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Judiciary, Corrections, and Juvenile Justice

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, which include 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 on 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.

Intercountry Adoptions

Additional requirements exist for intercountry adoptions. An intercountry adoption is the process of legally adopting a child from a foreign country. Kansas law provides that 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>.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

Legislation enacted in 2018 (Kansas SB 284) clarifies jurisdiction over adoption proceedings, including termination of parental rights proceedings, which are 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 the memorandum "Child Custody and Visitation Procedures," which can be found at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Petition

KSA 59-2128 lists the required contents of a petition for adoption 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

KSA 59-2114 requires consent to be in writing and acknowledged before a judge or 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." The type of consent depends on the kind of adoption sought, e.g., independent adoptions or stepparent adoptions.

Independent Adoption

In an independent adoption, consent is required from:

- The child's living parents; or one of the parents if the other parent's consent is unnecessary pursuant to Kansas law; or 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;
- If parental rights have not been terminated, any court having jurisdiction over the child pursuant to the CINC Code; and

- Any child older than 14 sought to be adopted who is of sound intellect.

Stepparent Adoption

In a stepparent adoption, consent must be given by:

- The living parents of a child;
- If the other parent's consent is unnecessary, one of the parents;
- If parental rights have not been terminated, the judge of any court having jurisdiction over the child pursuant to the CINC Code; and
- Any child older than 14 sought to be adopted who is of sound intellect.

Adopting Minors

If the parent is a minor, this does not invalidate the parent's consent; however, birth parents younger than 18 years old must receive the advice of independent legal counsel on the consequences of execution of a consent. Unless the minor birth parent is otherwise represented, the petitioner or child placement agency must pay for the cost of independent legal counsel. An attorney providing independent legal advice shall be present at the execution of the consent.

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, or before the birth of the child if he has the advice of independent legal counsel as to the consequences prior to its execution.

Agency Adoption

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

Relinquishment is the process of custody and parental rights being forfeited by the parent and assumed by another party. Relinquishments to an agency will be deemed sufficient if they are in substantial compliance with the form created by the Kansas 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. When a parent relinquishes a 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. Parental rights are not terminated until the judge makes the final decree of adoption. A court can also terminate parental rights pursuant to a CINC proceeding if a parent does not sign a consent. For more information on CINC proceedings, see the memorandum "Foster Care," which can be found at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Additionally, KSA 59-2136 addresses circumstances in which 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 and a report of the assessment and have it filed to the court before the hearing on the petition. The assessment includes the results of the investigation of the adoptive parents, their home, and ability to care for the child. An assessment is performed by a person meeting statutory qualifications. Assessments are only valid 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, the home 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 the filing of 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 on the petition, the court considers the assessment and all evidence and, if the adoption is granted, makes a final decree of adoption.

Rights of an Adopted Child

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 Enacted Legislation

2018 SB 284

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.

Recent Proposed Legislation

2020 HB 2587

HB 2587 would have amended venue requirements for agency adoptions in the Adoption and Relinquishment Act to allow adoption proceedings to take place in a county where DCF or a subcontracting agency has an office when the State or a department of the State is the adoption agency. The bill was passed by the House and referred to the Senate Committee on Judiciary, but it died in committee.

2019 SB 6

SB 6 was prefiled for introduction in the 2019 Legislative Session. The bill would have required that DCF collaborate with stakeholders to develop a plan to implement performance-based contracts to provide evidence-based prevention and early intervention services for at-risk families to have out-of-home placement for children awaiting adoption. Additionally, savings from reduced foster care caseloads would be reinvested into these programs to reduce the duration of foster care placement. The bill was referred to the Senate Committee on Public Health and Welfare, with no further action taken.

2019 HB 2025

HB 2025 was prefiled for introduction in the 2019 Legislative Session. The bill would have amended definitions used in the CINC Code (KSA 2018 Supp. 38-2202 and 38-2241) by adding to the definition of "interested party": "a person who

has filed a petition for adoption pursuant to KSA 59-2128, and amendments thereto, while such petition is pending.” The bill was referred to the House Committee on Children and Seniors, with no further action taken.

2019 HB 2164

HB 2164 would have repealed 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.

2019 HB 2333

HB 2333, as amended by the House Committee on Judiciary, would have provided that a final decree of adoption shall take effect upon the filing of the judgment, except that, if the child being adopted is 16 or 17 years of age, the court may order a final decree of adoption to take effect at an earlier date. The bill was stricken from the House Calendar on February 27, 2020.

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Judiciary, Corrections, and Juvenile Justice

H-2 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 years old and in the community until the age of 23 years old.

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 KDOC 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.

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 a 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.

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.

Recent Reform Efforts

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 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/report>.

2016. The recommendations from the 2015 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 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 (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 subsection.] 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. The 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. 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 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 House Sub. for SB 25, (the Appropriations Bill), the Legislature added language in fiscal year (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 was 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.

