and ninth month occurring before and after the offender's birthday. With some exceptions, the offender must pay a \$20 fee each time.

SB 20 (2013) amended this requirement to provide that registration is complete even when

the offender does not remit the registration fee, and failure to remit full payment within 15 days of registration is a class A misdemeanor, or, if within 15 days of the most recent registration two or more full payments have not been remitted, a severity level 9 person felony.

Offenders also must register in person within three business days of commencement, change, or termination of residence, employment status, school attendance, or other information required on the registration form, with the registering law enforcement agency where last registered and provide written notice to the KBI. Similarly, an offender must register within three business days of any name change. Finally, the offender must submit to the taking of an updated photograph when registering or to document any changes in identifying characteristics; renew any driver's license or identification card annually; surrender any driver's licenses or identification cards from other jurisdictions when Kansas is the offender's primary residence (an exception exists for active duty members of the military and their immediate family); and read and sign registration forms indicating whether these requirements have been explained.

Special conditions exist for registration in certain circumstances. If in the custody of a correctional facility, the law requires offenders to register with that facility within three business days of arrival, but does not require them to update their registration until discharged, paroled, furloughed, or released on work or school release from a correctional facility. If the offender is involuntarily committed under the Kansas Sexually Violent Predator Act, the committing court must notify the registering law enforcement agency of the county where the offender resides during the commitment. The offender must register within three business days of arrival of the county of commitment, but is not required to update such registration until placement in a reintegration facility, on transitional release, or on conditional release, at which point the regular responsibility for compliance resumes. If receiving inpatient treatment at any treatment facility, the offender must inform the registering law enforcement agency of the offender's presence at the facility and the expected duration of the treatment.

If an offender is transient, the law requires the offender to report in person to the registering law enforcement agency of the county or location of jurisdiction within three business days of arrival, and every 30 days thereafter, or more often at the discretion of the registering law enforcement agency. If traveling outside the United States, the offender must report in person to the registering law enforcement agency and the KBI 21 days prior to travel and provide an itinerary including destination, means of transport, and duration of travel. In an emergency, an offender must report within three business days of making arrangements for travel outside of the United States.

Duration of Registration

Pursuant to the Act, offenders are required to register for 15 or 25 years or for life, depending on the offense. Those crimes requiring registration for 15 years are capital murder; murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; criminal restraint, when the victim is less than 18; promoting the sale of sexual relations; a sexually motivated crime; a person felony where a deadly weapon was used; sexual battery; manufacture or attempted manufacture of a controlled substance; possession of certain drug precursors; distribution of certain controlled substances; any of the following when one of the parties is less than 18—adultery, patronizing a prostitute, or lewd and lascivious behavior; attempt, conspiracy, or criminal solicitation of any of these crimes; and convictions of any person required by court order to register for an offense not otherwise required by the Act.

Those crimes requiring registration for 25 years are criminal sodomy, when one of the parties is less than 18; indecent solicitation of a child; electronic solicitation; aggravated incest; indecent liberties with a child; unlawful sexual relations; sexual exploitation of a child; aggravated sexual battery; promoting prostitution, if the person selling sexual relations is 14 through 17 years of age; or any attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for life are second or subsequent convictions of an offense requiring registration; rape; aggravated indecent solicitation of a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; aggravated human trafficking; sexual exploitation of a child; promoting prostitution, if the person selling sexual relations is under 14 years of age; kidnapping; aggravated kidnapping; or any attempt, conspiracy, or criminal solicitation of any of these crimes. Additionally, any person declared a sexually violent predator is required to register for life.

Offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is a severity level 1 nondrug felony or an off-grid felony, also must register for life.

For offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is not a severity level 1 nondrug felony or an off-grid felony, a court may:

- Require registration until the offender reaches the age of 18, 5 years after adjudication or, if confined, 5 years after release from confinement, whichever occurs later;
- Not require registration if it finds on the record substantial and compelling reasons; or
- Require registration, but with the information not open to the public or posted on the Internet. (The offender would be required to provide a copy of such an order to the registering law enforcement agency at the time of registration, which in turn would forward the order to the KBI.) An offender required to register pursuant to the Act cannot expunge any conviction or part of the offender's criminal record while the offender is required to register.

Public Access to Offender Registration Information and the KBI Registered Offender Website

KSA 2019 Supp. 22-4909 provides that information provided by offenders pursuant to the Act is open to inspection by the public and can be accessed at a registering law enforcement agency, as well as KBI headquarters. Additionally, the KBI maintains a website with this information (<http://www.accesskansas.org/kbi/ro.shtml>), as do some registering law enforcement agencies. One of the provisions of this statute, added by 2012 HB 2568, prohibits disclosure of the address of any place where the offender is an employee or any other information about where the offender works on a website sponsored or created by a registering law enforcement agency or the KBI. While that information is not available online, it remains publicly available and may be obtained by contacting the appropriate registering law enforcement agency or by signing up for community notification through the KBI website.

Additionally, when a court orders expungement of a conviction or adjudication that requires registration, the offender must continue registering, although the registration is not open to inspection by the public or posted on the Internet.

If the offender has an additional conviction or adjudication that requires registration that is not expunged, registration for that conviction or adjudication remains open to the public and may be posted on the Internet, unless the registration is ordered restricted.

Court Decisions Regarding Offender Registration

In *State v. Myers*, 260 Kan. 669 (1996), the Kansas Supreme Court rejected an *ex post facto* challenge to the registration requirements, holding they did not unconstitutionally increase the punishment for the applicable crimes. However, the *Myers* court did hold that the public disclosure of registrant information would

be punitive and an *ex post facto* violation when imposed retroactively.

Subsequent Kansas appellate court decisions noted that the *Myers* holding that public disclosure applied retroactively is unconstitutional was cast into doubt by the U.S. Supreme Court's decision in *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2D 164 (2003). The *Smith* court held that Alaska's offender registration scheme, including public disclosure of registrant information via a website, was nonpunitive and its retroactive application not an *ex post facto* violation. (See *State v. Brown*, No. 107,512, unpublished opinion filed May 24, 2013.) A petition for review in *Brown* was filed June 24, 2013, but was placed on hold in January 2014.

In April 2016, the Kansas Supreme Court held in three cases challenging the retroactive application of increased registration periods on *ex post facto* grounds that the 2011 version of the Act was punitive in effect and therefore could not be applied retroactively. (See *Doe v. Thompson*, 304 Kan. 291 (2016); *State v. Buser*, 304 Kan. 181 (2016); and *State v. Redmond*, 304 Kan. 283 (2016).)

However, the same day the Court subsequently released an opinion in a case challenging lifetime postrelease registration for sex offenders under the Act as an unconstitutional cruel or unusual punishment. (See *State v. Petersen-Beard*, 304 Kan. 192 (2016).) Using *Smith* and its progeny as a template for analysis, the *Petersen-Beard* court held that registration did not constitute punishment, the analysis of whether the requirements constitute punishment is identical for all constitutional provisions, and therefore the contrary holdings of *Thompson*, *Buser*, and *Redmond* are overruled. (For a procedural description of how these cases came to be issued and overruled the same day, see Justice Johnson's dissent in *Petersen-Beard*.)

In August 2017, the Kansas Supreme Court explicitly extended the holding of *Petersen-Beard* in a case challenging retroactive application of tolling requirements for sex offender registration under the Act, stating that such retroactive application does not violate the *ex post facto*

clause. (See *State v. Reed*, 306 Kan. 899, 399 P.3d 865 (2017).)

In a decision issued the same day as *Reed*, the court declined to hold that retroactive application of increased registration requirements for drug offenders under the Act violates the *ex post facto* clause. (See *State v. Meredith*, 306 Kan. 906, 399 P.3d 859 (2017).) However, the *Meredith* court stated that its decision, due to an insufficient record on appeal, would not “fully foreclose future *ex post facto* challenges to KORA registration for non-sex offenders,” but that future challenges would have to distinguish the effects of the Act on such offenders from its effect on sex offenders.

Development of Sex Offender Policy

Consistent with Kansas’ early compliance with SORNA, the Kansas Legislature has been at the forefront of state and federal efforts to deal with the problem of sex offenders and sex predators. In addition to the SORNA amendments, since 1993, the Kansas Legislature has passed the Act; passed the Civil Commitment of Sexually Violent Predators Act; reinstated the death penalty for various acts of intentional and premeditated murder following the rape or sodomy of the victim or following the kidnapping of the victim; made life without parole the sentence for those persons convicted of a capital murder crime who are not given the sentence of death; nearly quadrupled the length of time more serious offenders, including sex offenders, serve in prison; lengthened the statute of limitations for sex crimes; and required DNA testing.

Legislation enacted in 2006 (SB 506) authorized the creation of the Sex Offender Policy Board (SOPB) under the auspices of the Kansas Criminal Justice Coordinating Council (KCJCC). The bill established the SOPB to consult with and advise the KCJCC on issues and policies relating to the treatment, sentencing, rehabilitation, reintegration, and supervision of sex offenders and to report its findings to the KCJCC, Governor, Attorney General, Chief Justice of the Supreme Court, the Chief Clerk of the House of Representatives, and the Secretary of the Senate. The SOPB’s first report examined

four topics: utilization of electronic monitoring, public notification pertaining to sex offenders, management of juvenile sex offenders, and restrictions on the residence of released sex offenders. The second report addressed the topics of treatment and supervision standards for sexual offenders, suitability of lifetime release supervision, and safety education and prevention strategies for the public.

Sex Offender Residency Restrictions

Legislation enacted in 2006 (SB 506) also prohibited cities and counties from adopting or enforcing any ordinance, resolution, or regulation establishing residential restrictions for offenders required to register under the Act. This provision was scheduled to expire on June 30, 2008. During the 2006 Interim, the Special Committee on Judiciary (Committee) was charged by the Legislative Coordinating Council with studying actions by other states and local jurisdictions regarding residency and proximity restrictions for sex offenders to discover any serious unintended consequences of such restriction and identifying actions Kansas might take that actually achieve the intended outcome of increasing public safety. The Committee held a joint hearing with the SOPB to take testimony from experts in the field. The Committee recommended the Legislature wait to receive the report from the SOPB on the topic before any legislative action was taken.

On January 8, 2007, the SOPB issued a report on its findings regarding sex offender residency restrictions, with the following conclusions:

- Although residency restrictions appear to have strong public support, the SOPB found no evidence to support their efficacy. It is imperative that policymakers enact laws that actually will make the public safe and not laws giving the public a false sense of security;
- It is recommended the Legislature make permanent the moratorium on residency restrictions. However, the moratorium should not be intended to interfere with a locality’s ability to regulate through zoning the location of congregate

dwelling for offenders, such as group homes;

- Residency restrictions should be determined based on individually identified risk factors;
- The most effective alternative for protecting children is a comprehensive education program. It is recommended the necessary resources be provided to an agency determined appropriate by the Legislature to educate Kansas parents, children, and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse; and
- In order for an effective model policy to be developed, the issue of sex offender residency restrictions should be referred to the Council of State Governments, the National Governors Association, and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

During the 2008 Legislative Session, SB 536 was enacted to:

- Eliminate the sunset provision on the prohibition on cities and counties from adopting or enforcing any ordinance, resolution, or regulation establishing residential restrictions for offenders;
- Add a provision to exempt any city or county residential licensing or zoning program for correctional placement residences that regulates housing for such offenders from the prohibition from adopting or enforcing offender residency restrictions;
- Add a provision that defines “correctional placement residence” to mean a facility that provides residential services for offenders who reside or have been placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse; and

- Clarify that a correctional placement residence does not include a single or multi-family dwelling or commercial residential building that provides residence to persons other than those placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse.

During the 2010 Interim, the Joint Committee on Corrections and Juvenile Justice Oversight studied the issue of residency restrictions and concluded that sex offender residency restrictions have no demonstrated efficacy as a means of protecting public safety.

Commitment of Sexually Violent Predators in Kansas

In Kansas, a sexually violent predator is a person who has been convicted of or charged with a “sexually violent offense” and who suffers from a mental abnormality or personality disorder, which makes the person likely to engage in repeat acts of sexual violence and who has serious difficulty in controlling such person’s dangerous behavior. Sexually violent predators are distinct from other sex offenders due to a higher risk to re-offend if their mental abnormality or personality disorder is left untreated. Those crimes considered “sexually violent offenses” are rape, KSA 2019 Supp. 21-5503; indecent liberties with a child and aggravated indecent liberties, KSA 2019 Supp. 21-5506; criminal sodomy and aggravated criminal sodomy, KSA 2019 Supp. 21-5504; indecent solicitation of a child and aggravated indecent solicitation, KSA 2019 Supp. 21-5508; sexual exploitation of a child, KSA 2019 Supp. 21-5510; aggravated sexual battery, KSA 2019 Supp. 21-5505; and aggravated incest, KSA 2019 Supp. 21-5604. “Mental abnormality” is defined as a congenital or acquired condition affecting the emotional or volitional capacity, which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others. “Likely to engage in repeat acts of sexual violence” means the person’s propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health

and safety of others. Pursuant to the Kansas Sexually Violent Predator Act (KSA 59-29a01 *et seq.*), originally enacted in 1994, a sexually violent predator can be involuntarily committed to the Sexual Predator Treatment Program (SPTP) at Larned State Hospital. Civil commitment is different from a criminal conviction. Instead of having a definitive time frame, civil commitment continues until the offender's mental abnormality or personality disorder has changed to the extent that he or she is safe to be released. Commitment can be accomplished only following a civil trial in which the court or a jury finds that a person is a sexually violent predator. A sexually violent predator would be required to complete the three phases of the treatment program, which include two inpatient phases at Larned State Hospital and one outpatient phase at one of the reintegration facilities. There is no time limit for completion of each phase. The offender must meet the predetermined requirements of the phase to progress.

Upon release from the secure facility, a person would go to a transitional release facility. These facilities cannot be located within 2,000 feet of a licensed child care facility, an established place of worship, any residence in which a child under 18 years of age resides, or a school or facility used for extracurricular activities of pupils enrolled in kindergarten through grade 12 (KSA 59-29a11(b)). Additionally, no more than 16 sexually violent predators may be placed in any one county on transitional release.

Once the court determines a person on transitional release may proceed to conditional release, the person must serve a minimum of five years in conditional release with no violations of the person's treatment plan before petitioning for final discharge.

The Secretary for Aging and Disability Services is required to issue an annual report to the Governor and Legislature detailing activities regarding transitional and conditional release of sexually violent predators. Such details include their number and location, the number of those who have been returned to treatment at Larned State Hospital and the reasons for the return,

and any plans for the development of additional transitional or conditional release facilities.

Sexual Predator Treatment Program Expenditures and Patient Census

In FY 2019, expenditures for the SPTP totaled \$23.5 million, all from the State General Fund. The patient census for the program totaled 270 patients, including 244 patients in the SPTP main facility at Larned State Hospital, 7 patients in reintegration units at Larned State Hospital, 9 patients in reintegration units at Osawatomie State Hospital, and 10 patients in reintegration units at Parsons State Hospital and Training Center.

Recent Legislation and Related Activity

In 2013 and 2015, the Legislative Division of Post Audit (LPA) completed a two-part performance audit of the SPTP that looked at the questions of how the Kansas SPTP compared to similar programs in other states and best practice, what actions could be taken to reduce the number of offenders committed to the SPTP, and whether the SPTP is appropriately managed to ensure the safety and well-being of program staff and offenders. Further information regarding this performance audit, including the reports, may be found on the LPA website: www.kslpa.org.

During the 2015 Session, House Sub. for SB 12 was enacted. This bill created and amended law governing the civil commitment of sexually violent predators and the SPTP. The bill's extensive provisions included the following:

- Named the continuing and new law governing such civil commitment the "Kansas Sexually Violent Predator Act";
- Adjusted the processes for identifying and evaluating persons who may meet the criteria of a sexually violent predator;
- Adjusted the processes for filing the petition alleging a person is a sexually violent predator and conducting the probable cause hearing and trial on such petition;

- Adjusted processes for post-commitment hearings and annual examinations;
 - Adjusted standards and processes for transitional release, conditional release, and final discharge;
 - Increased the limit on sexually violent predators who may be placed in any one county on transitional or conditional release from 8 to 16;
 - Amended the statute setting forth rights and rules of conduct for sexually violent predators;
 - Incorporated the Kansas Administrative Procedure Act, Kansas Judicial Review Act, and Office of Administrative Hearings into the procedures for addressing actions taken by the Kansas Department for Aging and Disability Services regarding SPTP residents; and
- Adjusted *habeas corpus* provisions for persons committed under the Act.
- During the 2016 Session, SB 407 was enacted, which modified registration requirements for committed offenders and revived a statute in the Sexually Violent Predator Act related to transitional release that was inadvertently repealed by 2015 House Sub. for SB 12.
- During the 2017 Session, HB 2128 was enacted, which amended the procedures for annual review, transitional release, and conditional release for committed offenders.
- During the 2018 Session, SB 266 was enacted, which amended various provisions within the Act to, among other things, adjust procedures related to annual review, petition for final discharge, conditional release, and individual person management plans and appeals.

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Redistricting

I-1 Introduction to Redistricting

Redistricting is the process of drawing electoral district boundaries in the United States. The Kansas Legislature is responsible for drawing the boundaries of the four congressional districts of the state, the state legislative districts (House and Senate), and the State Board of Education districts.

Why Does the Legislature Redistrict?

The *U.S. Constitution* and federal law require a Census to be conducted every ten years and congressional districts to be reapportioned based on the population information obtained in the Census. (See *U.S. Constitution* Art. I, §2, cl. 3 and 2 USC §2a(a).) Similarly, the *Kansas Constitution* requires boundaries for the State's House and Senate districts to be redrawn every ten years in coordination with, and using population information provided by, the federal Census. (See *Kansas Constitution* Art. 10, §1.) The *Kansas Constitution* also requires the Legislature to determine the boundaries for the ten State Board of Education (SBOE) districts. SBOE districts are each composed of four contiguous Senate districts. (See *Kansas Constitution* Art. 6, §3(a).)

When Does the Legislature Redistrict?

The redistricting process begins with and centers on the Census. Official Census information will be provided to all states by April 1, 2021. However, the Census is an ongoing project, and the groundwork for the 2020 Census began in 2012 after the most recent redistricting process was completed. Preparations for the Census are being made through a program called the 2020 Census Redistricting Data Program (Program). Kansas has participated in the Program since the mid-1980s and has used the resulting information to build congressional, state legislative, and SBOE districts using election precincts and census blocks. Federal law requires all state participation in the Program to be through a nonpartisan liaison. The Kansas Legislative Research Department serves as this nonpartisan liaison for the State of Kansas. The phases and timeline for the Program are outlined as follows.

**Phase 1: Block Boundary Suggestion
Project (BBSP)
June 2015 – May 2017**

BBSP was an optional phase of the redistricting process, and the State of Kansas chose to participate in the project. The goal of the BBSP is to allow the State to provide input into and verify where block boundaries are drawn to produce more meaningful and useful information to the State during the 2020 redistricting process. Block boundaries are important in redistricting because blocks are the smallest unit of geography for which the Census collects population and demographic information, rather than providing statistical samples. Blocks are formed by visible features, such as streets, roads, railroads, streams and other bodies of water, and legal boundaries. In urban areas, census blocks frequently align with traditional city blocks, but are often more expansive in rural areas. Voting districts (or precincts) are made up of groups of census blocks. Additionally, district lines cannot break block boundaries when drawing new lines during redistricting, so verifying the location of and population in blocks is important to the redistricting effort.

**Phase 2: Voting District Project (VTDP)
June 2017 – April 2020**

The second phase of the Program is also optional and Kansas again chose to participate. VTDP allows states to provide the U.S. Census Bureau (Bureau) with the location of current voting district (precinct) boundaries by updating precinct boundary information provided to the Bureau during the 2010 redistricting cycle. During the 2010 redistricting cycle, precincts were the basis for legislative and congressional districts proposed by the Kansas Legislature. If Kansas chose not to participate in VTDP, the State would not receive precinct-level population data at any time during the upcoming redistricting cycle.

**Phase 3: Delivery of 2020 Census
Redistricting Data Files and Geographic
Products**

The official Census Day is April 1, 2020, while national and state population information is scheduled to be released to the President by December 31, 2020. Information for all census tabulation areas (state, congressional district, state legislative districts, American Indian areas, counties, cities, towns, census tracts, census block groups, and census blocks) will be provided to the Governor and state legislative leaders of all states by April 1, 2021.

Kansas Population Adjustments

The *Kansas Constitution* requires the Office of the Secretary of State adjust the population information provided by the Bureau to count members of the military and college students in the following ways:

- Exclude nonresident military personnel and college students residing in Kansas; and
- Count resident military personnel and college students in the state in the district of their permanent residence. (See *Kansas Constitution* Art. 10, §1.)

This adjusted data must be certified by the Office of the Secretary of State no later than July 31, 2021. (See KSA 11-304.)

The 2019 Legislature passed SCR 1605, which proposed an amendment to the *Kansas Constitution* removing the language requiring the population adjustments. The amendment was ratified by voters at the election held on November 6, 2019. As a result, the population adjustments described above are no longer required and the redistricting process will use total population, as certified by the Bureau, to establish the boundaries of political districts.

Phase 4: Collection of Post-2020 Redistricting Plans

The Bureau is scheduled to collect final redistricting plans from the states through April 2022.

Phase 5: Evaluation and Recommendations

The Bureau will provide several opportunities for feedback on and evaluation of the Program. A report discussing the Program is set to be published in 2025.

By the time the Bureau's final report is published, preparation for the 2030 redistricting cycle will be underway. Redistricting is truly an ongoing process.

How Does the Legislature Redistrict?

The process of redistricting in Kansas involves all three branches of state government. The Legislature proposes maps drawing lines for congressional districts, state legislative districts, and SBOE districts. By passing the bills that contain the maps, the Legislature provides initial approval of those maps. The Governor then signs the bills, vetoes the bills, or allows them to become law without a signature, just like any other bill. Finally, the Kansas Supreme Court reviews the maps and gives them final approval. Each of these steps is discussed in more detail below. For comparison purposes, the processes used during the 2010 redistricting cycle are discussed. However, it must be noted legislative committees and procedures used during the 2010 cycle will not necessarily be the same during the 2020 cycle.

Legislature

During the 2010 redistricting cycle, the Legislative Coordinating Council created a Redistricting Advisory Group (Group) made up of three senators and three representatives. The Group was formed in 2009 and assisted with

preparations for the legislative portion of the redistricting process.

In 2011, the Joint Special Committee on Redistricting held public meetings in 14 different locations across Kansas. The Special Committee was made up of the members of the House Redistricting Committee and Senate Apportionment Committee and sought public input on what the citizens of Kansas wanted to see from the redistricting process. Public meetings were held in Chanute, Colby, Dodge City, Garden City, Hays, Hutchinson, Kansas City, Lawrence, Leavenworth, Manhattan, Overland Park, Pittsburg, Salina, and Wichita.

As specified in the *Kansas Constitution*, Kansas draws redistricting maps during the legislative session of the year ending in "2," which for this cycle will be the 2022 Legislative Session. The maps go through the legislative process like any other bill, and are subject to the same rules. During the 2010 redistricting cycle, the Legislature did not successfully pass redistricting bills in both chambers. Redistricting maps were ultimately drawn by the U.S. District Court for the District of Kansas in 2012.

Governor

Just like any other bill, redistricting maps require the approval of the Governor or a vote to override a Governor's veto to be passed into law and become effective.

Kansas Supreme Court

The *Kansas Constitution* provides a procedure for final approval of state legislative maps by the Kansas Supreme Court:

- The redistricting bills are published in the *Kansas Register* immediately upon passage;
- The Attorney General must petition the Kansas Supreme Court to determine the maps' validity within 15 days of the publication of an act reapportioning state legislative districts; and

- The Kansas Supreme Court has 30 days from the filing of that petition to enter a judgment. (See *Kansas Constitution* Art. 10, §1.)

If the Court determines the maps are valid, the redistricting process is complete. If, on the other hand, the Court says the maps are invalid:

- The Attorney General must petition the Court to determine validity of maps enacted in an attempt to conform with the Court's previous judgment; and
- The Court has ten days from the date of the Attorney General's filing to enter a judgment.

If the Court says the new maps are valid, redistricting is complete.

If the Court says the new maps are invalid, the Legislature has 15 days to pass new maps.

This repeats until the Legislature presents maps the Court determines are valid. (See *Kansas Constitution* Art. 10, §1.)

2012 Redistricting

During the 2012 redistricting process, the Kansas Legislature did not successfully pass redistricting maps into law. As a result, the maps currently in place were drawn by the U.S. District Court for the District of Kansas.

Additional Resources:

Kansas Redistricting:

- <http://www.kslegresearch.org/KLRD-web/Redistricting.html>

2020 Federal Census:

- <https://www.census.gov/programs-surveys/decennial-census/2020-census.html>
- <https://www.census.gov/programs-surveys/decennial-census/about/rdo/program-management.html>

Redistricting Data Program, U.S. Census Bureau:

- <https://www.census.gov/programs-surveys/decennial-census/about/rdo.html>

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Redistricting

I-2 Redistricting Legislation Across the Country

The U.S. Census, which provides the population information used as the basis for redistricting congressional and state legislative districts, will begin enumeration activities in April 2020. As the time for Census and the subsequent redistricting process draws near, redistricting has been discussed in state legislatures with increasing frequency. The chart included in this article provides information about legislation pending before state legislatures or recently enacted by state legislatures as of November 1, 2019. Recently vetoed legislation is also included, as it was at one time passed by a state legislature.

Currently, there are 71 redistricting bills or resolutions pending in 22 state legislatures and the U.S. Congress. Nine bills have been recently enacted by six of the states, and an additional seven bills have been vetoed in three states. A significant portion of recent redistricting legislation has addressed the topic of redistricting commissions, with 13 states and the U.S. Congress considering 51 bills focusing on that subject. Twenty redistricting bills in six states and the U.S. Congress have considered what criteria must be used to create redistricting plans. Establishing the residence of incarcerated individuals has also been the topic of legislation in several states, with four states considering seven bills on the topic. Other topics considered by state legislatures and the U.S. Congress include court challenges to redistricting plans, legislative and other studies related to redistricting, and the use of mathematical optimization models when redrawing legislative districts.

Bill	Status	Description
U.S. Congress HR 44	Pending – House Judiciary Committee	Would prohibit states from carrying out more than one congressional redistricting after a decennial census and apportionment.
U.S. Congress HR 124 & HR130	Pending – House Judiciary Committee	Would prohibit states from carrying out more than one congressional redistricting after a decennial census and apportionment, and requires states to conduct such redistricting through independent commissions.
U.S. Congress HR 131	Pending – House Judiciary Committee	Would require states to carry out congressional redistricting in accordance with a process under which members of the public are informed of redistricting proposals and have the opportunity to participate in the development of such proposals prior to their adoption, including use of an Internet website.
U.S. Congress HR 163	Pending – House Judiciary Committee	Would require the use of independent, nonpartisan commissions to carry out congressional redistricting and to require states to hold open primaries for elections for federal office.
U.S. Congress S 1972	Pending – Senate Judiciary Committee	Would prohibit partisan gerrymandering to ensure any redistricting of congressional district boundaries results in fair, effective, and accountable representation for all people.
U.S. Congress HR 2057	Pending – House Judiciary Committee	Would direct the Attorney General to enter into an agreement with the National Academies to conduct a study to develop guidelines, best practices, and examples for congressional redistricting.
U.S. Congress S 2226 & HR 3572	Pending – Senate Judiciary Committee (S 2226), Pending – House Judiciary Committee (H 3572)	Would require states to carry out congressional redistricting in accordance with plans developed and enacted into law by independent redistricting commissions.
Georgia SR 52	Pending – Carryover – Senate Reapportionment and Redistricting Committee	Proposes an amendment to the <i>Georgia Constitution</i> to require legislative and congressional reapportionment be done by an independent, nonpartisan commission instead of the General Assembly; provides for the establishment of the commission, the qualifications, and appointment of members of such commission; provides for related matters; and provides for submission of this amendment for ratification or rejection.
Georgia HB 283	Pending – Carryover – House Governmental Affairs Committee	Among other things, would establish the Georgia Voting Rights Commission; provides for its composition, manner of appointment, powers, and duties; provides for an independent Legislative and Congressional Reapportionment Office; and other related matters.

Bill	Status	Description
Georgia HR 369	Pending – Carryover – House Legislative and Congressional Reapportionment Committee	Proposes an amendment to the <i>Georgia Constitution</i> so as to provide that legislative and congressional reapportionment be done by an independent, nonpartisan commission instead of the General Assembly; provides for the establishment of such commission; provides for the qualifications and appointment of members of such commission; provides for the filling of vacancies on the commission; and provides for powers, duties, responsibilities, and resources for such commission.
Illinois SJRCA 4	Pending – Senate Committee on Assignments Committee	Proposes to amend the Legislature Article of the <i>Illinois Constitution</i> ; removes the requirement for each legislative district to be divided into two representative districts; modifies provisions concerning legislative redistricting; provides specified requirements for each legislative district, representative district, and congressional district for redistricting purposes; and replaces the current method of legislative redistricting with a certain number member commission.
Illinois HJRCA 10	Pending – House Rules Committee	Proposes to amend the Legislature Article of the <i>Illinois Constitution</i> , creates the Independent Redistricting Commission to adopt and file with the Secretary of State a redistricting plan for legislative and representative districts, provides for the selection of Commissioners, and establishes the authority of a special commissioner to design a redistricting plan in the event that the Commission fails to properly adopt and file a redistricting plan.
Illinois HJRCA 15	Pending – House Rules Committee	Proposes to amend the <i>Illinois Constitution</i> , which would remove the requirement for each legislative district to be divided into two representative districts; would modify provisions concerning legislative redistricting; provides specified requirements for each legislative district, representative district, and congressional district for redistricting purposes; and would replace the current method of legislative redistricting with a certain-numbered member commission, appointed by the Chief Justice.
Illinois HB 203	Pending – House Rules Committee	Would create the No Representation without Population Act, which would require the Department of Corrections to collect and maintain an electronic record of the legal residence, outside of any correctional facility, and other demographic data for each person entering its custody after a certain date, and provides for the minimum records that the Department shall maintain.
Kansas HCR 5006	Pending – Carryover – House Elections Committee	Would revise Article 10 of the <i>Kansas Constitution</i> to establish a redistricting commission.

Bill	Status	Description
Kentucky SB 214	Enacted 3/26/19	Changes the jurisdiction and venue for challenging legislative districts from Franklin Circuit Court to a panel of three Circuit Judges, and establishes procedures for selecting the panel and reviewing challenges.
Massachusetts S.13	Pending – Senate Second Reading	Proposes a legislative amendment to the <i>Massachusetts Constitution</i> to establish an independent redistricting commission.
Massachusetts H.679	Pending – Joint Committee on Election Laws	Would create an independent redistricting commission.
Minnesota SF 582 & HF 1018	Pending – Carryover – Senate State Government Finance and Policy and Elections Committee (582), House Subcommittee on Elections (1018)	Relates to redistricting, would provide for appointment of a commission to recommend the boundaries of legislative and congressional districts, would establish districting principles for legislative and congressional plans, and would assign duties to the Legislative Coordinating Commission.
Minnesota HF 1855	Pending – Carryover – House Ways and Means Committee	Proposes an amendment to the <i>Minnesota Constitution</i> that would establish a redistricting commission to adopt congressional and legislative district boundaries following each federal decennial census.
Minnesota SF 2255 & HF 2421	Pending – Carryover – Senate Rules and Administration Committee (S 2255), House Government Operations Committee (H 2421)	Proposes an amendment to the <i>Minnesota Constitution</i> that would establish a redistricting commission and redistricting principles.
Minnesota SF 2575	Pending – Carryover – Senate State Government Finance and Policy and Elections Committee	Relates to redistricting, would require the appointment of a commission to recommend the boundaries of legislative and congressional districts, would establish districting principles for legislative and congressional plans, and would assign duties to the Legislative Coordinating Commission and the Secretary of State.
Mississippi H 914	Enacted 3/19/19	Prohibits changes to precinct boundaries until the Legislature completes its redistricting plan for the House of Representatives and Senate districts.
Missouri SB 213	Enacted 7/11/19	Relates to the nonpartisan state demographer, provides that the demographer shall not accept directly or indirectly from any source other than the State any compensation, grants, stipends, retainers, or remuneration of any kind in connection with the redistricting process, including from any political campaign, political party committee, continuing committee, federal political action committee, or organization exempt from taxation.

Bill	Status	Description
Nebraska LB 253 & LB 466	Pending – Carryover – Special Committee on the Executive Board of the Legislative Council	Would adopt the Redistricting Act, would create a new Independent Redistricting Citizens Advisory Commission, would establish eligibility requirements for members of the Commission, and would establish principles and criteria for redistricting maps.
Nebraska LB 261	Pending – Carryover – Special Committee on the Executive Board of the Legislative Council	Would require use of redistricting maps drawn using State-issued computer software.
Nebraska LB 467	Pending – Carryover – Special Committee on the Executive Board of the Legislative Council	Would prohibit the consideration of the following in redistricting: the political affiliation of registered voters, demographic information other than population figures, or the results of previous elections, except as may be required by federal law.
Nebraska LB 578	Pending – Carryover – Judiciary Committee	Relates to redistricting, would provide for a venue of legal proceedings challenging laws regarding redistricting.
Nevada SCR 9	Adopted 5/24/19	Directs the Legislative Commission to appoint a committee to conduct an interim study of the requirements for reapportionment and redistricting in the state in conjunction with the data from the decennial census of 2020.
Nevada AB 450	Enacted 5/29/19	Relates to incarcerated persons; revises the manner in which certain incarcerated persons are counted for purposes of the apportionment of the population for legislative districts, congressional districts, and the districts of the Board of Regents; and requires the State Demographer, employed by the Department of Taxation, to, upon completion of the decennial census, revise the population counts for every block.
New Hampshire SB 8	Pending – Retained in Committee for Second Year Action	Would establish an independent redistricting commission.
New Hampshire CACR 9	Pending – Retained in Committee for Second Year Action	Proposes a constitutional amendment that would establish an independent redistricting commission to draw the boundaries for state and federal elections.
New Hampshire HB 603	Pending – Retained in Committee for Second Year Action	Would establish procedures and guidelines for apportioning electoral districts after the decennial census using a mathematical optimization process.
New Hampshire HB 706	Vetoed 8/9/19	Would have created an independent redistricting commission to convene no later than December 30 every ten years, beginning in 2020; identified the pool of eligible individuals to serve as commissioners; notified such eligible persons and invited them to apply; and specified the use advertisements and media to publicize the search for eligible members.

