

Legislative Update

Kansas Municipal Judges Association Annual Conference

April 24-25, 2017

Legislation Agreed to by Conference Committee

H Sub. for SB 40 would amend the law concerning human trafficking, including the creation of new crimes and amendments to existing crimes and other related provisions.

The bill would create new crimes concerning use of a "communication facility," which the bill would define as any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers, and all other means of communication.

Additionally, the bill would create the crime of promoting travel for child exploitation, which the bill would define as knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of any person engaging in conduct that would constitute aggravated human trafficking, using the definition as amended by the bill, sexual exploitation of a child, Internet trading in child pornography (a new crime created by the bill and described below), and commercial sexual exploitation of a child if it occurred in Kansas.

The bill would also create the crime of Internet trading in child pornography, which would be defined by incorporating certain elements of the crime of sexual exploitation of a child when the offender is 18 years of age or older and knowingly causes or permits the performance to be viewed by use of any electronic device connected to the Internet by any person other than the offender or a person depicted in the performance

In addition to the venue provided for under any other provision of law, the bill would allow prosecution for these crimes to be brought in the county where the visual depiction or performance may be viewed by any person other than the offender using any electronic device connected to the Internet and is viewed by a law enforcement officer using an electronic device connected to the Internet while engaged in such officer's official duties.

The Internet trading in child pornography crimes would not apply where the crimes of unlawful possession of a visual depiction of a child or unlawful transmission of a visual depiction of a child apply.

Related to the creation of these crimes, the bill would add Internet trading in child pornography and aggravated Internet trading in child pornography to the definition of "sex offense" in the capital murder statute and to the definition of "sexually violent crime" in the aggravated habitual sex offender statute and in the statute governing parole and postrelease supervision. When the child is less than 14 years of age, the bill would add aggravated Internet trading in child pornography to the statute governing crimes for which a defendant would be sentenced to imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years, a statute concerning sentencing for offgrid crimes, and to the statute prohibiting direct appeal of certain cases to the Kansas Supreme Court. Additionally, the bill would amend a rule governing admissibility of a witness' previous sexual conduct as evidence in certain prosecutions to apply in prosecutions of the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography.

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The bill would amend the definition of the crime of aggravated human trafficking, which is a severity level 1 person felony or an offgrid crime if the victim is less than 14 years of age. The bill would amend one of the four existing definitions of the crime to read "recruiting, harboring, transporting, providing, or obtaining by any means, a child knowing that the person, with or without force, fraud, threat, or coercion, will be used to engage in forced labor, involuntary servitude, or sexual gratification of the defendant or another involving the exchange of anything of value."

Additionally, the bill would create an affirmative defense to prosecution for these two definitions of aggravated human trafficking for a defendant who at the time of the violation was under 18 and committed the violation because the defendant was subjected to human trafficking or aggravated human trafficking. It would not be a defense that a victim consented or willingly participated in the forced labor, involuntary servitude, or sexual gratification of the defendant or another, or that the offender had no knowledge of the age of the victim.

The bill would specify a person who violates any of the provisions of the human trafficking statute could be prosecuted for, convicted of, and punished for commercial sexual exploitation of a child or any form of homicide. Further, in addition to any other sentence imposed, a person convicted of human trafficking would be fined between \$2,500 and \$5,000. A person convicted of aggravated human trafficking, as well as any attempt, conspiracy, or solicitation of that crime, would be fined a minimum of \$5,000. Fines collected would be remitted to the Human Trafficking Victim Assistance Fund. Additionally, the court could order any person convicted to enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation of a child.

The bill would amend the definition of "sex offense" in the capital murder statute to add aggravated human trafficking if committed in whole or in part for the purpose of the sexual gratification of another.

The bill would amend the crime of sexual exploitation of a child to increase the severity level from a level 5 to a level 3 person felony when committed by:

- Employing, using, persuading, inducing, enticing, or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance; or
- Promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

The bill would amend the crime of buying sexual relations to provide a person convicted of this crime would be fined between \$1,200 and \$5,000. Current law provides for a fine of \$2,500 for a first-time offense and a fine of up to \$5,000 for a second or subsequent offense. Half of all fines collected would be remitted to the Human Trafficking Victim Assistance Fund. Similarly, the bill would designate half of any fine imposed for a municipal violation of buying sexual relations to be remitted to the Human Trafficking Victim Assistance Fund. Current law provides for \$2,500 of any such fine to be remitted to that fund.

The bill would replace two definitions for the crime of commercial sexual exploitation of a child with one definition containing language modified from the existing definitions. Language similar to these definitions also is currently included in or would be added to the crime of human trafficking. The bill would also increase the severity level for commercial sexual exploitation of a child from a level 5 to a level 4 person felony.

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The bill would also amend the Kansas Offender Registration Act to add the crime of promoting the sale of sexual relations to the list of sexually violent crimes and specify a person convicted of such crime would be required to register for 15 years.

Concerning expungement of juvenile records, the bill would require a court to order expungement of records and files if it finds the juvenile is a victim of human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child; the adjudication concerned acts committed by the juvenile as a result of such victimization, including but not limited to acts which, if committed by an adult, would constitute a violation of disorderly conduct or selling sexual relations; and the hearing on expungement occurred on or after the date of final discharge.

Additionally, the bill would add to the list of crimes for which juvenile and adult expungement is not allowed the crimes of Internet trading in child pornography and aggravated Internet trading in child pornography. [Note: The bill appears to make additional substantive amendments regarding copies of orders of expungement and bail enforcement agent licensing. However, these provisions are in current law and are technical amendments to reconcile different versions of the statutes created by 2016 legislation.]

The bill would specify provisions allowing reduction or denial of compensation from the Crime Victims Compensation Board shall not be construed to reduce or deny compensation to a victim of human trafficking or commercial sexual exploitation of a child who was 18 years or younger at the time the crime was committed and is otherwise qualified for compensation.

Finally, the bill would update the name of the National Human Trafficking Hotline, which formerly was known as the National Human Trafficking Resource Center.

Agreed to April 5, 2017

H. Sub for SB 42 would create and amend law related to the Kansas juvenile justice system and the changes made to the system by 2016 SB 367, and would require the State Board of Education to implement statewide standards assuring all public school teachers receive annual training and education regarding the identification of likely warning signs indicating a child may be a sexual abuse victim.

Absconding from Supervision

The bill would amend the Revised Kansas Juvenile Justice Code (Juvenile Code) statute requiring community-based graduated responses for technical violations of probation to state that absconding from supervision shall not be considered a technical violation of probation and to allow a court to issue a warrant after reasonable efforts to locate a juvenile who has absconded are unsuccessful.