In its final report, available at http://www.dcf.ks.gov/Agency/Documents/Crossover_Youth_Working_Group_Final_Report_to_Legislature_2020.pdf, the working group made a number of findings related to crossover youth demographics; the number and nature of offender behaviors among crossover youth; juvenile intake and assessment outcomes for crossover youth; child welfare placements for crossover youth; and services offered to crossover youth.

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Judiciary, Corrections, and Juvenile Justice

H-3 Kansas Prison Population, Capacity, and Related Facility Issues

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 2020, however, the inmate population experienced a significant decrease, primarily due to the effects of the COVID-19 pandemic. However, the trend of growth is projected to resume. Currently, KDOC administers eight adult correctional facilities identified in the table below.

Facility	Year Opened	Capacity as of FY 2020
El Dorado Correctional Facility	1991	2,068
Ellsworth Correctional Facility	1987	899
Hutchinson Correctional Facility	1895	1,918
Lansing Correctional Facility	1863	2,432
Larned Correctional Mental Health Facility	1996	598
Norton Correctional Facility	1987	977
Topeka Correctional Facility	1961	948
Winfield Correctional Facility	1984	978

In 1863, the Kansas State Penitentiary, later known as Lansing Correctional Facility (Lansing CF), opened as Kansas' first correctional facility. 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 (Hutchinson CF), 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 (Winfield CF) in 1984 and Ellsworth, Norton, Osawatomie, and Stockton Correctional Facilities in 1987. A 1989 federal court order limited inmate populations at Lansing and

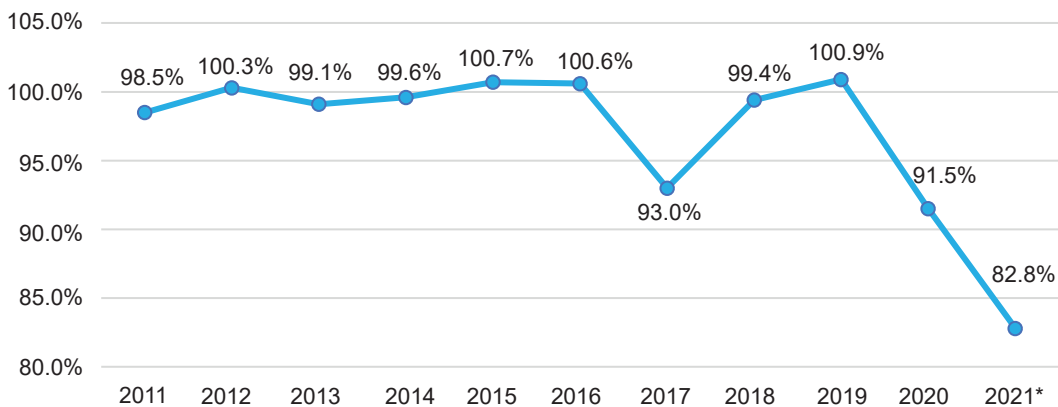
Hutchinson and required improved conditions for inmates with mental health issues.

The direct result of this order was construction of the El Dorado Correctional Facility (El Dorado CF) 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 (Larned CMHF).

Budget reductions in fiscal year (FY) 2009 prompted KDOC to suspend operations at three smaller minimum-custody facilities (Osawatomie, Stockton, and Toronto) and close conservation camps in Labette County.

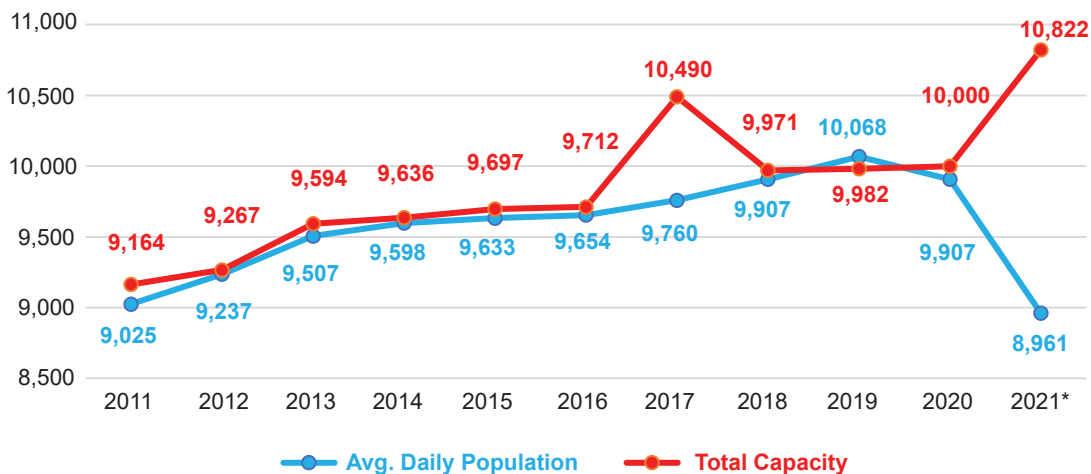
Additionally, the Kansas Department for Aging and Disability Services took control of the Osawatomie facility. Due to the increasing inmate population, the 2010 Legislature included a State General Fund appropriation for FY 2011, which allowed the reopening of Stockton Correctional Facility as a satellite unit of Norton Correctional Facility on September 1, 2010. Larned CMHF traditionally provided mental health services to inmates in need, but in May 2017, KDOC announced its intention to convert Larned CMHF into a prison for 18- to 25-year-old inmates. Inmates receiving mental health services were moved to El Dorado CF, which now serves as the system's primary mental health facility with 192 high-acuity behavioral beds.