Bill	Status	Description
New Jersey SCR 33	Pending – Senate State Government, Wagering, Tourism, and Historic Preservation Committee	Proposes constitutional amendments that would establish redistricting standards for the Apportionment Commission, would require the Chief Justice of Supreme Court to select 11 members from pool of general public applicants, and would require the Commission to hold public hearings.
New Jersey SCR 43 & ACR 60	Pending – Senate (SCR 43), Assembly State and Local Government Committee (ACR 60)	Proposes a constitutional amendment that would change the Legislative Apportionment Commission membership, and would establish new requirements on the Commission regarding process and legislative district composition.
New Jersey ACR 88	Pending – Assembly State and Local Government Committee	Proposes a constitutional amendment that would require legislative districts be established in a manner that promotes competition between political parties.
New Jersey ACR 119 & SCR 152	Pending – Assembly State and Local Government Committee (ACR 119), Senate (SCR 152)	Proposes a constitutional amendment that would change the Legislative Apportionment Commission membership, and would establish new requirements on the Commission for process and legislative district composition.
New Jersey S 758 & A 1987	Pending – Assembly State and Local Government Committee	Would require incarcerated individuals from the state to be counted at a residential address for legislative redistricting purposes.
New Jersey A 1145	Pending – Assembly Judiciary Committee	Would require incarcerated individuals to be counted for redistricting purposes at their previous addresses if they are state residents and not counted if incarcerated and not state residents.
New York A 31	Pending – Assembly Governmental Operations Committee	Would provide for the establishment of state legislative districts by a nonpartisan commission, would require membership of the commission include no members of the legislature, and would make the commission's final apportionment subject to legislative approval.
North Carolina H 69	Pending – House Select Committee on Redistricting	Would establish a nonpartisan redistricting process.
North Carolina S 673	Pending – Senate Rules and Operations of the Senate Committee	Proposes an amendment to the <i>North Carolina Constitution</i> that would establish the Citizens Redistricting Commission.
North Carolina H 827	Pending – House Rules, Calendar, and Operations of the House Committee	Would establish the North Carolina Citizens Redistricting Commission.

Bill	Status	Description
Oklahoma HJR 1019	Pending – Carryover – House Rules Committee	Would direct the Secretary of State to refer to the people for their approval or rejection a proposed amendment to the <i>Oklahoma Constitution</i> that adds a new section establishing an independent redistricting commission.
Pennsylvania HB 22	Pending – House State Government Committee	Proposes amendments to the <i>Pennsylvania Constitution</i> that would delete provisions relating to the Legislative Reapportionment Commission, and would provide for an Independent Redistricting Commission.
Pennsylvania SB 22	Pending – Senate Second Consideration	Proposes an amendment to the <i>Pennsylvania Constitution</i> that would provide for the Legislative Reapportionment Commission.
Pennsylvania HB 23	Pending – House State Government Committee	Would establish the Independent Redistricting Commission to oversee congressional and legislative redistricting.
Pennsylvania HB 401	Pending – House State Government Committee	Would provide for congressional redistricting plan, establish the Congressional Redistricting Commission, and make an appropriation.
Pennsylvania HB 402	Pending – House State Government Committee	Would enact the Redistricting Standards and Transparency Act.
Pennsylvania HB 940	Pending – House State Government Committee	Relates to determining residence of incarcerated individuals.
South Carolina S 6, S 135, & H 3044	Pending – Carryover – Senate Judiciary Committee (S 6 & S 135), House Judiciary Committee (H 3044)	Would propose an amendment to the <i>South Carolina Constitution</i> providing for an independent reapportionment commission, as well as the membership of the commission, selection of members, duties of the commission, approval of proposed apportionment plans, and apportionment in the event that a proposed apportionment plan is not approved.
South Carolina S 230 & H 3054	Pending – Carryover – Senate Judiciary Committee (S 230), House Judiciary Committee (H 3054)	Would create an independent redistricting commission; would provide that members of the commission be appointed every ten years after the following year of the decennial U.S. Census; and would provide for the membership and procedures to be followed by the Commission in reapportioning the House of Representatives, the Senate, and the state's congressional districts.
South Carolina S 249	Pending – Carryover – Senate Judiciary Committee	Would propose a constitutional amendment providing for an independent citizens redistricting commission to be known as the state Citizens Redistricting Commission, would require the General Assembly to provide for the membership and funding of the commission, and would specify the manner in which members of the commission are chosen and the duties of the commission.

Bill	Status	Description
South Carolina S 254	Pending – Carryover – Senate Judiciary Committee	Would establish the state Citizens Redistricting Commission for the purpose of submitting reapportionment plans to the General Assembly and providing for the selection, qualifications, powers, duties, and terms of the commission and its members.
South Carolina H 3167	Pending – Carryover – House Judiciary Committee	Would propose a constitutional amendment providing for an independent citizens redistricting commission to be known as the Citizens Redistricting Commission, and would require the General Assembly provide for the membership, selection of members, and funding of the commission.
South Carolina H 3390	Pending – Carryover – House Judiciary Committee	Would propose a constitutional amendment providing for an independent citizens redistricting commission to be known as the South Carolina Citizens Redistricting Commission, requires the General Sssembly to provide for the membership and funding of the commission and the manner in which members of the commission are chosen.
South Carolina H 3432	Pending – Carryover – House Judiciary Committee	Would establish the South Carolina Citizens Redistricting Commission for the purpose of submitting reapportionment plans to the General Assembly and to provide for the selection, qualifications, powers, duties, and terms of the Commission and its members.
Tennessee SJR 169	Pending – Carryover – Senate Judiciary Committee	Would propose a constitutional amendment to establish an independent redistricting commission for senatorial and representative districts.
Tennessee SB 934	Pending – Carryover – Senate Judiciary Committee	Would impose public notice and public input requirements on a redistricting committee and upon consideration of a final redistricting plan.
Tennessee SB 935 & HB1409	Pending – Carryover – Senate Government Operations Committee (SB 935), House Government Operations Committee (HB 1409)	Would enact the Tennessee Congressional Redistricting Commission Act, which would establish a five-member congressional redistricting commission beginning in January 2021.
Vermont H 236	Pending – Carryover – House Government Operations Committee	Relates to amending the membership of the Legislative Apportionment Board.

Bill	Status	Description
Virginia SB 106 & HB 1598	Vetoed 5/18/18	Relates to congressional and state legislative districts, would establish standards and criteria, require districts to be established based on population, require districts be respected to the maximum extent possible, require districts be composed of contiguous territory, and require districts to be composed of compact territory.
Virginia HB 158	Vetoed 4/9/18	Related to House of Delegates and Senate district boundaries, have authorized the General Assembly to make technical adjustments to legislative district boundaries subsequent to the decennial redistricting solely for the purpose of causing legislative district boundaries to coincide with local voting precinct boundaries.
Virginia SJ 306	Enacted 2/23/19	Proposes a constitutional amendment establishing the Virginia Redistricting Commission, a 16-member Commission tasked with establishing districts for the U.S. House of Representatives and for the Senate and the House of Delegates of the General Assembly, and would require the Commission consist of eight legislative members and eight citizen members.
Virginia HJ 591	Enacted 2/18/19	Proposes a constitutional amendment giving the General Assembly the authority to make technical adjustments to legislative electoral district boundaries following the enactment of any decennial reapportionment law, and provides that such adjustments may be made solely for the purpose of causing legislative electoral district boundaries to coincide with the boundaries of voting.
Virginia HJ 615	Enacted 2/23/19	Proposes a constitutional amendment requiring the establishment of independent redistricting commissions by the General Assembly and the governing bodies of each county, city, or town in which members of the governing body are elected from districts, and provides that the purpose of these independent redistricting commissions is to propose electoral districts.
Virginia SB 983	Enacted 4/4/18	Prohibits counties, cities, and towns from creating, dividing, abolishing, or consolidating any precincts or otherwise changing the boundaries of any precinct during a specified period of time, except in certain specified circumstances, and provides that precinct ordinances may be adopted after and not implemented before specified dates.
Virginia SB 1087	Vetoed 4/29/19	Related to election districts, provided that the General Assembly could make technical adjustments to the legislative district boundaries following a decennial census solely for the purpose of causing district boundaries to coincide with the current boundaries of local voting precincts.

Bill	Status	Description
Virginia SB 1579	Vetoed 4/29/19	Related to standards and criteria for congressional and state legislative districts, provided criteria by which congressional and state legislative districts were to be drawn, including equal population, racial and ethnic fairness, respect for existing political boundaries, contiguity, compactness, and communities of interest. The criteria set out would have applied to those districts drawn following the 2020 U.S. Census, and thereafter.
Washington HB 1396	Pending – Carryover – House State Government and Tribal Relations Committee	Relates to criteria for redistricting maps and eligibility of redistricting commission members.
Washington SB 5287	Enacted 5/21/19 – Line Item Vetoed	Required counting incarcerated individuals as residents of their last known place of residence.
Wisconsin SB 288 & AB 303	Pending – Assembly Campaigns and Elections Committee	Would direct the Legislative Reference Bureau to draw redistricting plans based upon standards specified in the bill and would establish a Redistricting Advisory Commission to perform certain tasks in the redistricting process. The bill would also make various other changes to the laws governing redistricting.

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J-1
Administrative Rule
and Regulation
Legislative Oversight

J-2
Board of Indigents'
Defense Services

J-3
Home Rule

J-4
KPERs' Retirement
Plans and History

J-5
Options Used to
Address Abandoned
Property

J-6
Senate Confirmation
Process

J-7
State Employee
Issues

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State and Local Government

J-1 Administrative Rule and Regulation Legislative Oversight

Since 1939, Kansas statutes have provided for legislative oversight of rules and regulations filed by state officers, boards, departments, and commissions. The 1939 law declared all rules and regulations of a general or statewide character were to be filed with the Revisor of Statutes and would remain in force until and unless the Legislature disapproved or rejected the regulations. It was not until 1974 that the Legislature took steps to formalize an oversight process. In that year, all filed rules and regulations were submitted to each chamber. Within 60 days of submission, the Legislature could act to modify and approve or reject any of the regulations submitted. In 1984, the Kansas Supreme Court, in *State Ex Rel. Stephan v. Kansas House of Representatives* (236 Kan. 45), held a procedure adopted in 1979, which authorized the use of concurrent resolutions to modify or revoke administrative rules and regulations, violated the doctrine of separation of powers under the *Kansas Constitution*.

The 1975 interim Legislative Budget Committee, under Proposal No. 33, found it "important to maintain and even enhance legislative oversight of all regulations in order to make sure that they conform with legislative intent." The 1976 Legislature enacted several amendments to the Rules and Regulations Filing Act (Act). In that same year, the Legislative Coordinating Council created the Special Committee on Administrative Rules and Regulations to review proposed administrative rules and regulations filed with the Revisor of Statutes. The law was later changed to require proposed agency rules and regulations to be reviewed as outlined below. A 1977 law created the Joint Committee on Administrative Rules and Regulations (Joint Committee). In 1988, responsibility for filing and publishing all rules and regulations was statutorily assigned to the Secretary of State.

Administrative rules and regulations are developed using the *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* developed by the Kansas Department of Administration.

Rule and Regulation Authority—Examples

Regulations serve to implement or interpret legislation administered by a state agency. The statutory authority for the agency to adopt

these rules and regulations is found in enabling legislation, as illustrated in the language found in the below legislation.

Kansas Amusement Ride Act (2017 Session)

The Secretary of Labor shall adopt rules and regulations necessary to implement provisions of the Kansas Amusement Ride Act (2017 House Sub. for SB 86, amending KSA 44-1613).

Acupuncture Practice Act (2016 Session)

The Board [of Healing Arts] shall promulgate all necessary rules and regulations which may be necessary to administer the provisions of this act and to supplement the provisions herein (2016 HB 2615, KSA 65-7615).

Powers of the Secretary (KSA 32-807)

The Secretary [of Wildlife, Parks and Tourism] shall have the power to: (a) Adopt, in accordance with KSA 32-805 and amendments thereto [approval, modification and approval, or rejection of proposed rules and regulations by the Wildlife, Parks and Tourism Commission], such rules and regulations as necessary to implement, administer and enforce the provisions of wildlife, parks and tourism laws of this state; . . .

Rules and regulations of the Kansas Lottery are exempt from the Act (KSA 74-8710).

The Rules and Regulations Filing Act (KSA 77-415 through 77-438, and amendments thereto) outlines the statutory requirements for the filing of regulations by most executive branch agencies and for the Legislature’s review of the agency regulations.

The Regulation Adoption Process

Administrative rules and regulations may be temporary or permanent. A temporary rule and

regulation, as defined in KSA 77-422, may be adopted by an agency if the State Rules and Regulations Board finds preservation of the health, safety, welfare, or public peace makes it necessary or desirable to put the regulation into effect before a permanent regulation would take effect. Temporary rules and regulations take effect after approval by the Director of the Budget, the Secretary of Administration, the Attorney General, and the State Rules and Regulations Board and may remain effective for no more than 120 days, beginning with the date of approval by the State Rules and Regulations Board and filing with the Secretary of State. A state agency, for good cause, may request a temporary rule and regulation be renewed one time for an additional period not to exceed 120 days.

KSA 77-420 and 77-421 outline the process for the adoption of permanent Kansas Administrative Regulations (KAR) in the following steps, which are to be followed in consecutive order:

- Obtain approval of the proposed rules and regulations from the Director of the Budget (Director). KSA 77-420 requires the Director to review the economic impact statement submitted with the rules and regulations and conduct an independent analysis to determine whether the costs incurred by businesses, local government, or individuals would be \$3.0 million or less over a two-year period. The Director will approve the proposed rule and regulation for submission to the Secretary of Administration and Attorney General if it is determined the impact is less than or equal to \$3.0 million. If the impact exceeds \$3.0 million, the Director may either disapprove the proposed rule and regulation or approve it, provided the agency had conducted a public hearing prior to submitting the proposed rule and regulation, the agency found the costs have been accurately determined and are necessary for achieving legislative intent, and the Director independently concurs with the agency’s findings and analysis;

- Obtain approval of the organization, style, orthography, and grammar of the proposed rules and regulations from the Secretary of Administration;
 - Obtain approval of the proposed rules and regulations from the Attorney General, including whether the rule and regulation is within the authority of the state agency;
 - Submit the notice of hearing, copies of the proposed rules and regulations as approved, the economic impact statement, and the environmental benefit statement, if required by KSA 77-416, to the Secretary of State, and submit a copy of the notice of hearing to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee and to the Kansas Legislative Research Department (KLRD); the notice also must be published in the *Kansas Register*;
 - Review the proposed rules and regulations with the Joint Committee during the public comment period, which is at least 60 days for all rules and regulations, except for certain hunting and fishing activities and for permanent prior authorization on a prescription-only drug (KSA 39-7, 120), for which the public comment period is at least 30 days;
 - Hold the public hearing and cause minutes or other records of the meeting to be made;
 - Prepare a statement of the principal reason for adopting the rules and regulations, including reasons for not accepting substantial arguments made in comments and reasons for any substantial change from the proposal;
 - Initiate new rulemaking proceedings if the final rule and regulation would differ in subject matter or effect in any material respect from the rule and regulation as originally proposed or the rule and regulation is not the logical outgrowth of the rule and regulation as originally proposed;
 - Adopt the rules and regulations; and
 - File the rules and regulations and associated documents with the Secretary of State.
- A permanent rule and regulation takes effect 15 days after publication in the *Kansas Register* (KSA 77-426).
- The Secretary of State, as directed by KSA 77-417, endorses on each rule and regulation filed at the time and date of filing, maintains a file of rules and regulations for public inspection, keeps a complete record of all amendments and revocations, indexes the filed rules and regulations, and publishes the rules and regulations. The Office of the Secretary of State publishes the adopted regulations in the KAR Volumes and Supplements and on the Office's website.
- In addition, new, amended, or revoked regulations are published in the *Kansas Register* as they are received. The Secretary of State is authorized to return to the state agency or otherwise dispose of any document that had been adopted previously by reference and filed with the Secretary of State.

Legislative Review

The 12-member Joint Committee is required by KSA 77-436 to review proposed rules and regulations during the public comment period prior to the required public hearing on the proposed regulations. Recent legislative changes to the Act have not changed this review process. The Joint Committee may introduce legislation it deems necessary in the performance of its review functions. Provisions of KSA 77-426 authorize the Legislature to adopt a concurrent resolution expressing its concern with any temporary or permanent rule and regulation filed during the preceding year and requesting revocation or amendment of such rule and regulation.

The Joint Committee provides comments reflecting its concerns or recommendations to the agency for consideration at the time of the agency's public hearing on the proposed rules and regulations. KSA 77-436 also requires the Joint

Committee to issue a report of those comments to the Legislature following each meeting. The Joint Committee requests the agency reply to it in writing to respond directly to each comment made, and to detail any amendments in the proposed rules and regulations made after the Joint Committee hearing and any delays in the adoption or the withdrawal of the rules and regulations. KLRD maintains a database of responses to Joint Committee comments and reports on those responses to the Joint Committee.

As part of its review process, the Joint Committee examines economic impact statements that are prepared by agencies, as required by law, and accompany the proposed rules and regulations.

Each year, KLRD prepares a report on the oversight activities of the Joint Committee; the 2019 electronic report is available on the KLRD website at <http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2019CommitteeReports/jcarr'18-'19-cr.pdf>. The report also includes a summary of provisions in legislation enacted in that year that authorize, require, or clarify authority for rules and regulations.

Recent Amendments to Rule and Regulation Procedures

Few bills since 2000 have changed the basic procedures for agency adoption of rules and regulations and legislative review of them.

2008

SB 579 (2008 Session Law, Chapter 25) required state agencies to consider the impact of proposed rules and regulations on small employers. (These provisions were expanded in 2018.) The bill defined “small employer” as any person, firm, corporation, partnership, or association with 50 or fewer employees, the majority of whom are employed in Kansas.

2010

House Sub. for SB 213 (2010, Chapter 95) revised the Act by removing obsolete language

and authorized publication of the KAR in paper or electronic form by the Secretary of State. In addition, the bill amended definitions used in the Act and in the exclusion of certain rules and regulations from the Act. Certain procedures to be followed in the rule-making process and procedures were also revised. One provision requires state agencies to begin new rule-making procedures when the adopted rules and regulations differ in subject matter or effect in a material respect from those proposed and reviewed by the Joint Committee. Under these conditions, the public comment period could be shortened to not less than 30 days.

2011

HB 2027 (2011, Chapter 14) amended the Act by simplifying the definitions of terms such as “rule and regulation” and removing certain exclusions that had not been used, such as those relating to use of the highways and made known to the public through the use of signals. It also expanded the definition of “person” to include individuals and legal or commercial entities that previously had not been included.

The bill gave precedential value to orders issued in an adjudication against a person who was not a party to the original adjudication when the order is:

- Designated by the agency as precedent;
- Not overruled by a court or other adjudication; and
- Disseminated to the public through the agency website or made available to the public in any other manner required by the Secretary of State.

The bill also allowed statements of policy to be treated as binding within the agency when directed to agency personnel concerning their duties or the internal management or organization of the agency.

The bill provided that agency-issued forms, the contents of which are governed by rule and regulation or statute, and guidance and information the agency provides to the public do not give rise to a legal right or duty and are not

treated as authority for any standard, requirement, or policy reflected in the forms, guidance, or information.

Further, the bill provided for the following to be exempt from the Act:

- Policies relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution;
- Parking and traffic regulations of any state educational institution under the control and supervision of the State Board of Regents; and
- Rules and regulations relating to the emergency or security procedures of a correctional institution and orders issued by the Secretary of Corrections or any warden of a correctional institution.

In those instances, statutes that specify the procedures for issuing rules and regulations will apply rather than the procedures outlined in the Act.

The bill created a new section giving state agencies the authority to issue guidance documents without following the procedures set forth in the Act. Under the terms of this section (KSA 77-438), guidance documents may contain binding instructions to state agency staff members, except presiding officers. Presiding officers and agency heads may consider the guidance documents in an agency adjudication, but are not bound by them.

To act in variance with a guidance document, an agency must provide a reasonable explanation for the variance and, if a person claims to have reasonably relied on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests. The bill required each state agency to maintain an index of the guidance documents, publish the index on the agency's website, make all guidance documents available to the public, file the index in any other manner required by the Secretary of State, and provide

a copy of each guidance document to the Joint Committee.

2012

SB 252 (2012, Chapter 61) changed notice requirements from 30 days to 60 days for new rule-making proceedings when an agency proposes to adopt a final rule and regulation that:

- Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and
- Is not a logical outgrowth of the rule and regulation as originally proposed.

2013

Enactment of HB 2006 (2013, Chapter 2) removed "Kansas" from the name of the Act.

2018

HB 2280 (2018, Chapter 117) made several changes to the Act:

- Granted new authority to the Director of the Budget to review and approve proposed rules and regulations;
- Added a member of the minority party and a representative of an appropriations committee to the State Rules and Regulations Board;
- Added a ranking minority member to the Joint Committee;
- Requires reports to the Legislature from the Joint Committee after each meeting; and
- Requires the Legislative Post Audit Committee, in 2021, to direct the Legislative Division of Post Audit to evaluate the implementation of the new provisions contained in the bill.

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State and Local Government

J-2 Board of Indigents' Defense Services

The *U.S. Constitution* grants certain rights and protections to criminal defendants, including the right to be represented by an attorney. This right has been interpreted by the U.S. Supreme Court and the Kansas Supreme Court to require the State to pay for attorneys to represent indigent defendants at most key stages in the criminal justice process.

In Kansas, this requirement is met by the Board of Indigents' Defense Services (BIDS). BIDS provides criminal defense services through:

- Public defender offices in certain parts of the state;
- Contract attorneys (attorneys in private practice contracted by BIDS); and
- Assigned counsel (court-appointed attorneys compensated by BIDS).

In addition to providing trial-level public defenders and assigned counsel, BIDS operates offices tasked with handling defense of capital cases, cases in which conflicts of interest prevent local public defenders from representing a particular defendant, and post-conviction appeals. BIDS is also responsible for paying the other costs associated with criminal defense, such as for expert witnesses and transcription fees. Finally, Legal Services for Prisoners, Inc., a non-profit corporation, is statutorily authorized to submit its annual rating budget to BIDS and provides legal assistance to indigent inmates in Kansas correctional institutions.

Public Defender Offices

BIDS operates nine trial-level public defender offices throughout the state:

- 3rd Judicial District Public Defender (Topeka);
- Junction City Public Defender;
- Sedgwick County Regional Public Defender;
- Reno County Regional Public Defender;
- Salina Public Defender;
- 10th Judicial District Public Defender (Olathe);
- Western Kansas Regional Public Defender (Garden City);

- Southeast Kansas Public Defender (Chanute); and
- Southeast Kansas Public Defender Satellite Office (Independence).

BIDS also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit;
- Capital Appeals;
- Capital Appeals and Conflicts;
- Northeast Kansas Conflict Office; and
- State *Habeas* Office.

Finally, BIDS operates two other special offices outside of Topeka:

- Wichita Conflicts Office; and
- Death Penalty Defense Unit—Sedgwick County Satellite Office.

BIDS officials report it monitors cost per case for each of its offices quarterly to determine the most cost-effective system to deliver constitutionally required defense services and makes changes as needed to maintain its cost effectiveness.

Assigned and Contract Counsel

It is not possible for state public defender offices to represent all criminal defendants who need services. For example, if two individuals are co-defendants in a particular matter, it would present a conflict of interest for a single public defender's office to represent both individuals. Additionally, BIDS has determined it is not cost effective to operate public defender offices in all parts of the state, based on factors such as cost per case and caseload in these particular areas. Instead, BIDS contracts with private attorneys in those areas to provide these services and compensates willing attorneys appointed as assigned counsel by local judges.

BIDS has been directed to monitor assigned counsel expenditures and to open additional public defender offices where it would be cost effective to do so.

Effective January 18, 2010, assigned counsel were compensated at a rate of \$62 per hour as the result of a BIDS effort to reduce costs and respond to budget cuts. For fiscal year (FY) 2016, the rate was increased to \$65 per hour, and for FY 2017, the rate was increased to \$70 per hour. During the summer of 2018, BIDS voted to increase the rate for FY 2019 to \$75 per hour. For FY 2019, the Board increased the rate to the statutory \$80 per hour cap.

Total fees for defense in felony cases are capped at various levels depending on the classification of the felony and the disposition of the case. However, if there is a judicial finding that a case is "exceptional" and requires the assigned attorney to work more hours than the cap allows, BIDS is required to exceed these caps. These exceptional fees are included in BIDS' overall budget for assigned counsel payments.

The 2007 Legislature changed the language of the assigned counsel compensation statute to allow BIDS to negotiate rates below the mandated (at that time) \$80-per-hour rate as an alternative cost-savings strategy. BIDS conducted public hearings in 11 counties where it was determined it was not cost effective to utilize assigned counsel at \$80 per hour. BIDS responded to local requests to maintain the assigned counsel system in these counties by negotiating reduced compensation rates. The negotiation was successful, and rates of \$62 per hour and \$69 per hour were implemented. BIDS has determined these rates are more cost effective than opening additional public defender offices.

The 2006 Legislature approved an increase in compensation rates from \$50 per hour to \$80 per hour for assigned counsel beginning in FY 2007. This rate had previously been raised from \$30 per hour to \$50 per hour by 1988 legislation in response to a Kansas Supreme Court ruling.

Prior to FY 2006, BIDS paid assigned counsel expenditures from the operating expenditures account in its State General Fund appropriation. All professional services were treated as assigned counsel costs, including attorney fees, transcription fees, and expert witness fees. The FY 2006 budget added a separate line item for

these other expenditures to more accurately account for assigned counsel costs.

Other Costs Affecting BIDS

Expert Witness and Transcription Fees

BIDS is required to pay the fees for expert witnesses and transcription. Most experts utilized by the agency have agreements to work at a reduced rate. However, the agency reported these costs have risen steadily since FY 2008 due to higher transcription costs mandated by the Kansas Supreme Court, new legal requirements for expert testimony, and the expansion of what is effective assistance of defense counsel and defense services.

Death Penalty Cases

Kansas reinstated the death penalty in 1994, following the end of a national moratorium imposed by the U.S. Supreme Court. (More information about the death penalty in Kansas is available in [H-4 Death Penalty in Kansas](#) in this *Briefing Book*.)

As a result, the Death Penalty Defense Unit was established to handle the defense of cases in which the death penalty could be sought. As with all cases handled by public defenders, conflicts of interest and other circumstances raise the possibility that outside counsel will have to be contracted to represent defendants.

Capital cases are more costly than other matters handled by BIDS. Not only do these cases take more time for trial, but they also require defense counsel to be qualified to handle the complexities and special rules of death penalty litigation. According to a report issued by the Kansas Judicial Council Death Penalty Advisory Committee (Advisory Committee) in 2004, a “capital case requires more lawyers (on both prosecution and defense sides), more experts on both sides, more pre-trial motions, longer jury selection time, and a longer trial.” On average, BIDS pays outside counsel \$150 per hour for

capital cases, almost twice the statutory rate of \$80 per hour.

A study, conducted by the Advisory Committee, was released on February 13, 2014, and updated cost data for the costs first reported in the Legislative Division of Post Audit’s 2003 report. The Advisory Committee found BIDS spent an average of \$395,762 on capital cases that went to trial and where prosecutors sought the death penalty, compared to an average of \$98,963 on other death penalty-eligible cases that went to trial without the prosecutor seeking the death penalty.

Other Offices Administered by BIDS

Appellate Defender Office

The Appellate Defender Office is located in Topeka and provides representation to indigent felony defendants with cases on appeal.

Northeast Kansas Conflict Office

The Northeast Kansas Conflict Office, located in Topeka, was established to deal with a large number of conflict cases in Shawnee County. This office also handles off-grid homicide cases in Lyon County.

Sedgwick County Conflict Office

The Sedgwick County Conflict Office was established to defend conflict cases that cannot be handled by the Sedgwick County Public Defender Office, and is located in Wichita.

Death Penalty Defense Unit

The Death Penalty Defense Unit was established after the reinstatement of the death penalty. BIDS determined it was more cost effective to establish an office with attorneys specially qualified to handle defense in capital cases rather than relying on contract or assigned counsel.

Capital Appeals and Conflicts Office

The primary function of the Capital Appeals and Conflicts Office is to handle representation throughout the long and complex appellate process that follows the imposition of a death sentence. This office also handles some cases from the Appellate Defenders Office, as time allows.

Capital Appeals Office

The Capital Appeals Office was established in 2003 to handle additional capital appeals. Specifically, this office was created to handle the appeals of Reginald and Jonathan Carr, who were both convicted of murder in Sedgwick County and sentenced to death. Due to conflict of interest rules, the existing Capital Appeals and Conflicts Office could only represent one of the two men. The establishment of the Capital Appeals Office

resolved that conflict and doubled BIDS' capacity for handling death penalty appeals.

State Habeas Office

The State *Habeas* Office was established in FY 2015 to handle death penalty defense after a death sentence is upheld by the Kansas Supreme Court and petition for a writ of *certiorari* has been unsuccessful for the defense.

Legal Services for Prisoners

Legal Services for Prisoners, Inc., provides legal services to inmates in Kansas correctional facilities. The goal of the program is to ensure that prisoners' right to access the courts and pursue non-frivolous claims is met. Legal Services for Prisoners submits its annual budget to BIDS. Although Legal Services for Prisoners is not a state agency, its funding is administered through BIDS.

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State and Local Government

J-3 Home Rule

The Kansas Supreme Court in *State ex rel. Kline v. Unified Government of Wyandotte County/Kansas City*, 85 P. 3d 1237 (Kan. 2004) reaffirmed cities have broad home rule powers granted directly by the people of the State of Kansas, and the constitutional home rule powers of cities shall be liberally construed to give cities the largest possible measure of self-government.

This article briefly examines the history of home rule in Kansas, and explains the different variations of Kansas local government home rule.

Most states confer some degree of home rule powers on some or all of their cities and counties. In Kansas, cities' home rule authority is authorized constitutionally, while counties are granted home rule powers by statute.

What Is Home Rule?

"Home rule" is defined as limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a feature of state and municipal government in the United States, where state constitutions since 1875 frequently have been amended to confer general or specifically enumerated self-governing powers on cities and towns, and sometimes counties and townships.

In the United States, local governments are considered creatures of the state as well as subdivisions of the state and, as such, are dependent upon the state for their existence, structure, and scope of powers. State legislatures have plenary power over the local units of government they create, limited only by such restrictions they have imposed upon themselves by state law or by provisions of their state constitutions, most notably home rule provisions. The courts in the late 19th century developed a rule of statutory construction to reflect this rule of dependency known as "Dillon's Rule."

Dillon's Rule states a local government has only those powers granted in express words, those powers necessarily or fairly implied in the statutory grant, and those powers essential to the accomplishment of the declared objects and purposes of the local

unit. Any fair, reasonable, or substantial doubt concerning the existence of power is resolved by the courts against the local government. Local governments without home rule powers are limited to those powers specifically granted to them by the Legislature.

While local governments are considered dependent on the state, and therefore are not autonomous, the political landscape changed significantly in Kansas beginning in the early 1960s. The following section describes the development of home rule powers for cities, counties, and, to a lesser extent, school districts.

City, County, and School District Home Rule—Brief History of Kansas Home Rule Provisions

Constitutional Home Rule Grant for Cities

After July 1, 1961, cities were no longer dependent upon specific enabling acts of the Legislature. The key constitutional language contained in Article 12, Section 5, of the *Kansas Constitution*, reflecting the broad scope of the grant of home rule power for Kansas cities reads as follows:

- “Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges, and other exactions...”
- “Cities shall exercise such determination by ordinance passed by the governing body with referendum only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments applicable uniformly to all cities... and to enactments of the legislature prescribing limitations of indebtedness.”
- “Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly

to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city.”

- “Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self government.”

The Home Rule Amendment applies to all cities regardless of their size. Further, the Home Rule Amendment is self-executing in that there is no requirement that the Legislature enact any law implementing it, nor are cities required to hold an election or adopt a charter, constitution, or some type of ordinance declaring their intent to exercise home rule powers.

Though the Home Rule Amendment grants cities the power to levy taxes, excises, fees, charges, and other exactions, the Legislature may restrict this power by establishing not more than four classes of cities—cities of the first, second, and third class having been defined in law. These classes exist for purposes of imposing revenue limitations or prohibitions. The 2006 Legislature reduced the number of classes of cities to one for the purpose of restoring uniformity of local retailers’ sales taxes.

Cities can be bound only by state laws uniformly applicable to all cities, regardless of whether the subject matter of the state law is one of statewide or local concern. If there is a nonuniform law that covers a city, the city may pass a charter ordinance and exempt itself from all or part of the state law and provide substitute or additional provisions. If there is no state law on a subject, a city may enact its own local law. Further, if there is a uniform law that does not expressly preempt local supplemental action, cities may enact additional non-conflicting local regulations compatible with the uniform state law.

Statutory Home Rule Grant for Counties

Home rule for counties was enacted by statute in 1974. The county statutory grant is patterned after the Home Rule Amendment. The County

Home Rule Act provides that “the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate...” subject only to the limits, restrictions, and prohibitions listed in the Act (KSA 2019 Supp. 19-101a). The statutory grant, likewise, contains a statement of legislative intent that the home rule powers granted to counties shall be liberally construed to give counties the largest measure of self government (KSA 19-101c).

County home rule is self-executing in the same manner as city home rule. The power is there for all 105 counties to use. No charter or local constitution need be adopted nor any election held to achieve the power, except in the case of Johnson County, which is covered by a special law authorizing the adoption of a charter by county voters. Voters in Johnson County approved the charter in November 2002.

Counties can be bound by state laws uniformly applicable to all counties. Further, nonuniform laws can be made binding on counties by amending the County Home Rule Act, which now contains 38 limitations on county home rule.

Counties may act under home rule power if there is no state law on the subject. Counties also may supplement uniform state laws that do not clearly preempt county action by passing non-conflicting local legislation.

City and County Home Rule Differences

The major distinction between county home rule and city home rule is that county home rule is granted by statute, whereas the city home rule is granted directly by the people. Because of its constitutional origins, only the voters of Kansas can ultimately repeal city home rule after two-thirds of both houses of the Kansas Legislature have adopted a concurrent resolution calling for amendment or repeal, or a constitutional convention has recommended a change. The Legislature can restrict city home rule powers only by enacting uniform laws that apply in the same way to all cities unless the subject matter is one of the few specific areas listed in the Home Rule

Amendment, such as taxing powers and debt limitations. By contrast, the Legislature has more authority to restrict or repeal statutory county home rule. Finally, the other factor distinguishing city and county home rule is the existence of numerous exceptions to county home rule powers found in the County Home Rule Act.