The statute governing failure to obey conditions of conditional release (version effective July 1, 2017) would be amended to add absconding from supervision as an event allowing the supervising officer to file a report with the court describing the alleged violation and the juvenile's history of violations. (Continuing law would then allow the court, following notice and hearing, to find a violation and modify or impose additional conditions of release.)

The statute governing when a juvenile may be taken into custody would be amended to add absconding from supervision as an event allowing a supervising officer to request a warrant, and the statute governing issuance of warrants (version effective July 1, 2017) would

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be amended to allow a court to issue a warrant commanding the juvenile be taken into custody if there is probable cause to believe the juvenile has absconded from supervision. The statute governing violation of conditions of probation or placement (version effective July 1, 2017) would be amended to add absconding from supervision to the findings enabling a court to extend or modify the terms of probation or placement or enter another sentence.

Immediate Intervention Programs

The bill would amend the statute regarding confidential data exchange for the juvenile justice system to require the Kansas Department of Corrections (KDOC) to establish and maintain a statewide searchable database containing information regarding juveniles who participate in an immediate intervention program. County and district attorneys, judges, community supervision officers, and juvenile intake and assessment workers would have access to the database and be required to submit necessary data to the database. KDOC would be required to, in consultation with the Office of Judicial Administration (OJA), adopt rules and regulations to implement the database.

The statute governing immediate intervention programs would be amended to exclude juveniles charged with a sex offense from a provision requiring the opportunity for participation in an immediate intervention program be offered to juveniles charged with a misdemeanor. The bill would also specify that participation in an immediate intervention program would not have to be offered to a juvenile who has participated in such a program for a previous misdemeanor or to a juvenile who was originally charged with a felony but had the charge amended to a misdemeanor as a result of a plea agreement. The bill would clarify that nothing in this statute would require a juvenile to participate in an immediate intervention program when the county or district attorney has declined to continue with prosecution of an alleged offense.

Sentencing and Placement

The bill would amend the Juvenile Code statutes governing sentencing alternatives (version effective July 1, 2017) and the placement matrix (version effective July 1, 2017) to provide that, upon a finding by the trier of fact during adjudication that a firearm was used in the commission of a felony offense by the juvenile, the judge may commit the juvenile directly to the custody of the Secretary of Corrections for placement in a juvenile correctional facility (JCF) or a youth residential facility for a term of 6-18 months, regardless of the risk level of the juvenile. Additionally, the court could impose a period of conditional release of up to six months, subject to graduated responses. The Secretary or designee would be required to notify the court of the juvenile's anticipated release date 21 days prior to such date. (Under the sentencing alternatives and placement matrix enacted by 2016 SB 367, placement in a JCF may be made only where the judge finds and enters into the written record that the juvenile poses a significant risk of harm to another or damage to property and the juvenile has either been adjudicated for high-level felonies or has certain prior offenses and is assessed as high-risk on a risk and needs assessment.)

The bill would amend the sentencing alternatives statute (version effective July 1, 2017) to remove 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.

The bill would amend the placement matrix statute (version effective July 1, 2017) to consolidate the categories of serious offender III and serious offender IV, which carry the same risk-level requirements and JCF commitment terms, into a single serious offender III category.

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The bill would amend the Juvenile Code statute governing jurisdiction to remove a provision requiring the Secretary for Children and Families to address issues of abuse and neglect by parents and to prepare parents for the child's return home in cases where a sentencing court orders the continued placement of the juvenile as a child in need of care.

Timing of Overall Case, Probation, and Detention Length Limits

The bill would establish that the provisions of the Juvenile Code statute governing overall case, probation, and detention length limits (effective July 1, 2017) would apply upon disposition or 15 days after adjudication, whichever is sooner.

Juvenile Justice Oversight Committee

The bill would amend the statute establishing the Kansas Juvenile Justice Oversight Committee (Oversight Committee) to add 2 members to the Oversight Committee, bringing its total membership to 21. The bill would also provide 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 not consensus between the two agencies.

Required Findings Upon Removal

The bill would create new law requiring, when a juvenile is removed from the home for the first time pursuant to the Juvenile Code, the judge to consider and make, if appropriate, the following findings: the juvenile is likely to sustain harm if not immediately removed from the home, allowing the juvenile to remain in the home is contrary to the welfare of the juvenile, or immediate placement of the juvenile is in the juvenile's best interest; and reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the juvenile from the juvenile's home or an emergency exists that threatens the safety of the juvenile.

Fund Provisions

The bill would amend the statute creating the Kansas Juvenile Justice Improvement Fund to replace references to the Fund with references to the "Evidence-Based Program Account of the State General Fund." A provision requiring the Secretary of Corrections to determine and certify cost savings "annually, on or before June 30," would be amended to require such determination and certification "at least annually, throughout the year." A provision requiring transfer of the certified amount by the Director of Accounts and Reports "annually, on July 1 or as soon thereafter as moneys are available," would be amended to require such transfer "upon receipt of a certification pursuant to" the certification provision.

The statute governing percentage reductions by the Governor would be amended to update a provision exempting the Fund from the statute's provisions to refer to the Evidence-Based Programs Appropriation of the State General Fund instead.

Immunity for Earned Discharge Calculations

The bill would amend law related to earned discharge for juvenile probationers. Specifically, the bill would state that the State of Kansas, the Secretary of Corrections, the Secretary's agents or employees, the OJA, and court services officers shall not be liable for

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damages caused by any negligence, wrongful act, or omission in making the earned discharge credit calculations.

Technical Amendments

The bill would make numerous technical amendments updating statutory references, ensuring consistent phrasing, and removing an effective date that would be made redundant by the bill.

Statewide Standards for School Training Regarding Identification of Sexual Abuse Victims

The bill would require the State Board of Education (State Board) to implement statewide standards assuring all public school teachers receive annual training and education regarding the identification of likely warning signs indicating a child may be a sexual abuse victim. The bill would also require the State Board to review and consider statewide social and emotional standards for student education regarding protection from and reporting of child sexual abuse and the difference between appropriate and inappropriate conduct. The bill would list items that could be included in the review, including age of students, parental notification requirements and exclusion from instruction, best practices for content and delivery, and collaboration with subject matter experts and child advocates. The State Board would be required to submit a report of progress and any plan or standards developed to the Legislature by February 1, 2018.

As Agreed April 5, 2017

HB 2041 would amend law related to courts, as follows.

Judicial Surcharge; Collection of Court Debts

The bill would extend the sunset provision for judicial surcharges on a number of docket fees until June 30, 2019. Current law allows the judicial branch to impose an additional charge per docket fee to fund the costs of non-judicial personnel until June 30, 2017.