Capacity Utilization Rate for Kansas Correctional Facilities
(By Fiscal Year)



*FY 2021 data as of August 31, 2020

Total Inmate Capacity and Average Daily Population
(By Fiscal Year)



*FY 2021 data as of August 31, 2020

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 a given fiscal year. In the past ten years, ADP rose steadily until FY 2020, and total capacity generally followed a similar trend. The capacity utilization rate saw a peak of 100.6 percent in both FY 2015 and FY 2016, which was then followed by a decrease to 93.0 percent in FY 2017. This 7.6 percent decline was due to the expansion of 800 double-bunked cells at El Dorado CF, Larned CMHF, and 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, 2020, the ADP in FY 2020 was 9,907 inmates, and the capacity utilization rate was 91.5 percent, which are decreases from FY 2019 of 162 inmates and 9.4 percent. The decreased capacity utilization rate is partially related to increased capacity resulting from the opening of new units at Lansing CF, but also because of the establishment of temporary COVID-19 isolation sites at various facilities.

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 August 31, 2020,

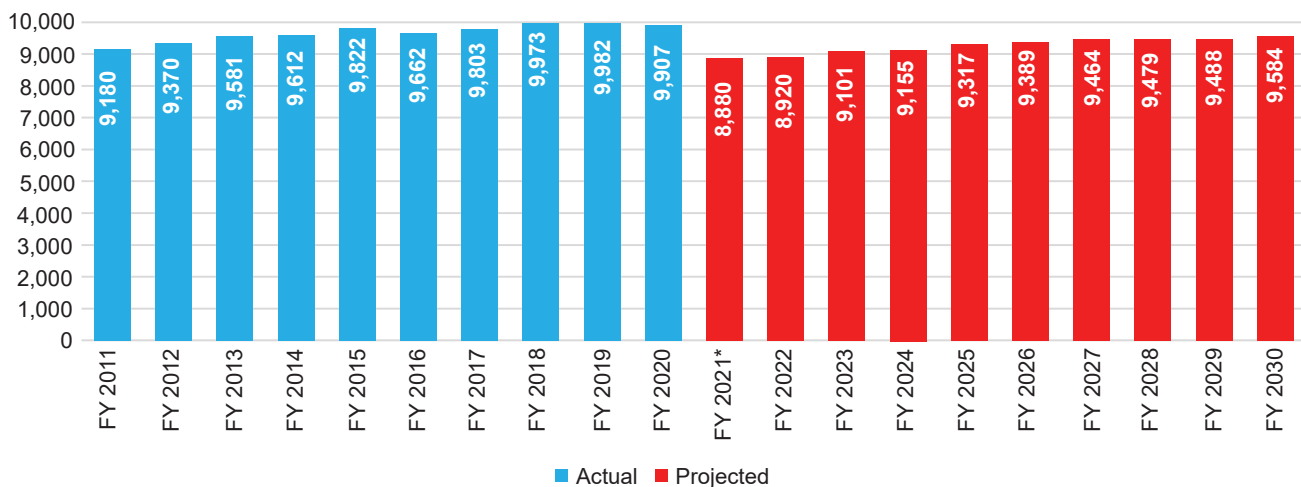
inmate ADP included 183 inmates held in non-KDOC facilities, which were primarily county jails and Larned State Hospital.

Actual and Projected Populations

The FY 2021 prison population projections released by the Kansas Sentencing Commission (KSC) anticipate the inmate population will be 1,179 less than the total capacity by the end of FY 2020 and will remain below capacity by 784 inmates by the end of FY 2030.

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 security inmates cannot be placed in medium or minimum security 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 is 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, 2020.

