



January 28, 2021

## **RECENT NOTABLE SENTENCING GUIDELINES LEGISLATION**

This memorandum summarizes significant statutory changes to Kansas sentencing guidelines since 2010.<sup>1</sup> 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

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

convicted of premeditated first-degree murder, the statute had allowed the sentencing court to impose a life sentence without eligibility for parole for 50 years when the judge found one or more aggravating factors were present. The *Alleyne* decision indicated such determinations must be made by the trier of fact (usually a jury) using a reasonable doubt standard, rather than by the sentencing judge.

In response to the *Alleyne* decision, the Kansas Attorney General requested Governor Brownback call the Kansas Legislature into Special Session “for the purpose of repairing” the Hard 50 sentence. The Governor subsequently called the Legislature into Special Session starting September 3, 2013, to respond to *Alleyne*. Before the 2013 Special Session, the Special Committee on Judiciary met to review *Alleyne*, receive testimony, and report preliminary findings to the House and Senate Committees on Judiciary at the commencement of the Special Session.

The Special Committee on Judiciary recommended language for a bill that would institute a jury procedure for the Hard 50 determination. At the Special Session, the Legislature considered and passed HB 2002, which was an amended version of the language proposed by the Special Committee on Judiciary. HB 2002 went into effect upon its publication in the *Kansas Register* (September 6, 2013).

#### **2014—HB 2490**

In 2014, HB 2490, which included amendments to the sentencing provisions for premeditated first-degree murder, attempted capital murder, and felony murder, was enacted.

- The bill increased the default sentence for premeditated first-degree murder committed on or after July 1, 2014, from the Hard 25 sentence to the Hard 50 sentence. The sentencing judge may impose the Hard 25 sentence if the judge reviews mitigating factors and finds substantial and compelling reasons to impose the lesser sentence.
- The bill also imposed the Hard 25 sentence for attempted capital murder (previously a severity level 1 felony) and felony murder (previously a Hard 20 sentence).
- If a defendant’s criminal history when sentenced for any of these crimes would subject the defendant to imprisonment for a term exceeding the Hard 50 or Hard 25 sentence (as applicable), the defendant will be required to serve the mandatory minimum term equal to the sentence established under the sentencing guidelines.

#### **2015—HB 2051**

In 2015, HB 2051 was enacted, increasing the amount of good time inmates sentenced for post-July 1, 2012, drug severity level 3 crimes may earn, to try to restore the general good time eligibility criteria to a similar state as it existed before the 2012 changes to the drug grid. The bill also increased the amount of time from 60 days to 90 days that may be earned by any eligible inmate for program credits.

## **2016—HB 2151, HB 2447, and HB 2463**

In 2016, three bills were enacted related to sentencing: HB 2151, HB 2447, and HB 2463.

- HB 2151 authorized the Secretary of Corrections (Secretary) to transfer certain low- to moderate-risk offenders to house arrest pursuant to community parenting release if the conditions listed in the bill are met and the Secretary determines the offender's placement in the program is in the child's best interests. The Secretary can return an offender to a correctional facility to serve the remaining sentence if the offender fails to comply with release requirements.
- HB 2447 increased the maximum number of days an inmate's sentence may be shortened for earning program credits from 90 days to 120 days. The bill also permitted the dismissal of parole, conditional release, or postrelease supervision violation charges to be conditioned upon the released inmate agreeing to credit being withheld for the period of time from the date the Secretary issued a warrant to the date the offender was arrested or returned to Kansas.
- HB 2463 amended statutes governing the determination of criminal history to add non-grid felonies, non-drug severity level 5 felonies, and any drug severity level 1 through 4 felonies committed by an adult to the list of juvenile adjudications that will decay if the current crime of conviction is committed after the offender reaches age 25. The bill also allowed a court to continue or modify conditions of release for, or impose a 120- or 180-day prison sanction on, an offender who absconds from supervision, without having to first impose a 2- or 3-day jail sanction. In addition, the bill made a violation or an aggravated violation of the Kansas Offender Registration Act a person offense if the underlying crime (for which registration is required) is a person crime. If the underlying crime is a nonperson crime, the registration offense is a nonperson crime. Previously, a violation or aggravated violation of the Kansas Offender Registration Act was a person crime regardless of the designation of the underlying crime.

## **2017—SB 112 and HB 2092**

Legislation enacted in 2017 involving sentencing included SB 112 and HB 2092.

- SB 112, among other changes, enacted the Law Enforcement Protection Act. This act created a special sentencing rule with enhanced penalties if a trier of fact finds beyond a reasonable doubt that an offender committed a non-drug felony offense (or an attempt or conspiracy to commit such offense) against a law enforcement officer while the officer was performing the officer's duty or solely due to the officer's status as a law enforcement officer.
- HB 2092, among other changes, amended law related to mandatory minimum sentences. The bill clarified mandatory minimum sentences will not apply if, due to criminal history, the offender would be subject to presumptive imprisonment for a severity level 1 crime for a term longer than the mandatory minimum. In such case, the offender would serve a sentence equal to the longer term and would

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

## **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.