The bill would also make technical corrections and reconcile amendments related to expungements made in the 2016 Session.

The bill would amend law related to the collection of debts owed to courts. The bill would require the cost of collection of debts owed to courts or restitution be paid by the responsible party as an additional court cost in all cases where the party fails to pay any debts owed to courts or restitution and the court contracts with an agent to collect the debt or restitution. Under current law, the cost of collection is paid by the defendant as an additional court cost only in criminal, traffic, and juvenile offender cases.

Reinstatement Fees

The bill would amend statutes regarding the reinstatement fee for failure to comply with a traffic citation and its distribution. Effective July 1, 2018, the bill would increase the reinstatement fee for each charge from \$59 to \$100.

Effective July 1, 2018, the bill also would increase the percentage the Judicial Branch Nonjudicial Salary Adjustment Fund receives of these fees and lower the percentage distributed to other funds while maintaining the amount distributed. Under current law, the Nonjudicial

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Salary Adjustment Fund receives 15.30 percent of the fee amount, the Division of Vehicles receives 42.40 percent, the Community Alcohol Fund receives 31.80 percent, and the Juvenile Alternatives to Detention Fund receives 10.59 percent. Under the bill as amended, the Nonjudicial Salary Adjustment Fund would receive the first \$15 of such reinstatement fees. Of the remaining amount, the Nonjudicial Salary Adjustment Fund would receive 41.17 percent, the Division of Vehicles Operating Fund would receive 29.41 percent, the Community Alcoholism and Intoxication Programs Fund would receive 22.06 percent, and the Juvenile Alternatives to Detention Fund would receive 7.36 percent.

The bill would also amend the statute establishing the Nonjudicial Salary Adjustment Fund to remove restrictions related to the Judicial Branch pay plan for nonjudicial personnel approved by the Chief Justice for fiscal year 2015

As Agreed on April 6, 2017.

Senate Sub. for HB 2053 would create the Crisis Intervention Act (Act) and amend law related to mental health to reflect the provisions of the Act, as follows.

Crisis Intervention Act

Definitions

For purposes of the Act, the bill would define "crisis intervention center" (center) to mean an entity licensed by the Kansas Department for Aging and Disability Services (KDADS) 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 that uses certified peer specialists. "Crisis intervention center service area" would be defined as the counties to which the crisis intervention center has agreed to provide service. The bill also would define "behavioral health professional," "head of a crisis intervention center," "law enforcement officer," "licensed addiction counselor," "physician," "psychologist," "qualified mental health professional," "treatment," "domestic partner," "physician assistant," "immediate family," "restraints," and "seclusion."

Effect on Rights

The Act would state that the fact a person has been detained for emergency observation and treatment (EOT) under the Act could not be construed to mean the person has lost any civil right, property right, or legal capacity, except as specified in any court order or as limited by the Act or reasonable policies the head of a center may, for good cause, find necessary to make for the orderly operation of the facility. No person in custody under the Act could be denied the right to apply for a writ of *habeas corpus*. No judicial action taken as part of the 48-hour court review [described below] would constitute a finding by the court. There would be no implication or presumption that a patient under the Act is, for that reason alone, a person in need of a guardian or conservator, or both, under the Act for Obtaining a Guardian or a Conservator, or Both.

Effect on Voluntary Admission

The Act would state it could not be construed to prohibit a person with capacity from applying for admission as a voluntary patient to a center, and any person desiring to do so would be given an opportunity to consult with the person's attorney prior to applying. If the head

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of the center accepts the application and admits the person as a voluntary patient, the head of the center would have to provide written notification to the person's legal guardian, if known.

Custody and Transportation by Law Enforcement Officer

The bill would allow any law enforcement officer (LEO) who takes a person into custody under the Care and Treatment Act for Mentally Ill Persons or the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem to transport such person to a center if the LEO is in a crisis intervention center service area. The center could not refuse to accept any person brought by an LEO for evaluation if the LEO's jurisdiction is in the center's service area. If the LEO is not in a center service area or chooses not to transport the person to a center, the LEO would have to follow the procedures under the Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem or the Care and Treatment Act for Mentally Ill Persons.

Admission and Detention Upon Application by Law Enforcement Officer

The Act would allow a center to admit and detain any person 18 years of age or older who is presented for EOT upon the written application of an LEO. Such application would be made on a form set forth or approved by the Secretary for Aging and Disability Services (Secretary). The Act would specify certain information to be included in the application, including the applicant's belief (and factual circumstances supporting that belief and under which the person was taken into custody) that the person may be a mentally ill person or person with an alcohol or substance abuse problem (or co-occurring conditions) subject to involuntary commitment under the care and treatment acts for such persons and that, due to such problem or condition, is likely to cause harm to self or others if not immediately detained.

The original application would be kept in the regular course of business with the law enforcement agency and a copy would be provided to the center and to the patient.

Admission and Detention Upon Application by Adult

The Act would allow a center to evaluate, admit, and detain any person 18 years of age or older who is presented for EOT upon the written application of any adult. Such application would be made on a form set forth or approved by the Secretary. The Act would specify certain information to be included in the application, including the applicant's belief (and factual circumstances supporting that belief and under which the person was taken into custody) that the person may be a mentally ill person or person with an alcohol or substance abuse problem (or co-occurring conditions) subject to involuntary commitment under the care and treatment acts for such persons and that, due to such problem or condition, is likely to cause harm to self or others if not immediately detained.

The original application would be kept by the applicant and a copy would be provided to the center and to the patient.

Evaluation, Court Review, Discharge, and Further Placement

The head of the center would be required to evaluate a person admitted under the Act within four hours of admission to determine whether the person is likely to be a mentally ill person or a person with an alcohol and substance abuse problem subject to involuntary commitment under the care and treatment acts for such persons and whether, due to such problem or condition, the person is likely to cause harm to self or others if not immediately

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detained. The head of the center would be required to inquire whether the person has a wellness recovery action plan or psychiatric advance directive.

The Act would require evaluation of a person admitted under the Act by a behavioral health professional not later than 23 hours after admission and again not later than 48 hours after admission to determine whether the person continues to meet the criteria described in the paragraph above. The 23-hour evaluation would have to be conducted by a different professional than the professional who conducted the initial evaluation.

Within 48 hours of admission, if the head of the center determines the person continues to meet the criteria above, the head of the center would be required to file an affidavit to that effect for review by the district court in the county where the center is located. The affidavit would have to include or be accompanied by the written application for EOT, information about the person's original admission, the care and treatment provided, and the factual circumstances supporting the evaluating professional's opinion that the person meets the criteria described above. After reviewing the affidavit and accompanying information, the court would have to order the release of the person or order that the person may continue to be detained and treated at the center, subject to the limitations described below.