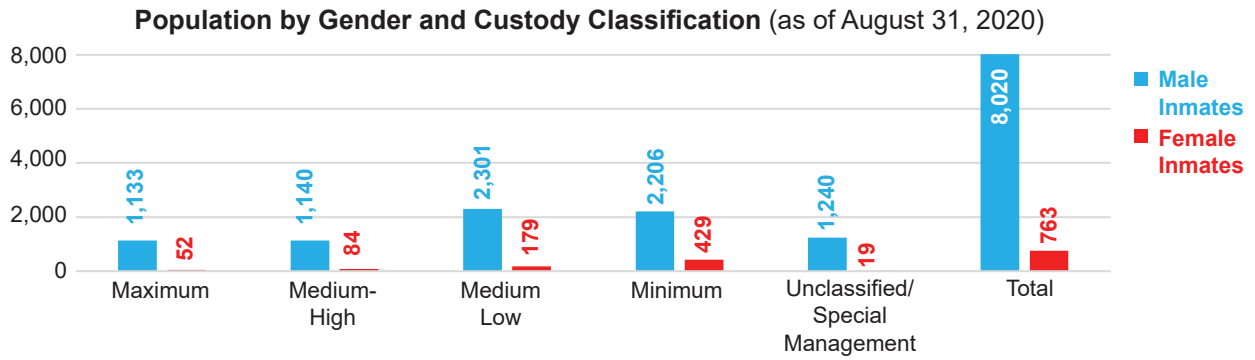
Actual and Projected Inmate Population



*FY 2021 data as of August 31, 2020

The FY 2021 prison population projections released by the KSC anticipate the male inmate population will be under capacity by 1,016 inmates in FY 2020, but will increase for every year in its ten-year projection, when there will be 8,807 inmates, or 613 below capacity, in FY 2030.

The FY 2021 prison population projections show the female inmate population remaining below capacity by 165 inmates in FY 2020. The KSC projects that over ten years, the female population will steadily decrease to 738 in 2024, then increase to 777, or 171 below capacity, in FY 2030.



Consequences of Operating Close to Capacity

According to KDOC, the consequences of operating close to capacity include:

- 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 2017 Legislative Session, KDOC brought plans before the Legislature to demolish an existing medium-security unit at Lansing CF and construct a new facility in its place. KDOC asserted the new facility will reduce the need for staff, generating savings over time. On November 30, 2020, the agency indicated that due to adjusted staffing requirements, savings would be \$4.5 million less than projected.

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 Lansing CF 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 Lansing CF, 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 in which 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 \$362.0 million. Construction of the two units began in April 2018 and inmates were occupying the new minimum security unit by December 2019. As a result of the COVID-19 pandemic, plans to migrate to the new medium/maximum security unit were accelerated due to facility’s public health advantages of individualized cells, modern air circulation systems, and infirmary. Inmate occupation of the new medium/maximum security unit was completed in April 2020.

The 2020 Legislature included State General Fund appropriations of \$6.1 million in FY 2020 and \$7.2 million for FY 2021 for expansion projects at Lansing CF and Winfield CF. The recently closed X Unit site at Lansing CF would be converted to 200-bed substance abuse treatment center, and the former Funston and Triplett buildings, on the grounds of the nearby Kansas Veterans' Home, would be converted to a 241-bed nursing care facility at Winfield CF for elderly adult male inmates.

Inmate Outsourcing

In order to reduce inmate overcrowding and eliminate mandatory 12-hour staff shifts at El Dorado CF, 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. In August 2019, the agency entered into a contract with CoreCivic for the use of medium and maximum security beds and related services at the Saguaro Correctional Center in Eloy, Arizona. This is a one-year contract with two one-year renewal options. There were 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. As of December 3, 2020, there were 118 inmates housed at the Arizona facility. On December 16, 2020, KDOC officials indicated that all inmates had been returned to Kansas.

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.

Effects of the COVID-19 Pandemic

Due to the vulnerable nature of a congregated inmate population, the COVID-19 pandemic continues to have a significant impact on the

Kansas correctional system. On March 31, 2020, the first staff member with COVID-19 was reported at Lansing CF, followed shortly by an inmate on April 4, 2020. As of December 10, 2020, over 6,000 cases of COVID-19 have occurred among staff and inmates, with 14 resulting in fatality. Outbreaks occurred at all eight facilities, which led the establishment of temporary isolation sites at El Dorado CF, Hutchinson CF, and Winfield CF, suspension of operations at the Wichita Work Release Program, and temporary reactivation of the former Larned Juvenile Correctional Facility, as well as delays in expansion projects at Lansing CF and Winfield CF. Public health mitigation measures involved limiting the use of dormitory-style units, face mask protocols, and implementation of a systemwide COVID-19 testing regime.

Early in the pandemic, staff capacity approached exhaustion as increasing cases required isolation. Members of the Kansas National Guard were activated to provide medical and logistical support. By December 4, 2020, the virus reached Kansas inmates housed at Saguaro Correctional Center in Eloy, Arizona, where a majority tested positive.

The pandemic resulted in a significant unforeseen decrease to the inmate population, both male and female. This is primarily attributed to a decrease in new admissions to the correctional system resulting from a delay in court proceedings that occurred in response to the pandemic.

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Judiciary, Corrections, and Juvenile Justice

H-4 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.

Kansas Youth Suicide Prevention Coordinator and Criminal Justice Reform Commission—2019 HB 2290

The 2019 Legislature passed HB 2290, which created and amended several laws related to public agencies. Among these provisions, the bill created a position of Kansas Youth Suicide Prevention Coordinator within the Office of the Attorney General and created the Kansas Criminal Justice Reform Commission (KCJRC) 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 required the Attorney General to appoint a Kansas Youth Suicide Prevention Coordinator (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 Attorney General appointed a Coordinator in August 2019.