Statutory Expansion of School District Powers

In 2003, schools were granted expanded administrative powers referred to by some as limited home rule powers. KSA 72-8205 was amended to expand the powers of school boards as follows:

- The board may transact all school district business and adopt policies the board deems appropriate to perform its constitutional duty to maintain, develop, and operate local public schools;
- The power granted by this subsection shall not be construed to relieve a board from compliance with state law or to relieve any other unit of government of its duties and responsibilities prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities are required of another unit of government; and
- The board shall exercise the power granted by this subsection by resolution of the board of education.

“Ordinary” versus “Charter” Ordinances or Resolutions

Ordinary Home Rule Ordinances

City home rule must be exercised by ordinance. The term “ordinary” home rule ordinance was coined after the passage of the Home Rule Amendment, but is not specifically used in the *Kansas Constitution*. The intent of using the term

is to distinguish ordinances passed under home rule authority that are not charter ordinances from all other ordinances enacted by cities under specific enabling acts of the Legislature. Similar terminology is used to refer to “ordinary” county home rule resolutions.

There are several instances where cities and counties may use ordinary home rule ordinances or resolutions. The first occurs when a city or county desires to act and there is no state law on the subject sought to be addressed by the local legislation. A second instance allows cities or counties to enact ordinary home rule ordinances or resolutions when there is a uniform state law on the subject, but the law does not explicitly preempt local action. The city or county may supplement the state law as long as there is no conflict between the state law and the local addition or supplement.

A third instance involves situations where either uniform or nonuniform enabling or permissive legislation exists, but a city or county chooses not to utilize the available state legislation and instead acts under home rule.

City Charter Ordinances and County Charter Resolutions

A city charter ordinance is an ordinance that exempts a city from the whole or any part of any enactment of the Legislature that is nonuniform

in its application to cities and that provides substitute or additional provisions on the same subject. A county charter resolution may be used in essentially the same manner.

Procedures for passage of city charter ordinances require a two-thirds vote of the members of the governing body of the city. Publication of the charter ordinance is required once each week for two consecutive weeks in the official city newspaper. The charter ordinance is subject to a 10.0 percent protest petition and election procedure.

County charter resolutions must be passed by a unanimous vote in counties where a three member commission exists, unless the board determines ahead of time to submit the charter resolution to a referendum, in which case a two-thirds vote is required. In counties with a five- or seven-member commission, a two-thirds vote is required to pass a charter resolution unless the charter resolution will be submitted to a vote, in which case a majority is required.

County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper and are subject to a 2.0 percent or 100 electors (whichever is greater) protest petition and election procedure.

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State and Local Government

J-4 Kansas Public Employees Retirement System's Retirement Plans and History

KPERs Overview—Brief History of State Retirement and Other Employee Benefit Plans

The Kansas Public Employees Retirement System (known generally as KPERs and referenced in this article as the Retirement System) administers three statewide plans. The largest plan, usually referred to as the regular KPERs plan or as KPERs, includes state, school, and local groups composed of regular state and local public employees; school district, vocational school, and community college employees; Regents' classified employees and certain Regents unclassified staff with pre-1962 service; and state correctional officers. A second plan is known as the Kansas Police and Firemen's (KP&F) Retirement System for certain designated state and local public safety employees. A third plan is known as the Kansas Retirement System for Judges that includes the state judicial system's judges and justices.

All coverage groups are defined benefit, contributory retirement plans and have as members most public employees in Kansas. Tier 1 of the KPERs plan is closed to new membership and Tier 2 closed to most new membership on December 31, 2014; certain state correctional personnel are eligible for membership. Tier 3 of the KPERs plan became effective for new employees hired after January 1, 2015. The cash balance plan is a defined benefit, contributory plan according to the Internal Revenue Service (IRS).

The primary purpose of the Retirement System is to accumulate sufficient resources to pay benefits. Retirement and death benefits paid by the Retirement System are considered off-budget expenses.

Starting in fiscal year (FY) 2000, retirement benefit payments, as proposed by the Governor and approved by the Legislature, were classified as off-budget, non-reportable expenditures. As the retirement benefit payments represent a substantial amount of money distributed annually to retirees and their beneficiaries, the historical growth in payments is tracked for informational purposes.

The Retirement System also administers several other employee benefit and retirement plans: a public employee death and long-term disability benefits plan, an optional term life insurance plan,

a voluntary deferred compensation plan, and a legislative session-only employee's retirement plan. The Legislature has assigned other duties to the agency in managing investments of moneys from three state funds: the Kansas Endowment for Youth Fund, the Senior Services Trust Fund, and the Treasurer's Unclaimed Property Fund.

The Retirement System is governed by a nine-member Board of Trustees (Board). Four members are appointed by the Governor and confirmed by the Senate, one member is appointed by the President of the Senate, one is appointed by the Speaker of the House, two are elected by Retirement System members, and one member is the State Treasurer. The Board appoints the Executive Director, who administers the agency operations for the Board.

The Retirement System manages approximately \$20.0 billion in actuarially valued assets. Annually, the Retirement System pays out more in benefits than it collects in employer and employee contributions. The gap between current expenditures and current revenues is made up with funding from investments and earnings. The financial health of the Retirement System may be measured by its funded ratio, which is the relationship between the promised benefits and the resources available to pay those promised benefits. In the most recent actuarial valuation on December 31, 2018, the funded ratio for the Retirement System was 68.4 percent, and the unfunded actuarial liability (UAL) was \$9.202 billion. This is the amount of financing shortfall when comparing the Retirement System assets with promised retirement benefits.

The Legislature in 2015 passed SB 228, authorizing the issuance of \$1.0 billion in taxable bonds. In August 2015, the Kansas Development Finance Authority issued the bonds with an effective interest rate of 4.69 percent. The bonds, with interest paid semi-annually over a 30-year period, will be paid off in 2045. The bonds' proceeds became part of the Retirement System's valuation on December 31, 2015. Debt service for the bonds is subject to appropriation and not an obligation of KPERS.

Brief History of KPERS

KPERS was created under law passed by the 1961 Legislature, with an effective date of January 1, 1962. Membership in the original KPERS retirement plan (now referred to as KPERS Tier 1) was offered to state and local public employees qualified under the new law and whose participating employers chose to affiliate with KPERS. Another KPERS tier was created in 2007 for state, school, and local public employees becoming members on and after July 1, 2009. KPERS Tier 2 has many characteristics of the original plan, but with certain modifications to ensure employees and employers will share in the total cost of providing benefits. A third tier was implemented January 1, 2015, for all new employees. The second and third KPERS tiers are described in the last section of this article.

School districts generally were not authorized to affiliate with KPERS until the 1970s, but there were three affiliating in 1963 as the first exceptions to the general rule. Two more school districts affiliated in 1966. Later in 1966, four of the five school districts that had affiliated with KPERS were dissolved by the Legislature as of July 1, 1966. No other school districts became affiliated with KPERS until 1971, when a general law brought the old State School Retirement System (SSRS) and its individual members into KPERS.

The 1970 Legislature authorized affiliation with KPERS on January 1, 1971, for any public school district, area vocational-technical school, community college, and state agency that employed teachers. Other public officials and officers not addressed in the original 1961 legislation had been authorized, beginning in 1963, to participate in KPERS as the result of a series of statutory amendments to KSA 74-4910, *et seq.*, that broadened participation to include groups defined as public rather than exclusively governmental. Amendments to KSA 74-4901 also broadened the definition of which governmental officials and officers were eligible for KPERS membership.

Calculation of Retirement Benefits and Eligibility for KPERs

KPERs Tier 1 and Tier 2 retirement benefits are calculated by a formula based on years of credited service multiplied by a statutory percentage for the type of service credit multiplied by final average salary.

For credited service, two categories were defined in the 1961 KPERs legislation: participating service, which was equal to 1.0 percent of defined salary for each year, and prior service equal to 0.5 percent of defined salary for each year. In 1965, the Legislature raised the prior service multiplier to 0.75 percent. In 1968, the prior service multiplier was raised to 1.0 percent, and the participating service multiplier was increased to 1.25 percent for all years of service.

In 1970, legislation set the participating service for school employees to be the same as other regular KPERs members, which was 1.25 percent at that time. The prior service multiplier for education employees was set at 1.00 percent for years under the SSRS and 0.75 percent for years of school service not credited under the SSRS. In 1982, legislation increased the participating service credit for state, school, and local KPERs members from 1.25 percent to 1.40 percent of final average salary for all participating service credited after July 1, 1982.

In 1993, legislation raised the multiplier to 1.75 percent for all years participating service for members who retired on or after July 1, 1993.

Three different qualifications for normal retirement were established: age 65, age 62 with 10 years of service, and 85 points (any combination of age plus years of service).

Legislation enacted in 2012, as subsequently clarified during the 2013 Legislative Session, applied a multiplier of 1.85 percent to Tier 2 members retiring under early retirement provisions, as well as to those retiring at the normal retirement dates.

Contribution Rates for KPERs

KPERs Tiers 1, 2, and 3 are participatory plans in which both the employee and employer make contributions. In 1961, employee contributions were statutorily set at 4.0 percent for the first \$10,000 of total annual compensation. The \$10,000 cap was eliminated by 1967 legislation. Tier 2 employee contribution rates were set at 6.0 percent by statute beginning July 1, 2009. Tier 1 employee contribution rates increased from 4.0 percent to 5.0 percent in 2014, and to 6.0 percent on January 1, 2015.

In 1961, initial employer contributions were set at 4.35 percent (3.75 percent for retirement benefits and 0.60 percent for death and disability benefits) of total compensation of employees for the first year, with future employer contribution rates to be set by the Board, assisted by an actuary and following statutory guidelines.

In 1970, the employer contribution rate for public education employers was set at 5.05 percent from January 1, 1971, to June 30, 1972, with subsequent employer contribution rates to be set by the Board. In 1981, the Legislature reset the 40-year amortization period for KPERs until December 31, 2022, and accelerated a reduction in the employer contribution rates in FY 1982 to 4.30 percent for state and local units of government (KPERs non-school) and to 3.30 percent for education units of government (KPERs school).

Actuarially recommended employer contribution amounts for the state and school group are determined by assessing the UAL of both groups and combining the separate amounts to determine one.

During the 1980s, the Legislature capped the actuarial contribution rates for employers on numerous occasions in statutory provisions. In 1988, the Legislature established two employer contribution rates: one for the state and schools and one for the local units of government. Previously, the state and local employer rate had been combined as the KPERs non-school group.

The amortization period for the combined state and school group was extended from 15 to 24 years, with employer contribution rates set at 3.1 percent for the state and 2.0 percent for the local employers in FY 1990.

In 1993, legislation introduced the statutory budget caps that would limit the amount of annual increase for employer contributions and provided a 25.0 percent increase in retirement benefits for those who retired on and after July 1, 1993, and an average 15.0 percent increase in retirement benefits for those who retired before July 1, 1993.

In order to finance the increased benefits, the Legislature anticipated phasing in higher employer contributions by originally setting a 0.1 percent annual cap on budget increases. The Legislature reduced the statutory rate for participating employer contributions for FY 2016 and FY 2017 to 10.91 percent and 10.81 percent, respectively. In FY 2018 and subsequent fiscal years, the contribution rate may increase by no more than 1.20 percent above the previous year's contribution rate. According to the most recent actuarial analysis provided to KPERS, the statutory rate for the state-school group will equal the actuarial contribution rate in FY 2022 at 14.09 percent. In calendar year 2029, the funded ratio is estimated to reach 80.0 percent, which is the minimum ratio for which pension plans are considered by retirement experts to be adequately funded. The state-school "legacy" UAL, which is estimated to be \$6.242 billion, is projected to be eliminated sometime after calendar year 2040.

The failure of KPERS participating employers to contribute at the actuarial rate since 1993 has contributed to the long-term funding problem. The long-term solvency can also be affected by market performance, changes to benefits, and actuarial assumptions, especially the assumed rate of return. Historically, the assumed rate of investment return was 8.0 percent; in 2017, the Board reduced the rate to 7.75 percent, resulting in an increase in the UAL of approximately \$500.0 million.

Retirement Benefits and Adjustments

The original 1961 KPERS legislation provided for the non-alienation of benefits. The KPERS Act stated, "No alteration, amendment, or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal." This provision is found in KSA 74-4923.

The 1961 legislation exempted the KPERS retirement benefits from all state and local taxation. In other words, no taxes shall be assessed, and no retroactive reduction of promised benefits may be enacted. Any change in benefits must be prospective, unless it involves a benefit increase, which may be retroactive in application, as in the case of increasing the multiplier for all years of service credit.

An automatic cost-of-living adjustment (COLA) was not included in the original 1961 legislation.

Over the years, the Legislature provided additional *ad hoc* post-retirement benefit adjustments for retirees and their beneficiaries.

KPERS Tier 2 and Tier 3 for Certain New Members

Legislation in 2007 established a Tier 2 for KPERS state, school, and local employees effective July 1, 2009, and made the existing KPERS members a "frozen" group in Tier 1 that no new members could join. The employee contribution rate for the "frozen" KPERS Tier 1 remained 4.0 percent, until 2014 when it increased from 4.0 percent to 5.0 percent, and in 2015 when it increased from 5.0 percent to 6.0 percent. The contribution rate remains at 6.0 percent today.

The Tier 2 for employees hired on or after July 1, 2009, continued the 1.75 percent multiplier; allowed normal retirement at age 65 with 5 years of service, or at age 60 with at least 30 years of service; provided for early retirement at age 55 with at least 10 years of service and an actuarial reduction in benefits; included an automatic,

annual 2.0 percent COLA at age 65 and older; and required an employee contribution rate of 6.0 percent.

Legislation in 2012 established a Tier 3 for KPERS state, school, and local employees effective January 1, 2015, and made the existing KPERS members, hired between July 1, 2009, and December 31, 2014, a “frozen” group in Tier 2 that no new members could join, except for certain state correctional personnel. The employee contribution rate for the “frozen” KPERS Tier 2 remained set at 6.0 percent, but the COLA was eliminated and a new, higher multiplier of 1.85 percent was authorized to be applied retroactively for all years of credited service and for future years of service.

Effective January 1, 2015, the KPERS Tier 3 has the following plan design components:

- Normal retirement age—age 65 and 5 years of service, or age 60 and 30 years of service;
- Minimum interest crediting rate during active years—4.0 percent;
- Discretionary Tier 3 dividends—modified formula based on KPERS funded ratio for awarding discretionary credits and capped for early years;
- Employee contribution—6.0 percent;
- Employer service credit—3.0 percent for less than 5 years of service; 4.0 percent for at least 5, but less than 12, years of service; 5.0 percent for at least 12, but less than 24, years of service; and 6.0 percent for 24 or more years of service;
- Vesting (the period of employment necessary for benefits to accrue)—5 years;
- Termination before vesting—interest would be paid for the first 2 years if employee contributions are not withdrawn;
- Termination after vesting—option to leave contributions and draw retirement benefits when eligible, or withdraw employee contributions and interest but forfeit all employer credits and service;
- Death prior to retirement—5-year service requirement and if spouse had been named primary beneficiary, provide retirement benefit for spouse when eligible;
- Tier 3 early retirement—age 55 with 10 years of service;
- Default form of retirement distribution—single life with 10-year certain;
- Annuity conversion factor—2.0 percent less than the actuarial assumed investment rate of return;
- Benefits option—partial lump sum paid in any percentage or dollar amount up to 30.0 percent maximum;
- Post-retirement benefit — COLA may be self-funded for cost-of-living adjustments;
- Electronic and written statements—the Board shall provide information specified. Certain quarterly reporting is required;
- Powers reserved to adjust plan design—the Legislature may prospectively change interest credits, employer credits, and annuity interest rates. The Board may prospectively change mortality rates;
- Actuarial cost of any legislation—fiscal impact assessment by KPERS actuary required before and after any legislative enactments;
- Divorce after retirement—allows a retirant, if divorced after retirement, and if the retirant had named the retirant’s ex-spouse as a joint annuitant, to cancel the joint annuitant’s benefit option in accordance with a court order;
- If a member becomes disabled while actively working, the member will be given participating service credit for the entire period of the member’s disability. The member’s account will be credited with both the employee contribution and the employer credit until the earliest of (i) death; (ii) attainment of normal retirement age; or (iii) the date the member is no longer entitled to receive disability benefits;

- A benefit of \$4,000 is payable upon a retired member's death; and
- Employer credits and the guaranteed interest crediting are to be reported quarterly.

That 2012 legislation also further modified the KPERS Tier 1 plan design components and the participating employer funding requirements for contributions. Several other provisions enhanced supplemental funding for KPERS, first by providing that 80.0 percent from sales of state property would be transferred to the KPERS Trust Fund and, second, by providing for annual transfers of up to 50.0 percent of the balance from the Expanded Lottery Act Revenues Fund to the KPERS Trust Fund after other statutory expenses have been met.

Other Recent Revisions

Working after retirement. With regard to substantive policy, the Legislature enacted a new working-after-retirement provision, which took effect on January 1, 2018. For retirees under the age of 62, there is a 180-day waiting period before returning to work. If the retiree is 62 or older, the current 60-day waiting period applies. There must be no prearranged employment agreement between the retiree and the public employer that is affiliated with KPERS. For covered positions, the employer pays the statutory contribution rate on the first \$25,000 of compensation and for that portion of compensation greater than \$25,000, the contribution rate is equal to 30.0 percent. Covered positions for non-school employees are those that are not seasonal or temporary and whose employment requires at least 1,000 hours of work per year; covered positions for school employees are those that are not seasonal or temporary and whose employment requires at least 630 hours of work per year or at least 3.5 hours a day for at least 180 days. For non-covered positions, the employer makes no contributions. None of the above provisions sunset.

Starting on January 1, 2018, all retirees who had retired prior to that date in state, local, and licensed or unlicensed school positions are not subject to an earnings limitation. Employers will pay the statutory contribution rate on the first

\$25,000 of compensation and for that portion of compensation greater than \$25,000, the contribution rate will be equal to 30.0 percent for retirees employed in covered positions.

Employer contributions. With regard to fiscal policy, the aforementioned 2012 legislation also modified the rate of increase in the annual caps on participating employer contributions. The 0.6 percent cap increased to 0.9 percent in FY 2014, 1.0 percent in FY 2015, 1.1 percent in FY 2016, and 1.2 percent in subsequent fiscal years until the UAL of the state and school group reaches an 80.0 percent funded ratio.

Legislation in 2016 provided the Governor with enhanced allotment authority and specifically allowed for the reduction of FY 2016 employer contributions to KPERS. In total, \$97.4 million in previously approved FY 2016 employer contributions to the state-school group were delayed.

Legislation in 2017 froze FY 2017 employer contributions at FY 2016 levels, reducing approximately \$64.1 million in approved contributions. FY 2018 employer contributions remained at their statutory level, and FY 2019 employer contributions were reduced by approximately \$194.0 million from their statutory amount. Repayment of the FY 2017 and FY 2019 reductions were approved *via* layered amortization of a level dollar amount over 20 years.

Legislation in 2018 transferred \$56.0 million from the State General Fund to the KPERS Trust Fund in FY 2018, which was due to receipts exceeding consensus revenue estimates for the fiscal year by at least that amount. An additional \$82.0 million was transferred the State General Fund to the KPERS Trust Fund in FY 2019.

Legislation in 2019 repaid the total reduction in FY 2016 employer contributions authorized in 2016. Additional interest was included for a total amount repaid of \$115.0 million from the State General Fund to the KPERS Trust Fund in FY 2019. Separate legislation transferred an additional \$51.0 million from the State General Fund to the KPERS Trust Fund in FY 2020.

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State Employee
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State and Local Government

J-5 Options Used to Address Abandoned Property

Vacant and abandoned property has long been an issue in small and large Kansas communities. According to testimony received on various bills heard by the Kansas Legislature, these properties are a familiar part of the American landscape. These structures may affect neighborhoods and neighbors' quality of life. Additionally, these properties could diminish the value of nearby properties, resulting in reduced local property tax revenue, and cost cities millions for policing, cleaning vacant lots, and demolishing derelict buildings.

Research describes tools that may be used to deal with abandoned and vacant property, with property registration, land banking, and receivership programs receiving the most attention. Researchers caution not all of these tools will work for every market, and the approach a municipality takes should be designed with its particular issues in mind.

Vacant Property Registration

Vacant property registration is described as the first step a municipality can take to gather more information about the particular abandoned property issues the community is facing, and it may help prevent abandonment altogether. A report from GSBS Richman Consulting (GSBS), prepared for Oklahoma City in 2013, suggests, at a minimum, a registry should include a maintenance plan for the identified property and a fee structure (<https://www.okc.gov/home/showdocument?id=2518>).

Best practices for this tool include:

- Registration of foreclosed properties at the time of notice of default or foreclosure; and
- Submission of a maintenance plan at time of registration;
 - Purchasing insurance coverage for unoccupied buildings;
 - Establishing minimum levels of exterior maintenance;
 - Posting owner contact information on the property;
 - Frequent inspections by the municipality;
 - Installing exterior nighttime lighting; and
 - Code enforcement for non-compliance.

According to the U.S. Department of Housing and Urban Development (HUD), these registrations help municipalities track vacancy issues in their jurisdictions. HUD and GSBS also suggest fees for registration should escalate the longer the property remains vacant to create a disincentive for owners and encourage the return of these properties to productive use. Additionally, the fees for these registrations could be utilized to offset costs associated with vacant properties.

The Unified Government of Wyandotte County and Kansas City, Kansas, adopted a registration ordinance in February 2018. The ordinance requires the owner of any building or structure that becomes vacant to register within 60 days of the first date of vacancy. The registration must be accompanied by a written comprehensive plan of action containing a timeline for corrective action for any code violations, rehabilitation (if required), and maintenance while the building is vacant. The annual fee is \$200. The ordinance also outlines other provisions, such as inspection of the property and notification for change of ownership.

Vacant building registration is not without opponents. In 2013, in response to the GSBS report, Oklahoma City enacted a vacant property registration program. That program included a \$285 registration fee that increased by \$190 every year the property remained vacant. However, in 2014, the Oklahoma Legislature passed legislation preventing such ordinances from being enacted, ending the Oklahoma City program.

Land Banks

Another tool some municipalities utilize to deal with vacant properties is land banking. HUD's Neighborhood Stabilization Program describes a land bank as a public or community-owned entity created for the purpose of acquiring, managing, maintaining, and re-purposing vacant, abandoned, and foreclosed properties. The Center for Community Progress (CCP), a non-profit that specializes in assisting communities address abandoned, vacant, and deteriorating property, estimated there were 170 land banking

programs in the United States as of January 2018. Land banks are most often associated with municipalities that have large-scale blight and abandonment issues within their jurisdictions.

Best practices. Land banks are typically created *via* local ordinances, pursuant to authority provided in state law. Occasionally, they are also created within existing entities, such as redevelopment authorities, housing departments, or planning departments. Their authority varies greatly, depending on how the land bank is created. Typically, they are granted special powers and authority in the state's enabling statute. According to CCP, comprehensive land bank legislation usually grants the following powers:

- The ability to obtain property at low or no cost through the tax foreclosure process;
- The ability to hold land tax-free;
- The ability to obtain clear title, extinguish back taxes, or both;
- The ability to lease properties for temporary uses; and
- The ability to negotiate sales based on the outcome that most closely aligns with a community's needs.

The Lincoln Institute of Land Policy (LILP) identifies Ohio's land bank enabling statute as a possible example of comprehensive land bank legislation. In Ohio, land banks have the following statutory purposes:

- Facilitate the reutilization of vacant, abandoned, and tax-foreclosed real property;
- Efficiently hold such property pending reutilization;
- Assist entities to assemble and clear the title of such property; and
- Promote economic and housing development.

Ohio Rev. Code Ann. § 1724.02 established an exhaustive list of powers that may be granted to land banks in the state, many of which align with the examples provided above. These powers include the ability to apply for tax exemption for

the property, negotiate the purchase and sale of property, and lease the property for temporary use.

Land banks in Kansas. Kansas cities may establish land banks under the authority of KSA 2019 Supp. 12-5901 *et seq.*, and Wyandotte County is authorized to establish a land bank under the authority of KSA 2019 Supp. 19-26,103 *et seq.* According to CCP, there are ten land banks in the state: Arma, Arkansas City, Herrington, Hutchinson, Kansas City/Wyandotte County, Lyons, McPherson, Olathe, Overland Park, and Pittsburg. Junction City also has a land bank, but it is not reflected in the CCP database.

Kansas law allows property to be transferred to land banks by the city, county, another city, or another taxing subdivision in the county. Land banks can choose to accept any transferred property, and these properties are not subject to any bidding requirements and are exempt from law requiring public sale. Land banks also have the authority to acquire property by purchasing it. The land bank's board of directors established pursuant to the law is required to manage its property, keep an inventory of such properties, and sell or otherwise dispose of the property. The board is allowed to sell any property without competitive bidding under terms necessary to assure the effective re-utilization of the property. Land banks are also exempt from property taxes, except for special assessments levied by a municipality, and the county treasurer is required to remove from the tax rolls all taxes and other charges due on the property when it is acquired by the board. Land banks are required to operate on a cash basis; however, at the time of establishment, the governing body of the establishing municipality may advance operating funds to the bank to pay for certain expenses. Kansas law also has several transparency and reporting requirements for land banks.

When comparing Kansas land banking law to the referenced best practices, Kansas law incorporates most best practices. The exclusions are the ability to lease properties for temporary use and the clear directive for obtaining a clear title.

Land banks and tax foreclosure. Land banks can be used to complement or possibly replace tax foreclosure sales. Some researchers view tax foreclosure sales as a liquidation-based system composed of the sale of tax liens or public tax auctions wherein government trades its interest in tax-delinquent property to speculators or investors for modest revenue collection. Depending on the real estate market in the area, this could potentially result in real estate speculators holding onto property with little incentive to improve or maintain it. However, land banks typically have a statutory obligation to seek a new use for acquired property and to hold property in careful stewardship until a new purpose can be determined.

Receivership Programs

Receivership is a tool that can be used through a court system to designate a local government or qualified non-governmental entity, such as a nonprofit, as the receiver of a vacant property. According to the LILP, this tool exists in many states, but provisions vary greatly, making them more useful in some states than others.

Generally, a receivership statute allows a municipality or a qualified nonprofit entity to apply to a court to be appointed the receiver or be granted possession of the property to restore it to use. Once appointed, a receiver or possessor has control of the property, may borrow and spend money to rehabilitate it, and may place liens against the property for the amount spent. Once the property is rehabilitated, the owner may be able to regain control of the property by making the receiver whole, or the property may be sold by the court or receiver.

The City of Baltimore is considered to have a robust receivership ordinance by the CCP. The ordinance allows the city or a nonprofit designee to ask a court to appoint a receiver for any property that has an outstanding vacant building violation notice. Any entity with a preexisting interest in the property, such as an owner or mortgagee, must demonstrate the ability to rehabilitate the property without delay to avoid appointment of a receiver. If a receiver is appointed, the receiver's

administrative and rehabilitation expenses become a super-priority lien on the property. Additionally, the ordinance provides notification requirements a court must determine have been met.

Massachusetts, a state the CCP considers to have a strong receivership law, utilizes a statewide abandoned housing initiative (<https://www.mass.gov/service-details/learn-more-about-the-abandoned-housing-initiative>) within the Attorney General's Office (AGO). This program allows municipalities to submit addresses of abandoned residential properties to the AGO to initiate an investigation to identify delinquent owners. Once identified, the AGO attempts to contact the owner and any party with legal interest to reach an agreement to complete necessary repairs. If this is not possible, the state's Sanitary Code (<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXVI/Chapter111/Section127i>) contains a provision for receivership that can be utilized to remedy code violations. According to the AGO, the Sanitary Code allows for a priority lien to be placed on the residence. A receivership can last six months to a year; at its conclusion, the owner can reimburse the receiver for the cost to clear the lien. If this is not possible, the receiver may foreclose on the lien in a manner approved by a court.

Best practices. A 2016 article in the *Journal of Affordable Housing* examined receivership statutes in 19 states and provided the following best practices:

- Establish formal governmental programs that allow for the appointment of private receivers from a list of qualified entities;
- Allow neighbors and other interested parties to petition to bring attention to properties that may not have received official attention and that affect a more limited group of people;
- Make grants and access to a certified list of potential receivers available to unaffiliated petitioners as resources so the petitioners need not go through the process of establishing receivership qualifications to a court;

- Create clear definitions for qualifying properties to ensure fewer petitions will be rejected;
- Require respondents to post bond to encourage serious effort to challenge a claim;
- Require petitioners to provide the court with a quarterly progress report;
- Enable receivers to rent rehabilitated property after rehabilitation, but before sale, to lessen the amount of their lien;
- Provide strict warnings and action deadlines to respondents (delinquent owners); and
- Provide strict guidance when dealing with a receiver's compensation.

The author also suggested consideration be given to the respondent's right of redemption after the property is sold or rehabilitated, noting the practice creates a larger risk to the project and makes it less attractive to other buyers.

Kansas receivership law. Kansas law provides for something similar to a receivership program in the provisions of KSA 2019 Supp. 12-1750 *et seq.*, particularly in KSA 2019 Supp. 12-1756a. These provisions do not use the term "receiver," but do allow for the petition of a district court by a municipality or qualified nonprofit for temporary possession of a property that meets certain requirements, such as the property being tax delinquent for two years, and be determined to meet the definition of "abandoned." Petitioners must notify interested parties 20 to 60 days prior to filing the petition. Other petitioner duties include filing an annual report with the court concerning the rehabilitation of the property, which must include statements of all expenditures made by the organization in possession, including payments for rehabilitation, operation, and maintenance; repairs; real estate taxes; mortgage payments; and lien-holder payments. The prior owner of the property may regain possession of the property by petitioning a district court. The court must determine compensation to the rehabilitating organization.

It is difficult to determine how many of the best practices can be found in Kansas' receivership

law. It appears Kansas incorporates portions of the recommendations. For instance, Kansas law allows for the establishment of formal programs allowing for the appointment of private receivers, but it would be difficult for neighbors and other interested parties to utilize these programs depending on how a municipality has implemented a program. Additionally, Kansas law contains definitions establishing what property can be considered abandoned, but there can be differences of interpretation regarding the clarity of such a definition. The law also provides action deadlines and requirements for respondents to a petition, but does not require the posting of bond to show an effort to rehabilitate. A court also has the discretion to extend these deadlines. Further, the law requires an annual progress report by a petitioner, whereas best practices suggest reports to the court should be made quarterly in order to keep the court better informed.

Kansas law does not allow for rehabilitated property to be rented before their sale and it does not provide any guidance on a receiver's compensation. It also provides for a redemption period for the prior owner, which the author of the 2016 article notes should be an item of consideration when creating these statutes.

Additional Tools

Aside from the tools listed above, communities can also consider options to help slow or prevent properties from becoming abandoned or vacant, such as foreclosure prevention programs and home repair programs. Below is information on two examples of such programs.

Homeowners' Emergency Mortgage Assistance Program

In 1983, Pennsylvania created the Homeowners' Emergency Mortgage Assistance Program (HEMAP), which is a loan program for homeowners who have shown they have a reasonable prospect of resuming full mortgage payments within a required time frame. The program is funded by a state appropriation. Loans are limited to a maximum of 24 or 36 months from the date of mortgage delinquency or a maximum of \$60,000, whichever comes first. Additionally, all loan recipients must pay up to approximately 35.0 percent or 40.0 percent of their net monthly income towards their total housing expense. To date, the program has helped 46,000 homeowners.

Basic Systems Repair Program

Philadelphia offers the Basic Systems Repair Program (BSRP). The program provides free repairs to address electrical, plumbing, heating, and structural and roofing emergencies in eligible owner-occupied homes in the city. Owners are eligible if they have not received BSRP services in the previous three years, own and live in a home that has a qualifying issue, are current under their payment agreements for the property taxes and water bill, and meet the income guidelines.

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State and Local Government

J-6 Senate Confirmation Process

State law in Kansas requires that certain appointments by the Governor or other state officials be confirmed by the Senate prior to the appointee exercising any power, duty, or function of the office. If a majority of the Senate votes on the question of confirmation of an appointment to an office and the appointment is not confirmed, the office shall become vacant at that time (KSA 75-4315b).

When the Senate is not in session, the Senate Committee on Confirmation Oversight (Committee) reviews appointments and makes recommendations related to the appointments to the full Senate.

The Committee has six members with proportional representation from the two major political parties (KSA 2019 Supp. 46-2601). One of the members of the Committee is the Majority Leader of the Senate, or the Majority Leader's designee, who serves as chairperson. The Minority Leader of the Senate, or the Minority Leader's designee, serves as vice-chairperson.

If a vacancy occurs in an office or in the membership of a board, commission, council, committee, authority, or other governmental body and the appointment to fill the vacancy is subject to confirmation by the Senate, the Committee may authorize, by a majority vote, the person appointed to fill the vacancy to exercise the powers, duties, and functions of the office until the appointment is confirmed by the Senate.

A list of those positions subject to Senate confirmation is included on the following pages, along with tables outlining the confirmation process for gubernatorial appointees and non-gubernatorial appointees.

Acting State Officers

State law provides that the Governor and other appointing authorities may appoint an acting state officer to certain positions (including department secretaries) to serve for a period not greater than six months, during which the acting state officer shall have and exercise all of the powers, duties, and functions of the office in which he or she is acting (KSA 75-4315a).