The head of the center would be required to discharge a person admitted under the Act at any time the person no longer meets the criteria described above, and not later than 72 hours after admission, unless the head of the center determines the person continues to meet the criteria described above, in which case the head of the center would be required to immediately file a petition under the appropriate care and treatment act and find appropriate placement for the person (including community hospitals equipped to take involuntary commitments or the designated state hospital). If the 72-hour period ends after 5 p.m., the Act would require such petition be filed by the close of business of the first day thereafter that the district court is open.

The center would be required to make reasonable accommodations for the person's transportation upon discharge from the center.

Requirements of the Head of the Center

When a person is involuntarily admitted to or detained at a center under the Act, the head of the center would be required to immediately advise the person that the person is entitled to immediately contact the person's legal counsel, legal guardian, personal physician or psychologist, minister of religion, or immediate family. If the person desires to make such contact, the head of the center would be required to make available reasonable means for such communication.

The head of the center would also be required to provide notice of the person's involuntary admission, including a copy of the documentation authorizing the admission, to the person's attorney or legal guardian (once known), unless the attorney or guardian was the person who signed the application. If authorized by the patient under the act governing confidential communications and information of treatment facility patients, the head of the center would also be required to provide notice to the patient's immediate family (once known), unless the family member to be notified was the person who signed the application.

Finally, the head of the center would be required to immediately advise the person in custody of the person's rights as detailed in the Act.

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Medications and Treatment

The Act would require medications and other treatments be prescribed, ordered, and administered only in conformity with accepted clinical practice. Medications could be administered only by written order of a physician or by verbal order noted in the patient's records and subsequently signed by the physician, and the attending physician would be required to regularly review the drug regimen and monitor any symptoms or side effects. Prescriptions for psychotropic medications could be written for no longer than 30 days but could be renewed.

During treatment, the responsible physician or psychologist (or designee) would be required to reasonably consult with the patient or patient's legal guardian and give consideration to the views expressed by such persons regarding treatment and any alternatives, including views in a wellness recovery action plan or psychiatric advance directive. No medication or other treatment could be administered to any voluntary patient without the consent of such patient or the patient's legal guardian.

The Act would require consent for medical or surgical treatments not intended primarily to treat a patient's mental disorder be obtained in accordance with applicable law.

If a patient objects to taking any medication prescribed for psychiatric treatment, and after full explanation of the benefits and risks of such medication such objection continues, the medication could be administered over the patient's objection, with the objection recorded in the patient's medical record.

The administration of experimental medication would be prohibited without the patient's written consent.

Restraints or Seclusion

Restraints or seclusion would be prohibited unless the head of the center or a physician or psychologist determines such measures are necessary to prevent immediate substantial bodily injury to the patient or others and alternative methods are not sufficient to accomplish this purpose. Restraints or seclusion could not be used as punishment or for the convenience of staff. When restraint or seclusion is used, the Act would require use of the least restrictive measure necessary to prevent injury, and the use could not exceed three hours without medical reevaluation, except between the hours of midnight and 8:00 a.m. The Act would require monitoring of the use of restraint or seclusion no less than once per each 15 minutes. The head of the center or a physician or psychologist would be required to sign a statement explaining the treatment necessity for the use of seclusion or restraint, which would be added to the patient's permanent treatment record.

The above provisions would not prevent, for a period of up to two hours without review and approval by the head of the center or a physician or psychologist, the use of restraints as necessary for a patient likely to cause physical injury to self or others without such restraint, the use of restraints primarily for examination or treatment or to ensure the healing process, or the use of seclusion as part of a treatment methodology that calls for time out due to the patient's refusal to participate or disruption.

Rights of Patients; Penalty for Deprivation of Rights

The bill would include in the Act a list of rights of patients (in addition to the rights provided elsewhere in the Act), including rights related to clothing*, possessions*, and money*; communication* and correspondence*; conjugal visits*; visitors*; refusal of involuntary labor;

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prohibition of certain treatment methods without written consent of the patient; explanation of medication and treatment; communication with the Secretary, the head of the center, and any court, attorney, physician, psychologist, qualified mental health professional, licensed addiction counselor, or minister of religion; contact of, consultation with, and visitation by the patient's physician, psychologist, qualified mental health professional, licensed addiction counselor, minister of religion, legal guardian, or attorney at any time; information regarding these rights upon admission; and humane treatment, consistent with generally accepted ethics and practices.

The head of a center could, for good cause only, restrict those rights marked above with "*" . The remaining rights could not be restricted by the head of a center under any circumstances. Each center would be required to adopt policies governing patient conduct that are consistent with the above provisions. The Act would require a statement explaining the reasons for any restriction of a patient's rights be immediately entered on the patient's medical record, with copies of the statement made available to the patient and to the patient's attorney, and the bill would require notice of any restriction to be communicated to the patient in a timely manner.

Any person willfully depriving any patient of the rights listed above, except for the restriction of rights as permitted by the Act or in accordance with a properly obtained court order, would be guilty of a class C misdemeanor.

Records

Any district court, treatment, or medical records of a person admitted to a center under the Act that are in the possession of a district court or center would be privileged and not subject to disclosure, except as provided under the Care and Treatment Act for Mentally Ill Persons.

Immunity and Criminal Making of a Report

The Act would provide immunity from civil and criminal liability for acting or declining to act pursuant to the Act for any person, law enforcement agency, governing body, center, or community mental health center or personnel.

It would be a class A misdemeanor to, for corrupt consideration, advantage, or malice, make, join in making, or advise the making of a false petition, report, or order provided for in the Act.

Amendments to Law

Act Establishing Standards for Facilities Providing Residential Care and Support, Psychiatric and Mental Health Care and Treatment, and Other Disability Services

The definitions section of this act would be amended to define "crisis intervention center" and include this term within the definition of "center." The sections of this act setting forth the purpose of the act and the authority, powers, and duties of the Secretary (for purposes of the act) would be amended to incorporate crisis intervention centers.

Care and Treatment Act for Mentally Ill Persons

This act would be amended to allow an LEO within a crisis intervention center service area to transport a person covered by this act to a center. The statute setting forth the rights of

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patients under this act would be amended to add “qualified mental health professional” to the list of persons with whom a patient has the right to communicate by letter, to contact or consult privately, or to be visited by at any time. The statute providing immunity under this act would be amended to add law enforcement agencies, governing bodies, and community mental health centers or personnel to those receiving immunity, and immunity for declining to act would be added.

Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem

This act would be amended to allow an LEO within a crisis intervention center service area to transport a person covered by this act to a center. The statute setting forth the rights of patients under this act would be amended to add “licensed addiction counselor” to the list of persons with whom a patient has the right to communicate by letter, to contact or consult privately, or to be visited by at any time. The statute providing immunity under this act would be amended to add law enforcement agencies, governing bodies, and community mental health centers or personnel to those receiving immunity, and immunity for declining to act would be added.

As Agreed April 5, 2017.

HB 2085 would amend law regarding ignition interlock to require every person who has an ignition interlock device installed to complete the ignition interlock device program pursuant to rules and regulations adopted by the Secretary of Revenue. An approved service provider would have to provide proof of completion to the Division of Vehicles before the person's driving privileges would be fully reinstated.

The bill would also amend statutes governing expungements in municipal and district courts to state that provisions regarding expungement of violations of driving under the influence (DUI) or test refusal would apply to all violations committed on or after July 1, 2006, except that the district court expungement provision for a second or subsequent violation would not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

[*Note:* The bill appears to make additional substantive amendments regarding copies of orders of expungement and bail enforcement agent licensing. However, these provisions are in existing law and are technical amendments to reconcile different versions of the statutes created by 2016 legislation.]

As Agreed April 5, 2017.

HB 2128 would amend law regarding procedures for annual review, transitional release, and conditional release for persons civilly committed under the Kansas Sexually Violent Predator Act (Act), as follows.

Annual Review of Committed Persons

The bill would amend provisions related to the annual review of committed persons to require the court to file the notice to the person and annual report required under current statute upon receiving the notice and report. The bill would require the person to file a request for an annual review hearing within 45 days of the court filing the notice, and failure to make such a

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request would waive the person's right to a hearing until the next annual report is filed. A contested annual review hearing for transitional release would consist of consideration about whether the person is entitled to transitional release. Only a person in transitional release would be permitted to petition for conditional release, and only a person in conditional release would be permitted to petition for final discharge. The bill would remove a provision in current law stating that nothing in the Act shall prohibit a person in conditional release from otherwise petitioning the court for discharge at the annual review hearing.

The bill would replace the current provision allowing a person to retain a qualified professional person to examine the person with a provision allowing a person to retain an examiner pursuant to the statute governing physical and mental examinations in the Kansas Rules of Civil Procedure. The examiner would have access to all available records concerning the person. If an indigent person requests an examiner, the court would determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner would be discretionary and, before appointing an examiner, the court would be required to consider factors including the person's compliance with institutional requirements and participation in treatment to determine whether the person's progress justifies the costs of an examination.

At the annual review hearing, the burden of proof would be on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in transitional release. The report (or a copy) of the findings of a qualified expert would be admissible as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person would be presumed to be unable to show probable cause to believe the person is safe to be released.

If the person does not file a petition requesting a hearing, the court that committed the person under the Act would be required to conduct an *in camera* annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so that an annual review hearing is warranted. The court would be required to enter an order reflecting its determination.

A provision providing the person with the benefit of the same constitutional protections afforded during the determination of whether the person is a sexually violent predator would be changed to entitle the person to the assistance of counsel. The bill would provide that if the person is indigent and without counsel, the court would be required to appoint counsel to assist the person.

Provisions in current law would be removed or modified to conform to the new procedures, including the addition of the "significantly changed" standard. The term "committed person" would be changed to "person" throughout the annual review section.

Petitions for Transitional Release and Conditional Release

The statute setting forth the procedure for petition for transitional release would be amended to reflect the "significantly changed" standard and to add a nearly-identical procedure for petition for conditional release. This procedure would allow the Secretary for Aging and Disability Services (Secretary), if the Secretary determines the person's mental abnormality or personality disorder has significantly changed so that the person is not likely to engage in repeat acts of sexual violence if placed in conditional release, to authorize the person to petition the court for conditional release. After specified service, the court would be required to set a hearing within 30 days. The Attorney General would represent the State, have the right to have the petitioner examined by an expert or professional person, and have the burden of proof to show

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beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and if placed in conditional release is likely to engage in repeat acts of sexual violence.

If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not sufficiently safe to warrant conditional release, the court would be required to order that the person remain either in secure commitment or in transitional release. Otherwise, the person would be placed in conditional release. The bill would specify other statutory provisions regarding conditional release that would apply to a conditional release under this section.

Annual Review of Persons in Transitional Release

The current procedure for court review of reports regarding persons in transitional release would be replaced with a procedure substantially similar to the annual review procedure the bill would provide for committed persons, as follows.

The bill would require the Secretary to provide the person with a written notice of the person's right to petition the court for release over the Secretary's objection. The bill would require the notice contain a waiver of rights. The Secretary would be required to forward the report and notice to the court that committed the person under the Act, and the court would be required to file the notice and report. The bill would require the person to file a request for an annual review hearing within 45 days of the court filing the notice, and failure to make such a request would waive the person's right to a hearing until the next annual report is filed. A contested annual review hearing for conditional release would consist of a consideration of whether the person is entitled to conditional release from transitional release. Only a person in transitional release would be permitted to petition for conditional release, and no person in transitional release would be permitted to petition for final discharge.

The person would be allowed to retain an examiner pursuant to the statute governing physical and mental examinations in the Kansas Rules of Civil Procedure. The examiner would have access to all available records concerning the person. If an indigent person requests an examiner, the court would determine whether the services are necessary and the reasonable compensation for such services. The appointment of an examiner would be discretionary and, before appointing an examiner, the court would be required to consider factors, including the person's compliance with institutional requirements and participation in treatment, to determine whether the person's progress justifies the costs of an examination.

At the annual review hearing, the burden of proof would be on the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in conditional release. The report (or a copy) of the findings of a qualified expert would be admissible as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person would be presumed to be unable to show probable cause to believe the person is safe to be released.

The person would have the right to have an attorney represent the person at the annual review hearing to determine probable cause, but the person would not be entitled to be present at the hearing.

If the person does not file a petition requesting a hearing, the court that committed the person under the Act would be required to conduct an *in camera* annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so that an annual review hearing is warranted. The court would be required to enter an order reflecting its determination.

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If the court at the annual review hearing determines that probable cause exists to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in conditional release, the court would be required to set a hearing for conditional release. The person would be entitled to be present and to have the assistance of counsel. The Attorney General would represent the State, have the right to have the petitioner examined by an expert or professional person, and have the burden of proof to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be placed in conditional release and, if conditionally released, is likely to engage in acts of sexual violence. The person would have the right to have experts evaluate the person, and the court would be required to appoint an expert if the person is indigent and requests an appointment.

Subsequent to either a court review or hearing, the court would be required to issue an appropriate order with findings of fact, and the order would be provided to the Attorney General, the person, and the Secretary.