Kansas Criminal Justice Reform Commission (KCJRC)

The KCJRC is comprised of 19 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 KDOC for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, health care, and substance abuse facilities.

The bill required one member of the KCJRC to be a mental health professional appointed by the Kansas Community Mental Health Association. At its first meeting, the KCJRC voted to establish five subcommittees, including one related to mental health and drug treatment.

The bill required the KCJRC to prepare and submit its preliminary report (www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2019CommitteeReports/KS-CriminalJustRefmComm-cr.pdf) to the Legislature, which was submitted in November 2019, and a final report and recommendations due to the Legislature on or before December 1, 2020.

Preliminary Report Recommendations Related to Mental Health

The Mental Health and Drug Treatment Subcommittee made recommendations relating to requesting an inventory of major mental illness or abuse disorders, allowing 2003 SB 123 drug treatment prior to conviction, and funding regional treatment beds. It also recommended that the Legislature adopt the recommendations of the Mental Health Task Force Report, as provided to the 2018 and 2019 Legislatures, to implement and fund a comprehensive plan to address voluntary and involuntary hospital inpatient capacity needs while providing all levels of care across all settings.

Final Report Recommendations Related to Mental Health

The Mental Health and Drug Treatment Subcommittee made recommendations relating to SB 123 treatment; access to mental health services; co-occurring disorders; co-responder programs; behavioral health in jails and correctional facilities; and mental health and substance abuse workforce development, among other recommendations. For a complete list of adopted recommendations, please refer to the 2020 Final Report (http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/Report_KCJRC_2021.pdf).

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-2 Juvenile Services, available at <http://www.kslegresearch.org/KLRD-web/Briefing-Book-2021.html>.

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 in a “crisis intervention 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.

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.

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 served 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 were 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 ages 18-25 years old with high recidivism potential. The 150 inmates with mental health issues previously housed in the 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.

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 specialty courts program, but several judicial districts and a few municipalities have established programs.

KCJRC Preliminary Report

Recommendations Related to Specialty Courts

The KCJRC Specialty Courts Work Group, organized to study and make recommendations on specialty courts in the state, included in its report to the 2020 Legislature that it identified 24 specialty courts in Kansas, which include truancy courts, behavioral health courts, youth courts, mental health courts, tribal healing to wellness courts, veterans' courts, and drug courts. These courts were initiated at the local level and operate with no special funding by the Legislature. Kansas Supreme Court Rules 109A and 109B govern the conduct of the courts and require compliance with the Best Practices Standards published by the National Association of Drug Court Professionals and other organizations.

KCJRC Final Report Recommendations Related to Specialty Courts

For the KCJRC Final Report to the 2021 Legislature, the Specialty Courts Work Group recommended that the Legislature adopt

legislation to require the Kansas Supreme Court to adopt rules for the establishment and operation of one or more specialty court programs within the state. The recommendation was adopted by the KCJRC and included in the 2020 Final Report.

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Judiciary, Corrections, and Juvenile Justice

H-5 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, 2020, accessible at <https://sentencing.ks.gov/document-center/publications/lists/kansas-sentencing-guidelines-desk-reference-manuals/2020-desk-reference-manual>. 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, murder in the first degree, terrorism, illegal use of weapons of mass destruction, and treason are designated as off-grid person crimes. [Note: Statutory references for off-grid crimes are provided in a chart following this article.]

Kansas law provides for the imposition of the death penalty, under certain circumstances, for a conviction of capital murder. Where the death penalty is not imposed, a conviction of capital murder carries a life sentence without possibility of parole.

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.

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. Also included in the off-grid group are certain sex offenses against victims under the age of 14: aggravated human trafficking, rape, aggravated indecent liberties, aggravated criminal sodomy, commercial sexual exploitation of a child, and sexual exploitation of a child. 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.

The 2020 Drug Grid can be found on page 6, and the 2020 Nondrug Grid can be found on page 7.

Each grid contains nine criminal history categories. 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 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 2019 Supp. 75-5217).

Recent Notable Sentencing Guidelines Legislation

For information on recently enacted sentencing guidelines legislation, please refer to the "Recent Notable Sentencing Guidelines Legislation" memorandum, which will be available on KLRD's website at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Criminal Justice Reform Issues

During the 2018 and 2019 Legislative Sessions, several bills addressing criminal justice reform issues have been enacted.

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 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.

During the 2019 Legislative Session, the Governor added \$50,000 of State General Fund money to the Kansas Board of Regents budget to fund tuition under the bill.

As of November, 2020, the State has agreed to pay compensation to four 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; \$1.03 million to Floyd Bledsoe, who was incarcerated for 16 years; \$1.5 million to Lamonte McIntyre, who was incarcerated for 23 years, and \$238,779 to Bobby Harper who was incarcerated for nearly 2 years.

Kansas Criminal Justice Reform Commission

In 2019, the Legislature passed HB 2290, which, among other provisions, established the Kansas Criminal Justice Reform Commission.