**Alphabetical List of Appointments
Subject to Senate Confirmation**

- Adjutant General
- Administration, Secretary
- Aging and Disability Services, Secretary
- Agriculture, Secretary
- Alcoholic Beverage Control, Director
- Bank Commissioner
- Banking Board
- Board of Tax Appeals, Members and Chief Hearing Officer
- Central Interstate Low-Level Radioactive Waste Commission
- Children and Families, Secretary
- Civil Service Board
- Commerce, Secretary
- Corporation Commission
- Corrections, Secretary
- Court of Appeals, Judge
- Credit Union Administrator
- Crime Victims Compensation Board
- Employment Security, Board of Review
- Export Loan Guarantee Committee
- Fire Marshal
- Gaming Agency, Executive Director
- Healing Arts, Executive Director of State Board
- Health and Environment, Office of Inspector General
- Health and Environment, Secretary
- Highway Patrol, Superintendent
- Historical Society, Executive Director
- Hospital Authority, University of Kansas
- Human Rights Commission
- Indigents' Defense Services, State Board
- Kansas Bureau of Investigation, Director
- Kansas City Area Transportation District
- Kansas Development Finance Authority, Board of Directors
- Kansas National Guard, General Officers
- Labor, Secretary
- Librarian, State
- Long-Term Care Ombudsman
- Lottery Commission
- Lottery Commission, Executive Director
- Mo-Kan Metropolitan Development District and Agency Compact
- Pooled Money Investment Board
- Property Valuation, Director
- Public Employee Relations Board
- Public Employees Retirement System Board of Trustees
- Racing and Gaming Commission
- Racing and Gaming Commission, Executive Director
- Regents, State Board
- Revenue, Secretary
- Securities Commissioner
- Transportation, Secretary
- Veterans' Affairs Office, Commission on, Director
- Water Authority, Chairperson
- Water Office, Director
- Wildlife, Parks and Tourism, Secretary

Senate Confirmation Process: Gubernatorial Appointments	
Step 1	The Governor appoints an individual to a vacancy requiring Senate confirmation.
Step 2	The Governor's Office collects completed copies of the appointee's nomination form, statement of substantial interest, tax information, and background investigation, including fingerprints.
Step 3	The Governor's Office submits completed copies of the appointee's nomination form and statement of substantial interest to the Kansas Legislative Research Department (KLRD) <i>via</i> the chairperson of the Committee.
Step 4	KLRD and Revisor of Statutes staff review the file for completeness.
Step 5	If the file is complete, KLRD staff informs the chairperson of the Committee that the file is available for review.
Step 6	The appointment is considered by the Committee (during Session, the appointment may be considered by an appropriate subject-matter committee).
Step 7	If the Committee votes to recommend and authorize the appointee, the appointee may exercise the powers, duties, and functions of the office until the full Senate votes on confirmation.
Step 8	The full Senate votes on confirmation during the next Session (or current if Session is underway).

Senate Confirmation Process: Non-gubernatorial Appointments	
Step 1	The chairperson of the Committee is notified by the appointing authority that an appointment has been made requiring Senate confirmation.
Step 2	The appointing authority submits completed copies of the appointee's nomination form, statement of substantial interest, tax information release form, and written request for a background investigation to the KLRD <i>via</i> the chairperson of the Committee.
Step 3	The Director of Legislative Research submits a written request to the Kansas Bureau of Investigation (KBI) for a background check, including fingerprints. The Director also submits a request to the Department of Revenue to release the appointee's tax information.
Step 4	KBI and Department of Revenue officials complete the background and tax investigations. The information is sent to KLRD.
Step 5	The Director of Legislative Research informs the appointing authority and appointee the file is complete and available for review.
Step 6	The appointing authority and appointee may exercise the option to review the information and decide whether to proceed with the nomination.
Step 7	If the appointing authority and nominee decide to proceed with the nomination, the Director of Legislative Research informs the chairperson and vice-chairperson of the Committee the file is available for review.
Step 8	The appointment is considered by the Committee.
Step 9	If the Committee votes to recommend and authorize the appointee, the appointee may exercise the powers, duties, and functions of the office until the full Senate votes on confirmation.
Step 10	The full Senate votes on confirmation during the next Session (or current if Session is underway).

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J-1
Administrative Rule
and Regulation
Legislative Oversight

J-2
Board of Indigents'
Defense Services

J-3
Home Rule

J-4
KPERs' Retirement
Plans and History

J-5
Options Used to
Address Abandoned
Property

J-6
Senate Confirmation
Process

J-7
State Employee
Issues

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State and Local Government

J-7 State Employee Issues

Classified and Unclassified Employees

The state workforce is composed of classified and unclassified employees. Classified employees comprise 42 percent of the state workforce, while unclassified employees comprise the remaining 58 percent. HB 2391 (2015) revised the Kansas Civil Service Act to direct all persons in newly hired positions, including any rehired employee and any current employee who voluntarily transfers, or is voluntarily promoted or demoted, into an unclassified position. If federal law requires a state agency to maintain personnel standards on a merit basis and that agency has converted classified positions to unclassified positions, the state agency must adopt a binding statement of agency policy to meet the federal requirements.

Classified employees are selected through a competitive process, while unclassified positions can be filled through direct appointment, with or without competition. While unclassified employees are essentially "at will" employees who serve at the discretion of their appointing authority, classified employees are covered by the "merit" or "civil service" system, which provides additional employment safeguards. These safeguards are as follows:

- All actions, including recruitment, hiring, classification, compensation, training, retention, promotion, discipline, and dismissal of state employees, shall be:
 - Based on merit principles and equal opportunity;
 - Made without regard to race, national origin or ancestry, religion, political affiliation, or other nonmerit factors and shall not be based on sex, age, or disability except where those factors constitute a *bona fide* occupational qualification or where a disability prevents an individual from performing the essential functions of a position; and
 - Employees are to be retained based on their ability to manage the duties of their position.

Characteristics of State Employees

In fiscal year (FY) 2018, a profile of classified state employees reflected the following.

The “average” classified employee:	The “average” unclassified employee:
Is 46 years of age;	Is 45 years of age;
Has 14 years of service; and	Has 10 years of service; and
Earns \$41,203 per year	Earns \$49,610 per year
Source: SHARP (June 2018)—Includes classified and unclassified, benefit-eligible employees, including full- and part-time employees. Excludes Regents universities, legislators, student employees, classified temporary, and unclassified non-benefit-eligible temporary employees.	

State Employee Benefits

Among the benefits available to most state employees are medical, dental, and vision plans; long-term disability insurance; deferred compensation; and a cafeteria benefits plan, which allows employees to pay dependent care expenses and non-reimbursable health care expenses with pre-tax dollars. In addition, state employees accrue vacation and sick leave. The vacation leave accrual rate increases after 5, 10, and 15 years. In general, the State also provides nine to ten days of holiday leave for state employees.

Retirement Plans

Most state employees participate in the Kansas Public Employees Retirement System (KPERs). Employees contribute 6.0 percent bi-weekly based on salary. The state contribution is set by law each year. In addition to the regular KPERs program, there are plans for certain law enforcement groups, correctional officers, judges and justices, and certain Regents unclassified employees. Contributions from both the employee and the State differ from plan to plan. ([See J-4 Kansas Public Employees Retirement System’s Retirement Plans and History](#) in this *Briefing Book* for more information.)

Compensation of State Employees

Kansas statutes direct the Director of Personnel Services, after consultation with the Director of the Budget and the Secretary of Administration, to prepare a pay plan for classified employees, which “shall contain a schedule of salary and wage ranges and steps.” The statutes also provide that this pay plan can be modified by provisions in an

appropriation bill or other act. When the Governor recommends step movement on the classified pay plan, a general salary increase, or both, funding equivalent to the percentage increase for classified employees generally is included in agency budgets to be distributed to unclassified employees on a merit basis.

The previous Kansas Civil Service Basic Pay Plan consisted of 34 pay grades, each with 13 steps. The difference between each step was approximately 2.5 percent, and the difference between each salary grade was approximately 5.0 percent. Employees typically are hired into a job at the minimum of the salary grade. Until recently, assuming satisfactory work performance, classified employees would receive an annual 2.5 percent step increase, along with any other general adjustment in salary approved by the Legislature. No classified step movement was recommended or approved from FY 2001 to FY 2006. In FY 2007, the Legislature approved a 2.5 percent step movement, effective September 10, 2006. There has been no further step movement since FY 2009.

New Classified Employee Pay Plans

The 2008 Legislature established five new pay plans for executive branch classified state employees and authorized multi-year salary increases for classified employees, beginning in FY 2009, who are identified in positions that are below market in salary.

The legislation authorized a four-year appropriation totaling \$68.0 million from all funds, including \$34.0 million from the State General Fund (SGF), for below-market pay adjustments (excluding the FY 2009 appropriation of \$16.0 million). Due to budgetary considerations, the

appropriation for FY 2012 was eliminated, bringing the total appropriation to \$58.7 million. The State Finance Council approved an appropriation of \$11.4 million, including \$8.1 million from the SGF for FY 2013.

Finally, the legislation codified a compensation philosophy for state employees, which was crafted by the State Employee Pay Philosophy Task Force. This philosophy was endorsed by the State Employee Compensation Oversight Commission during the 2007 Interim. The pay philosophy includes:

- The goal of attracting and retaining quality employees with competitive

compensation based on relevant labor markets;

- A base of principles of fairness and equity to be administered with sound fiscal discipline; and
- An understanding that longevity bonus payments shall not be considered as part of the base pay for classified employees.

The following table reflects classified step movement and base salary increases since FY 1997.

Fiscal Year	Salary Adjustment
1997	Step Movement: 2.5 percent Base Adjustment: None
1998	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
1999	Step Movement: 2.5 percent Base Adjustment: 1.5 percent
2000	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
2001	Step Movement: 2.5 percent Base Adjustment: None
2002	Step Movement: None Base Adjustment: 3.0 percent, with 1.5 percent effective for full year and 1.5 percent effective for half a year
2003	Step Movement: None Base Adjustment: None
2004	Step Movement: None Base Adjustment: 1.5 percent effective for last 23 pay periods
2005	Step Movement: None Base Adjustment: 3.0 percent
2006	Step Movement: None Base Adjustment: 2.5 percent, with 1.25 percent effective for full year and 1.25 percent effective for half a year
2007	Step Movement: 2.5 percent, effective September 10, 2006 Base Adjustment: 1.5 percent
2008	Step Movement: None Base Adjustment: 2.0 percent
2009	Step Movement: None Base Adjustment: 2.5 percent; Below Market Salary Adjustments
2010	Step Movement: None Base Adjustment: None; Below Market Salary Adjustments

Fiscal Year	Salary Adjustment
2011	Step Movement: None Base Adjustment: None; Below Market Salary Adjustments
2012	Step Movement: None Base Adjustment: None
2013	Step Movement: None Base Adjustment: None
2014	Step Movement: None Base Adjustment: None Employee Bonus: \$250 Bonus
2015	Step Movement: None Base Adjustment: None
2016	Step Movement: None Base Adjustment: None
2017	Step Movement: None Base Adjustment: None
2018	Step Movement: None Base Adjustment: 2.5 percent < 5 years; 5.0 percent > 5 years with no adjustment; 2.5 percent Judicial
2019	Step Movement: None Base Adjustment: 5.0 percent if not included in 2017 Legislative Pay Plan; 2.5 percent if included at 2.5 percent in 2017 Legislative Pay Plan; 5.0 percent uniformed corrections officers; 5.0 percent nonjudicial; 2.0 percent Judicial Branch
2020	Step Movement: None Base Adjustment: 2.5 percent if not otherwise receiving an increase for FY 2020; 15.9 percent for uniformed corrections officers; 5.0 percent for other correctional employees who routinely work with offenders.

FY 2020. The FY 2020 approved budget includes 40,866.9 full-time equivalent (FTE) positions and represents an increase of 31.2 positions, or 0.1 percent, above the FY 2019 approved number.

The increase is largely attributable to adding 313.0 FTE positions in the Department of Health and Environment for the KanCare Clearinghouse in FY 2019 and for FY 2020. These positions include the hiring of 27 training and quality support staff and 13 home and community based services (HCBS) staff by October 2018, as well as 273 staff to move long-term care, elderly, and disabled processes back in-house prior to the end of FY 2019.

The increase is also attributable to adding 45.0 FTE positions in the Department for Children and Families to increase child welfare staff, including 3.0 FTE positions to complete licensing and

background checks to meet provisions of the federal Family First Prevention Services Act for FY 2020.

The FY 2020 approved budget also includes a number of salary adjustments for state employees:

- \$41.8 million, including \$22.0 million from the SGF, for a 2.5 percent salary increase for most state employees, including in the Judicial Branch, who do not otherwise receive an increase for FY 2020. Statewide elected officials and legislators are excluded;
- \$11.6 million, all from the SGF, for salary adjustments equivalent to a 15.9 percent salary adjustment for correctional officers I, I(A), II, II(A), and a 5.0 percent salary adjustment for other correctional employees who routinely work with

offenders for FY 2020. These salary adjustments were approved by the State Finance Council in May 2019;

- \$400,000, all from the SGF, for public defender salary increases for FY 2020 based on casework and experience; and
- \$92,082 in FY 2019 and \$261,539 for FY 2020, all from the SGF, for teacher salary increases for the Schools for the Deaf and Blind (Schools). KSA 76-11a16 requires the compensation of teachers at the Schools equal the previous year’s salary of teachers employed in the Olathe School District.

FTE positions are permanent positions, either full time or part time, but mathematically equated

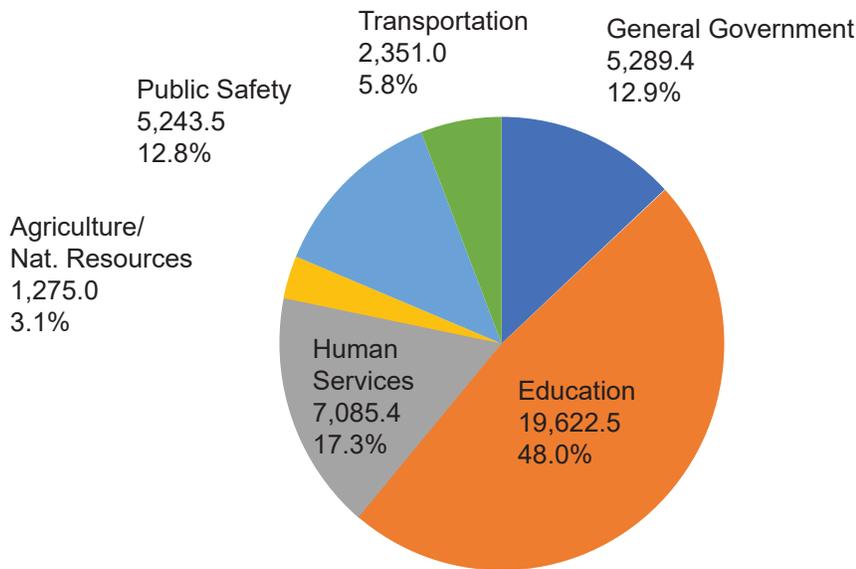
to full time. For example, two half-time positions equal one full-time position.

Non-FTE unclassified permanent positions are essentially unclassified temporary positions that are considered “permanent” because they are authorized to participate in the state retirement system.

For purposes of this article, FTE positions now include non-FTE permanent unclassified positions, but continue to exclude temporary employees.

The following chart reflects approved FY 2020 FTE positions by function of government.

FY 2020 FTE Positions by Function of Government



Total: 40,866.8 FTE

Note: Totals may not add due to rounding.

Largest employers. The following table lists the ten largest state employers and their number of FTE positions.

Agency	FTE Positions
University of Kansas	5,346.8
Kansas State University	3,864.8
University of Kansas Medical Center	3,184.0
Department for Children and Families	2,527.9
Department of Transportation	2,351.0
Wichita State University	2,153.0
Judicial Branch	1,867.6
Department of Health and Environment-Health	1,123.3
Kansas State University-ESARP	1,121.1
Fort Hays State University	1,080.4
Source: 2019 IBARS Approved	

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K-1
District Court Docket Fees

K-2
Introduction to State Budget

K-3
State General Fund Transfers

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Kansas Legislator

Briefing Book

2020

State Budget

K-1 District Court Docket Fees

Kansas established a uniform system of district court docket fees in 1974. These original docket fees were \$35 for civil cases and varying amounts for criminal cases, depending upon the nature of the crime.

From 1984 to 1995, local law libraries were allowed to charge differing library fees in addition to statutorily set docket fees, which caused docket fees to be non-uniform.

In 1996, the Legislature passed legislation that returned docket fees to a uniform level and also added docket fees for filing post-divorce motions for changes in child custody, child support orders, or visitation. The 2006 Legislature passed legislation specifying only the Legislature can establish fees or moneys for court procedures, including docket fees, filing fees, or other fees related to access to court procedures.

The 2006 Legislature raised docket fees for four purposes: to provide additional funding for the State General Fund associated with an approved judicial branch salary increase, to provide an increase in funding for the Kansas Law Enforcement Training Center Fund, to provide funding for the Kansas Judicial Council's judicial performance evaluation process, and for the Child Exchange and Visitation Centers Fund.

The 2009 Legislature raised docket fees to provide funding for the first phase of a statewide non-judicial personnel salary adjustment and raised the docket fee in criminal cases by \$1 to fund a \$186,239 increase to the Prosecuting Attorneys' Training Fund.

The 2014 Legislature redirected docket fees from state agencies to the Judicial Branch starting in fiscal year (FY) 2014. Starting in FY 2015, docket fees were deposited in three places: the Judicial Council, the Electronic Filing Management Fund, and the Judicial Branch Docket Fee Fund. Through FY 2021, the Electronic Filing Management Fund will receive the first \$3.1 million in clerk's fees. From FY 2022 forward, that amount will be reduced to \$1.5 million for annual maintenance and upkeep.

The Office of Judicial Administration collected \$30.1 million in district court docket fees, surcharges, and miscellaneous revenue for the State Treasury in FY 2019.

Fines, penalties, and forfeitures. In FY 2019, the Judicial Branch collected \$17.6 million in fines, penalties, and forfeitures. A portion of funds collected, 33.6 percent, is earmarked for assisting victims of crime, alcohol, and drug abuse programs; children’s services; and other law enforcement-related activities. The remainder is transferred to the State General Fund for general operations.

Other fees. In addition to docket fees, the Judicial Branch also imposes other fees and assessments on individuals who use the judicial system. The Judicial Branch collected \$8.3 million in other fees and assessments in FY 2019. These fees

support law enforcement-related activities within the Kansas Bureau of Investigation, Office of the Attorney General, Board of Indigents’ Defense Services, and the Department of Corrections.

The 2009 Legislature authorized the Supreme Court to enact a new surcharge in FY 2009. The surcharge is approved annually by the Legislature. The 2011 Legislature increased the surcharge by 25.0 percent. The 2014 Legislature abolished the Surcharge Fund and directed all docket fees generated by the surcharge be deposited in the Docket Fee Fund. The 2019 Legislature extended the surcharge through FY 2025.

		FY 2019 Actual		FY 2020 Estimate	
Name of Fund	Administering Authority	Percent of Fees	Revenue to Fund	Percent of Fees	Revenue to Fund
Docket Fee Distribution					
Judicial Branch Docket Fee Fund	Chief Justice, Kansas Supreme Court	99.01%	\$26,783,272	99.01%	\$26,783,272
Judicial Council Fund	Judicial Council	0.99	206,294	0.99	206,294
Electronic Filing Management Fund	Chief Justice, Kansas Supreme Court	N/A	3,100,000	N/A	3,100,000
<i>Subtotal - Docket Fee Distribution</i>		<i>100.00%</i>	<i>\$30,089,566</i>	<i>100.00%</i>	<i>\$30,089,566</i>
Fines, Penalties, and Forfeitures					
Crime Victim’s Compensation Fund	Attorney General	10.94%	\$1,923,325	10.94%	\$1,923,325
Crime Victim’s Assistance Fund	Attorney General	2.24	393,807	2.24	393,807
Community Alcoholism and Intoxication Programs Fund	Department for Aging and Disability Services	2.75	483,468	2.75	483,468
Dept. of Corr. Alcohol and Drug Abuse Treatment Fund	Department of Corrections	7.65	1,344,921	7.65	1,344,921
Boating Fee Fund	Department of Wildlife, Parks and Tourism	0.16	28,129	0.16	28,129
Children’s Advocacy Center Fund	Attorney General	0.11	19,339	0.11	19,339
EMS Revolving Fund	Emergency Medical Services Board	2.28	400,839	2.28	400,839
Trauma Fund	Secretary of Health and Environment	2.28	400,839	2.28	400,839
Traffic Records Enhancement Fund	Department of Transportation	2.28	400,839	2.28	400,839
Criminal Justice Information Systems Line Fund	Kansas Bureau of Investigation	2.91	511,597	2.91	511,597
State General Fund	Kansas Legislature	66.40	11,673,562	66.40	11,673,562
<i>Subtotal - Fines, Penalties, and Forfeitures</i>		<i>100.00%</i>	<i>\$17,580,666</i>	<i>100.00%</i>	<i>\$17,580,666</i>

		FY 2019 Actual		FY 2020 Estimate	
Name of Fund	Administering Authority	Percent of Fees	Revenue to Fund	Percent of Fees	Revenue to Fund
Other Fees and Assessments					
State General Fund	Various	Fee	\$242,445	Fee	\$242,445
Law Enforcement Training Center Fund	Various	Fee	2,245,619	Fee	2,245,619
Marriage License Fees	Various	Fee	696,470	Fee	696,470
Correctional Supervision Fund	Various	Fee	1,069,428	Fee	1,069,428
Drivers License Reinstatement Fees	Various	Fee	1,076,603	Fee	1,076,603
KBI-DNA Database Fees	Various	Fee	722,102	Fee	722,102
Community Corrections Supervision Fee Fund	Various	Fee	514,854	Fee	514,854
Indigents' Defense Services Application Fee	Various	Fee	598,230	Fee	598,230
Indigents' Defense Services Bond Forfeiture Fees	Various	Fee	509,844	Fee	509,844
Other (Law Library, Court Reporter, Interest, etc.)	Various	Fee	317,781	Fee	317,781
<i>Subtotal - Other Fees and Assessments</i>			\$7,916,065		\$7,916,065
Total of all Docket Fees, Fines, Penalties, and Forfeitures Assessed			\$55,936,608		\$55,936,608

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State Budget

K-2 Introduction to State Budget

Budget Overview

This report provides background information on the state budget process, including definitions of classifications of expenditures by function of government and by major purpose of expenditure.

Information about the approved fiscal year (FY) 2019 and FY 2020 budgets also are included, as well as general information on the status of the State General Fund (SGF).

The Budget Process

The Kansas budget is an executive budget in that the budgetary recommendations of the Governor are embodied in the appropriation bills, which are introduced and considered by the Legislature.

- Most state agencies are required by law to submit their budget requests no later than October 1 of each year (customarily, the deadline specified by the Director of the Budget is September 15). Agency budget requests are submitted to the Division of the Budget and the Kansas Legislative Research Department (KLRD) at the same time.
 - Twenty state agencies, most of them occupational and professional licensing boards and financial institution regulatory agencies, are “biennial budget agencies” and are authorized to file budget adjustment requests every other year.

The Director of the Budget (Director), an appointee of the Governor, is directed by law to review the detailed requests submitted by the various state agencies and to make initial recommendations that are transmitted to agencies in November. An agency is then authorized to appeal those initial recommendations to the Governor. By law, judicial branch agency budgets are exempt from review by the Director. By practice, legislative branch agency budgets are not reviewed.

- The Governor then makes budgetary recommendations, which are provided to the Legislature at the beginning of each legislative session. The Governor’s recommendations

also are included in appropriations bills, which become the Legislature's base for approving the budget each year.

- At the discretion of the Governor, a budget cycle may include two budget years. The first year of a two-year cycle, the agency requests and the Governor recommends a current year budget and two budget years. In the second year, the Governor's recommendation includes the current year and a budget year with the approved amount from the first year's legislation. In this case, the Governor's recommendation reflects only changes from the previously approved budget year amount. This distinction changes the comparison made in the *Budget Analysis* and the changes made to the appropriations bill(s).
- KLRD prepares an analysis of both the budget request made by each agency and the Governor's recommendations, which is submitted to the Legislature approximately three weeks after the Director submits the *Governor's Budget Report*.
- Agencies' budgets receive simultaneous consideration in the House Committee on Appropriations and the Senate Committee on Ways and Means. Identical appropriation bills reflecting the Governor's recommendation are introduced in both chambers.
 - **Consideration by the first chamber.** The chairpersons of the House Committee on Appropriations and the Senate Committee on Ways and Means appoint budget committees (House) or subcommittees (Senate) to consider appropriations for various agencies. After reviewing the budget requests, the budget committees and subcommittees draft a report that details all budgetary adjustments to the Governor's recommendations the budget committee or subcommittee support. Once the report is prepared, it is presented to the corresponding full committee. The committee may adjust the recommendations or it may adopt the report as submitted. The recommendations of the committee are considered by the full chamber, which also may adjust (through floor amendments) or adopt the recommendations.
 - **Consideration by the second chamber.** The process for review of an appropriation bill in the second chamber repeats the steps followed in the chamber of origin.
 - **Conference committee action.** After consideration of an appropriation bill by the second chamber, the bill typically goes to a conference committee to reconcile differences between the House and Senate versions of the bill.
 - **Omnibus Appropriations Bill.** The Legislature usually adjourns its regular session sometime in early April and returns for a wrap-up session that occurs roughly two-and -one-half weeks following the first adjournment. During the wrap-up session, the Legislature takes action on a number of items of unfinished business. One of these is the Omnibus Appropriations Bill. It is designed to make technical adjustments to the appropriation bills passed earlier in the session and to address the fiscal impact of legislation passed during the session. The Omnibus Appropriations Bill is usually one of the last bills passed each session.
- **Classifications of state spending.** The State of Kansas classifies state spending by major purpose of expenditure and by function of government.

FY 2019 and FY 2020 Approved Budget

The 2019 Legislature approved:

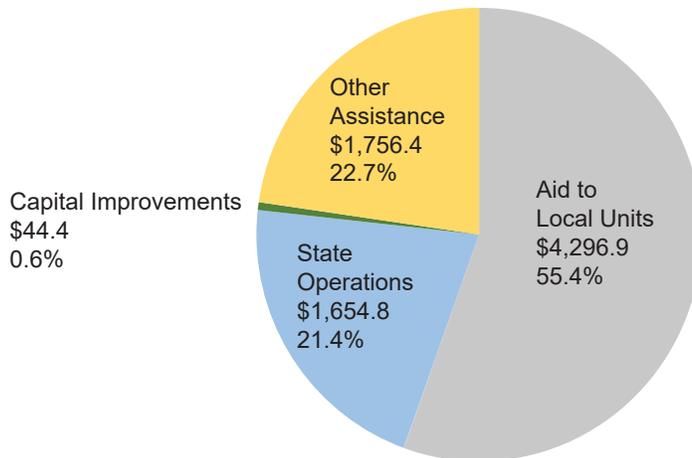
- An FY 2019 budget totaling \$17.2 billion from all funding sources, which is an increase of \$1.3 billion (8.0 percent) above FY 2018 actual expenditures.
- An FY 2019 State General Fund budget totaling \$7.1 billion, which is an increase of \$474.3 million (7.1 percent) above FY 2018 actual expenditures.
- An FY 2020 budget totaling \$18.4 billion from all funding sources, which is an increase of \$1.2 billion (7.0 percent) above the approved FY 2019 budget.
- An FY 2020 State General Fund budget totaling \$7.7 billion, which is an increase of \$626.3 million (8.8 percent) above the approved FY 2019 budget.

Major purposes of expenditure include the following:

- **State Operations.** Actual agency operating costs for salaries and wages, contractual services, commodities, and capital outlay.
- **Aid to Local Units.** Aid payments to counties, cities, school districts, and other local government entities.
- **Other Assistance, Grants, and Benefits.** Payments made to or on behalf of individuals as aid, including public assistance benefits, unemployment benefits, and tuition grants.
- **Capital Improvements.** Cash or debt service payments for projects involving new construction, remodeling and additions, rehabilitation and repair, razing, and the principal portion of debt service for a capital expense.

The following illustrations reflect approved FY 2020 SGF expenditures by major purpose of expenditure.

FY 2020 SGF Expenditures by Major Purpose
(Dollars in Millions)



TOTAL: \$7,749.6

Note: Total may not add due to rounding.

Expenditures by function of government are grouped by agencies that make expenditures for similar programs and purposes. There are six functions of government:

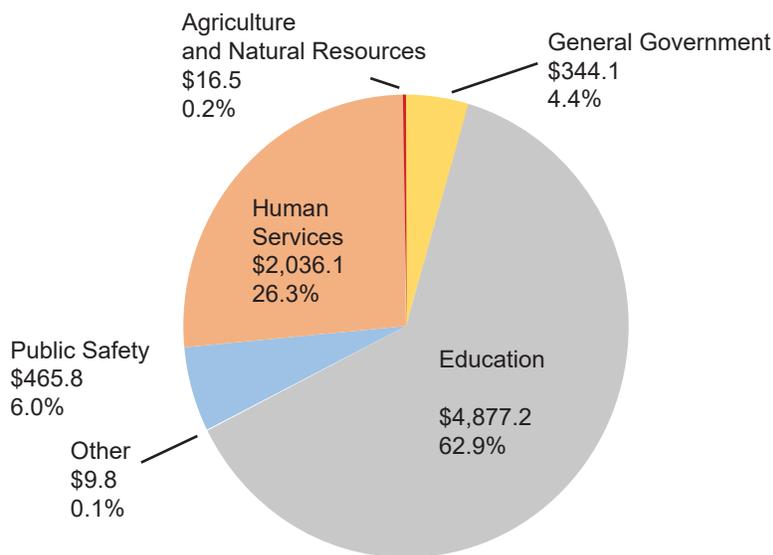
- **General Government.** State agencies with both administrative and regulatory functions, including statewide elected officials, the legislative and judicial branches, and fee-funded professional and regulatory licensing agencies.
- **Human Services.** Agencies that provide services to individuals, including the Department for Aging and Disability Services and state hospitals, the Department for Children and Families, the Department of Labor, the health portions of the Department of Health and Environment, and the Commission on Veterans' Affairs Office.
- **Education.** Agencies that provide various educational services to Kansans, including the Department of Education,

the Board of Regents and the Regents Institutions, the State Library, the State Historical Society, and the Schools for the Blind and the Deaf.

- **Public Safety.** Agencies that ensure the safety and security of citizens, including the Department of Corrections and its facilities, the Highway Patrol, and the Kansas Bureau of Investigation.
- **Agriculture and Natural Resources.** Agencies that protect the natural and physical resources of the state, including the Department of Agriculture, the environment portion of the Department of Health and Environment, and the Department of Wildlife, Parks and Tourism.
- **Transportation.** This function includes only the Department of Transportation.

The following illustrations reflect approved FY 2020 SGF expenditures by function of government.

**FY 2020 SGF Expenditures
by Function of Government**
(Dollars in Millions)



TOTAL: \$7,749.6

Note: Total may not add due to rounding.

Consensus Revenue Estimating Process

Since 1974, a consensus approach involving the legislative and executive branches (Division of the Budget, KLRD, the Department of Revenue, and one consulting economist each from the University of Kansas, Kansas State University, and Wichita State University) has been utilized for estimating revenues to the SGF. These consensus estimates are used by both the Governor and the Legislature to formulate and approve budget requests. The law requires on or before December 4 and April 20, the Director of the Budget and the Director of Legislative Research to prepare a joint estimate of revenue to the SGF for the current and ensuing fiscal year.

The following table reflects actual SGF receipts (in millions) for FY 2018 and the April 2019 estimate, as adjusted for legislation, of the Consensus Revenue Estimating Group for FY 2019 and FY 2020.

(Dollars in Millions)			
	Actual FY 2018	Estimated FY 2019	Estimated FY 2020
Income Taxes	\$ 3,812	\$ 4,061	\$ 4,242
Excise Taxes	3,032	3,031	3,054
Other Taxes	174	177	186
Other Revenue	267	(49)	(62)
Total	\$ 7,298	\$ 7,231	\$ 7,432

SGF revenue sources include:

- **Income taxes** include individual and corporate income and financial institutions taxes.
- **Excise taxes** include sales and compensating use taxes, alcohol and cigarette taxes, and severance taxes.
- **Other taxes** include motor carrier property taxes, estate and succession taxes, and insurance premium taxes.
- **Other revenue** includes interest earnings, agency earnings, and net transfers to and from the SGF.

The following tables reflect where a SGF dollar is projected to come from in FY 2020 and how it will be spent.

Where Each FY 2020 SGF Dollar Will Come From (Dollars in Millions)		
48¢	Individual Income Tax	\$3,750
40¢	Sales and Compensating Use Tax	2,785
5¢	Corporation and Financial Income Tax	450
2¢	Insurance Premium Tax	182
2¢	Tobacco Taxes	119
2¢	Alcohol Taxes	89
1¢	Severance Tax	35
2¢	Other Taxes and Revenue	22
\$1.00	Total Receipts	\$7,432

Note: Totals may not add due to rounding.

Where Each FY 2020 SGF Dollar Will Be Spent (Dollars in Thousands)		
52¢	Department of Education	\$4,014,541
11¢	Board of Regents/Postsecondary Education	839,126
0¢	Other Education	23,520
63¢	Subtotal - Education	\$4,877,187
12¢	Department for Aging and Disability Services and State Hospitals	\$935,739
10¢	Department of Health and Environment	760,473
5¢	Department of Corrections and Facilities	414,575
4¢	Department for Children and Families	331,719
2¢	Judicial Branch, Board of Indigents' Defense Services	144,811
2¢	Department of Administration	133,863
2¢	All Other	151,200
\$1.00	Total Expenditures	\$7,749,567

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State Budget

K-3 State General Fund Transfers

This article provides an explanation of the five local State General Fund (SGF) demand transfers, including the statutory authorization for the transfers, the specific revenue sources for the transfers (where applicable), recent treatment of the demand transfers as revenue transfers, and funding provided for the transfers in recent years. In addition, other demand transfers, which do not flow to local units of government, are discussed briefly.

Distinction between Demand Transfers and Revenue Transfers

Demand transfers are expenditures specified by statute rather than appropriation acts. An important characteristic of a demand transfer is that the amount of the transfer in any given fiscal year is based on a formula or authorization in substantive law. The actual appropriation of the funds traditionally was made through that statutory authority rather than through an appropriation. In recent years, however, adjustments to the statutory amounts of the demand transfers have been included in appropriation bills. SGF demand transfers are considered to be SGF expenditures.

A SGF **revenue transfer** is specified in an appropriation bill and involves transferring money from the SGF to a special revenue fund. Any subsequent expenditure of the funds is considered an expenditure from the special revenue fund.

Five statutory demand transfers flow to local units of government:

- Two of the local transfers are funded from sales tax revenues: the **Local Ad Valorem Tax Reduction Fund (LAVTRF)** and the **County and City Revenue Sharing Fund (CCRSF)**. Both are to be distributed to local governments for property tax relief. The LAVTRF should receive 3.6 percent of sales and use tax receipts, and the CCRSF should receive 2.8 percent. While the percentages are established in statute, in recent years, the transfers often have been capped at some level less than the full statutory amount or not funded at all;

- The other local transfer based on a specific revenue source is the **Special City-County Highway Fund (SCCHF)**, which was established in 1979 to prevent the deterioration of city streets and county roads. Each year this fund is to receive an amount equal to the state property tax levied on motor carriers;
- The fourth transfer to local units of government is not based on a specific tax resource. The **School District Capital Improvements Fund (SDCIF)** is used to support school construction projects. By statute, the State Board of Education is to certify school districts' entitlements determined under statutory provisions and funding is then transferred from the SGF to the SDCIF; and
- The fifth transfer to local units of government is the **School District Capital Outlay Fund (SDCOF)**. The 2005 Legislature created the capital outlay state aid program as part of its response to the Kansas Supreme Court's opinion in school finance litigation. The program is designed to provide state equalization aid to school districts for capital outlay mill levies, up to eight mills.
- In FY 2003, as part of approved SGF allotments, the second half of the scheduled transfers to the LAVTRF, CCRSF, and SCCHF were suspended, and no transfers have been made since FY 2004; and
- Because of balances in the SCCHF, local governments received the full amounts of the SCCHF transfer in both FY 2003 and FY 2004, although only one of two scheduled transfers was made in FY 2003 and no SGF transfer was made in FY 2004. The FY 2005, FY 2006, FY 2007, and FY 2009 transfers to the SCCHF were approved at the FY 2003 pre-allotment amount. The FY 2009 transfer was approved at \$6.7 million. No funding has been approved since FY 2009.