For purposes of this section, if the person is indigent and without counsel, the court would be required to appoint counsel to assist the person.

Provisions in current law would be removed or modified to conform to the new procedures, including the addition of the "significantly changed" standard.

As Agreed April 5, 2017

HB 2301 would amend law related to public records and public meetings, as follows.

Juror Information

The bill would amend law within the Kansas Code of Criminal Procedure relating to trial jurors. The bill would remove addresses of prospective jurors from the information included in the list of prospective jurors filed with the clerk of the court.

The bill also would specify the list would not be considered a public record (under current law, the list is designated a public record). This provision would expire on July 1, 2022, unless the Legislature reviews and reenacts the provision.

Open Records Exceptions

The bill would continue in existence the following exceptions to the Kansas Open Records Act (KORA):

- KSA 2016 Supp. 74-2012, concerning motor vehicle records;
- KSA 2016 Supp. 22-4909, concerning criminal offender registration;
- KSA 2016 Supp. 45-221(a)(51) and (52), concerning home addresses of law enforcement officers and judges;
- KSA 2016 Supp. 65-1505, concerning criminal history records checks;
- KSA 2016 Supp. 74-5607, concerning peace officers standards and training;
- KSA 2016 Supp. 75-7d01, 75-7d05, concerning the batterer intervention program certification;

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- KSA 2016 Supp. 75-5133, concerning charitable gaming and microdistillery information;
- KSA 2016 Supp. 79-3234, concerning social security numbers;
- KSA 2016 Supp. 75-7d08, concerning the batterer intervention program;
- KSA 2016 Supp. 12-5711, concerning the Fort Scott/Bourbon County Riverfront Authority;
- KSA 2016 Supp. 21-2511, concerning biological samples for the Kansas Bureau of Investigation;
- KSA 2016 Supp. 38-2313, concerning fingerprints and photographs of juvenile offenders;
- KSA 2016 Supp. 65-516, concerning child care facilities;
- KSA 2016 Supp. 74-8745, concerning the multistate lottery;
- KSA 2016 Supp. 74-8752, concerning the multistate lottery investigation and audit;
- KSA 2016 Supp. 74-8772, concerning the Kansas Racing and Gaming Commission; and
- KSA 2016 Supp. 75-7427, concerning the Office of Inspector General.

The bill also would remove the sunset date of July 1, 2021, placed on the following exceptions to KORA by the 2016 Legislature following its review of the exceptions:

- KSA 2016 Supp. 40-955, concerning insurance rate filings;
- KSA 2016 Supp. 45-221(a)(10)(F), concerning victims of sexual offenses;
- KSA 2016 Supp. 45-221(a)(50), concerning information provided to the 911 Coordinating Council;
- KSA 2016 Supp. 65-4a05, concerning individual identification present in documents related to licensing of abortion clinics;
- KSA 2016 Supp. 65-445(g), concerning child sexual abuse reports;
- KSA 2016 Supp. 12-5611, concerning the Topeka/Shawnee County Riverfront Authority;
- KSA 2016 Supp. 22-4906, 22-4909, concerning criminal offender registration;
- KSA 2016 Supp. 38-2310, concerning records concerning certain juveniles;
- KSA 2016 Supp. 38-2311, concerning juvenile treatment records;
- KSA 2016 Supp. 38-2326, concerning juvenile offender information systems;
- KSA 2016 Supp. 44-1132, concerning discrimination in employment;
- KSA 2016 Supp. 60-3333, concerning environmental audit reports;
- KSA 2016 Supp. 65-6154, concerning emergency medical services reports;
- KSA 2016 Supp. 71-218, concerning community colleges and employee evaluation documents;
- KSA 2016 Supp. 75-457, concerning substitute mailing addresses;
- KSA 2016 Supp. 75-712c, concerning reports of missing persons;
- KSA 2016 Supp. 75-723, concerning the Abuse, Neglect, and Exploitation of Persons Unit in the Office of the Attorney General; and
- KSA 2016 Supp. 75-7c06, concerning concealed firearm records.

The bill also would remove a reference to a repealed statute.

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Procedure and Justifications for Closed or Executive Meetings

The bill would amend the Kansas Open Meetings Act (KOMA) with respect to closed or executive meetings. The bill would require any motion to recess for a closed or executive session to include a statement describing the subjects to be discussed during the closed or executive session and the justification for closing the meeting. Current law requires a statement of the justification for closing the meeting and the subjects to be discussed during the closed meeting. The bill would leave unchanged the requirement the motion contain the time and place at which the open meeting will resume.

The bill would require the complete motion be recorded in the minutes of the meeting.

Justifications for closing meetings would be limited to the circumstances listed in the bill. The justifications would be substantively similar to the list of subjects allowed to be discussed at closed or executive sessions under current law, with the following exceptions:

- The bill would amend language related to KSA 22a-243(j) to specify matters relating to the investigation of child deaths could be discussed;
- Current law states matters related to district coroners could be discussed in executive session pursuant to the statute;
- The bill would specify what matters could be discussed pursuant to statute in the following instances:
 - Matters relating to parimutuel racing pursuant to KSA 74-8804 and amendments thereto;
 - Matters relating to the care of children pursuant to KSA 2016 Supp. 38-2212(d)(1) or 38-2213(e) and amendments thereto;
 - Matters relating to patients and providers pursuant to KSA 39-7,119(g) and amendments thereto;
 - Matters relating to maternity centers and child care facilities pursuant to KSA 65-525(d) and amendments thereto; and
 - Matters relating to the office of inspector general pursuant to KSA 2015 Supp. 75-7427 and amendments thereto;
- The bill would add a justification allowing the Governor's Domestic Violence Fatality Review Board (DVFRB) to conduct case reviews in closed or executive meetings; and
- The bill would strike language related to repealed statutes.

As Agreed April 6, 2017.

Legislation in Conference Committee

SB 112 would amend law regarding crimes and criminal procedure. Specifically, it would create the crime of aggravated domestic battery and amend the crimes of domestic battery, possession of drug paraphernalia, burglary, cruelty to animals, and dog fighting. Further, it would amend provisions concerning illegal sentences, postrelease supervision for persons convicted of sexually violent crimes, and expungement of arrest records. It also would enact the Law Enforcement Protection Act and provisions concerning the electronic recording of certain custodial interrogations.

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Domestic Battery

Effective July 1, 2017, the bill would create the crime of aggravated domestic battery, which would be defined as:

- Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck, or chest of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner; or
- Knowingly impeding the normal breathing or circulation of the blood by blocking the nose or mouth of a person with whom the offender is involved or has been involved in a dating relationship or a family or household member, when done in a rude, insulting, or angry manner.