The bill established the 19-member Kansas Criminal Justice Reform Commission (Commission), composed of legislators, Judicial Branch personnel, prosecutors and defense attorneys, and other stakeholders, and required the Commission to analyze, review, and study various criminal justice topics specified by the bill. The Commission submitted an interim report (<http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2019CommitteeReports/KS-CriminalJustRefmComm-cr>

[pdf](#)) to the Legislature in November 2019 and a final report and recommendations (http://www.kslegresearch.org/KLRD-web/Publications/Resources/Documents/Justice-Reform/Report_KCJRC_2021.pdf) in December 2020.

Kansas Closed Case Task Force

HB 2290 also established 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 submit a report by December 1, 2020. The Task Force will expire December 30, 2020.

Additional Information

For more information regarding these and other criminal justice reform efforts in the Kansas government, please refer to the “Recent Legislative and other Governmental Committees and Commissions Studying Criminal Justice and Juvenile Justice Issues in Kansas” memorandum, which can be found at <http://www.kslegresearch.org/KLRD-web/JudiciaryCorrections&JuvenileJustice.html>.

Off-Grid Crimes	
Crime	Reference
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
Treason	KSA 2019 Supp. 21-5901
Off-Grid Crimes Sentences	
Capital Murder-Death Penalty	KSA 2019 Supp. 21-5401 and KSA 2019 Supp. 21-6617
Capital Murder-Life without Parole	KSA 2019 Supp. 21-6620(a)
Premeditated First Degree Murder-After July 1, 2014	KSA 2019 Supp. 21-6620(c)
Terrorism, Illegal Use of Weapons of Mass Destruction, or Treason	KSA 2019 Supp. 22-3717(b)(2)
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
Sexual Exploitation of a Child	KSA 2019 Supp. 21-5510

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 (SL1-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 w/in 1000 ft of any school property.

Levels	Distribute or Possess w/ intent to Distribute							Probation	Good Time
	Cocaine	Meth & Heroin	Marijuana	Manufacture (all)	Cultivate	Dosage Units	Postrelease		
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 w/in 1000 ft of any school property

SENTENCING RANGE – NONDRUG OFFENSES

Category → Severity Level ↓	A 3+ Person Felonies	B 2 Person Felonies	C 1 Person & 1 Nonperson Felonies	D 1 Person Felony	E 3+ Nonperson Felonies	F 2 Nonperson Felonies	G 1 Nonperson Felony	H 2+ Misdemeanor	I 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	83 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	43 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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Judiciary, Corrections, and Juvenile Justice

H-6 Uniform Laws

A uniform law or act (uniform law) seeks to establish the same law on a subject among various jurisdictions (usually states). Uniform laws are usually drafted by the Uniform Law Commission (ULC) and must be considered and enacted by each state or other jurisdiction that wishes to incorporate the uniform law's provisions in its statutes. Uniformity of provisions among various states is a principal objective of uniform laws, and the ULC strives to "provide states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law."

In addition to drafting uniform laws, the ULC also drafts model acts, where uniformity of provisions among states is not a principal objective, but uniformity may still be promoted even though many jurisdictions may not adopt the act in its entirety.

Uniform Law Commission

The ULC (also known as the National Conference of Commissioners on Uniform State Laws) was founded in 1892. It is a nonprofit unincorporated association of state commissions on uniform laws from each state, as well as the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Members (commissioners) must be lawyers, and include practicing attorneys, judges, legislators, legislative staff, and law professors.

The ULC states its purpose "is to promote uniformity in state law when uniformity is desirable and practicable." The ULC has produced over 300 uniform and model acts on subjects including commerce, family and domestic relations, real estate transactions, trusts and estates, alternative dispute resolution, and other topics.

Kansas joined the ULC in 1893. According to the ULC, Kansas has adopted 118 uniform or model acts drafted by the ULC through 2020. [Note: This number includes uniform or model acts that may have been revised versions, as well as statutes that have since been repealed, so the number of uniform laws currently in effect in Kansas is lower, as discussed below.]

Kansas statute (KSA 46-407a) provides for five representatives to the ULC, as follows:

- Three representatives who are members of the Kansas bar, appointed by the Kansas Commission on Interstate Cooperation, with the advice of the president of the Kansas Bar Association;
- The chairperson of the House Committee on Judiciary; and
- The chairperson of the Senate Committee on Judiciary.

Because ULC members must be lawyers, the statute provides that, if the chairperson of either judiciary committee is not a member of the Kansas bar, then the chairperson may designate another member of the committee who is a member of the Kansas bar to serve instead. If no member of the committee is a member of the Kansas bar, then the Revisor of Statutes may be designated to serve instead, and the Revisor may designate an assistant revisor to serve.

Current Uniform Laws in Kansas

The *2019 General Index to the Kansas Statutes Annotated* lists 48 different uniform laws in Kansas statutes.

