



January 28, 2021

RECENT NOTABLE SENTENCING GUIDELINES LEGISLATION

This memorandum summarizes significant statutory changes to Kansas sentencing guidelines since 2010.¹ The 2021 *Briefing Book* article "Sentencing Overview and Criminal Justice Reform Issues" provides additional information on the sentencing guidelines.

2010—Recodification

In 2010, the Kansas Criminal Code, including the sentencing guidelines, was recodified. The recodification took effect July 1, 2011. Citations in this memorandum are to the recodified code.

2012—Senate Sub. for Sub. for HB 2318

In 2012, Senate Sub. for Sub. for HB 2318 changed the drug grid from a four-level grid to a five-level grid, adding a new level 2 with penalties falling between the existing first and second levels of the grid. The new grid also expanded the presumptive imprisonment boxes and the border boxes.

2013—HB 2170

In 2013, the Legislature passed HB 2170, which represented the recommendations of the Justice Reinvestment Working Group, a statutorily created body charged with analyzing the Kansas criminal justice system and, based upon that analysis, providing evidence-based policy options that would reduce recidivism and, at the same time, the increasing prison population. Among other provisions, the enacted bill implemented a series of graduated sanctions for probation violators, including 2- or 3-day jail stays and 120- or 180-day prison stays. [*Note:* 2019 SB 18 eliminated the 120- or 180-day prison-stay sanctions.]

2013 Special Session—HB 2002

In June 2013, the U.S. Supreme Court's decision in *Alleyne v. U.S.*, 570 U.S. 2151, 133 S. Ct. 2151, 186 L. Ed. 2D 314 (2013), called the constitutionality of Kansas' Hard 50 sentencing statute (KSA 21-6620) into doubt. Since 1994, in cases where a defendant was

¹ The legislation summarized in this memorandum was previously included in the "Sentencing Overview and Criminal Justice Reform Issues" article of the 2020 Briefing Book.

not be eligible for parole until the entire sentence is completed. In addition, the sentence could not be reduced by good time credits.

2019—SB 18

Enacted in 2019, SB 18 made numerous amendments regarding crimes, punishments, and criminal procedure. Among its provisions are the following changes:

- The bill removed the ability of the sentencing court to specifically withhold authority from supervising court services or community corrections officers to impose certain probation violation sanctions of confinement in a county jail for a 2-day or 3-day period or an additional 18 days of confinement in a county jail;
- The bill also removed probation violation sanctions allowing the court to remand the defendant to the custody of the Secretary for periods of 120 or 180 days and removed and modified other related provisions;
- The bill amended a mitigating factor that may be applied when the victim was an aggressor or participant in the criminal conduct associated with the crime of conviction, to prohibit the application of this factor to a sexually violent crime or to electronic solicitation, when: a) the victim is less than 14 years old, and the offender is at least 18 years old, or b) the offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act;
- The bill also amended law related to correction of an illegal sentence by specifying such sentences may only be corrected while the defendant is serving the sentence; and
- The bill also amended law related to classification of out-of-state criminal history of a defendant by listing certain factors or circumstances that would result in the out-of-state crime being considered a person felony for Kansas criminal history classification purposes, if such factors or circumstances are elements of the crime as defined by the convicting jurisdiction.