This crime would be a severity level 7 person felony.

The bill also would amend the existing crime of domestic battery by adding "a person with whom the offender is involved or has been involved in a dating relationship" as a possible victim of the offense. The bill would add a definition of "dating relationship" to this section that is based on the existing definition used in the definitions section of the Criminal Code and in the Protection from Abuse Act.

The bill would amend provisions related to sentencing for domestic battery, as follows. In determining the sentence to be imposed within the limits provided for a first, second, or subsequent offense, the bill would require a court to consider information presented to the court regarding a current or prior protective order issued against the offender. The bill would define "protective order" for these purposes. The bill would also strike language allowing the Department of Corrections to order that certain offenders not be required to undergo domestic violence offender assessments.

Sentencing for Possession of Drug Paraphernalia

Effective July 1, 2017, the bill would reduce the severity level for unlawful possession of drug paraphernalia from a class A to a class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.

Sentencing for Burglary

The bill would change burglary of a dwelling with intent to commit a felony, theft, or sexually motivated crime therein to a severity level 7 person felony, rather than a severity level 7 nonperson felony.

Cruelty to Animals

Effective July 1, 2017, the humane killing exclusion from the crime of cruelty to animals would be amended to remove references to "pound," "incorporated humane society," and "the operator of" an animal shelter. Provisions allowing an animal to be taken into custody and cared for or treated would be amended to either remove references to "incorporated humane society" or replace such references with "animal shelter." An existing requirement for notice to an owner or custodian would be expanded from cases in which the animal is placed in the care of an animal shelter to all cases, and written notification would be required.

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The existing requirement that the board of county commissioners in the county where the animal was taken into custody establish procedures to allow an animal shelter to petition the district court to be allowed to place the animal for adoption or euthanize the animal would be replaced with a provision allowing the law enforcement agency, district attorney's office, county prosecutor, veterinarian, or animal shelter to petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal. The bill would remove a provision requiring the board of county commissioners to review the cost of care and treatment being charged by the animal shelter maintaining the animal.

A provision prohibiting an animal from being returned to or allowed to remain with a person adjudicated guilty of this crime would be amended to remove a requirement that the court first be satisfied an animal owned or possessed by the person would be subjected to such crime in the future. A reference to "duly incorporated humane society" in this provision would be replaced with "animal shelter."

"Animal shelter" would be defined to mean the same as in the Kansas Pet Animal Act.

Dog Fighting

Effective July 1, 2017, a provision regarding the placement of a dog taken into custody would be amended to replace a reference to "duly incorporated humane society" with "animal shelter."

The existing requirement that the board of county commissioners in the county where the animal was taken into custody establish procedures to allow an animal shelter to petition the district court to be allowed to place the animal for adoption or euthanize the animal would be replaced with a provision allowing the law enforcement agency, district attorney's office, county prosecutor, veterinarian, or animal shelter to petition the district court in the county in which the animal was taken into custody to transfer ownership of the animal. The bill would remove a provision requiring the board of county commissioners to review the cost of care and treatment being charged by the animal shelter maintaining the animal.

A provision requiring costs be paid by the county where the dog was taken into custody if no conviction results would be amended to add law enforcement agencies and veterinarians to the list of entities entitled to payment for expenses incurred for the care, treatment, and boarding of the dog.

"Animal shelter" would be defined to mean the same as in the Kansas Pet Animal Act.

Expungement of Arrest Records

Effective July 1, 2017, if a person has been arrested as a result of mistaken identity or as a result of another person using identifying information of the named person and the charge against the named person is dismissed or not prosecuted, the bill would require the prosecuting attorney or other judicial officer who ordered the dismissal or declined to prosecute to provide notice to the court of such action and petition the district court for the expungement of such arrest record. Further, the bill would require the court to order the arrest record and any subsequent court proceedings expunged and purged from all applicable state and federal systems.

The bill would define "mistaken identity" as the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of a person who committed the crime, misinformation provided to law enforcement as to the identity of a person who committed the crime, or some

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other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime. Further, the bill would exclude from the definition of "mistaken identity" any situation in which an arrestee intentionally provides false information to law enforcement officials in an attempt to conceal such person's identity.

The bill would allow any person who may have relevant information about the petitioner to testify at the hearing on such petition and would allow the court to inquire into the background of the petitioner. Such a petition would be required to include the same information required in other petitions for expungement of arrest records.

When a court orders expungement of arrest records as described above, the bill would require the order to state the information required in the petition and the grounds for expungement. Additionally, the bill would require the order to direct the Kansas Bureau of Investigation (KBI) to purge the arrest information from the Criminal Justice Information System central repository and all applicable state and federal databases. The clerk of the court would be required to send a certified copy of the order to the KBI, which would carry out the order and notify the Federal Bureau of Investigation, the Secretary of Corrections, and any other criminal justice agency that may have a record of the arrest. If an order of expungement is entered, the bill would provide that the person eligible for mandatory expungement as described above would be treated as not having been arrested.

Illegal Sentences

The existing right to a hearing regarding an illegal sentence would be made inapplicable if the motion, files, and records of the case conclusively show that the defendant is entitled to no relief. The bill also would define "illegal sentence" and specify that a sentence would not fall within that definition due to a change in the law occurring after the sentence is pronounced.

Postrelease Supervision for Persons Convicted of Sexually Violent Crimes

The bill would clarify that lifetime postrelease supervision is to be imposed on offenders sentenced to imprisonment for a sexually violent crime committed on or after July 1, 2006, if the offender was 18 years of age or older when the crime was committed. It would further establish a mandatory period of 60 months postrelease supervision, plus good time and program credit earned and retained, for offenders sentenced to imprisonment for a sexually violent crime committed on or after the effective date of the bill, if the offender was under 18 years of age when the crime was committed. Current statute provides for lifetime postrelease supervision for all persons convicted of a sexually violent crime committed on or after July 1, 2006, regardless of the offender's age.

The bill also would clarify that a separate provision regarding postrelease supervision for persons sentenced to a term of imprisonment for a sexually violent crime applies only to such crimes committed on or after July 1, 1993, but prior to July 1, 2006.

Law Enforcement Protection Act

Effective July 1, 2017, the bill would enact the Law Enforcement Protection Act, which would enhance the sentencing of felony crimes committed against law enforcement officers in the performance of their duties, or due to their status as a law enforcement officer.