The following table reflects actual and approved local demand or revenue transfers (in millions of dollars) for FY 2018-FY 2020.

Other demand transfers. In addition to the local demand/revenue transfers, two other transfers do not flow to local units of government.

One provides for a statutory \$6.0 million transfer from the SGF to the State Water Plan Fund. In FY 2018, \$1.4 million was transferred, and \$2.8 million in FY 2019 and \$4.0 million in FY 2020 is approved to be transferred.

Another provides for a transfer to the Regents' Faculty of Distinction Fund to supplement endowed professorships at eligible educational institutions. A transfer of \$1.7 million is approved for FY 2019 and FY 2020.

Treatment of demand transfers as revenue transfers. In recent years, the local demand transfers, with the exception of the SDCOF, have been changed to revenue transfers. By converting demand transfers to revenue transfers, these funds cease to be SGF expenditures and are no longer subject to the ending balance law. The LAVTRF, CCRSF, and SCCHF were last treated as demand transfers in fiscal year (FY) 2001, and the SDCIF transfer was changed to a revenue transfer in FY 2003.

Recent funding for the local demand/revenue transfers. The SDCIF was the only local SGF transfer recommended.

- Full-year funding (at a level below the statutory amount) was last recommended for the LAVTRF and the CCRSF in FY 2002;

Demand/Revenue Transfers from SGF for Local Units of Government FY 2018-FY 2020 (Dollars in Millions)					
				Change from FY 2019	
	FY 2018 Actual	FY 2019 Approved	FY 2020 Approved	\$	%
SDCIF	\$189.8	\$203.2	\$215.0	\$11.8	5.8%
SDCOF	60.5	65.4	67.8	2.4	3.7
LAVTRF	-	-	-	-	-
CCRSF	-	-	-	-	-
SCCHF	-	-	-	-	-
TOTAL	\$250.3	\$268.6	\$282.8	\$14.2	5.3%

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Liquor Taxes

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Selected Tax Rate
Comparisons

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Taxation

L-1 Homestead Program

When Kansas enacted the Homestead Property Tax Refund Act in 1970, it became the sixth state to enact a “circuit-breaker” style of property tax relief.

A “circuit-breaker” is a form of property tax relief in which the benefit is dependent on income or other criteria and the amount of property taxes paid. This moniker developed as an analogy to the device that breaks an electrical circuit during an overload, just as the property tax relief benefit begins to accrue once a person’s property taxes have become overloaded relative to his or her income.

Including Kansas:

- 34 states currently have some form of circuit-breaker program.
- 27 states allow renters to participate in the programs.

Eligibility Requirements:

- Household income of \$35,000 or less; and
- Someone in the household is:
 - Age 55 or above;
 - A dependent under age 18;
 - Blind; or
 - Otherwise disabled.

Renters were eligible (15 percent of rent was equivalent to property tax paid) until tax year 2013.

Program Structure

The current Kansas Homestead Refund Program is an entitlement for eligible taxpayers based upon their household income and their property tax liability. The maximum available refund is \$700 and the minimum refund is \$30.

Recent Legislative History

A 2006 change to the Homestead Refund Program expanded it by approximately \$4.5 million. The 2007 Legislature enacted an even more significant expansion of the program, which increased the size of the program by an additional \$9.9 million.

Among the key features of the 2007 expansion law:

- The maximum refund available under the program was increased from \$600 to \$700;
- 50 percent of Social Security benefits were excluded from the definition of income for purposes of qualifying for the program; and
- A residential valuation ceiling prohibits any homeowner with a residence valued at \$350,000 or more from participating in the program.

PROGRAM CLAIMS AND REFUNDS			
	Eligible Claims Filed	Amount	Average Refund
FY 2012	126,762	\$43.049 million	\$340
FY 2013	115,719	\$37.586 million	\$325
FY 2014	86,082	\$29.415 million	\$342
FY 2015	70,343	\$23.032 million	\$327
FY 2016	76,202	\$25.968 million	\$341
FY 2017	79,737	\$24.649 million	\$309
FY 2018	83,155	\$24.948 million	\$324
FY 2019	73,302	\$23.994 million	\$327

Hypothetical Taxpayers

The impact of the 2006 and 2007 program expansion legislation is demonstrated on the following hypothetical taxpayers:

HOMESTEAD REFUND			
	Pre-2006 Law	2006 Law	2007 Law
Elderly couple with \$1,000 in property tax liability and \$23,000 in household income, \$11,000 of which comes from Social Security benefits	\$72	\$150	\$385
Single mother with two young children, \$750 in property tax liability and \$16,000 in household income	\$240	\$360	\$420
Disabled renter paying \$450 per month in rent, with \$9,000 of household income from sources other than disability income	\$480	\$528	\$616

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Taxation

L-2 Kansas Income Tax Reform

Beginning in 2012, the Kansas Legislature passed legislation enacting major changes to the Kansas individual income tax. Virtually all areas of the determination of income tax liability were affected by the reforms, including additions and subtractions to adjusted gross income, standard and itemized deductions, tax rates and brackets, tax credits, and tax liability exclusion. Major legislation was passed in 2012, 2013, 2015, and 2017, with additional legislation being passed related to individual income tax reform in 2014.

Addition and Subtraction Modifications

In 2012, legislation specifically exempted certain non-wage business income by providing a modification to federal adjusted gross income that subtracted the taxpayer's income reported on lines 12, 17, and 18 of federal Form 1040. This included business income; income from rents, royalties, partnerships, S corporations, and trusts; and farm income. In addition to this subtraction modification, the legislation included a modification requiring taxpayers to add their losses attributable to those categories back to their federal adjusted gross income in determining their adjusted gross income for Kansas income tax purposes. In 2015, legislation modified the subtraction modification by requiring taxpayers to include "guaranteed payments" in their determination of income. "Guaranteed payments" is a federally defined term for a specific type of business income.

The 2017 Legislature eliminated the addition and subtraction modifications in their entirety, largely returning this area of the Kansas individual income tax to its condition prior to 2012.

Standard Deduction and Itemized Deductions

In 2012, legislation increased the standard deduction for single head-of-household filers from \$4,500 to \$9,000 and for married taxpayers filing jointly from \$6,000 to \$9,000. These amounts were reduced to \$7,500 for married taxpayers filing jointly and \$6,000 for single head-of-household filers by 2013 legislation.

Itemized deductions were unaffected by 2012 legislation, but 2013 legislation eliminated the itemized deduction for certain gambling

losses and provided for a series of “haircuts” to all other itemized deductions—excluding charitable contributions—that reduced those deductions by 30.0 percent beginning in tax year 2013 and increasing to 50.0 percent by tax year 2017. In 2015, legislation further reduced itemized deductions by eliminating all itemized deductions other than charitable contributions, mortgage interest, and property taxes beginning in tax year 2015. Mortgage interest and property taxes were reduced to 50.0 percent of their federal amount effective for tax year 2015, and charitable contributions remained at the full federal amount.

In 2017, legislation reinstated the itemized deduction for medical expenses at 50.0 percent of the federal amount beginning in tax year 2018 and increased the amount for medical expenses, property taxes, and mortgage interest to 75.0 percent of the federal level in 2019 and 100.0 percent of the federal level in 2020.

Tax Rates and Brackets

In 2012, legislation collapsed the three-bracket structure for individual income tax Kansas had used since 1992 into a two-bracket system and applied rates of 3.0 and 4.9 percent. Previous rates had been 3.5, 6.25, and 6.45 percent. In 2013, legislation provided a schedule of future rate reductions to lower the rates to 2.3 and 3.9 percent in tax year 2018, and then provided a formula that could—under certain circumstances—provide additional rate reductions in the future based upon year-over-year growth of specified State General Fund tax receipts. In 2015, legislation altered the rate reduction schedule to provide that the rates would be reduced to 2.6 and 4.6 percent before a modified version of the rate reduction formula would go into effect in tax year 2021.

In 2017, legislation reinstated a three-bracket individual income tax structure with tax rates set at 2.9, 4.9, and 5.2 percent for tax year 2017 and at 3.1, 5.25, and 5.7 percent for tax year 2018 and all tax years thereafter. The statutory future rate reduction formula was repealed by 2017 legislation.

Income Tax Credits

In 2012, legislation repealed or limited numerous income tax credits. In 2014, legislation reinstated tax credits for adoption expenses and disability access expenses. In 2017, legislation reinstated the child and dependent care tax credit through a three-year phase beginning in tax year 2018.

Low-Income Tax Exclusion

In 2015, legislation created a provision that eliminated any positive income tax liability for single filers with \$5,000 or less of taxable income and for married taxpayers filing jointly with \$12,500 or less of taxable income beginning in tax year 2016. In 2017, legislation changed the thresholds for this exclusion to \$2,500 for single filers and \$5,000 for married filers, effective tax year 2018.

Fiscal Information

When fully implemented, tax legislation passed in 2012 and 2013 had the effect of reducing individual income tax receipts, while tax legislation passed in 2015 and 2017 had the effect of increasing individual income tax receipts.

According to the Kansas Department of Revenue, the estimated combined fiscal effect of major tax legislation enacted during those four sessions on individual income tax was a reduction in receipts of \$358.1 million for fiscal year 2018.

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Taxation

L-3 Liquor Taxes

Kansas has three levels of liquor taxation; each imposes different rates and provides for a different disposition of revenue.

Liquor Gallonage Tax. The first level of taxation is the gallonage tax, which is imposed upon the person who first manufactures, sells, purchases, or receives the liquor or cereal malt beverage (CMB).

Liquor Enforcement or Sales Tax. The second level of taxation is the enforcement or sales tax, which is imposed on the gross receipts from the sale of liquor or CMB to consumers by retail liquor dealers and grocery and convenience stores; and to clubs, drinking establishments, and caterers by distributors.

Liquor Drink Tax. The third level of taxation is levied on the gross receipts from the sale of liquor by clubs, caterers, and drinking establishments.

Gallonage

Since the gallonage tax is imposed upon the person who first manufactures, uses, sells, stores, purchases, or receives the alcoholic liquor or CMB, the tax has already been paid by the time the product has reached the retail liquor store—or in the case of CMB, grocery or convenience store. (*Note:* Examples of taxation rates are detailed throughout this article.)

When the liquor store owner purchases a case of light wine from a distributor, the 30 cents per gallon tax has already been built in as part of that store owner's acquisition cost.

Rates	
	Per Gallon
Beer and CMB	\$0.18
Light Wine	\$0.30
Fortified Wine	\$0.75
Alcohol and Spirits	\$2.50

Gallonge tax receipts in fiscal year (FY) 2019 were approximately \$23.3 million. Of this amount, nearly \$9.6 million was attributed to the beer and CMB tax.

Gallonge Tax Disposition of Revenue		
	State General Fund (SGF)	Community Alcoholism and Intoxication Programs Fund (CAIPF)
Alcohol and Spirits	90.0%	10.0%
All Other Gallonge Taxes	100.0%	--

Liquor gallonge tax rates have not been increased since 1977.

Enforcement and Sales

Enforcement. Enforcement tax is an in-lieu-of sales tax imposed at the rate of 8.0 percent on the gross receipts of the sale of liquor to consumers and on the gross receipts from the sale of liquor and CMB to clubs, drinking establishments, and caterers by distributors. For example, a consumer purchasing a \$10 bottle of wine at a liquor store is going to pay 80 cents in enforcement tax.

The club owner buying the case of light wine (who already had paid the 30 cents per gallon gallonge tax as part of the acquisition cost) also now must pay the 8.0 percent enforcement tax.

Sales. CMB purchases in grocery or convenience stores are not subject to the enforcement tax, but rather are subject to state and local sales taxes. The state sales tax rate is 6.5 percent, and combined local sales tax rates range as high as 5.0 percent.

CMB sales, therefore, are taxed at rates ranging from 6.5 percent to 11.5 percent.

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores

and CMB by grocery and convenience stores, there is a major difference in the disposition of revenue.

Enforcement and Sales Tax Disposition of Revenue			
	SGF	State Highway Fund	Local Units
Enforcement (8.0 %)	100.00%	--	--
State Sales (6.50%)	83.846%	16.154%	--
Local Sales (up to 5.0%)	--	--	100.00%

Enforcement tax receipts in FY 2019 were approximately \$74.3 million. Grocery and convenience store sales tax collections from CMB are unknown.

The liquor enforcement tax rate has not been increased since 1983.

Drink

The liquor drink tax is imposed at the rate of 10.0 percent on the gross receipts from the sale of alcoholic liquor by clubs, caterers, and drinking establishments.

The club owner (who had previously paid the gallonge tax and then the enforcement tax when acquiring the case of light wine) next is required to charge the drink tax on sales to its customers. Assuming the club charged \$4.00 for a glass of light wine, the drink tax on such a transaction would be 40 cents.

Drink Tax – Disposition of Revenue			
	SGF	CAIPF	Local Alcoholic Liquor Fund
Drink Tax (10.0%)	25.0%	5.0%	70.0%

Liquor drink tax revenues in FY 2019 were about \$48.3 million, of which \$12.2 million was deposited in the SGF. The liquor drink tax rate has remained unchanged since imposition in 1979.

Taxation of Beer and CMB

Starting on April 1, 2019, CMB licensees may sell beer containing no more than 6.0 percent alcohol

by volume and liquor retailers may sell CMB products. For purposes of taxation, CMB products and beer sold at grocery or convenience stores and other CMB licensed establishments will be subject to the state and local sales tax rates. Beer and CMB products sold at liquor stores continue to be subject to the liquor enforcement tax. Revenues from these taxes are distributed in accordance with current law.

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Taxation

L-4 Selected Tax Rate Comparisons

The following tables compare selected tax rates and tax bases with those of nearby states.

Sales Tax			
	Rate	Food	Non-prescription Drugs
Kansas	6.50%	6.50%	Non-exempt
Missouri	4.23%	1.23%	Non-exempt
Nebraska	5.50%	Exempt	Non-exempt
Colorado	2.90%	Exempt	Non-exempt
Iowa	6.00%	Exempt	Non-exempt
Arkansas	6.50%	1.50%	Non-exempt
Texas	6.25%	Exempt	Exempt

Source: Federation of Tax Administrators, as of January 1, 2019.

Motor Fuel Tax ¹ (cents per gallon)		
	Gasoline	Diesel Fuel
Kansas	25.03	27.03
Missouri	17.40	17.40
Nebraska	30.50	29.90
Colorado	22.00	20.50
Iowa	30.50	32.50
Arkansas	21.80	22.80
Texas	20.00	20.00

¹ Includes fees, such as environmental and inspection fees.
Source: Federation of Tax Administrators, as of January 1, 2019.

Cigarette Tax	
	Excise Tax (cents per pack)
Kansas	129
Missouri	17
Nebraska	64
Oklahoma	203
Colorado	84
Iowa	136
Arkansas	115
Texas	141

Source: Federation of Tax Administrators, as of January 1, 2019.

Corporate Income Tax				
	Tax Rate	Number of Brackets	Bracket Range	Apportionment Method
Kansas ¹	4.00%	1	Flat Rate	Three factor
Missouri	6.25%	1	Flat Rate	Three factor / Sales
Nebraska	5.58%-7.81%	2	\$100,000	Sales
Oklahoma	6.00%	1	Flat Rate	Three factor
Colorado	4.63%	1	Flat Rate	Sales
Iowa	6.00%-12.00%	4	\$25,000-\$250,001	Sales
Arkansas	1.00%-6.50%	6	\$3,000-\$100,001	Double Weighted Sales
Texas ²	N/A	N/A	N/A	Sales

¹ Kansas levies a 3.0 percent surtax on taxable income over \$50,000.

² Texas imposes a franchise tax on entities with more than \$1,130,000 total revenues at a rate of 0.75 percent, or 0.375 percent for entities primarily engaged in retail or wholesale trade, on the lesser of 70.0 percent of total revenues or 100.0 percent of gross receipts after deductions for either compensation or cost of goods sold.

Source: Federation of Tax Administrators, as of January 1, 2019.

Individual Income Tax							
	Federal IRC Starting Point	Tax Rate Range	Number of Brackets	Bracket Range	Personal Exemption Single	Personal Exemption Married	Personal Exemption Dependent
Kansas	Adjusted Gross Income	3.10%-5.70%	3	\$15,000-\$30,000	\$2,250	\$4,500	\$2,250
Missouri	Adjusted Gross Income	1.50%-5.40%	9	\$1,053-\$8,424	-	-	-
Nebraska	Adjusted Gross Income	2.46%-6.84%	4	\$3,230-\$31,160	\$137 (credit)	\$274 (credit)	\$137 (credit)
Oklahoma	Adjusted Gross Income	0.50%-5.00%	6	\$1,000-\$7,200	\$1,000	\$2,000	\$1,000
Colorado	Taxable Income	4.63%	1	Flat Rate	-. ¹	-. ¹	-. ¹
Iowa	Adjusted Gross Income (as defined in IRC effective 3/24/18)	0.33%-8.53%	9	\$1,598-\$71,910	\$40 (credit)	\$80 (credit)	\$40 (credit)
Arkansas	No Relation to Federal IRC	0.90%-6.90%	6	\$4,299-\$35,100	\$26 (credit)	\$52 (credit)	\$26 (credit)
Texas	N/A	N/A	N/A	N/A	N/A	N/A	N/A

¹ Colorado uses the personal exemption amounts provided in the current version of the IRC. The Tax Cuts and Jobs Act of 2017 set the IRC personal exemption amounts at \$0.

Source: Federation of Tax Administrators, as of July 1, 2019.

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M-1 Distracted Driving: State Laws

M-2 Kansas Turnpike: The Relationship between KTA and KDOT

M-3 School Bus Passing Law Enforcement in Other States

M-4 State Highway Fund Receipts and Transfers

M-5 State Motor Fuels Taxes and Fuel Use

M-6 Toll or Tax?

Transportation

M-1 Distracted Driving: State Laws

In 2017, at least 3,166 people were killed in motor vehicle crashes involving distracted drivers in the United States. Of those killed, 599 were pedestrians, bicyclists, and others who were not occupants of the vehicles. Of the nearly 6.5 million police-reported motor vehicle traffic crashes in 2017, 34,247 were fatal crashes, and 9 percent of fatal crashes were reported as distraction-affected.¹

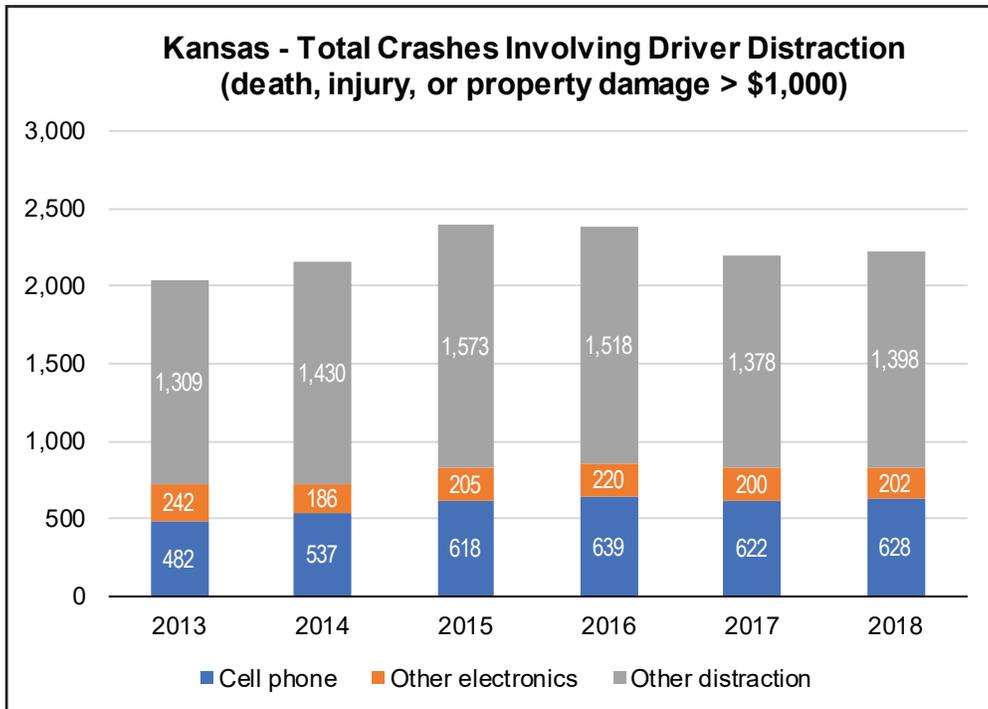
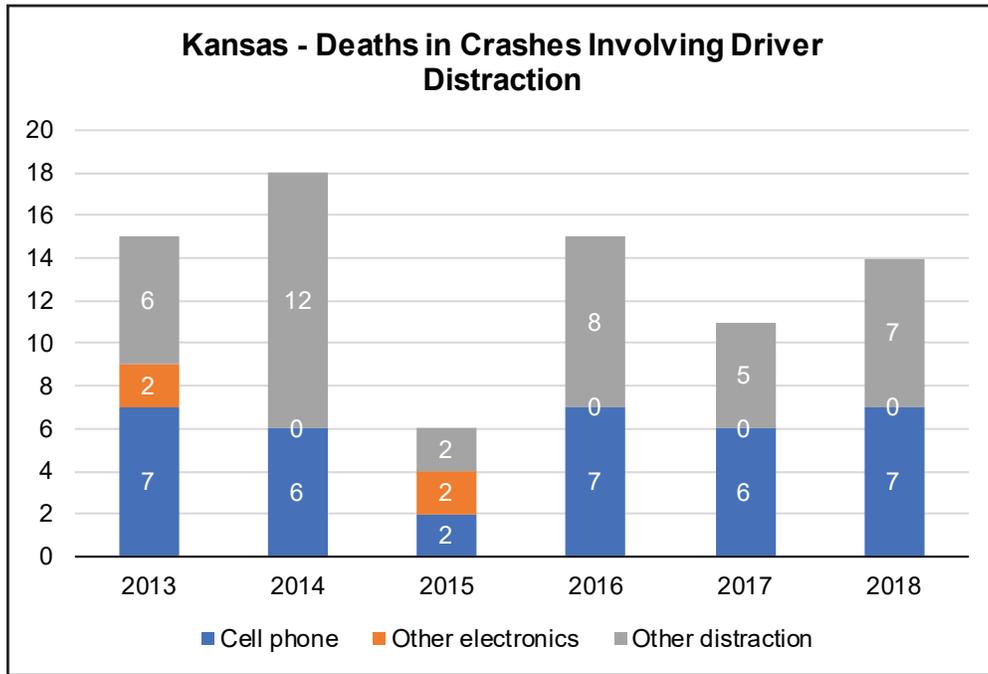
Kansas data for 2018 show distracted driving was recorded as a factor in 2,228 crashes that led to injuries or property damage exceeding \$1,000, and 14 people died and 909 were injured in those crashes. In 2017, a total of 15,627 crashes involved distracted drivers, with total costs of those crashes estimated at \$774.5 million.²

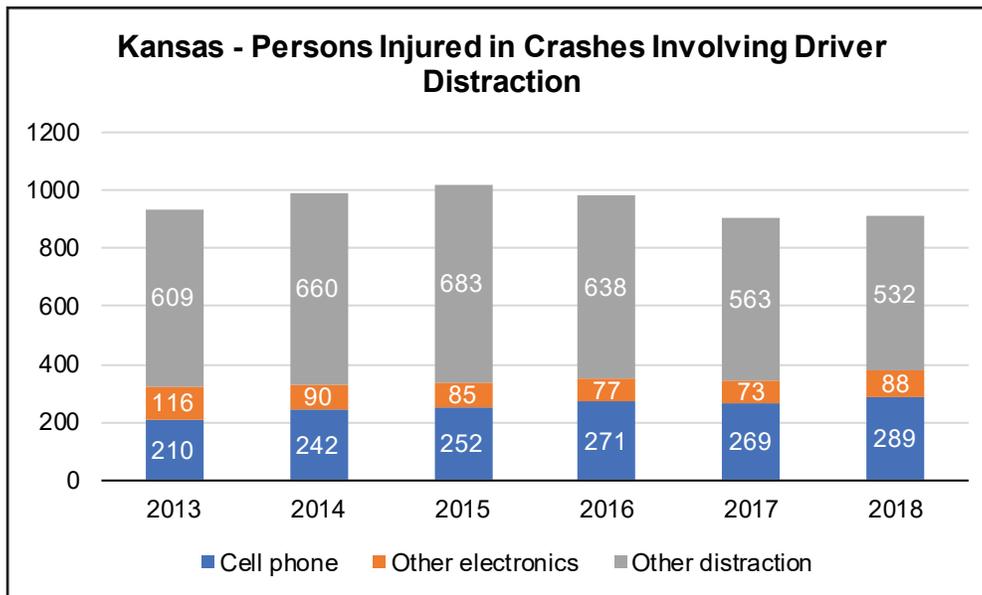
While the full prevalence of distracted driving is unknown, a roadside observation of more than 3,000 drivers at 11 intersections in Alabama found 32.7 percent of them to be engaged in at least 1 distracting activity, such as talking on the phone (31.4 percent) or manipulating a phone (16.6 percent).³ A national, representative, anonymous panel of 1,211 U.S. drivers found nearly 60.0 percent reported cell phone reading and writing activity within the previous 30 days; of the drivers in the panel, the highest rate of device usage was among drivers ages 18 through 24.⁴

Distractions caused by cell phones and other electronic devices account for large percentages of deaths, injuries, and crashes in which distraction is recorded as a factor. Researchers say that is because such devices often cause all of the three types of distraction described by the National Highway Traffic Safety Administration:

- Visual: taking your eyes off the road;
- Manual: taking your hands off the wheel; and
- Cognitive: taking your mind off driving.⁵

The following three charts illustrate driver distraction statistics in Kansas.





State Responses to Distracted Driving

According to the Insurance Institute for Highway Safety (IIHS):

- Text messaging is banned for all drivers in 48 states (including Kansas; KSA 2019 Supp. 8-15,111) and the District of Columbia. In addition, novice drivers are banned from texting in Missouri; only Montana has no ban;
- The use of all cellphones by novice drivers is restricted in 38 states (including Kansas; KSA 2019 Supp. 8-296 and 8-2,101) and the District of Columbia; and
- Talking on a hand-held cellphone while driving is banned in 20 states and the District of Columbia and partially banned, e.g., in highway work zones, in 7 more.⁶

The states’ full or partial bans on hand-held device use vary in many ways, including the exceptions to the bans. All of these states allow use for emergency purposes, and most allow use

of two-way or federally licensed amateur radios. Most require a vehicle to be off a roadway, *i.e.*, not just stopped in traffic, for use of hand-held devices to be permitted.

At least six states and the District of Columbia also have laws generally prohibiting distracted driving, defined as engaging in any activity that interferes with the safe operation of the vehicle.

Effectiveness of Bans on Device Usage

The IIHS estimates more than 800 people died in 2017 in crashes related to device manipulation.⁷ Reviews of peer-reviewed studies suggest state laws intended to reduce distracted driving, particularly distraction caused by use of electronic devices, do affect driver behavior. For example, a 2014 review of studies published since 2009 found “all-driver bans on hand-held phone conversations have resulted in long-term reductions in hand-held phone use, and drivers in ban states reported higher rates of hands-free

phone use and lower overall phone use compared with drivers in non-ban states.”⁸

Studies also find driver distractions impair driver performance. A review of 350 analyses reported in 206 articles published between 1968 and 2012 found 80.0 percent of the analyses identified “detrimental relationships between secondary tasks and driving performance.”⁹ Studies directly observing driver behavior found novice drivers made more driving errors than experienced drivers when distractions were involved, but the rates of errors were similar when the distraction took the driver’s eyes away from the road.¹⁰ Another study found “cell-phone participants’

assessments of the safeness of their driving and confidence in their driving abilities were uncorrelated with their actual errors. Thus, talking on a cell phone not only diminished the safeness of participants’ driving, it diminished their awareness of the safeness of their driving.”¹¹

Additional information. Specific information about state laws regarding use of hand-held devices and more information about effectiveness of bans on device usage can be found in the memorandum “Hands-free and Distracted Driving Laws in Other States,” available at <http://www.kslegresearch.org/KLRD-web/Transportation.html>.

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- 2 Data used for the graphics were downloaded from “Driver-Related Data” at <http://www.ksdot.org/bureaus/burTransPlan/prodinfo/accista.asp>, specifically “2017 Kansas Traffic Crash Facts” and “Driver Distraction,” accessed September 2019. Data for 2018 were provided via e-mail.
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- 7 IIHS, “Driver cellphone interactions increase 57 percent,” January 24, 2019, accessed September 2019.
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M-2 Kansas Turnpike: The Relationship between KTA and KDOT

The Kansas Turnpike Authority (KTA) is an entity separate from the Kansas Department of Transportation (KDOT), but the two entities work together to serve the transportation needs of Kansas. This article discusses the statutory relationship between KTA and KDOT.

KTA and KDOT

In 1953, the Kansas Legislature created the KTA as a separate, quasi-public organization. The KTA was tasked with constructing, operating, and maintaining Kansas Turnpike (Turnpike) projects. To pay for the projects, the KTA is authorized to issue bonds payable solely or partly from KTA revenues. The proceeds of those bonds are to be used only to pay for costs of the project or projects for which the bonds are issued, and the bonds are not a debt of the State or of any of its political subdivisions. The KTA has a statutory relationship with KDOT in terms of governance, contracts, and potentially adding Turnpike projects to the state highway system.

The KTA Board

A five-member board oversees KTA operations. Two of these members are appointed by the Governor for four-year terms. The Governor's appointees must be residents of Kansas and be owners of revenue bonds issued by the KTA. One member must be the Secretary of Transportation (Secretary) and another must be the chairperson of the Senate Committee on Transportation. The fifth member must be a member of the House Committee on Transportation and is appointed by the Speaker of the House of Representatives. The KTA elects one member as chairperson and another as vice-chairperson. The KTA also must elect a secretary-treasurer who need not be a member of the KTA (KSA 2019 Supp. 68-2003). Thus, the KTA has always had a relationship with KDOT by virtue of the Secretary's serving on the KTA board.

The Secretary's role as a member of the KTA significantly expanded with enactment of 2013 HB 2234. Beginning July 1, 2013, the Secretary became the director of operations of the KTA. The provision was set to sunset July 1, 2016, but enactment of 2015 HB 2085 removed the sunset and changed the title to "director." As director of the KTA, the Secretary is responsible

for the daily administration of the toll roads, bridges, structures, and facilities constructed, maintained, or operated by the KTA. The director or the director's designee has such powers as necessary to carry out these responsibilities. The KTA's chief executive officer (CEO) directs daily operations.

Contracts between the Secretary and the KTA

The KTA and KDOT may solidify their partnership by forming contracts with each other. The Secretary and KTA are authorized and empowered to contract with one another to provide personnel and equipment for preliminary project studies and investigations (KSA 2019 Supp. 68-2021). Generally, KSA 68-2021 allows the KTA to contract with KDOT for use of KDOT resources for certain types of work related to KTA projects. These provisions have remained essentially unchanged since 1955.

A statute added in 2013 authorizes the Secretary and KTA to contract with each other to provide personnel and equipment and other resources for recordkeeping, reporting, administrative, planning, engineering, legal, and clerical functions and for construction, operation, and maintenance of Turnpike projects and state highways (KSA 2019 Supp. 68-2021a). Additionally, KSA 2019 Supp. 68-2021a requires the two parties to minimize duplication of effort, facilities, and equipment in operation and maintenance of turnpikes and highways of the state.

KTA and KDOT contract with one another frequently to minimize duplication of efforts and provide cost savings to the State. According to the Secretary's testimony on 2015 HB 2085, KDOT and KTA have worked together more since the partnership was formalized in 2013. According to testimony provided to legislative committees in 2017 and 2019, KTA and KDOT have partnered on bridge surveys, bridge inspections, and construction. Also, KDOT and KTA partnered with the City of Wichita on a major construction project on East Kellogg.

Potential for KTA Projects to Become Part of the State Highway System

Although KTA and KDOT have a formalized partnership, the KTA retains its separate identity, powers, and duties (KSA 2019 Supp. 68-2021a). KTA maintains the integrity of bonded indebtedness, but when bonds issued under the provisions of KSA 68-2001 to KSA 68-2020 are paid or a sufficient amount for the payment of all bonds and the interest has been set aside for the benefit of bondholders, the project can become a part of the state highway system and therefore be maintained by KDOT (KSA 68-2017).

When a project becomes a part of the state highway system, the Secretary would have the power granted to the KTA under KSA 2019 Supp. 68-2009 to fix, revise, charge, and collect tolls for the use of such Turnpike project. The tolls, rents, and rates of the charges must be sufficient to maintain, repair, operate, regulate, and police such Turnpike (KSA 68-2017). However, bonds issued for maintenance and rebuilding have meant no Turnpike project has thus far become a part of the state highway system.

Adding Tolled Highways

KSA 68-2002 states no KTA toll road project shall be undertaken unless and until a project has been thoroughly studied and the study shows public funds for such a project are not available, construction could be financed solely or partly using private funds in toll road revenue bonds, and the project and indebtedness can be financed solely or partly through tolls and other income from operating the project.

Provisions enacted in 2019 Senate Sub. for SB 2007 authorize the Secretary to construct a toll or turnpike project separate from the KTA if certain requirements are met. The requirements include a proposal prepared jointly by KDOT and local units of government, the project must add capacity or be a new bridge or highway, the project has been determined to be feasible, revenues from such a project are used only for the project for which the tolls are collected, and the project must be approved by the KTA and the State Finance

Council. In neutral testimony on SB 192 on this topic, the KTA CEO stated the KTA was prepared to be a partner with KDOT, local communities, and other stakeholders on such projects.

Additional information on the financing of Turnpike projects is available in [M-6 Toll or Tax?](#) in this *Briefing Book*.