Some of the more widely adopted uniform acts that have been adopted in Kansas include the following:

- *Uniform Commercial Code* (KSA Chapter 84). A comprehensive set of laws governing all commercial transactions in the United States, including sales of goods, leases, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, investment securities, and secured transactions;
- *Uniform Anatomical Gift Act* (KSA 65-3220, *et seq.*). Governs organ donation;
- *Uniform Trade Secrets Act* (KSA 60-3320, *et seq.*). Governs trade secret protection;

- *Uniform Interstate Family Support Act* (KSA 23-36,101, *et seq.*). Allows enforcement of child support orders issued by an out-of-state court;
- *Uniform Child Custody Jurisdiction and Enforcement Act* (KSA 23-37,101, *et seq.*). Limits the state with jurisdiction over child custody to one, in order to avoid competing orders;
- *Uniform Electronic Transactions Act* (KSA 16-1601, *et seq.*). Removes barriers to electronic commerce by establishing the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures; and
- *Uniform Prudent Management of Institutional Funds Act* (KSA 58-3611, *et seq.*). Governs management of funds donated to charitable institutions in accordance with modern investment and expenditure practice.

Recent Legislation

2017 – 2018 Biennium

SB 329, enacting the Uniform Partition of Heirs Property Act, was introduced in 2018 and was recommended favorably by the Senate Committee on Judiciary. It was rereferred to that committee and no further action was taken.

HB 2186, enacting the Uniform Arbitration Act of 2000, was introduced in 2017 and was passed by the House. The Senate Select Committee on Education Finance recommended a substitute bill regarding school finance. The Uniform Arbitration Act of 2000 was subsequently enacted through 2018 HB 2571.

HB 2472, amending the Uniform Anatomical Gift Act, was introduced and enacted in 2018.

2019 – 2020 Biennium

SB 55, enacting the Uniform Partition of Heirs Property Act, was introduced in 2019 and heard

in the Senate Committee on Judiciary. No further action was taken.

SB 194, amending provisions related to the Revised Uniform Anatomical Gift Act, was introduced in 2019 and was recommended favorably by the Senate Committee on Public Health and Welfare. It was rereferred to that committee in February 2020 and no further action was taken.

HB 2521, enacting the Revised Uniform Athlete Agents Act, was introduced in 2020 and was passed by the House. It was heard by the Senate Committee on Judiciary. No further action was taken.

HB 2533, enacting the Uniform Family Law Arbitration Act, was introduced in 2020 and was

recommended favorably by the House Committee on Judiciary. No further action was taken.

HB 2554, enacting the Uniform Fiduciary Income and Principal Act (UFIPA), was introduced in 2020 and was passed by the House. It was heard by the Senate Committee on Judiciary. No further action was taken.

HB 2713, enacting the Revised Uniform Law on Notarial Acts, was introduced in 2020 and was passed by the House. It was recommended favorably by the Senate Committee on Judiciary. No further action was taken.

[*Note:* The shortening of the 2020 Legislative Session due to the COVID-19 pandemic likely impacted the progress of many bills.]

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Judiciary, Corrections, and Juvenile Justice

H-7 Kansas Emergency Management Act

History of the Kansas Emergency Management Act

The Kansas Emergency Management Act (KEMA), codified at KSA 48-920 *et. seq.*, contains provisions governing the state's response to disasters occurring within the state. This article will provide a brief history of KEMA, recent changes to the act, and its application in the State's response to the COVID-19 pandemic.

Civil Defense Acts of 1951 and 1955

The first modern statutes related to emergency management were enacted by the Civil Defense Act of 1951, and later amended by the Civil Defense Act of 1955. The 1951 enactment created a state civil defense advisory council and allowed each city and county to establish local councils of defense to carry out all state emergency functions. Notable provisions in the 1955 enactment included granting authority to cities to purchase accident insurance to protect volunteer civil defense workers (currently found in KSA 48-922) and the creation of a Civil Defense Division within the Office of the Adjutant General.

Kansas Emergency Preparedness Act (1975)

In 1975, the Legislature enacted the Kansas Emergency Preparedness Act (Act), which would later become KEMA. Under this Act, the Civil Defense Division was abolished and replaced with the Division of Emergency Preparedness within the Office of the Adjutant General. The process of the governor declaring a state of disaster emergency by proclamation with possible ratification by the Legislature and extension by the State Finance Council was established in this Act.

1994 HB 3055

In 1994, the Legislature abolished the Division of Emergency Preparedness and replaced it with the Division of Emergency Management (KDEM). This legislation also provided designation of disaster agency roles for cities located in more than one county

and succession of duties pursuant to KEMA when the Governor is unavailable.

2001 Senate Sub. for Sub. for HB 2468 and 2002 SB 395

In 2001, the Legislature added to the Governor's authority to issue a state of disaster emergency proclamation upon a finding or when notified that a quarantine or other regulations are necessary to prevent the spread of any contagious or infectious disease among domestic animals, and provided a different timeline and extension process for such emergencies. In 2002, the Legislature expanded the Governor's authority to proclaim a state of disaster emergency to prevent the spread of contagious or infectious disease among plants, raw agricultural commodities, animal feed, or processed food.