The bill would create a special sentencing rule with enhanced penalties that would apply if a trier of fact finds beyond a reasonable doubt that an offender committed a nondrug felony offense (or the offender committed an attempt or conspiracy to commit such offense) against a

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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. The special sentencing rule would be applied as follows:

- Felonies levels 2 through 10;
- Sentencing would be enhanced by 1 level;
- Level 1 felonies
- The minimum sentence would be life in prison;
- The offender would not be eligible for a sentence modification or probation;
- the offender could not be released on parole before serving 25 years of the sentence;
- The offender would not be eligible for good time credit; and
- No other sentence would be permitted.

If an offender would be subject to a minimum presumptive sentence due to criminal history, the minimum sentence of 25 years would not apply. Instead, the longer minimum sentence would apply.

The sentence imposed would not be considered a departure from the sentencing grid and could not be appealed. Further, the enhancements would not apply to crimes where the factual aspect concerning a law enforcement officer is a statutory element of the offense.

Finally, the bill would define "law enforcement officer" by reference to two of the three categories included in the definition provided of the term provided in the criminal code definitions section. This definition would include any person who by virtue of such person's office or public employment is vested by law with the duty to maintain public order or to make arrests for crimes, and any university or campus police officer.

Policies for the Electronic Recording of Custodial Interrogations

Effective July 1, 2017, the bill would require all Kansas law enforcement agencies to adopt a detailed, written policy concerning the electronic recording of custodial interrogations conducted at a place of detention and to implement such policy on or before July 1, 2018. In developing such policy, the bill would require local law enforcement agencies to collaborate with the county or district attorney in the appropriate jurisdiction regarding its contents. The policy would require electronic recording of the entirety of a custodial interrogation that concerns a homicide or felony sex offense, as well as the making and signing of a statement during the course of such interrogation. The policy also would include retention and storage requirements and a statement of exceptions in some circumstances, such as equipment malfunction or inadvertent failure to operate the recording equipment properly.

The bill would require the policy to be available to all officers and for public inspection during normal business hours. During trial, the bill would allow for officers to be questioned pursuant to the rules of evidence regarding any violation of such a policy. Finally, the bill would provide that every electronic recording of any statement shall be confidential and exempt from the Kansas Open Records Act.

Current Status – Being considered in conference committee.

HB 2092, as amended, would amend law related to probation revocation and to public disclosure of probable cause affidavits, as follows.

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Probation Revocation

The bill would allow a court to revoke probation, assignment to a community corrections program, suspension of a sentence, or nonprison sanction of an offender without having previously imposed an intermediate sanction if such probation, assignment, suspension, or sanction was originally granted as a result of a dispositional departure.

Disclosure of Probable Cause Affidavits

The bill would amend law regarding the disclosure to the public of affidavits or sworn testimony underlying an arrest warrant to clarify the timing of notification to the defendant of a request for disclosure. Specifically, the bill would prescribe that such notice shall be provided upon entry of appearance by an attorney on behalf of the defendant or upon indication by the defendant to the court that the defendant will represent the defendant's self. Existing law requires notification of the defendant upon the filing of the request for disclosure.

Current Status – Being considered in conference committee.

Legislation Pending

House Sub. for SB 101 would amend law concerning protective orders, notification of a sexual assault examination of a minor child, infectious disease testing, and claims for compensation through the Crime Victims Compensation Board, as follows.

Protective Orders

The bill would amend the law concerning protective orders to extend the provisions of the Protection from Abuse Act (PFAA) and Protection from Stalking Act (PFSA) to apply to victims of sexual assault. Specifically, the bill would amend the definition of "abuse" in the PFAA to include "engaging in any sexual contact or attempted sexual contact with another person without consent or when such person is incapable of giving consent."

The bill would also amend the PFSA, renaming it the Protection from Stalking and Sexual Assault Act (PFSSAA). For the purposes of the PFSSAA, "sexual assault" would be defined as:

- A nonconsensual sexual act; or
- An attempted sexual act against another by force, threat of force, or duress, or when the person is incapable of giving consent.

The bill would add "sexual assault" throughout the PFSSAA and would allow the court to issue an order restraining the defendant from committing or attempting to commit a sexual assault upon the victim. The bill would specify the court could issue a protection from stalking or sexual assault order granting any one or more of the orders allowed by the PFSSAA, including orders restraining a defendant from harassing, abusing, or sexually assaulting a victim. The bill would require the order to include a statement that if such order is violated, the violation would constitute "violation of a protective order" and a "sex offense" as defined by the Kansas Criminal Code and the accused could be prosecuted for, convicted of, and punished for such sex offense.

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The bill would amend the crime of violation of a protective order to include knowingly violating a protection from sexual assault order, which would be a class A person misdemeanor.

Notification of Sexual Assault Examination

The bill would add exceptions to the requirement under current law that mandates a medical facility to give a parent or guardian written notice when a sexual assault examination of a minor child has taken place. The exceptions would apply when a medical facility has information that a parent, guardian, or family or household member is the subject of a related criminal investigation, or when the physician, licensed physician assistant, or registered professional nurse, after consultation with law enforcement, reasonably believes the child will be harmed if such notice is given.

Infectious Disease Testing

The bill would amend a statute regarding infectious disease testing of certain alleged offenders or persons arrested and charged with a crime to require such testing occur within 48 hours after the alleged offender appears before a magistrate following arrest. The bill would also require the court to order the arrested person to submit to follow-up tests for infectious diseases as medically appropriate. Finally, the bill would clarify that the results of such tests are to be disclosed to the victim and parent or legal guardian of the victim.

Crime Victims Compensation

The bill would allow a claimant, or victim on whose behalf the claim is made, to be compensated for mental health counseling through the Crime Victims Compensation Board when a claim is filed within two years of notification to the claimant that DNA testing has revealed a suspected offender or when a claim is filed within two years of notification to the claimant the identification of a suspected offender.

Status-House adopted Conference Committee Report April 7, 2017.

SB 124 amends the law governing determination of legal custody, residency, and parenting time. The bill replaces the requirement for a court to consider, among other relevant factors, evidence of spousal abuse, either emotional or physical, with a requirement to consider evidence of domestic abuse, including, but not limited to, a pattern or history of physically or emotionally abusive behavior, or threat thereof, used by one person to gain or maintain domination and control over an intimate partner or household member or an act of domestic violence, stalking, or sexual assault. The bill also amends the law to require courts to determine parenting time in accordance with the best interests of the child and specify "custody" in that statute refers to "legal custody."

The bill also amends the law governing child in need of care proceedings to allow reports concerning the results and analysis of a court-ordered drug or alcohol test to be admissible in evidence if the report is prepared and attested to by the person conducting the test or an authorized employee of the facility that conducted the test. Such person must prepare a certificate that includes an attestation as to the result and analysis of the test and sign the

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certificate under oath. The bill states this provision shall not prevent a party from calling such person as a witness.

Status – Enrolled and has been presented to the Governor.