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M-3 School Bus Passing Law Enforcement in Other States

State laws across the country for many years have prohibited passing a stopped school bus from either direction and many states' laws impose substantial fines for doing so.¹ Nevertheless, in a total of single-day counts taken in Spring 2019, 130,963 school bus drivers from 39 states recorded 95,319 vehicles illegally passing their stopped school buses. In Kansas in 2019, the drivers of 3,300 buses from 220 districts reported a total single-day count of 1,040 instances of such illegal passing.²

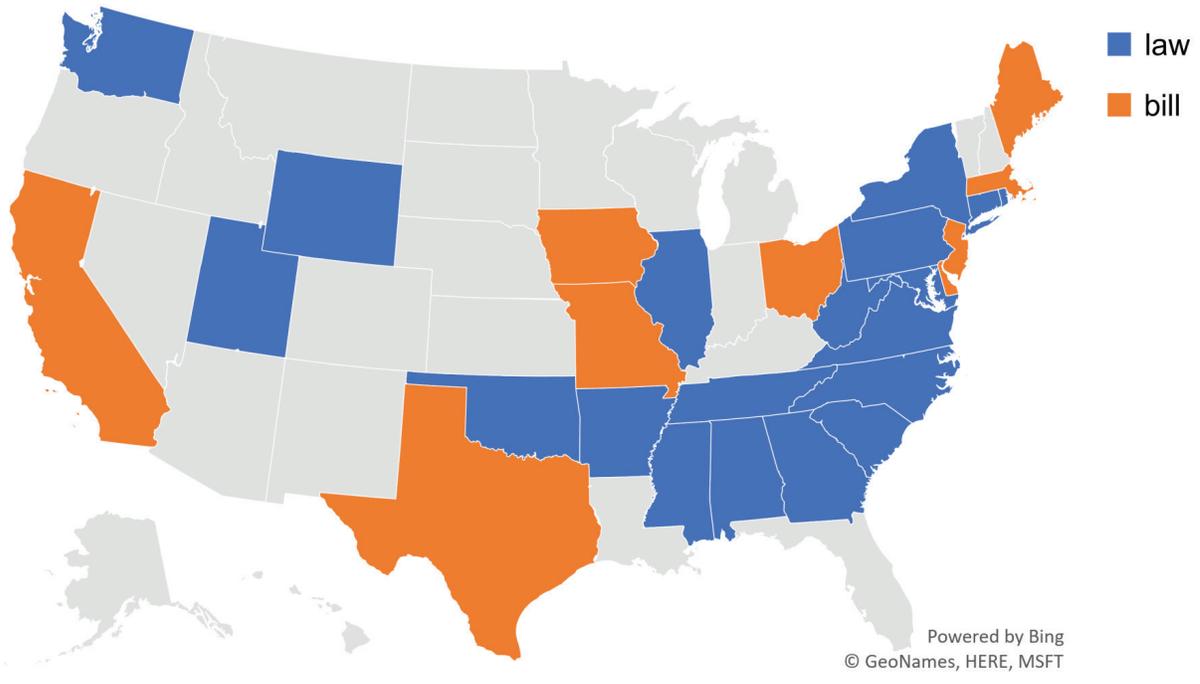
To reduce the instances of such illegal passing and reduce the risk to children entering and leaving school buses, some states have authorized video enforcement. This article examines some of the policy choices enacted in these states and contemplated in bills in other states. The included information is based on examination of the states' laws and bills, which are listed at the end of this article.

States' authorization of school bus camera enforcement programs. School districts are authorized by law in Alabama, Arkansas, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, and Washington to equip school buses with cameras and operate enforcement systems, either by themselves or by contracting with a vendor. Alabama, Connecticut, Georgia, Illinois, Maryland, North Carolina, and Virginia laws authorize such use for other types of municipalities, such as counties, sometimes requiring cooperation with the school districts. West Virginia and Wyoming state laws require cameras on buses. As identified on the following map, additional states are considering similar authorizations.

The laws of Alabama, Arkansas, Connecticut, Illinois, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Virginia, and Washington specifically authorize contracts with private vendors for such systems.

Most states with these laws require law enforcement involvement with reviewing violations, but some authorize civil enforcement. Laws of states including Arkansas, Connecticut, Georgia, Maryland, Oklahoma, Pennsylvania, Rhode Island, Utah, Virginia, and Washington require direct involvement of a law enforcement officer in reviewing images recording alleged violations, and bills pending in states including Massachusetts, Missouri, New Jersey,

States with School Bus Camera Enforcement Laws or Pending Bills, as of October 2019



New York, and South Carolina also would require this.

Illinois state law authorizes the county or municipality to issue a citation after review by a technician or, under some circumstances in the more populated cities and counties, by a law enforcement officer or retired officer. In Alabama, the definition of a “law enforcement agency” for this purpose includes the law enforcement agency of “a local governing body, a county sheriff, the Alabama State Law Enforcement Agency, or a school system that is authorized to issue a citation.” North Carolina law states a county shall issue the citation. Law authorizing a pilot program in New York specifies municipality administrative tribunals that hear and determine complaints of traffic infractions may deal with these violations. Bills pending in South Carolina and Texas would authorize civil enforcement by the Department of Public Safety and school districts, respectively.

States also differ in whether a citation must be issued. Laws in Arkansas, Rhode Island, Utah, and Washington give the law enforcement agency the discretion as to whether to issue a citation, but

a citation must be issued in Connecticut, Georgia, Illinois, and Pennsylvania if there are reasonable grounds to believe a violation occurred. Maryland requires the law enforcement agency to issue a citation, but gives the agency discretion to issue a warning in place of the citation.

Vehicle owner responsibilities. For most states with these laws, the vehicle owner is presumed to be the operator and is held accountable for the violation. Laws of states including Alabama, Arkansas, Connecticut, Georgia, Illinois, Maryland, Mississippi, North Carolina, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, and Wyoming specify the registered owner of the vehicle for which a recorded image of a violation is captured is presumed to be responsible unless a citation was issued to another person at the time of the violation. The states offered various ways to rebut the presumption, such as providing proof the vehicle was stolen, or by providing an affidavit or sworn oath regarding the operator of the vehicle at the time of the incident.

Iowa law authorizes a peace officer to draw a “permissible inference” that the owner was responsible for illegally passing a stopped school bus if the driver cannot be identified from the report delivered by a school official to the peace officer. (*Note*: Current Iowa law does not directly address cameras on school buses.)

Laws of Alabama, Connecticut, New York, and Washington forbid recording images of the face of the operator or passengers that could be used to identify them; Oklahoma law requires an image of the driver and, if there is sufficient evidence to identify the vehicle and driver, that the district attorney’s office prosecute the case.

Citations. Laws of some states provide specifics about the citation itself and how the citation must be served. Laws of Alabama, Connecticut, Georgia, Illinois, Maryland, North Carolina, and Rhode Island require images be included with the citation, in addition to information on the date, time, and location of the alleged violation, and Virginia law states the person to whom the citation is issued has 30 days to inspect images. Laws of Georgia, New York, North Carolina, and Virginia state notices are to be sent *via* first-class mail. South Carolina requires personal service.

Time limits are placed on that service by a few states: within 10 days after the violation for Connecticut and Rhode Island, 10 days after obtaining the registered owner’s name and address in Georgia, 14 days of the violation for Maryland and Washington, and 30 days after notification of vehicle owner identity in Illinois.

Recorded images as evidence. Some state laws specify recorded images are sufficient evidence of the violation. Laws of states including Connecticut, Georgia, Illinois, North Carolina, Rhode Island, Tennessee, and Wyoming specify recorded images are *prima facie* evidence of the facts or evidence sufficient to establish a violation. Certification of the images by a law enforcement officer is required by states including Maryland, Pennsylvania, and Washington.

Recorded image retention and use. Records retention and allowable uses of images recorded for this purpose are addressed in

some states’ school bus camera laws. If no violation is detected, recorded images must be destroyed after certain periods under the laws of some states: Alabama (90 days of recording), Connecticut (90 days of the alleged violation), Pennsylvania (1 year of recording), Rhode Island (24 hours of recording), and Wyoming (1 year of recording). Retention periods also vary if a violation is detected: Alabama (30 days after final disposition), Connecticut (upon final disposition), New York (upon final disposition), Pennsylvania (1 year of final disposition), Rhode Island (1 year after citation is resolved), Washington (no longer than necessary to enforce), and Wyoming (1 year of recording). North Carolina requires a county to maintain records of violations for at least five years. Bills pending as of October 2019 in California, Maine, Massachusetts, Missouri, New Jersey, and Texas also propose records destruction after specified periods.

In none of the states with these laws is a record of an alleged violation an open record. States including Alabama, Illinois, New York, Pennsylvania, Rhode Island, and Wyoming allow the images to be used for certain other proceedings (such as when required by a court order), but laws of states including Utah and Washington specify the images may be used only for enforcing laws prohibiting passing of school buses.

State Laws and Pending Bills

- Alabama: Ala.Code 1975 §§ 16-27A-2, 16-27A-3, 16-27A-4;
- Arkansas: A.C.A. §§ 6-19-131, 27-51-1001;
- Connecticut: C.G.S.A. §§ 14-107, 14-279a, 14-279b, 51-56a;
- Georgia: GA ST § 40-6-163;
- Illinois: 625 ILCS 5/11-208.3, 5/11-208.9;
- Iowa: I.C.A. § 321.372A, 321.484;
- Maine: 19-A M.R.S.A. § 2117;
- Maryland: MD Code, Transportation, § 21-706.1; Courts and Judicial Proceedings, § 7-302;

- Mississippi: Miss. Code Ann. §§ 37-41-59, 63-3-615;
 - New York: 2019 Ch. 145 (AB 4950);
 - North Carolina: N.C.G.S.A. §§ 20-217, 115C-242.1, 153A-246;
 - Oklahoma: OK ST T. 47 § 11-705, 70 § 119 (HB 1926);
 - Pennsylvania: 75 Pa.C.S.A. § 3345, 3345.1;
 - Rhode Island: Gen.Laws 1956, §§ 31-41.1-1, 31-51-2, 31-51-2.1, 31-51-3, 31-51-5, 31-51-8;
 - South Carolina: Code 1976 §§ 56-5-2770, 56-5-2773, 56-5-2774;
 - Tennessee: T.C.A. §§ 55-8-151, 55-8-198;
 - Utah: U.C.A. 1953 §§ 41-6a-1302, 41-6a-1303, 41-6a-1310;
 - Virginia: VA ST § 46.2–844;
 - Washington: RCWA 46.63.075, 46.63.180;
 - West Virginia: W. Va. Code, §§ 17C-12-7, 17C-12-9; and
 - Wyoming: W.S.1977 § § 21-3-131, 31-5-507.
- Bills pending as of October 10, 2019:
- California: SB 371;
 - Delaware: HB 111;
 - Iowa: SF 495;
 - Maine: L.D. 166;
 - Massachusetts: (grouped as similar bills) HB 2994/HB 3142/SB 2075; HB 3046/SB 2131; HB 2971/SB 2045; HB 2998; SB 1376;
 - Missouri: HB 596;
 - New Jersey: AB 4891;
 - New York: SB 3548;
 - Ohio: HB 83;
 - South Carolina: HB 4282; and
 - Texas: HB 2656.

- 1 For example, Kansas law states “the driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching such school bus when there is in operation on the school bus the flashing red lights specified in [KSA 8-1730(a)], and the driver shall not proceed until such school bus resumes motion or the flashing red lights and the stop signal arm are no longer actuated.” (KSA 2019 Supp. 8-1556) Violation is punishable by a fine of \$315 for the first offense, \$750 for the second within five years, and \$1,000 for each subsequent violation within five years after two prior convictions. (KSA 2019 Supp. 8-2118)
- 2 Sources: National Association of State Directors of Pupil Transportation Services, <http://www.nasdpts.org/stoparm/2019/index.html>, and Kansas State Department of Education, <https://www.ksde.org/Agency/Fiscal-and-Administrative-Services/School-Finance/School-Bus-Safety/School-Bus-Safety-Illegal-Passing-Information>.

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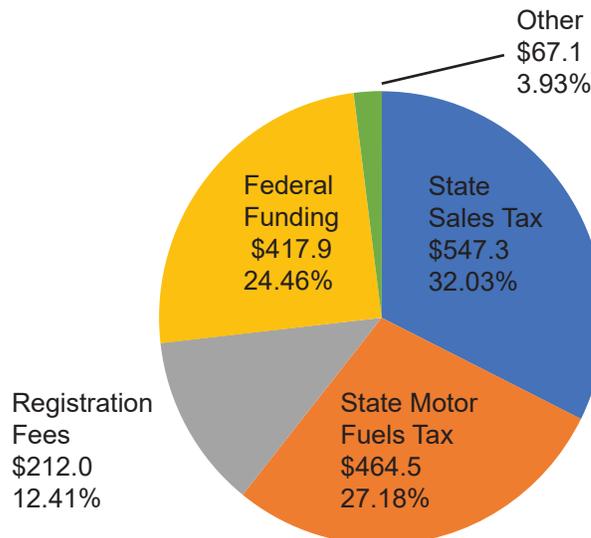
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M-4 State Highway Fund Receipts and Transfers

Article 11, Section 10 of the *Kansas Constitution* says, “The State shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels.” Projected revenues to the State Highway Fund (SHF) for use by the Kansas Department of Transportation (KDOT) can be described in five categories: state sales tax, state motor fuels tax, federal funding, vehicle registration fees, and “other.” This article discusses the components of those categories and transfers from the SHF.

KDOT estimates detailed in the pie chart below—updated through November 2019—including November consensus estimates) include the amounts for revenues in fiscal year (FY) 2020.

**Projected KDOT FY 2020 Revenues
as of November 2019**
(Dollars in Millions)



Total: \$1,708.8

Note: Other Funds include drivers license fees, special vehicle permits, interest on funds, and miscellaneous revenues. Additionally, federal funding estimates and other funding sources amounts are based upon the agency’s budget submission to the 2020 Legislature.

Components of State Highway Fund Revenues

The following information summarizes statutes related to major categories of state funding collected in the SHF.

State motor fuels tax. Kansas imposes a tax of 24¢ a gallon on gasoline and 26¢ a gallon on diesel fuel, unchanged since 2003. A separate article on state motor fuel taxes and fuel use is provided as [M-5 State Motor Fuels Taxes and Fuel Use](#). KSA 79-34,142 directs 66.37 percent of fuels tax revenues to the SHF and 33.63 percent to the Special City and County Highway Fund; the percentages have not changed since 2003.

State sales tax. KSA 79-3620 directs 16.154 percent of the revenues from the state sales tax to the SHF. The sales tax rate on which this is imposed is 6.5 percent. KSA 79-3710 similarly directs 16.154 percent of compensating use tax to the SHF.

Registration fees. Statutes also direct moneys from vehicle registration and title fees (KSA 2019 Supp. 8-145 and others), fees from permits for oversize or overweight vehicles (KSA 2019 Supp. 8-1911), and other registration-related fees to the SHF. For most vehicles, property taxes paid at registration and retained by the counties are the majority of the total amount paid. Examples are provided in the general memorandum “Taxes and Fees Paid at Vehicle Registration,” available at [http://www.kslegresearch.org/KLRD-web/Transportation.html](#).

Other fees. Driver’s license exam and reinstatement fees (KSA 8-267 and others) are included in this category, as are smaller items, such as junkyard certificate of compliance fees (KSA 68-2205) and sign permit and license fees (KSA 2019 Supp. 68-2236).

Anticipated Revenues the State Highway Fund Has Not Realized

Since 2011, actual revenues to the SHF have been reduced by approximately \$3.8 billion when compared with the amounts anticipated.

The following table summarizes the categories of those reductions. A detailed spreadsheet, “2019 Session – State Highway Fund Transfers FY 2011-FY 2020,” shows year-by-year revenue adjustments by categories of “Extraordinary Transfer” or “Ordinary Transfer,” listed by the project or agency receiving the transfer. It is available at <http://www.kslegresearch.org/KLRD-web/Transportation.html>.

The following summary tables include current transfers and transfer adjustments approved during the 2019 Session for FY 2019 and FY 2020.

These transfers are broken down by type of transfer as follows.

“Ordinary (or historically routine) transfers” refers to those transfers that have some relationship to transportation projects in other agencies or that have generally occurred over a number of years as part of the appropriations process. KDOT considers these transfers to include any transfers that started prior to the T-Works program, and have continued into the T-Works program.

“Extraordinary transfers,” a KDOT designation, refers to transfers that have been added since the creation of T-Works in 2010.

SHF Revenue Adjustments (Dollars in Millions)		
	FY 2019 Approved*	FY 2020 Approved
TRANSFER:		
Ordinary	(\$106.56)	(\$106.53)
Extraordinary	(\$366.45)	(\$258.22)
SGF Transfer to SHF	\$50.00	\$0.00
Total Transfers	(\$423.01)	(\$365.75)
* The 2019 Session transferred \$50.0 million from the State General Fund (SGF) to the SHF in FY 2019 as part of revenues’ exceeding consensus revenue estimates in that fiscal year.		

Changes to SHF Revenues FY 2011 Actual to FY 2020 Approved (Dollars in Millions)	
TRANSFER:	
Ordinary	(\$1,049.31)
Extraordinary	(\$2,722.81)
SGF Transfer to SHF – FY 2019*	\$50.00
TOTAL Transfers	(\$3,772.12)
* The 2019 Session transferred \$50.0 million from the SGF to the SHF in FY 2019 as part of revenues' exceeding consensus revenue estimates in that fiscal year.	

Highway-related Transfers to Local Governments

KSA 79-3425i states the Special City and County Highway Fund (SCCHF) will receive certain moneys related to commercial vehicles in addition to moneys from fuel taxes. Transfers to the SCCHF of commercial motor vehicle *ad valorem* taxes and the commercial vehicle fees that replaced the *ad valorem* taxes as of January 1, 2014 (see KSA 2019 Supp. 8-143m), have been suspended since FY 2010. Appropriations bills, most recently Section 179 of 2019 House Sub. for SB 25, have amended KSA 79-3425i so that no commercial vehicle taxes or fees are transferred from the SGF to the SCCHF for FY 2019, FY 2020, and FY 2021. The transfers had been limited to approximately \$5.1 million a year beginning in FY 2001.

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M-5 State Motor Fuels Taxes and Fuel Use

For many years, the state sources that provide the most funding for transportation programs have been motor fuels taxes, sales tax, and registration fees. This article provides information regarding Kansas motor fuels taxes and fuel use.

Per Gallon Motor Fuel Taxes

Kansas' motor fuels taxes are 24¢ per gallon on gasoline and 26¢ per gallon on diesel fuel, unchanged since 2003. The table below lists the effective dates of tax increases for motor fuels. The increases in 1989 through 1992 were part of the Comprehensive Highway Plan as it was enacted in 1989, and those in 1999 and 2001 were part of the Comprehensive Transportation Program enacted in 1999. No increases in fuels taxes are associated with the Transportation Works for Kansas (T-Works) program enacted in 2010.

Effective Date	Gasoline	Diesel
1925	2¢	--
1929	3¢	--
1941	--	3¢
1945	4¢	4¢
1949	5¢	5¢
1956	--	7¢
1969	7¢	8¢
1976	8¢	10¢
1983	10¢	12¢
1984	11¢	13¢
1989	15¢	17¢
1990	16¢	18¢
1991	17¢	19¢
1992	18¢	20¢
1999	20¢	22¢
2001	21¢	23¢
2002	23¢	25¢
2003	24¢	26¢

A tax of 17¢ per gallon was imposed on E-85 fuels beginning in 2006. Certain fuel purchases, including purchases of aviation fuel and fuel used for non-highway purposes, are exempt from fuel tax.

A federal fuels tax of 18.4¢ per gallon for gasoline, gasohol, and special fuels and 24.4¢ per gallon for diesel fuel also is included in fuel prices. The amount of federal tax per gallon has not increased since 1993, although increases have been proposed in Congress.

As of July 1, 2019, combined state, local, and federal gasoline taxes across the country averaged 54.57¢ per gallon and ranged from a low of 33.06¢ per gallon in Alaska to 79.60¢ per gallon in California and 77.10¢ per gallon in Pennsylvania. The equivalent rate for Kansas was 42.43¢ per gallon; for Colorado, 40.40¢; for Missouri, 35.82¢; for Nebraska, 49.00¢; and for Oklahoma, 38.40¢.¹

In 2018, Oklahoma added taxes of 3¢ a gallon on gasoline and 6¢ a gallon on diesel. In November 2018, Missouri voters rejected an increase in gasoline taxes of 2.5¢ each year for four years beginning July 1, 2019. According to the National Conference of State Legislatures, Alabama, Arkansas, Illinois, Ohio, and Virginia had enacted gasoline tax increases in 2019; California, Indiana, Montana, Oregon, South Carolina, Tennessee, and West Virginia increased gasoline taxes in 2017; and Utah accelerated indexing provisions enacted in 2015. In October 2016, New Jersey enacted a tax bill that, among other tax changes, increased the state's fuel tax by 23¢ per gallon starting November 1, 2016, which was its first fuel tax increase since 1988. In 2015, eight states passed legislation to increase fuel taxes. In 2013, six states and the District of Columbia enacted legislation to increase or allow an increase (generally, by indexing the rate) in gas taxes, followed by three more states in 2014.²

Revenue Projections if Tax Increased

In Kansas during the 2019 Session, HB 2370 and SB 188 (identical as introduced) proposed phased increases of 3¢ a gallon for gasoline and 5¢ a gallon for diesel by fiscal year (FY) 2023. The fiscal notes prepared by the Division of the Budget projected total increased revenues by FY 2023 of \$40.0 million annually to the SHF and \$20.2 million to the Special City and County Highway Fund (SCCHF).³ Also in 2019, HB 2381 proposed 6¢ increases for all motor fuels, changing the allocations between the SHF and the SCCHF, and reducing the percentage of sales and compensating use taxes statutorily directed to the SHF. In the fiscal note for that bill, the Division of the Budget stated the Department of Revenue estimated the changes would increase motor fuels tax revenues to the SHF by \$104.2 million but reduce sales and compensating use taxes directed to the SHF by the same amount. All three bills are pending as of November 2019.

Fuels Usage and Tax Revenues

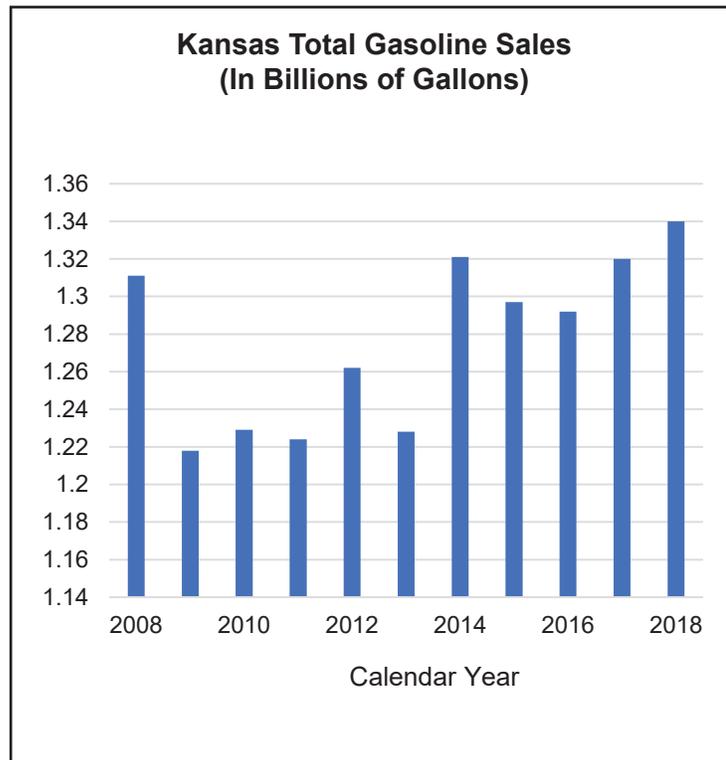
Kansas fuel tax revenues and gasoline usage fluctuate, as illustrated in the graphics on the following pages.⁴

Amounts Households Spend

According to the Bureau of Labor Statistics in the U.S. Department of Labor, U.S. households spent an average of \$9,761 on transportation in 2018, which is an increase from \$8,293 in 2011. In 2019, \$2,109 (21.6 percent) of the transportation total was spent on gasoline.⁵ If fuel prices average \$2.35 per gallon, Kansas state fuel taxes account for 10.2 percent of the amount motorists spend on fuel.

State Gasoline Taxes as Portion of Overall Fuel Cost					
		U.S. Average		Kansas	
Vehicle, driving	Gallons Used	Fuel Cost Average, \$2.56	State Tax Average, \$0.3617	Fuel Cost Average, \$2.35	Tax Average, \$0.24
12,000 miles, 15 mpg	800	\$2,048	\$297	\$1,880	\$192
12,000 miles, 25 mpg	480	\$1,229	\$178	\$1,128	\$115
12,000 miles, 35 mpg	343	\$878	\$127	\$806	\$82
30,000 miles, 15 mpg	2,000	\$5,120	\$743	\$4,700	\$481
30,000 miles, 25 mpg	1,200	\$3,072	\$446	\$2,820	\$288
30,000 miles, 35 mpg	857	\$2,194	\$319	\$2,014	\$206
State gasoline tax as percent of overall fuel cost		14.5%		10.2%	
Fuel costs from https://gasprices.aaa.com/ as of September 16, 2019, for regular gasoline.					
State tax costs from https://www.api.org/oil-and-natural-gas/consumer-information/motor-fuel-taxes and as of July 1, 2019.					

Amounts Raised from State Fuel Taxes (in millions):	
FY 2005	\$422.8
FY 2006	\$424.7
FY 2007	\$430.5
FY 2008	\$427.8
FY 2009	\$417.8
FY 2010	\$421.1
FY 2011	\$432.7
FY 2012	\$431.5
FY 2013	\$411.9
FY 2014	\$438.3
FY 2015	\$436.1
FY 2016	\$447.3
FY 2017	\$454.8
FY 2018	\$458.2
FY 2019	\$460.8



- 1 American Petroleum Institute, “Combined Local, State and Federal (Cents per Gallon) Rates Effective 7/1/2019,” <http://www.api.org/oil-and-natural-gas/consumer-information/motor-fuel-taxes>, accessed September 16, 2019.
- 2 2018 Oklahoma HB 1010 and 2018 Missouri HB 1460. National Conference of State Legislatures, “Recent Legislative Actions Likely To Change Gas Taxes,” August 23, 2019, <http://www.ncsl.org/research/transportation/2013-and-2014-legislative-actions-likely-to-change-gas-taxes.aspx>, accessed September 16, 2019.
- 3 A very small percentage of the overall revenue increases projected would come from commercial vehicle fuel permit increases included in the bills.
- 4 Reports, Monthly Motor Fuel Reported by States, U.S. Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, Motor Fuel, and the Highway Trust Fund. http://www.fhwa.dot.gov/policyinformation/motorfuelhwy_trustfund.cfm and reports for previous years, accessed September 16, 2019.
- 5 U.S. Department of Labor Bureau of Labor Statistics, news release dated September 10, 2019, “Consumer Expenditures–2018,” <https://www.bls.gov/news.release/pdf/cesan.pdf>, accessed September 16, 2019.

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Distracted Driving:
State Laws

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M-6
Toll or Tax?

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Transportation

M-6 Toll or Tax?

The Kansas Turnpike (Turnpike) is operated by the Kansas Turnpike Authority (KTA). State and federal tax dollars do not flow to or from the KTA.

Additionally, the KTA cannot use toll or other revenue in ways other than maintaining, repairing, and operating Turnpike projects; paying principal and interest on bonds and creating reserves for the same; fixing and collecting tolls; and entering into certain types of contracts (KSA 2019 Supp. 68-2009). If a toll were to be used outside of the aforementioned purposes, the toll likely would be considered a tax. This article includes information on the KTA, statutes governing its operations, and court decisions related to turnpike tolls in other states.

Overview and Background of the Turnpike

Toll roads have a long history in the United States: the first turnpike in the United States was chartered in 1792. In a 1939 report to Congress titled “Toll Roads and Free Roads,” the U.S. Bureau of Public Roads, now the Federal Highway Administration, rejected a toll-financed interstate system. The report found most interstate corridors would not generate enough toll revenue to retire the bonds that would be issued to finance them.

However, the financial success of the Pennsylvania Turnpike that opened in 1940 prompted several states to follow Pennsylvania’s lead and construct their own toll roads in the late 1940s and early 1950s. The Interstate Highway System had not yet been created, so highway supporters in Kansas saw advantages in connecting the state’s largest cities. Opponents argued residents in the western half of the state should not have to pay for an expensive highway they would rarely use. Thus, a user-fee system was the only viable option to pay for the roadway.

In 1953, the Kansas Legislature created the KTA as a separate, quasi-public organization (KSA 2019 Supp. 68-2003). The KTA was tasked with constructing, operating, and maintaining a toll road connecting the three largest cities in Kansas. The 236-mile Kansas Turnpike stretching from Kansas City to the Oklahoma state line south of Wichita was constructed in 22 months and opened to

traffic on October 25, 1956. The price tag for its construction was about \$147.0 million.

Financing the Turnpike

Financing the construction of the Turnpike was a major concern for legislators and citizens. When the Kansas Legislature created the KTA, legislators wanted to make it clear any Turnpike debt would not be considered a debt of the State or any political division of the State (KSA 68-2008). Legislation was enacted to outline the terms of Turnpike projects, including the issuance of revenue bonds and the use and disposition of tolls.

Creating a Turnpike Project

Under KSA 2019 Supp. 68-2002 (as amended by 2019 Senate Sub. for HB 2007), a toll road project cannot be undertaken unless the project and the proposed location have been thoroughly studied with respect to traffic, engineering, cost, and financing. The study must show public funds for construction of a free expressway are not available, the construction of the toll expressway can be financed solely or partly through the investment of private funds in toll road revenue bonds, and the project and indebtedness incurred will be financed solely or partly through tolls and other income from operation of the project. Various projects have been authorized for study over the years, but none have been added to the Turnpike system.

Senate Sub. for HB 2007 also amended KSA 68-20,120 to permit the Secretary of Transportation (Secretary) to study the feasibility of constructing new toll projects or Turnpike projects. The feasibility study must evaluate the total cost of the project and funding of the project (including toll revenues in combination with other funds); determine the duration of the collection of tolls required for the project to become toll-free; include consultation with local officials to determine traffic volume and local contribution; and include at least one local public meeting to review the project. After conducting such feasibility study and finding a favorable result, the Secretary may construct the new toll project or Turnpike project.

Senate Sub. for HB 2007 also specifies the Secretary may use toll revenues only for the payment of the costs of the toll project or Turnpike project for which the toll was collected.

Issuing Revenue Bonds

KSA 68-2007 outlines the issuance of Turnpike revenue bonds. At any time, the KTA is authorized to provide by resolution for the issuance of Turnpike revenue bonds to pay for all or part of the cost of any one or more Turnpike projects.

The proceeds of the bonds of each issue are used solely for the payment of the cost of the Turnpike project or projects for which the bonds were issued. The KTA sold \$160.0 million of revenue bonds on October 14, 1954. According to the KTA, the original 1954 bond issue has been paid off and new bonds have been issued for financing safety improvements and major reconstruction projects. All current KTA bonds will mature by September 1, 2039.

Use and Disposition of Turnpike Tolls

The KTA has the authority to fix, revise, charge, and collect tolls for the use of each Turnpike project (KSA 2019 Supp. 68-2009). The tolls are fixed and adjusted with respect to the aggregate of tolls from the Turnpike projects or projects in connection with issued bonds to provide a fund that is sufficient with other revenues to pay the cost of maintaining, repairing, and operating the Turnpike project or projects, and the principal of and the interest on those bonds (KSA 2019 Supp. 68-2009(a)).

The KTA does not receive federal or state tax dollars, including the fuel tax collected at any of the six service stations along the Turnpike. Instead, those fuel tax revenues are deposited into the State Highway Fund and distributed to pay for other transportation needs throughout Kansas. Maintenance and operations of the Turnpike are funded from tolls, which also pay back bondholders that loaned private capital to finance, construct, and reconstruct the Turnpike. Some additional revenue is received by non-tolling sources, such as leases and other

contractual agreements. The Kansas Turnpike is self-financed and does not rely on taxes; therefore, the customer is not paying twice for use of the facility.

Tolls are strictly subject to the control of the KTA; they are not subject to supervision or regulation by any other commission, board, bureau, or agency of the State (KSA 2019 Supp. 68-2009(b)). Effective October 1, 2018, two-axle vehicles traveling the entire length of the Turnpike will pay a total of \$15.00 in cash, or \$11.15 as a K-TAG customer. The KTA reported toll revenue of \$112,525,112 for the fiscal year ending June 30, 2017.

The tolls and all other revenues derived from the Turnpike project or projects pay for the maintenance, repair, and operation of those projects. Excess funds are set aside in a sinking fund, which is charged with the payment of the principal and interest of bonds as they become due and the redemption price or purchase price of bonds retired by call or purchase. The sinking fund is a fund for all bonds without distinction or priority of one bond over the other (KSA 2019 Supp. 68-2009(b)). The KTA is not allowed to use tolls or other revenues for any other purpose (KSA 2019 Supp. 68-2009(c)).

Charging tolls has several important practical implications. First, tolls assure out-of-state users pay their fair share for use of the Turnpike. Toll also provide a mechanism to charge users in proportion to the actual cost of their use. For example, most turnpikes across the country charge higher tolls for trucks than automobiles, reflecting the greater wear and tear trucks have on roadways. Some turnpikes charge variable rates per mile by section so users of sections that are more costly to maintain pay accordingly. Toll are calculated based on the length of the route traveled.

Is a Toll a Tax? Other States' Views on Tolls

Drivers can choose to pay tolls or take alternate routes, whereas taxes are mandatory and charged to everyone. The issue of whether a

toll is considered a tax has arisen in the U.S. Supreme Court and in several individual states, as well as in federal district courts. In the case of *Sands v. Manistee River Imp. Co.*, 123 U.S. 288, 294, 8 S. Ct. 113, 115, 31 L. Ed. 149 (1887), the Supreme Court stated there is no analogy between the imposition of taxes and the levying of tolls for improvement of highways. Taxes are levied for the support of government and their amount is regulated by its necessities. Toll, on the other hand, are the compensation for the use of another's property, or of improvements made. The cost of a toll is determined by the cost of the property, improvements of the property, and considerations of the return such values or expenditures should yield.

Courts in Florida, Illinois, Massachusetts, Montana, and Virginia all agree tolls are not taxes. It is clear toll revenue cannot be used to fund projects outside of a state's transportation system. However, there is no generally accepted principle among the states that toll revenue from one facility can be used to fund another facility.