2020 Senate Sub. for HB 2054

On May 21, 2020, the Legislature convened for its *Sine Die* Session and passed Senate Sub. for HB 2054, a response to the 2020 COVID-19 pandemic in Kansas providing certain relief related to health, welfare, property, and economic security during the public health emergency. The bill also created new provisions related to emergency management and amended several provisions in KEMA. The Governor vetoed HB 2054 on May 26, 2020.

2020 HB 2016 (Special Session)

The 2020 Special Session was convened June 3, 2020, pursuant to a proclamation issued by the Governor on May 26 following her veto of HB 2054. The Legislature passed, and the Governor approved, HB 2016 on June 4, 2020. The bill contains many modified provisions of HB 2054. Among other provisions, the bill creates and amends law related to state of disaster emergencies and KEMA.

New Sections of Law Created

The bill ratifies, continues, and extends the current state of disaster emergency related to COVID-19 through September 15, 2020, and prohibits the

Governor from declaring a new state of disaster emergency unless approved by an affirmative vote of at least six legislative members of the State Finance Council (Council).

The bill also provides on and after September 15, 2020, the Governor may not order the closure or cessation of any business or commercial activity for more than 15 days during any state of disaster emergency declared under KEMA. At least 24 hours prior to the issuance of such order, the Governor must call a meeting of the Council to consult with the Council regarding the conditions necessitating the issuance of the order. After an order or orders have resulted in 15 days of such closures, the Governor may not order such closure, except upon specific application by the Governor to the Council and an affirmative vote of at least six legislative members of the Council. The Governor may order such closure, as approved by the Council, for specified periods not to exceed 30 days each. This section expires January 26, 2021.

The bill creates a section of law providing that the Governor may not issue an executive order pursuant to KEMA that has the effect of closing public or private schools unless affirmed by the Kansas State Board of Education.

Amendments to KEMA

The bill makes several amendments to the statute governing the powers of the Governor during a state of disaster emergency (KSA 48-925), all of which expire January 26, 2021.

The bill also amends a statute governing states of local disaster emergency to allow any state of local disaster emergency declaration to be reviewed, amended, or revoked by the Board of County Commissioners or the governing body of the city, respectively, at a meeting of the governing body.

The bill also amends the section governing violations of KEMA to change the penalty from a class A misdemeanor to a civil penalty of up to \$2,500 per violation, enforced through an action brought under Chapter 60 of the *Kansas Statutes Annotated*, by the Attorney General

or the county or district attorney in the county in which the violation took place. The bill also allows the Attorney General or any county or district attorney to bring an action to enjoin, or to obtain a restraining order, against a person who has violated, is violating, or is otherwise likely to violate KEMA.

Special Committee on the Kansas Emergency Management Act

On June 18, 2020, the Legislative Coordinating Council approved the creation of a 13-member Special Committee to review KEMA, 2020 Special Session HB 2016, and oversight and emergency management approaches utilized in other states, and to make recommendations to the Legislature on any improvements or changes that should be considered.

The Special Committee met on August 24-26, 2020, and September 22-24, 2020. At the August meeting, the Special Committee heard presentations from the Office of Revisor of Statutes, a presentation on legislative oversight of emergency management in other states from representatives of the National Conference of State Legislatures, and a briefing on the Wolf Creek Generating Station operations from a representative of Evergy. In addition, the Special Committee heard testimony from the Adjutant General, the Secretary of Health and Environment, the Attorney General, the Commissioner of Education, the Chairperson of the House Committee on K-12 Education Budget, and the Kansas State Fire Marshal. Representatives of Kansas Association of Counties, Kansas Chamber of Commerce, National Federation of Independent Businesses, Kansas Department

of Agriculture, League of Kansas Municipalities, and Kansas Medical Society also testified before the committee, offering their thoughts and suggestions on KEMA and HB 2016.

At the September meeting, the Special Committee heard presentations from the Office of Revisor of Statutes, the Kansas Legislative Research Department, and the Legislative Division of Post Audit. The Governor's Chief of Staff, the Special Counsel to the Chief Justice, the Jefferson County Attorney, the Sedgwick County District Attorney, and the city manager of Dodge City testified before the Special Committee, offering thoughts and suggestions on KEMA and changes made in HB 2016. Representatives of Kansas Hospital Association, Americans for Prosperity, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, Kansas Peace Officers Association, Johnson County Sheriff's Office, Kansas Emergency Management Association, Kansas Advocates for Better Care, and Kansas Health Care Association also testified at this meeting.

Following testimony at the September meeting, the Special Committee discussed a list of 37 topics raised by conferees and members during the Special Committee's 6 days of meetings. While the Special Committee did not propose any specific legislation for the 2021 Legislative Session, it recommended several items be studied further by the appropriate standing committees of the 2021 Legislature. Those items are included in the Special Committee's Interim Report to the 2021 Legislature, which can be found at http://www.kslegresearch.org/KLRD-web/Publications/CommitteeReports/2020CommitteeReports/ctte_spc_2020_ks_emerg_manage_act_1_complete_report.pdf.

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