Florida

Florida citizens have challenged the validity of tolls, claiming tolls are akin to taxes; however, the Florida Supreme Court has repeatedly held that tolls are user fees and not taxes. In *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992), the Florida Supreme Court noted a tax is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform. User fees are charges based upon proprietary right of the governing body permitting the use of the instrumentality involved. User fees share common traits that distinguish them from taxes: they are charged in exchange for a particular government service that benefits the party paying the fee in a manner not shared by other members of society, and they are paid by choice. They are paid by choice because the party paying the fee has the option of not utilizing the government service and thereby avoiding the charge. This concept of user fees was approved by the Florida Supreme Court in *City of Daytona*

Beach Shores v. State, 483 So. 2d 405 (Fla. 1985).

In the case of *Gargano v. Lee Cnty. Bd. of Cnty. Comm'rs*, 921 So. 2d 661, 667 (Fla. Dist. Ct. App. 2006), the plaintiff argued a toll on a bridge was not a user fee because she did not pay the toll by choice. The court noted it is true anyone who lives on the surrounding islands and does not own a boat or helicopter must pay a toll to reach that person's home from the mainland and does not have the choice to take other roadways. However, the court stated the concept of "choice" for defining user fees is designed to distinguish a tax whose payment can be compelled from charges for services that one can avoid. In this case, the plaintiff had the choice to stay on the island and not visit the mainland; the county did not compel her to use the bridge or pay the fee. The court noted, as a practical matter, the plaintiff did not have many available options, but as a legal matter, the toll was not a tax.

The Florida Supreme Court has stated revenue from bridge tolls can be used to fund financial improvements of approaches and approach roads to the bridge. In *McGovern v. Lee Cnty.*, 346 So. 2d 58, 64 (Fla. 1977), the court stated inherent in the legislative scheme for funding self-liquidating projects is the principle that those who directly benefit from the project should bear a substantial portion of the cost and those who bear the substantial cost should benefit from the expenditure of money on the project. To allow bridge tolls to finance improvements of approaches and approach roads to the bridge does not violate this principle because those paying the tolls will benefit by having convenient access to the bridge.

However, the court stated there are limits to utilizing revenue from bridges to fund approaches and approach roads. The closer an access road is to a bridge or causeway, the more likely a significant portion of its traffic will use the bridge. Toll revenue can be used if the roads to be improved are within the immediate vicinity of the project. However, revenues from a toll bridge or causeway can fund improvements to roads distant from the facility only if the road functions as an approach or approach road. A road or

segment of road is an approach or approach road if a significant portion of its traffic moves onto the bridge or causeway, or if a significant portion of the traffic moving across the bridge or causeway came from the road or road segment.

Consequently, the Florida Supreme Court has determined tolls are user fees and not taxes. Additionally, toll revenue from a bridge or causeway can fund improvements within the immediate vicinity. Toll revenue from a toll bridge or causeway can fund improvements to roads distant from the facility, as long as a functional test is used to determine whether a road or segment of a road is an approach or approach road.

Illinois

In 1945, the Supreme Court of Illinois decided on the constitutionality of the State Superhighway Act. The Act created the Illinois State Superhighway Commission and defined its powers and duties (*People ex rel. Curren v. Schommer*, 392 Ill.17, 20, 63 N.E.2d 744,746 (1945)). The Act contemplated a system of toll roads to be known as superhighways and provided that such system of highways would be planned, built, operated, and maintained by the State Superhighway Commission. Plaintiffs argued the creation of the commission was unconstitutional and tolls were unconstitutional taxes.

The court found the creation of the commission was not an unconstitutional delegation of legislative power. Additionally, the court found there is a clear-cut and definite distinction between tolls and taxes. The essential meaning of a tax is it is a mode of raising revenue for the public needs of a public purpose, while tolls are the compensation for the use of another's property.

Illinois courts have found tolls are not taxes, but the courts have not stated whether toll revenue from one toll facility can be used to fund another toll facility.

Massachusetts

In the case of *Murphy v. Massachusetts Tpk. Auth.*, 462 Mass. 701, 971 N.E.2d 231 (2012), users of toll roads and tunnels in the Metropolitan Highway System (MHS) alleged tolls collected by the Massachusetts Turnpike Authority (MTA) were an unconstitutional tax, to the extent the tolls were used to pay for overhead, maintenance, and capital costs associated with MHS's non-tolled roads, bridges, and tunnels. According to the plaintiffs, the tolls are lawful user fees when applied to pay the expenses of tolled roads and tunnels, but an unconstitutional tax when applied to pay the expenses of non-tolled roads, tunnels, and bridges.

The Supreme Judicial Court of Massachusetts found the Legislature authorized the MTA to collect tolls on only certain parts of the MHS and use those toll revenues to pay the expenses of the entire MHS. The MTA did not need to demonstrate the toll fee exactly equals the costs of maintenance or the benefits conferred. Instead, all that is required is the tolls reflect a fair approximation of the use of facilities for whose benefit they are imposed (the court here quoting *Cohen v. Rhode Island Turnpike & Bridge Auth.*, 775 F. Supp.2d 439, 449–450 (D.R.I. 2011)). Where the MHS tolls were required by statute to be used to pay the costs of the entire MHS integrated system of roads, tunnels, and bridges, and where there is no allegation they were put to a use prohibited by the statute or the toll revenues exceeded the total cost of the MHS, the tolls reflect a reasonable and non-excessive approximation of the value of use of the MHS (*Wallach v. Brezenoff*, 930 F.2d 1070, 1072 (3d Cir.1991)).

The court in *Murphy* found the MTA charged user fees and not unconstitutional taxes by expending portions of revenue charged to users of toll roads and tunnels to pay for overhead, maintenance, and capital costs associated with the MHS's non-tolled roads, bridges, and tunnels because the legislature specifically authorized the MTA to use tolls for expenses of non-toll roads. Users who paid the MHS tolls enjoyed a particularized benefit not enjoyed by those who traveled only on non-toll roads. Additionally, users had the

option of not driving on tolled MHS roads and tunnels and thereby could avoid paying the tolls. Tolls were collected to compensate the MTA for expenses incurred in operating the MHS, not to raise revenues for the State.

Montana

The Supreme Court of Montana has stated there is a clear distinction between taxes and tolls. A tax is a demand of the sovereignty levied for support of the government and its amount is regulated by its necessities. Tolls are the demands of proprietorship, exacted as compensation for use of another's property (*Monarch Min. Co. v. State Highway Commn*, 128 Mont. 65, 70, 270 P.2d 738, 740 (1954)). Montana has not yet considered the issue of whether toll revenue from one toll facility can be used to fund another toll facility.

Rhode Island

A bill enacted in 2016 authorized the Rhode Island Department of Transportation (RIDOT) to collect tolls exclusively from large commercial trucks and prohibited it from collecting similar tolls from any other type of vehicle, including passenger vehicles. The bill was passed after Rhode Island found that large commercial trucks caused more than 70 percent of damages to roads and bridges while contributing less than 20 percent of the state's total annual revenues to fund transportation infrastructure. Rhode Island also found there was a funding gap between revenue needed to maintain bridges and the annual amount generated by dedicated revenue sources.

After enactment of the bill, the American Trucking Associations and other trucking, transport, and freight companies brought suit in federal court (the U.S. District Court for Rhode Island) against the Director of RIDOT claiming the tolls were unconstitutional and seeking to prevent collection of the tolls (*American Trucking Associations, Inc. v. Alviti*, 377 F.Supp.3d 125). RIDOT argued the tolls constituted a tax under state law per the Tax Injunction Act (28 U.S. Code § 1341), not a toll, and therefore the federal court did not have jurisdiction.

The Court discussed the *Sands* holding that tolls must compensate the owner of something for use of that thing by another and there must be a direct correlation between the fee or toll and use of the property. The Court found the fees, although labeled “tolls,” were a “highly targeted and sophisticated tax designed to fund infrastructure maintenance and improvements that would otherwise need to be paid for by other forms of tax-generated revenue.” The plaintiffs have appealed the ruling.

Virginia

The authority of the KTA to charge and collect tolls in Kansas has not been a contentious issue like it has been in Virginia. The Metropolitan Washington Airports Authority (MWAA) was formed in 1986 as an entity independent from Virginia, the District of Columbia, and the federal government. However, it possessed the powers delegated to it by the District of Columbia and Virginia. Congress explicitly granted MWAA the power “to levy fees or other charges” (*Corr v. Metro. Washington Airports Auth.*, 740 F.3d 295, 297 (4th Cir. 2014)). Although the MWAA assumed control over the two Washington airports, the Dulles Toll Road (Toll Road) continued to be operated by the Virginia Commonwealth Transportation Board (CTB).

The Virginia General Assembly repeatedly authorized CTB to use toll revenue to fund mass transit projects within the Dulles Corridor. In December 2006, Virginia agreed to transfer control over to MWAA. MWAA then had the power to set tolls on the Toll Road, but the MWAA was required to use toll revenues exclusively for transportation improvements within the Dulles Corridor.

Many legal challenges arose from this arrangement. In April 2011, plaintiffs initiated an action seeking to enjoin MWAA from using toll road revenue to repay bonds issued to fund the Metrorail project and seeking refunds of all excess tolls collected. They argued the toll paid by users of the Toll Road is in fact a tax because instead of defraying the cost of a driver’s use of the road,

a portion of the toll is used for other purposes, namely the Metrorail expansion project.

The *Corr* court, citing *Elizabeth River Crossings*, 286 Va. 286, 749 S.E.2d 176, 183 (2013), found the tolls paid by drivers on the Toll Road are not taxes for these reasons: (1) the toll road users pay the tolls in exchange for a particularized benefit not shared by the general public, (2) drivers are not compelled by the government to pay the tolls or accept the benefits of the project facilities, and (3) the tolls are collected solely to fund the project, not to raise general revenues.

The court agreed with Virginia’s and MWAA’s assessments that the Metrorail expansion and Dulles Toll Road are parts of a single interdependent transit project. Since they are parts of the same project, tolls charged on the Toll Road are not taxes just because they are used to fund the Metrorail expansion. The record did not indicate surplus tolls are diverted outside those confines or are treated as general revenue. Therefore, tolls are user fees, not taxes, because they are nothing more than an authorized charge for the use of a special facility. In 2015, the U.S. Supreme Court denied review of the case.

The authority of the MWAA also was challenged in federal court in *Schneider v. Metro. Washington Airports Auth.*, WL 1931752 (E.D. Va., 2019) when plaintiffs argued MWAA’s use of revenue from the Toll Road to pay for Virginia’s share of the cost of Metrorail expansion was unconstitutional. The *Schneider* court discussed the *Corr* holding and found there is a reasonable correlation between the toll charged and the benefit received because Metrorail expansion bears a functional relationship to the facilities used by Toll Road motorists. The court found, like in *Corr*, the Toll Road users receive the benefit of being able to choose between traveling by Metrorail or driving on the road with reduced congestion and, therefore, these tolls are user fees, not taxes. The defendant’s motion to dismiss was granted.

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Utilities and Energy

N-1 Broadband Expansion

The federal government in conjunction with states, including Kansas, has engaged in multiple efforts over the past few decades to determine how to expand broadband access, particularly to rural America. The definition of “broadband” has evolved as multiple task forces and advisory committees, at the state and federal level, have grappled with the issue of broadband accessibility.

Federal Developments

The 1996 Telecommunications Act

With the enactment of the 1996 Telecommunications Act (Act), Congress updated federal telecommunication law for the first time since the enactment of the Communications Act of 1934. The Act addresses five general areas: radio and television broadcasting, cable television, telephone services, Internet and online computer services, and telecommunications equipment manufacturing. The Act was signed into law by President Clinton, who stated the legislation “opens up competition between local telephone companies, long distance providers, and cable companies, and expands the reach of advanced telecommunications services to schools, libraries, and hospitals.”

The Act contains provisions that created the Federal Universal Service Fund (FUSF). The FUSF was created to provide support through four programs: High-Cost Support, Low-Income Support, Schools and Libraries Support, and Rural Health Care Support. The FUSF is funded by contributions from providers of telecommunications based on an assessment of their interstate and international end-user revenues.

Definitions

Following is a list of terms defined in the Act and codified in Title 47 of the *U.S. Code of Federal Regulations* (CFR).

Local exchange carrier (LEC). Any person engaged in the provision of telephone exchange service or exchange access. [47 CFR § 51.5]

Incumbent local exchange carrier (ILEC). With respect to an area, the local exchange carrier that:

- Provided telephone exchange service in such area on February 8, 1996, and was deemed to be a member of the exchange carrier association pursuant to 47 CFR § 69.601(b) on February 8, 1996; or
- Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member of the exchange carrier association. [47 CFR § 51.5]

Rural incumbent local exchange carrier. A carrier that meets the definitions of “rural telephone company” and “incumbent local exchange carrier.” [47 CFR § 51.5]

Rural telephone company. A LEC operating entity to the extent that such entity:

- Provides common carrier service to any local exchange carrier study area that does not include either:
 - Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- Provides telephone exchange service to any LEC study area with fewer than 100,000 access lines; or
- Has less than 15 percent of its access lines in communities of more than 50,000 on February 8, 1996. [47 CFR § 51.5]

Rate-of-return carrier. Any ILEC not subject to price cap regulation as defined in 47 CFR § 61.3. [47 CFR § 51.5]

Price cap regulation. A method of regulation of dominant carriers (a carrier found by the Federal

Communications Commission (FCC) to have market power [*i.e.*, power to control prices]) provided in 47 CFR §§ 61.41 through 61.49. [47 CFR § 61.3]

Frozen high-cost support. Beginning January 1, 2012, each price cap LEC and rate-of-return carrier affiliated with a price cap LEC receives a “baseline support amount” equal to its total 2011 support in a given study area, or an amount equal to \$3,000 times the number of reported lines for 2011, whichever is lower. Each price cap LEC and rate-of-return carrier affiliated with a price cap LEC receives a “monthly baseline support amount” equal to its baseline support amount divided by 12. [47 CFR § 54.312]

The National Broadband Plan (2010)

In early 2009, Congress directed the FCC to develop a National Broadband Plan (Plan) to ensure every American has “access to broadband capability.” Congress also required the Plan to include a detailed strategy for achieving affordability and maximizing use of broadband to advance “consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, employee training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.”

The Plan states the government may influence broadband in the following four ways:

- Design policies to ensure robust competition and, as a result, maximize consumer welfare, innovation, and investment;
- Ensure efficient allocation and management of assets the government controls or influences, such as spectrum, poles, and rights-of-way, to encourage network upgrades and competitive entry;
- Reform current universal service mechanisms to support deployment of broadband and voice in high-cost areas; ensure low-income Americans

can afford broadband; and, in addition, support efforts to boost adoption and utilization; and

- Reform laws, policies, standards and incentives to maximize the benefits of broadband in sectors government influences significantly, such as public education, health care, and government operations.

The Plan also recommended, as part of creating the Connect America Fund (CAF), supporting the provision of affordable broadband and voice with at least 4 megabits per second (Mbps) actual download speeds and shift up to \$15.5 billion over the next decade from the existing Universal Service Fund program to support broadband.

Connect America Fund (also known as the Federal Universal Service High-Cost Program)

In 2011, the FCC issued a Reform Order (Order) creating the CAF to support broadband, create a Mobility Fund to support 3G or better wireless coverage, and expand the Lifeline Program to allow subsidies to be provided for broadband. The Order set performance goals for reform of the FUSF to include, among other things, ensuring universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; ensuring universal availability of modern networks capable of providing advanced mobile and broadband service; and ensuring rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation.

The Order directed CAF to be implemented in two phases, with the first phase deploying new broadband service to 37 states with \$115.0 million in public funding and tens of millions in private investment. To qualify for CAF Phase I support, a carrier had to provide broadband with actual speeds of 4 Mbps download and 1 Mbps upload and deploy broadband to at least one currently unserved location for each \$775 in additional high-cost support received. CenturyLink accepted \$35.0 million, none of

which was spent in Kansas. In the second round of Phase I funding, AT&T was approved for \$95.0 million, none designated for Kansas; CenturyLink was approved for nearly \$40.0 million, of which \$81,474 was designated to be spent in Kansas; and FairPoint Communications Missouri, Inc., was approved for \$2.9 million, of which \$91,612 was designated to be spent in Kansas.

In CAF Phase II, each incumbent price-cap carrier was asked to make a state-level commitment to provide affordable broadband to all high-cost locations in its service territory. In CAF Phase II funding, rate-of-return carriers receiving CAF support to offset lost intercarrier compensation (charges that one carrier pays to another carrier to originate, transport, and/or terminate telecommunications traffic) must offer broadband service with actual speeds of at least 4 Mbps download and 1 Mbps upload upon a customer's reasonable request. AT&T accepted \$18.9 million in support offered for Kansas; therefore, it will be required to deploy 10 Mbps/1 Mbps voice and broadband-capable services to at least 95.0 percent of the 35,375 eligible areas by the end of 2020. CenturyLink accepted \$16.5 million in support offered for Kansas; therefore, it will be required to deploy 10 Mbps/1 Mbps voice and broadband-capable services to at least 95.0 percent of the 29,018 eligible areas by the end of 2020. (*Note: Eligible areas include census blocks unserved by mobile broadband services, and carriers may not receive support for areas they have previously stated they plan to serve.*)

The areas for which price-cap carriers did not accept model-based support, as well as other areas, were made available in the Phase II auction. The competitive bidding process concluded in August 2018, with financial documentation due to the FCC in February 2019. Seven bidders in Kansas were awarded a total of \$46.7 million in support across ten years to provide broadband service with speeds ranging from 25 Mbps/3 Mbps to 1,000 Mbps/500 Mbps. More information on the results of the CAF II auction can be found at <https://www.fcc.gov/auction/903>.

The 2011 Order also created the Remote Areas Fund (RAF) to be funded with a budget of at least \$100.0 million annually. The RAF's stated purpose

is to ensure people living in the most remote areas of the nation, where the cost of providing broadband service is extremely high, can obtain service. As of September 12, 2019, there is no information on FCC plans to commence the RAF auction. The RAF will employ technology-neutral rules.

Broadband Deployment Advisory Committee (2017)

On January 31, 2017, the FCC chairperson announced the formation of the Broadband Deployment Advisory Committee, to provide advice and recommendations for the FCC on how to accelerate the deployment of high-speed Internet access. The Committee was anticipated to meet for two years. The Committee has recommended, among other things, a model code for states titled the State Broadband Infrastructure Deployment Act. A full list of recommendations can be found at <https://www.fcc.gov/broadband-deployment-advisory-committee>.

Broadband Definitions

In 1999, the FCC determined “advanced telecommunications capability” and “advanced services” and, in effect, “broadband” are services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kilobits per second. The FCC changed the definition of broadband in 2010 to a minimum download speed of 4 Mbps and minimum upload speed of 1 Mbps. As part of its “2015 Broadband Progress Report,” the FCC voted to change the definition of broadband by raising the minimum download speeds to 25 Mbps and the minimum upload speed to 3 Mbps, which triples the number of U.S. households without broadband access (as defined by the current definition).

Kansas Developments

Statutes

In 1996, the Kansas Legislature enacted a series of telecommunication-related statutes that,

among other things, set forth a statewide policy and a definition of broadband (KSA 66-2001 *et seq.*).

Kansas statute declares it is the policy of the State to ensure every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price; ensure consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates; promote consumer access to a full range of telecommunications services, including advance telecommunications services that are comparable in urban and rural areas throughout the state; advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to Internet providers, and others; and protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience, and necessity.

Kansas law provides the following definitions:

- “Broadband network” means a connection that delivers services at speeds exceeding 200 kilobits per second in both directions (KSA 66-2005); and
- “Broadband” is the transmission of digital signals at rates equal to or greater than 1.5 Mbps (KSA 66-1,187).

The Kan-Ed Act defines “broadband technology-based video communication” to mean a class of communications technologies that may include switched ethernet services, DSL, cable modem, private line service, multiprotocol label switching based networks, managed or dedicated Internet technologies and other future technologies, capable of supporting such applications (KSA 75-7222).

Task Forces and Committees

Kansas Broadband Advisory Task Force (2010)

In 2010, the Kansas Broadband Advisory Task Force (KBATF) was created by Governor Parkinson by Executive Order (EO) 10-08. The KBATF was charged with, among other things, developing recommendations for development and implementation of a broadband digital strategy to support statewide availability and adoption of broadband services consistent with the 2010 National Broadband Plan.

In 2015, Governor Brownback abolished the KBATF by EO 15-01.

Special Committee on Rural Broadband Services (2012)

The Special Committee on Rural Broadband Services was charged with examining how recent FCC changes to the FUSF and the Kansas Universal Service Fund would affect rural broadband, the accessibility of rural broadband services, and the progress and accuracy of mapping rural broadband service.

In its report to the 2013 Legislature, the Special Committee recommended, among other things, the standing committees on utilities should review short- and long-term planning and solutions for rural broadband, the Department of Commerce should report to the standing committees on utilities a broadband mapping update, and members of the Legislature should be provided an electronic notification when the updated broadband mapping is released.

Telecommunications Study Committee (2013)

The Telecommunications Study Committee was created by 2013 HB 2201. The Committee was created to study, among other things, the possibility of establishing a Kansas Broadband Fund. In its statutorily required annual report to the 2015 Legislature, the Committee recommended

the Senate and House utilities committees review the definitions of broadband, telecommunications services, and telecommunications infrastructure with a focus on “future-proofing” those definitions to accommodate the rapid changes in technology.

Statewide Broadband Expansion Task Force (2018)

Senate Sub. for HB 2701 (2018) created the Statewide Broadband Expansion Task Force. The mission of the Task Force is to:

- Work collaboratively to develop an approach that includes, but is not limited to, the development of criteria for the creation of a statewide map for defining and evaluating the broadband needs of Kansas citizens, businesses, industries, institutions, and organizations;
- Identify and document risks, issues, and constraints associated with a statewide broadband expansion project and to develop any corresponding risk mitigation strategies where appropriate;
- Consider any recent actions by the FCC relating to broadband services;
- Identify opportunities and potential funding sources to:
 - Expand broadband infrastructure and increase statewide access to broadband services;
 - Remove barriers that may hinder deployment of broadband infrastructure or access to broadband services; and
 - Consider options for the deployment of new advanced communication technologies;
- Develop criteria for prioritizing the expansion of broadband services across Kansas;
- Review current law and regulations concerning access to the public right-of-way for public utilities and make corresponding recommendations for any changes necessary to encourage broadband deployment; and

- Propose future activities and documentation required to complete the statewide broadband expansion plan, including an upgradeable, functional map of the state of available broadband service, as well as including which technologies should be deployed and the methods to finance broadband expansion.

The Task Force submitted a progress report to the Legislature in January 2019. At the March 28, 2019, meeting, the Task Force established three subcommittees to address the various aspects of its charge and were directed to meet at least twice prior to a final December 2019 meeting of the full Task Force. The Legislative Coordinating Council has approved one meeting day for the 2019 Interim, and it is scheduled for December 17. A final report is required to be submitted to the Legislature by January 15, 2020.

Mapping

On July 31, 2019, Connected Nation, a nonprofit organization that helps address broadband

and digital technology gaps, in partnership with the Governor's Office, published a statewide broadband map of wire-line and wireless coverage. The map was funded by a \$300,000 grant in 2018 and was created by collecting data in collaboration with Kansas broadband service providers. The map is available at <https://connectednation.org/kansas/interactivemap>.

Other States

Forty-three states and the District of Columbia have at least one statute related to broadband technology. While some states provide definitions of broadband for various purposes, states have also endeavored to expand access to high-speed Internet through broadband technology and to improve existing broadband service. In addition, all 50 states have created a task force, commission, or broadband project to identify or address broadband access issues. For additional information about other states, please see the memorandum at <http://www.kslegresearch.org/KLRD-web/Utilities&Energy.html>.

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Utilities and Energy

N-2 Electric Utility Regulation and Ratemaking

Overview of Electric Utility Structure in Kansas

Three types of electric utilities exist in Kansas: investor-owned, cooperative, and municipal. Investor-owned utilities (IOUs) are those in which shareholders provide the capital for operation and maintenance of electric service. Westar Energy, Kansas City Power & Light (KCP&L), and Empire District Electric are the three IOUs in Kansas. The Kansas Corporation Commission (KCC) approved a merger of Westar Energy and Great Plains Energy, Inc. (parent company of KCP&L) on May 24, 2018, creating a new company called Eversource Energy, Inc. For the purposes of this article, the companies will be referenced as Westar and KCP&L. Cooperatives generally exist in rural areas where the customers own the company that provides their electric service. There are 32 cooperatives currently operating in Kansas. Additionally, 118 municipalities provide electric service for their citizens.

The following electric companies are regulated by the KCC: KCP&L, Westar, Empire District Electric, and Southern Pioneer. Cooperatives and municipalities are outside of the KCC jurisdiction pursuant to KSA 66-104b and KSA 66-104f, respectively, though KCC may have jurisdiction over these entities in certain limited circumstances.

Electric utilities under the jurisdiction of the KCC must receive KCC approval to change their rates or terms of service. The KCC's role, according to KSA 66-101 *et seq.*, is to establish rates that are just and reasonable while ensuring efficient and sufficient service from the utility. In addition to setting rates, the KCC has the authority to regulate:

- Structure of the retail market for sales of electricity;
- Permitting and siting of transmission and generation;
- Transmission of bundled retail electricity (service in which all aspects of energy production, such as, generation, transmission, and distribution, are provided by one entity);
- Mergers and acquisition activity; and
- Other various public policies relating to regulated entities.

Ratemaking

In determining an appropriate rate for a regulated electric utility, the KCC must first determine the utility's annual revenue requirement considering five factors:

- The cost of capital invested in assets (also called a rate of return) that reflects the actual cost of debt and a reasonable return or profit the utility has an opportunity to earn on shareholders' equity;
- The total investment, or rate base, upon which a return will be earned;
- The accumulated and ongoing depreciation of plant(s) and equipment;
- The company's reasonable and prudent operating expenses; and
- Income taxes.

After determining the revenue requirement, the KCC must design rates that will collect the utility's revenue requirement from the utility's customers in an efficient and equitable manner.

Process

Application. The process of ratemaking begins when the utility files an application to change its rates, including details of the proposal, prepared testimony, and supporting data. In most cases, the KCC is allowed 240 days from the filing date to make its decision. However, the time limit can be waived under certain circumstances.

Review. In its review of the application, KCC staff, composed of accountants, economists, financial analysts, and engineers, reviews the utility's books and records. This review can take several months to complete. Staff then provides a non-binding recommendation to the three-member Commission. Interested parties, such as consumer groups or industrial customers, may also file recommendations in the case. The Citizens Utility Ratepayer Board (CURB) is the State-appointed representative of residential and small commercial ratepayers in rate cases before the KCC.

Public hearing. A public hearing is not required by law, but it is generally held in significant rate cases. The hearing provides an opportunity for the public to learn more about a utility company's proposal and speak before the KCC to express their views on the case. The public may also submit comments online *via* the KCC's website or in an e-mail or letter during the designated comment period.

Evidentiary hearing. The facts of a rate case are presented during a formal evidentiary hearing. Expert witnesses may testify and answer questions based on their written testimony submitted by the utility, KCC staff, CURB, and other parties to the case. The three members of the Commission read the written testimony, review the exhibits, hear the cross-examination, and may ask the witnesses questions as they weigh the evidence in the case.

Reviewing the record. Commissioners review the record, the facts of the case, and legal briefs to make their decision. The KCC will authorize rate changes that are just and reasonable and in the public interest. By law, the company must be allowed the opportunity to make enough money to meet reasonable expenses, pay interest on debts, and provide a reasonable return to stockholders.

Decision. When a decision is made, the KCC announces it through a written order that is approved in an open business meeting. That order is subject to appellate court review, which may be initiated by any party, with the exception of KCC staff, who has filed a timely request for reconsideration.

Additional information on ratemaking may be found at <https://kcc.ks.gov/electric/how-rates-are-set>.

Recent Developments in Ratemaking

In the 2018 Legislative Session, the Senate introduced a concurrent resolution (SCR 1612) urging the KCC to lower electric rates to regionally competitive levels. Proponents of the concurrent resolution stated electric rates in Kansas are much higher than those in surrounding

states. Opponents stated the resolution was unnecessary as rate reductions would be realized through a pending merger of Westar and KCP&L. The resolution passed the Senate Committee of the Whole but died in the House Committee on Energy, Utilities and Telecommunications.

In September 2018, the KCC approved a \$66.0 million rate cut for electric customers of Westar, resulting in a decrease of \$3.80 per month for the average residential customer.

Additional Regulators of Electricity

In addition to the KCC, several other entities have regulatory power over the generation, transmission, and distribution of electricity in Kansas.

Kansas Department of Health and Environment (KDHE). KDHE regulates electric generating units (EGUs) pursuant to KSA 65-3001 *et seq.*, the Kansas Air Quality Act. Specifically, KSA 65-3031 provides the Secretary of Health and Environment, in accordance with the requirements of the Environmental Protection Agency's (EPA's) rule on *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, may develop and submit to the EPA a state plan for compliance with the regulation of carbon dioxide from any affected or existing EGUs. The Secretary may implement such standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading, or other alternative implementation measures that the Secretary determines to be in the interest of Kansas.

Environmental Protection Agency. Amendments to the federal Clean Air Act in 1970 established comprehensive regulations for stationary sources of air pollutants such as fossil-fuel burning power plants throughout the United States; the EPA began regulating greenhouse gases emitted by power plants in 2011. President Obama proposed the Clean Power Plan (CPP) rule in 2015, which aimed to reduce carbon dioxide emissions from electrical power generation by 32.0 percent by 2030, relative to

2005 levels. On June 19, 2019, the EPA finalized the Affordable Clean Energy (ACE) rule proposed by President Trump in 2018. The rule replaced the CPP and establishes emission guidelines for states to develop plans to address greenhouse gas emission from existing coal-fired EGUs.

Federal Energy Regulatory Commission (FERC). FERC has jurisdiction over electricity in Kansas as it relates to:

- Wholesale sales of electricity;
- Reliability of large interconnected electrical systems made up of generation and transmission facilities and their control systems, often referred to as the “bulk power system” or electrical grid;
- Transmission of unbundled electricity, which provides for independent accounting for separate operations such as generation, transmission, and distribution;
- Allocation of costs for interstate electric transmission;
- Licensure of non-federal hydroelectric power;
- Capacity requirements for regional transmission organizations;
- Mergers and acquisitions activity; and
- Market manipulation enforcement.

North American Electric Reliability Corporation (NERC). The federal Energy Policy Act of 2005 provided for the creation of a federal electric reliability organization to develop mandatory reliability standards for the bulk power system in the United States. In 2007, FERC granted NERC the legal authority to enforce those reliability standards. NERC oversees the nine regional reliability entities that comprise the interconnected power system in the United States, Canada, and Mexico. Other responsibilities of the NERC include assessing adequacy of resources and providing education and training opportunities as part of an accreditation program to ensure power system operators remain qualified and proficient.

Southwest Power Pool (SPP). SPP is a regional transmission organization (RTO) mandated by FERC to ensure reliable supplies of power, adequate transmission infrastructure, and a competitive wholesale electricity market. To meet those mandates, SPP oversees the bulk power system and wholesale power market in the central United States on behalf of utilities and transmission companies in 14 states composed of Kansas, Arkansas, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

State Legislation Relating to Utility Regulation

The Kansas Legislature has passed several bills related to the regulation of electric utilities over the years. Examples of such legislation follow.

HB 2047 (1976)

With the enactment of the Retail Electric Suppliers Act (RESA) in 1976, the state was divided into electric service territories. RESA provides that “within each such territory, only one retail electric supplier shall provide retail electric service, and any such territory established for a retail electric supplier pursuant to this section shall be certified to such retail electric supplier by the [KCC] and such area shall be provided retail electric service exclusively by such supplier.”

HB 2263 (2005)

The 2005 Legislature passed the Kansas Electric Transmission Authority Act, creating the Kansas Electric Transmission Authority (KETA). The purpose of KETA was to further ensure reliable operation of the integrated electrical transmission system, diversify and expand the state’s economy, and facilitate the consumption of Kansas energy through improvements in the state’s electric transmission infrastructure. KETA fulfilled that purpose through building electric transmission facilities or by facilitating the construction, upgrade, and repair of third party transmission facilities. The 2016 Legislature repealed the

statutes authorizing KETA and abolished its funds in SB 318.

Senate Sub. for HB 2369 (2009)

The 2009 Legislature passed the Renewable Energy Standards Act (Act) that requires electric public utilities, except municipally owned electric utilities, to generate or purchase specified amounts of electricity generated from renewable resources. The 2015 Legislature amended the Act by making it a voluntary goal for affected utilities to achieve net renewable generation capacity equal to at least 20.0 percent of the utility’s peak demand by the year 2020 rather than a mandatory requirement with the enactment of House Sub. for SB 91.

HB 2233 (2015)

The 2015 Legislature passed HB 2233, which established the procedure for developing and submitting a state plan to the EPA to comply with the proposed federal CPP rule. In response to the U.S. Supreme Court’s issuance of a stay on litigation related to the CPP rule on February 9, 2016, the 2016 Legislature suspended all state agency activities, studies, and investigations in furtherance of the preparation of the submission of a final state plan pursuant to the CPP rule in SB 318.

Sub. for SB 323 (2018)

The 2018 Legislature amended law related to Kansas municipal energy agencies (MEAs), the oversight of electric cooperatives by the KCC, and retail electric suppliers with the enactment of Sub. for SB 323.

MEAs. The bill requires MEAs to file for a certificate for transmission rights for any electric facilities used to transmit electricity constructed in the certificated territory of a retail electric supplier. Under continuing law, MEAs are authorized to operate as public utilities without obtaining a certificate of public convenience (certificate requirements described in KSA 66-131). The bill also provides a MEA is allowed to elect to be exempt from the jurisdiction, regulation,

supervision, and control of the KCC by having an election of its voting members, not more often than once every two years, by complying with specified requirements as listed in the bill.

Oversight of electric cooperatives. The bill allows the KCC's oversight role of electric cooperatives to be limited as it relates to charges or fees for transmission services that are recovered through an open access transmission tariff of an RTO and that has its rates approved by FERC.

Retail electric suppliers. When a municipality proposes to annex land located within the certified territory of a retail electric supplier, the municipality is required to provide notice to the retail electric supplier no less than 30 days prior to the municipality making a selection for a franchise agreement. When a municipality is making a franchise agreement selection, it is required by continuing law to consider certain factors. The bill adds two factors for a municipality to consider: 1) proposals from any retail electric supplier holding a certificate in the annexed area; and 2) whether the selection is in the public interest as it relates to all the factors considered by the municipality.

Sub. for SB 69 (2019)

Sub. for SB 69 authorizes the Legislative Coordinating Council (LCC) to conduct a study

of retail rates of Kansas electric public utilities to assist future legislative and regulatory efforts in developing policy that includes regionally competitive rates and reliable service. The utilities subject to the study include statutorily defined electric public utilities, electric cooperative public utilities exempt from KCC jurisdiction, and the three largest municipally owned or operated electric utilities by customer count. The study will be conducted in two parts, with the first portion to be completed by January 8, 2020, and the second portion to be completed by July 1, 2020.

On July 29, 2019, the LCC approved a bid submitted by London Economics, Inc., to conduct Phase One of the rate study, and authorized a re-bid to study Phase II, which will address other consequential issues materially affecting Kansas electric rates. The closing date for submission of bids for Phase II was October 1, 2019.

The KCC is responsible for paying the costs of the study through assessments upon utilities that are subject to the study.

For a comprehensive summary of bills related to the regulation of electricity in Kansas, see the memorandum entitled "1998 through 2019 Bills Impacting Energy Production and Transportation of Energy" at <http://www.kslegresearch.org/KLRD-web/Utilities&Energy.html>.

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Utilities and Energy

N-3 Small Wireless Facility Siting

The fifth generation of mobile communication network, referred to as 5G, will be deployed primarily through a network of small wireless antennas. With each new generation of wireless networks, cellular and Internet connection speed has improved. 5G is projected to increase connection speed, possibly enabling speed ten times faster than current 4G networks. It is also projected to increase connectivity and capacity, allowing more people to communicate using their devices at the same time. In an effort to accelerate deployment of next generation cellular technology, the Federal Communications Commission (FCC) approved a *Declaratory Ruling and Third Report and Order* (Report) addressing 5G siting in the United States on September 26, 2018. This article reviews certain sections of the Report and addresses how the Report may impact Kansas law.

FCC Declaratory Ruling and Third Report and Order Overview

The FCC states the purpose of the Report is to:

- Clarify the scope and meaning of the “effective prohibition” standards set forth in Sections 253 and 332(c)(7) of the Telecommunications Act of 1996 (Act) as they apply to state and local regulation of wireless infrastructure deployment;
- Conclude Sections 253 and 332(c)(7) limit state and local governments to charging fees that allow for cost recovery only for processing applications and managing structures in rights-of-way;
- Identify specific fee levels for small wireless facility deployments that comply with the relevant standard;
- Provide guidance on certain state and local non-fee requirements, including aesthetic and undergrounding requirements;
- Establish new “shot clocks” for small wireless facilities (“shot clocks” refers to timeliness for a municipality to review small wireless facility applications);
- Codify existing shot clocks for non-small wireless facility deployments established by the 2009 Declaratory Ruling (not discussed in this article);

- Clarify all state and local government authorizations necessary to deploy personal wireless service infrastructure are subject to these shot clocks; and
- Establish a failure to act within the new small wireless facility shot clocks constitutes a presumptive prohibition on the provision of services, and set the expectation that local governments shall provide all required authorizations without further delay.

The FCC states its intent is to “promote the timely build out of new infrastructure across the country by eliminating regulatory impediments that unnecessarily add delays and costs to bringing advanced wireless services to the public.” Further, the FCC states, “America is in a transition to the next generation of wireless service,” and this action “is the next step in the FCC’s ongoing efforts to remove regulatory barriers that would unlawfully inhibit the deployment of infrastructure necessary to support these new services.”

According to the National Conference of State Legislatures, the Report places new limits on local wireless infrastructure siting review and has the potential to preempt the 20 states, including Kansas, that have enacted small cell legislation.

Standard for Determining Effective Prohibition of Service

One of the expressed purposes of the Report is to clarify the FCC’s interpretation of the term “effective prohibition,” found in Sections 253 and 332(c)(7) of the Act. The Report states effective prohibition occurs where a state or local legal requirement materially inhibits a provider’s ability to engage in the activities related to its provision of a covered service (Para. 37). This would include both inhibiting additional services or improving existing ones.

Fees

Another purpose of the Report is to resolve confusion regarding limits on state and local fees. The Report states right-of-way access fees and fees for the use of government property in

the right-of-way, as well as application or review fees and similar fees imposed by a state or local government as part of their regulation of the deployment of small wireless facilities inside and outside the right-of-way, violates Sections 253 and 332(c)(7) of the Act unless the following conditions are met:

- The fees are a reasonable approximation of the state or local governments’ costs;
- Only objectively reasonable costs are factored into those fees; and
- The fees are no higher than the fees charged to similarly situated competitors in similar situations (Para. 50).

The Report prescribes the following fee structure that the FCC believes would not violate Sections 253 and 332(c)(7) of the Act:

- \$500 for a single up-front application that includes up to five small wireless facilities with an additional \$100 for each additional facility; and
- \$270 annually per small wireless facility for all recurring fees (Para. 79).

Aesthetic Requirements

The Report also uses the FCC’s interpretation of Sections 253 and 332(c)(7) of the Act to provide guidance on certain potential regulations imposed by local governments.

Regarding aesthetic regulations, the FCC clarifies in the Report that requirements must meet the following three criteria to be permissible under the Act:

- Be reasonable;
- Be no more burdensome than those applied to other types of infrastructure deployments; and
- Be objective and published in advance (Para. 86).

The Report indicates some jurisdictions have adopted blanket ordinances or regulations requiring all wireless facilities to be deployed under ground, some for aesthetic reasons (Para. 90). The FCC clarifies this would amount to an

effective prohibition due to the characteristics of wireless signals and violate Sections 253 and 332(c)(7) of the Act.

Minimum spacing requirements are addressed in the Report (Para. 91). The FCC clarifies spacing requirements that prevent providers from replacing preexisting facilities or collocating equipment would be unreasonable. An example of this would include requiring facilities be sited a certain minimum distance away from other facilities.

Review Deadlines and Remedies

The Report establishes the following new shot clocks or timelines for a municipality to review small wireless facility applications:

- 60 days for an application for collocation of small wireless facilities on preexisting structures; and
- 90 days for an application for new construction of small wireless facilities (Para. 105).

In the Report, because small wireless facilities are likely to be deployed in large numbers as part of a system to cover a particular area, the FCC anticipates some providers will submit batched applications (Para. 113). “Batched” is defined as multiple separate applications filed at the same time, each for one or more sites or a single application covering multiple sites. As a result, the FCC states, with regard to the new shot clocks, these types of applications should follow the same rules as if the applications were filed separately (Para. 114). In addition, if an application contains both sites for collocation and new construction, it should adhere to the longer 90-day shot clock.

These shot clocks are being established under the FCC interpretation of Section 332 of the Act. The FCC notes these shot clocks are similar to shot clocks adopted in a Declaratory Ruling issued by the FCC in 2009 for non-small cell wireless facilities (which have been further clarified by the Report, but are not addressed in this article). The FCC notes the 2009 shot clocks were affirmed by

the Fifth Circuit and the U.S. Supreme Court in *City of Arlington v. FCC* in 2013.

The Report clarifies failure to adhere to the small wireless facility shot clock deadlines is considered a presumptive prohibition of service, violating Section 332 of the Act, and an applicant would be able to seek relief in court through a preliminary or permanent injunction (Sec. B Paras. 116-131).

Kansas Law

Senate Sub. for HB 2131 (2016) established application processes, limitations, and construction procedure for operating and maintaining small cell equipment in the public right-of-way.

Kansas Fees

Under KSA 66-2019, authorities cannot charge an application fee, consulting fee, or other fee associated with the submission, review, processing, and approval of an application that is not required for other wireless infrastructure providers or wireline telecommunications or broadband providers in their jurisdiction.

Further, the law states an authority (defined as any governing body, board, agency, office, or commission of a city, county, or the state that is authorized by law to make legislative, quasi-judicial, or administrative decisions concerning an application) can only assess fees for the actual costs relating to granting or processing an application that are directly incurred. This portion is in line with what is required by the FCC Report.

Kansas law also limits the amount an authority can receive from application charges and fees to:

- \$500 for a collocation application that is not a substantial modification, small cell facility application, or distributed antenna system application; or
- \$2,000 for an application for a new wireless support structure or for a collocation application that is a substantial modification of a wireless support structure.

As noted above, the Report allows for a maximum application fee of \$500 for the first five sites and \$100 for every site thereafter. There is no distinction between collocated sites and new support structures in the Report.

Kansas law also allows for small cell network applications with no greater than 25 individual facilities of similar design within a jurisdiction of a single authority to file a consolidated application and receive a single permit for the installation, construction, maintenance, and repair of the network instead of filing separate applications for each.

An authority also has the ability to enter into a lease with an applicant for the use of public lands, buildings, and facilities. The lease must be at market rate and at least ten years in duration, unless otherwise agreed to by both the applicant and the authority. Charges for placement of wireless facilities on public lands, if the authority chooses to charge, are required to be competitively neutral and not unreasonable, discriminatory, or in violation of current federal or state law. The FCC's Report suggests a reoccurring fee of no more than \$270 per facility would be acceptable when determining if such a fee creates an "effective prohibition" under the Act.

In 2019, the Legislature passed SB 68, which prohibits a city from requiring a wireless service provider or wireless infrastructure provider to enter into a franchise, franchise agreement, franchise ordinance, contract franchise, or contract franchise ordinance for the provision of wireless services. The law allows a city to assess a wireless service provider or wireless infrastructure provider a fixed right-of-way access fee for each small cell facility deployed that requires the use of the city's right-of-way. SB 68 also clarifies a city would still be able to govern the use of its right-of-way through certain agreements.

Kansas Application Review Process

Similar to the Report, KSA 66-2019 establishes a shot clock for review and issuance of a final decision for small cell network applications by an

authority. Kansas law requires local authorities to adhere to the following time lines:

- Review and issue a final decision for consolidated applications for small cell networks containing no more than 25 individual and similar small cell facilities within 60 calendar days;
- Review and issue a final decision for applications for substantial modification to an existing wireless support structure within 90 calendar days; and
- Review and issue a final decision for applications for a new wireless support structure within 150 calendar days.

With regard to modified and new wireless structures, if an authority fails to act within the required time the application is considered approved.

The shot clocks in Kansas law are several weeks longer than what is mandated by the Report, depending on how a wireless provider wants to install a small cell network. However, Kansas law eliminates the need for a provider to seek relief through a court injunction if an application is not reviewed by the deadline, because it is deemed approved at the end of the shot clock period.

Kansas Aesthetic Requirements

Kansas law states an authority has the right to prohibit the use or occupation of a specific portion of the public right-of-way due to reasonable public interest necessitated by public health, safety, and welfare so long as such interest is exercised in a competitively neutral manner and is not unreasonable or discriminatory. Kansas law further states a wireless services provider or wireless infrastructure provider, subject to an application, shall have the right to construct, maintain, and operate wireless support structures, utility poles, small cell wireless facilities, or distributed antenna systems along, across, upon, under, or above the public right-of-way. The limitation of access for aesthetic reasons is not expressly stated in statute. The authority must be competitively neutral with regard to other users of the public right-of-way, may not be unreasonable or discriminatory, and may not violate any applicable state or federal law, rule, or regulation.

The chart below compares certain requirements found in the FCC Report and Kansas law.

Comparison of Certain Requirements for Siting of Small Wireless Facilities		
Requirement	FCC	KSA 66-2019
Co-location Application Fee	\$500 for the first five facilities, \$100 for each beyond initial five	\$500 for non-substantial modification to existing structure. \$2000 for substantial modification
New Structure application Fee	\$500 for the first five facilities, \$100 for each beyond initial five	\$2,000
Batched Application Fee	\$500 for the first five facilities, \$100 for each beyond initial five	\$500 or \$2000 depending on application. Can only be applied for by a network with 25 or less individual facilities.
Co-location Application Review	60 days	90 days
New Structure Application Review	90 days	150 days
Batched Application Review	90 or 150 days depending on if the application requires construction of a new wireless support structure	60 calendar days for networks with 25 or less individual facilities

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Veterans, Military, and Security

O-1 Cybersecurity

A number of provisions related to cybersecurity have been considered in the Legislature in recent years, while many other states introduced and enacted cybersecurity measures of their own. An overview of these activities follows.

Kansas Legislation

HB 2209 (2019 Law)

HB 2209, among other provisions related to insurance, allows the Kansas Board of Regents (KBOR) to purchase cybersecurity insurance. The bill allows KBOR to purchase such insurance as it deems necessary to protect student records, labor information, and other statutorily protected data KBOR maintains, independent of the Committee on Surety Bonds and Insurance, and without complying with purchasing procedures of the Department of Administration. The term “cybersecurity insurance” includes, but is not limited to, first-party coverage against losses such as data destruction, denial of service attacks, theft, hacking, and liability coverage guaranteeing compensation for damages from errors, such as the failure to safeguard data.

House Sub. for SB 56 (2018 Law)

House Sub. for SB 56 created the Kansas Cybersecurity Act (Act). The legislation established the position of Chief Information Security Officer (CISO) and the Kansas Information Security Office (KISO) within the Office of Information Technology Services (OITS) to administer the Act and perform various functions related to cybersecurity of executive branch agencies. The definition of “executive branch agency” excludes elected office agencies, the Kansas Public Employees Retirement System, Regents institutions, the Kansas Board of Regents, and the Adjutant General’s Department. Executive branch agency heads are solely responsible for security of all data and information technology resources under the agency’s purview through various measures and procedures. Executive branch agencies have the discretion to pay for cybersecurity services from existing budgets, from grants or other revenues, or through special assessments to offset costs. Any increase in fees or charges due to the Act, including cybersecurity fees charged by the KISO, are to be fixed by rules and regulations

adopted by the agency and can only be used for cybersecurity.

Sub. for HB 2331 (2017 Bill)

Sub. for HB 2331 would have enacted the Representative Jim Morrison Cybersecurity Act. The bill was based on the previous year's HB 2509 in that it would have created the KISO and established the position of CISO in statute. The bill would have also established the Kansas Information Technology Enterprise (KITE), which would have consolidated functions of OITS and transferred current OITS employees and officers to KITE.

The House Committee on Government, Technology, and Security introduced HB 2331 during the 2017 Legislative Session. The House Committee recommended a substitute bill be passed that would have included various amendments to the original contents of 2017 HB 2331, as well as an amended version of 2017 HB 2359 (relating to the creation of KITE). After passing the House Committee of the Whole, the bill was referred to the Senate Committee on Ways and Means. The Senate Committee

heard testimony on the bill, but failed to take any further action during the 2017 or 2018 Legislative Sessions.

Other States' Legislation

In 2019, 45 states and Puerto Rico considered more than 260 bills or resolutions related to cybersecurity; as of early September 2019, 36 states had enacted 97 bills related to cybersecurity. Common cybersecurity legislation categories include:

- Improving government security practices;
- The security of connected devices;
- Cybersecurity insurance or standards for insurance data and information security;
- Election security; and
- Creating cybersecurity commissions, task forces, or studies.

For more information on other states' recent cybersecurity legislation, see <http://www.ncsl.org/research/telecommunications-and-information-technology/cybersecurity-legislation-2019.aspx>.

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Veterans, Military, and Security

O-2 Veterans and Military Personnel Benefits

Most benefits for military personnel and veterans are offered by the federal government. However, states can offer additional benefits and resources to veterans and military families. Kansas has established agencies to assist veterans and military family members in filing claims for federal benefits and offers other benefits for veterans and military families in Kansas, and provides information on resources where more detailed information can be found.

2019 Legislation

Kansas regularly passes legislation to address veterans' needs. Legislation passed in 2019 made minor eligibility changes to the Kansas National Guard Educational Assistance Act and made records arising out of peer support counseling sessions involving National Guard members confidential, exempt from the Kansas Open Records Act and inadmissible in judicial proceedings (HB 2365). More information about the current benefits and protections available for Kansas veterans, servicemembers, and military families is included below.

Benefits Assistance

Kansas Commission on Veterans' Affairs Office (KCVAO). The KCVAO provides Kansas veterans and their families with information and assistance by coordinating programs and services to help them improve their quality of life. The KCVAO's available services range from helping veterans file claims for medical, educational, or other benefits to helping veterans obtain earned medals and military awards. KCVAO veterans' services representatives are available, free of charge, to assist veterans and family members.

Veterans' Claims Assistance Program (VCAP). The purpose of the VCAP is to improve the coordination of veterans' benefits counseling in Kansas, ensure efficient use of taxpayer dollars, and serve veterans with necessary counseling and assistance. The VCAP, through its advisory board, also advises the Director of the KCVAO on all veterans' services, including the VCAP. The VCAP Advisory Board also makes recommendations to the Director of the KCVAO regarding match funding levels for veterans' service organizations.

State of Kansas Veterans' Benefits

Education

Residency. Veterans, their spouses, and their children are considered residents by community colleges and Kansas Board of Regents (KBOR) institutions. When such a person is using federal educational benefits to attend college, resides in or is assigned to a permanent duty station in Kansas, or previously established residence in Kansas prior to service and lives in Kansas at the time of enrollment, the person will be charged in-state tuition and fees regardless of length of residency.

Scholarships

Kansas offers scholarships for veterans, active duty military personnel, and Kansas National Guard members. In some cases, spouses and dependents of veterans also are eligible for scholarship consideration.

The Kansas Military Service Scholarship covers tuition and fees for certain active duty servicemembers and honorably discharged (or generally discharged under honorable conditions) veterans who deployed or received hostile fire pay for at least 90 days after September 11, 2001. The 90-day requirement may be waived if the servicemember was injured during such military service.

The Kansas National Guard Educational Assistance Program provides tuition and fees assistance for enlisted personnel in the Kansas Air or Army National Guard who are not under a suspension of favorable action flag, not currently on the unit unfavorable information file, have a high school diploma or GED, and have not already obtained a bachelor's or higher academic degree. The assistance is in an amount not to exceed 15 credit hours a semester with an aggregate total not to exceed 150 percent of the total credit hours required to complete their educational program. The availability of this tuition assistance is subject to appropriations. Kansas also offers free tuition and fees to dependents and unmarried widows and widowers of servicemembers killed

in action while serving on or after September 11, 2001; dependents of those who are prisoners of war or missing in action; and dependents of those who died as a result of service-connected disabilities suffered during the Vietnam conflict. Obligations to the State for taking certain types of state scholarships can be postponed for military service.

Kansas also offers Reserve Officer Training Corps (ROTC) scholarships at KBOR institutions, Washburn University, and community colleges for students interested in becoming commissioned officers in the armed forces.

More information about educational resources available to veterans and military families can be found at:

- http://myarmybenefits.us.army.mil/Home/Benefit_Library/State_Territory_Benefits/Kansas.html; and
- <http://www.kansasregents.org/students/military>.

Military Interstate Children's Compact Commission. Kansas has been a member of the Military Interstate Children's Compact Commission since 2008. The Compact addresses educational transition issues military families face when relocating to new duty stations. The Compact assists military families with enrollment, placement, attendance, eligibility, and graduation.

Children of active duty servicemembers, National Guard and Reserve servicemembers on active duty orders, and servicemembers or veterans who are medically discharged or retired for one year are eligible for assistance under the Compact.

More information and points of contact are available at <http://mic3.net/Kansas.html>.

Emergency Financial Assistance

The Adjutant General may extend grants and interest-free loans to Kansas National Guard servicemembers, members of the reserve forces, and their families to assist with financial emergencies. Individuals may contribute to the

Military Emergency Relief Fund by checking the designated block on their individual income tax return forms.

Employment

Veterans' preference. The veterans' preference applies to initial employment and first promotion with state government and with counties and cities in "civil service" positions. Veterans are to be preferred if "competent," which is defined to mean "likely to successfully meet the performance standards of the position based on what a reasonable person knowledgeable in the operation of the position would conclude from all information available at the time the decision is made."

Veterans' preference applies to veterans who have been honorably discharged from the armed forces. The veterans' preference will also extend to spouses of veterans who have 100 percent service-connected disability, surviving spouses (who have not remarried) of veterans killed in action or died as result of injuries while serving, or the spouses of prisoners of war. Veterans' preference does not apply to certain types of jobs, such as elected positions, city or county at-will positions, positions that require licensure as a physician, and positions that require the employee to be admitted to practice law in Kansas.

The hiring authority is required to take certain actions, including noting in job notices that the hiring authority is subject to veterans' preference, explaining how the preference works, and explaining how veterans may take advantage of the preference.

For more information regarding veterans' preference, visit <https://admin.ks.gov/services/state-employment-center/veterans>.

Private veterans' preference. Private employers may establish a veterans' hiring preference in Kansas. The veterans' preference must be in writing and must be consistently applied. Veterans are required to provide the employer with proof of military service and discharge under honorable conditions.

Pensions and life insurance. State pension participants away from state jobs for military service may be granted up to five years of state service credit for their military service. An employee may buy up to six years of service credit that is not granted, and purchased service need not be preceded or followed by state employment.

Additionally, an absence for extended military service is not considered termination of employment unless the member withdraws accumulated contributions.

Basic life insurance, worth 150 percent of annual salary, continues while the employee is on active duty. An employee may continue to have optional life insurance by paying the premiums for 16 months; after such time, the policy may be converted to an individual policy.

Position reinstatement. An officer or employee of the state or any political subdivision does not forfeit that position when entering military service; instead, the job has a "temporary vacancy," and the original jobholder is to be reinstated upon return. Anyone called or ordered to active duty by this state, or any other states' reserve compartment, and who gives notice to his or her public or private employer and reports back to that employer within 72 hours of discharge is to be reinstated to the former position (unless it was a temporary position). A state employee who returns to classified service within 90 days after an honorable discharge is to be returned to the same job or another job comparable in status and pay in the same geographic location. A state employee's appointing authority may grant one or more pay step increases upon return.

Professional licenses—credit for military education and training. Statutes direct state agencies issuing professional licenses to accept from an applicant the education, training, or service completed in the military. The education, training, or service must be equal to the existing educational requirements established by the agency. The license may be granted even if the servicemember was discharged under less than honorable conditions.

While this rule generally does not apply to the Board of Nursing, the Board of Emergency Medical Services, or the practice of law, there are special provisions for nurses and emergency medical technicians. Statutes authorize the Board of Nursing to waive the requirement that an applicant graduate from an approved school of practical or professional nursing if the applicant passed the National Council Licensure Examination for Practical Nurses, has evidence of practical nursing experience within the U.S. military, and was separated from service with an honorable discharge or under honorable conditions.

Statute also mandates the granting of an attendant's certificate to an applicant who holds a current and active certification with the National Registry of Emergency Medical Technicians (NREMT) and who completed emergency medical technician training as a member of the U.S. military. For these provisions to apply, the applicant must have received an honorable discharge or have been separated under honorable conditions. Additionally, Kansas has enacted the Interstate Compact for Recognition of Emergency Medical Personnel Licensure allowing Kansas to consider active and former servicemembers, in addition to their spouses, who hold a current valid and unrestricted NREMT certification, as having the minimum training and examination requirements for EMT licensure.

Kansas also allows a person to receive a license to practice barbering if they have been certified in a related industry by any branch of the U.S. military and completed a course of study in a licensed Kansas barber college or school.

Professional licenses—maintaining license while serving. A state license issued to engage in or practice an occupation or profession is valid while the licensee is in military service and for up to six months following release without the licensee paying a renewal fee, submitting a renewal application, or meeting continuing education or other license conditions. (This provision does not apply to licensees who engage in the licensed activity outside of the line of duty while in military service.) No such license may be revoked, suspended, or canceled for failure

to maintain professional liability insurance or failure to pay the surcharge to the Health Care Stabilization Fund.

Expedited professional licenses—military servicemembers' nonresident military spouses. Kansas professional licensing bodies are required to grant professional licenses to nonresident military spouses and servicemembers who hold professional licenses in other states, if the licensees meet certain requirements. These licenses must be issued within 60 days after a complete application is submitted.

Probationary licenses—servicemembers and military spouses. A servicemember or military spouse may have a license on a probationary basis for up to six months when the licensing body does not have licensure, registration, or certification by endorsement, reinstatement, or reciprocity and the servicemember or military spouse meets certain criteria.

Temporary Bar admission for military spouses. Kansas Supreme Court Rule 712A grants applicants temporary admission to the Kansas Bar without a written examination if they are currently married to a military servicemember stationed in Kansas and have been admitted to the practice of law upon a written examination by the highest court of another state or in the District of Columbia.

Military leave for state employees. Benefits-eligible state employees who are members of a reserve component of the military are eligible for 30 working days of military leave with pay for active duty within a 12-month period beginning October 1 and ending on September 30 the following year.

State employee direct payment benefits. Benefits-eligible state employees who are on military leave as activated reserve component uniformed military personnel may be eligible for one-time activation payments of \$1,500.

Additionally, benefits-eligible state employees who are called to full-time military duty and are mobilized and deployed may receive the difference between their military pay, plus most

allowances, and their regular State of Kansas wages, up to \$1,000 per pay period.

Highways and Bridges

The State of Kansas honors veterans by designating portions of highways in their name. The Kansas Department of Transportation provides a Memorial Highways and Bridges Map at <http://www.ksdot.org/maps.asp>.

Housing and Care

Certain veterans, primarily those with disabilities, are eligible for housing and care at the Kansas Soldiers' Home near Fort Dodge and the Kansas Veterans' Home in Winfield. The KCVAO states priority for admission of veterans will be given on the basis of severity of medical care required. For more information, see:

- <https://kcva.ks.gov/veteran-homes/fort-dodge-home>; and
- <https://kcva.ks.gov/veteran-homes/winfield-home>.

Insurance

Personal insurance. No personal insurance shall be subject to cancellation, non-renewal, premium increase, or adverse tier placement for the term of a deployment, based solely on that deployment.

Private health insurance. A Kansas resident with individual health coverage, who is activated for military service and therefore becomes eligible for government-sponsored health insurance, cannot be denied reinstatement to the same individual coverage following honorable discharge.

Judicial Benefits Diversion Considerations

A prosecutor may consider combat service-related injuries when considering whether to enter into a diversion agreement with a defendant. The injuries considered include major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury.

Sentencing Considerations

Judges may consider combat service-related injuries (including major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury) as mitigating factors when sentencing a defendant.

Court-ordered Treatment Considerations

A judge may consider combat service-connected injuries (including major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury) when ordering a defendant to treatment. There is no requirement that a defendant have a discharge under honorable conditions to qualify for court-ordered treatment.

Treatment in this program is an alternative for a defendant who meets the criteria for court-ordered treatment, but cannot receive treatment through a military treatment facility or veterans' treatment facility.

Taxes

Income tax—check-off provisions. Taxpayers may contribute income tax refunds or additional money to the Kansas Military Emergency Relief Fund, to be used to help military families defray costs of necessities while a family member is on active duty or for other services to support military families, and the Kansas Hometown Heroes Fund, to be used solely for veterans' services programs of the KCVAO.

Income tax refund—certain Native American veterans. HB 2147 (2018) created a process for certain Native American military veterans to apply for a refund of state personal income taxes improperly withheld from their federal military income between 1977 and 2001 in the amount of income taxes paid plus interest. If the veteran is deceased, the refund may be sought on behalf of their estate by a surviving spouse or any heir-at-law. No refunds will be issued after June 30, 2020.

Property tax—deferral. An active duty servicemember who has orders to deploy, or is

currently deployed, outside of the United States for at least six months may defer payment of taxes on real property for up to two years. A claim for the deferral must be filed with the county clerk.

Property tax—homestead. Certain disabled veterans and surviving spouses who do not remarry are eligible for the Homestead Property Tax Refund Program. Disabled veterans are those Kansas residents who have been honorably discharged from active duty in the armed forces or Kansas National Guard and who have been certified to have a 50 percent or more permanent service-connected disability. See more information in [article L-1 Homestead Program](#).

Motor vehicle tax. Active duty servicemembers who are Kansas residents are not required to pay motor vehicle taxes for their first two vehicles if they maintain vehicles outside of the state and are absent from the state on military orders on the date the registration payment is due.

Vehicle-related Benefits

Driver’s license requirements—waiver. The Director of Vehicles and Kansas Department of Revenue may waive the skills test for an applicant for a commercial driver’s license, if that applicant provides evidence of certain military commercial vehicle driving experience.

The applicant’s military driving experience must meet the requirements of 49 CFR 383.77. The applicant must have military experience operating a vehicle similar to the commercial motor vehicle the applicant expects to operate. The applicant must not have been convicted of any offense (such as driving under the influence of alcohol or a controlled substance) that would disqualify a civilian commercial driver. An applicant will be required to pass the Kansas knowledge test for driving a commercial motor vehicle. Also, some state requirements for written and driving testing may be waived for an applicant for a Class M (motorcycle) driver’s license who has completed motorcycle safety training in accordance with U.S. Department of Defense requirements.

“Veteran” designation on driver’s licenses and identification cards. A veteran may have “VETERAN” printed on the front of a state-issued driver’s license or a non-driver identification card by showing proof of military service in the form of a DD214 or equivalent form. The veteran must have received an honorable discharge or general discharge under honorable conditions.

The Secretary of Revenue may provide names and addresses from motor vehicle records to the KCVAO for the purpose of assisting the KCVAO in notifying veterans of the facilities, benefits, and services available to veterans in the state of Kansas.

License plates. Kansas has several distinctive license plates available for veterans and family members. In some cases, those license plates may be provided at no cost. HB 2559 (2018) allows for the creation of distinctive license plates for several new specified military operations, including the Korean War, Operation Desert Storm, Operation Iraqi Freedom, and Operation Enduring Freedom. More information on military-related license plates is available at <https://www.ksrevenue.org/dovplates.html>. Additionally, several decals depicting medals or combat ribbons are available to display on certain veterans’ license plates, and a wheelchair emblem decal may be affixed to a distinctive license plate to indicate the vehicle transports a person with a permanent disability, providing an alternative to the Disabled Veteran distinctive tag.

Vietnam War Era Medallion Program

The Vietnam War Era Medallion Program provides eligible veterans with a medallion, a medal, and a certificate of appreciation. The Medallion Program is open to veterans who served in the United States or in a foreign country, regardless of whether the veteran was under 18 years of age at the time of enlistment.

Eligible veterans are those who served on active duty in the U.S. military between February 28, 1961, and May 7, 1975; are legal residents of Kansas or were legal residents at the time they entered military service, the time they were

discharged from military service, or at the time of their death; and were honorably discharged, are still on active duty in an honorable status, or were on active duty at the time of their death.

Voting Opportunities

Overseas military personnel and their family members may vote a full ballot for all elections. The ballots will be mailed 45 days before an election. The military servicemember or family member may submit a ballot to the county election office before polls close by mail, e-mail, or fax. For more information, see <http://www.voteks.org/when-you-vote/how-will-i-vote.html>.

Parking Privileges for Disabled Veterans

Veterans with disabled veterans license plates or wheelchair emblem decals may exercise free parking privileges in spaces reserved for disabled persons in public parking facilities and parking lots that employ parking attendants.

Other Benefits

Anti-discrimination towards military personnel. Kansas law prohibits discrimination on the basis of military status. Alleged violations are a civil matter.

Permits and licensing. Several types of hunting and fishing permits and licensing benefits are available to military personnel and veterans. More information about these benefits is available at:

- <https://ksoutdoors.com/Hunting/Applications-and-Fees>; and
- <http://ksoutdoors.com/Fishing/Fishing-Application-and-Fees>.

Concealed carry licenses. Active duty military personnel and their dependents residing in Kansas may apply for a concealed carry handgun license without a Kansas driver's license or a Kansas non-driver's license identification card.

Upon presenting proof of active duty status and completing other requirements for a concealed carry permit, the servicemember or dependent would be granted a license under the Personal

and Family Protection Act and issued a unique license number.

Active duty military personnel stationed outside of Kansas can also apply for a concealed carry license if they provide evidence of completion of a course offered in another jurisdiction determined by the Attorney General to have training requirements that are equal to or greater than those required in Kansas.

Military burials. Certain veterans and their eligible dependents may be buried in state veterans' cemeteries. Cemeteries are located in Fort Dodge, Fort Riley, WaKeeney, and Winfield.

The final disposition of a military decedent's remains would supersede existing statutory listing of priorities for such remains. The provision applies to all active duty military personnel and gives priority to the U.S. Department of Defense Form 93 in controlling the disposition of the decedent's remains for periods when members of the U.S. Armed Forces, the Reserve, or National Guard are on active duty. A certified copy of an original discharge or other official record of military service may be filed with the Adjutant General, who will provide copies free of charge if they are needed to apply for U.S. Department of Veterans Affairs benefits.

Consumer protection. The Kansas Consumer Protection Act (KCPA) defines members of the military and their immediate family members, as well as veterans and their surviving spouses, as "protected consumers" under the KCPA (KSA 2019 Supp. 50-676, as amended by 2017 SB 201). The KCPA protects consumers from deceptive business practices.

Alternate death gratuity. If federal funding is not available during a federal government shutdown, the Adjutant General will pay a death gratuity of \$100,000 for any eligible Kansas military servicemember. The Adjutant General will secure federal reimbursements after the government reopens.

Additional Benefits Information

The U.S. Army's official benefits website provides a general overview of military and veterans' benefits in Kansas, along with contact information for some state agencies: <https://myarmybenefits.us.army.mil/Benefit-Library/State/Territory-Benefits/Kansas>.

The KBOR website lists scholarships available for military personnel, veterans, and spouses, along with the requirements for each scholarship: <http://www.kansasregents.org/students/military>.

The KCVAO's website includes several resources for veterans and military personnel. The following links cover federal and state benefits, employment resources, and educational resources:

- <http://www.kcva.org>;
- <http://kcva.ks.gov/veteran-services/federal-benefits>;
- <http://kcva.ks.gov/veteran-services/state-benefits>;
- <http://kcva.ks.gov/kanvet>;
- <http://kcva.ks.gov/kanvet/employment-resources>; and

- <https://kcva.ks.gov/kanvet/education-resources>.

The U.S. Department of Veterans Affairs' Kansas website includes links for veterans health administration offices, veterans benefits administrations offices, and national cemetery administration offices: https://www.va.gov/landing2_locations.htm.

The U.S. Department of Labor's website lists the contact information for the Kansas Director of Veterans' Employment and Training, as well as Kansas employment resources for veterans and federal resources for veterans: <https://www.dol.gov/vets/aboutvets/regionaloffices/chicago.htm#ks>. The Adjutant General's Department's Kansas Military Bill of Rights website lists benefits and services that Kansas provides to veterans and military personnel: <http://kansastag.gov/NGUARD.asp?PageID=346>.

Additional information, including statutory citations when appropriate, is available at <http://www.kslegresearch.org/KLRD-web/VeteransMilitary&Security.html>.

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