

## ***Legislative Update***

### ***Kansas Municipal Judges Association Annual Conference***

***April 22-24 2018***

#### **Enacted Legislation**

**HB 2439** amends the definition of the crime of involuntary manslaughter to include the killing of a human being committed in the commission of, or attempt to commit, or flight from driving under the influence of alcohol or drugs (DUI) while:

- In violation of any restriction imposed on such person's driving privileges for DUI;
- The person's driving privileges are suspended or revoked for DUI; or
- The person has been deemed a "habitual violator," as defined in KSA 2017 Supp. 8-285, including at least one DUI violation.

Violation of this provision is a severity level 3, person felony. This new offense is added to the list of offenses for which juvenile records or files may not be expunged. It also is added to the list of offenses that the Department of Corrections is required to report when committed by a sex offender in the custody of the Secretary of Corrections.

In addition, the bill amends the definition of aggravated battery to include causing great bodily harm or disfigurement of another person while DUI under the same circumstances as those described above. Violation of the aggravated battery provision is a severity level 4, person felony.

The new offenses are added to the list of underlying offenses requiring an increased penalty for a third or subsequent conviction for driving while driving privileges are canceled, suspended, or revoked for such underlying offenses. The bill amends the DUI, commercial DUI, and test refusal statutes to include the new offenses in the list of offenses for which any convictions in a person's lifetime must be considered in determining the number of a subsequent DUI conviction. The DUI administrative penalties definitions statute is amended to include the new offenses, as well as the continuing offense of involuntary manslaughter while DUI, in the definition of "alcohol or drug-related conviction."

The statute governing the use of previous DUI-related convictions in calculating criminal history for involuntary manslaughter while DUI or aggravated battery while DUI is amended to apply the same rules to the new offenses.

*Approved March 3, 2018*

**HB 2454** amends various statutes related to juvenile offenders.

#### ***Detention Hearings***

The bill amends 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 from detention hearings only to all hearings under the section, including the detention review hearings required every 14 days while the juvenile is in detention. The bill further amends law related to detention review hearings by adding a provision stating such hearings are not required for a juvenile offender held in

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detention awaiting case disposition. The bill amends 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 amends 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 clarifies, 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 amends one of the statutory duties of the Kansas Juvenile Justice Oversight Committee (Juvenile Oversight Committee) to require the Juvenile 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 Juvenile Oversight Committee’s annual report is changed from “calculated by the committee” to “determined.”

*Approved April 10, 2018*

**HB 2457** enacts the Asbestos Trust Claims Transparency Act (Act), which shall apply to all asbestos claims (as defined in the Silica and Asbestos Claims Act) filed on or after July 1, 2018.

The bill requires the plaintiff to provide certain statements and materials no later than 30 days prior to the date the court establishes for the completion of all fact discovery. Specifically, the plaintiff is required to conduct an investigation, file all asbestos trust claims that can be made by the plaintiff, and provide a sworn statement indicating the investigation has been conducted and all possible claims filed. The plaintiff is required to provide all parties with all trust claim materials, accompanied by a custodial affidavit from the asbestos trust. If the plaintiff’s asbestos trust claim is based on exposure through another individual, the plaintiff is required to produce all trust claim documents submitted by or on behalf of the other individual to any asbestos trust to which the plaintiff has access. The bill also requires the plaintiff to supplement the information and materials within 30 days after the plaintiff, or a person on the plaintiff’s behalf, supplements an existing asbestos trust claim, receives additional information or materials related to such a claim, or files an additional asbestos trust claim.

The bill outlines circumstances under and procedures by which a defendant may file and the court may grant a motion for the completion of all fact discovery regarding the plaintiff’s asbestos trust claims.

Additionally, the bill defines “asbestos,” “asbestos claim,” “asbestos trust,” “plaintiff,” “trust claim materials,” and “trust governance documents”; establishes evidentiary standards for asbestos claims; provides a procedure to reopen and adjust judgment in an asbestos claim if the plaintiff subsequently files an asbestos trust claim with an asbestos trust in existence at the time of judgment; and requires defendants and judgment debtors to file any motion under the bill within a reasonable time and not more than one year after the judgment was entered.

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*Approved April 2, 2018*

**HB 2459** creates and amends law related to civil asset forfeiture, as follows.

### ***Creation of Kansas Asset Seizure and Forfeiture Repository and Related Reporting Requirements***

The bill creates a new section within the Kansas Standard Asset Seizure and Forfeiture Act (SASFA) requiring the Kansas Bureau of Investigation (KBI) to establish, on or before July 1, 2019, the Kansas Asset Seizure and Forfeiture Repository (Repository), which will gather information concerning each seizure for forfeiture made by a seizing agency pursuant to SASFA. The information gathered will include, but not be limited to:

- The name of the seizing agency or name of the lead agency if part of a multi-jurisdictional task force and any applicable agency or district court case numbers for the seizure;
- The county where and date and time the seizure occurred, a description of the initiating law enforcement activity leading to the seizure, and the specific location where the seizure occurred;
- Descriptions of the type of property and contraband seized and the estimated values of the property and contraband;
- Whether criminal charges were filed for an offense related to the forfeiture and court and case number information of such charges;
- A description of the final disposition of the forfeiture action, including any claim or exemption asserted under SASFA;
- Whether the forfeiture was transferred to the federal government for disposition;
- Total cost of the forfeiture action, including attorney fees; and
- Total amount of proceeds from the forfeiture action, specifying the amount received by the seizing agency and the amount received by any other agency or person.

The bill requires the KBI to maintain the Repository and an associated public website and requires the KBI to promulgate rules and regulations before July 1, 2019, to implement the new section.

On and after July 1, 2019, each seizing agency must report the specified information concerning each seizure for forfeiture to the Repository, with the prosecuting attorney submitting information to the seizing agency within 30 days after the final disposition of the forfeiture, and the seizing agency submitting the required information to the Repository within 60 days after the final disposition of the forfeiture.

On or before February 1 of each year, beginning in 2020, each law enforcement agency (agency) must annually compile and submit a forfeiture fund report to the Repository. If the agency is a state agency, the report must include the agency's state forfeiture fund balance on January 1 and December 31 of the preceding calendar year and the total amount of the deposits and a listing, by category, of expenditures during the preceding calendar year. If the agency is a city or county agency, the report must include the agency's special law enforcement trust fund balance on January 1 and December 31 of the preceding calendar year and the total

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amount of deposits and a listing, by category, of expenditures during the preceding calendar year.

The reports for each agency must separate and account for deposits and expenditures from proceeds from forfeiture credited to the agency's fund pursuant to the SASFA section governing disposition of forfeited property, deposits and expenditures from proceeds from forfeiture actions under federal law, and amounts held by the agency related to pending forfeiture actions under SASFA.

On March 1 of each year, beginning in 2020, the KBI must determine whether each agency's financial report matches the agency's seizing report. If the agency has not submitted the required financial report, or if the agency's financial report does not substantially match the agency's seizing report, the KBI must notify the agency of the difference in reports. If the agency does not correct the reporting error within 30 days, the KBI must send the agency and the county or district attorney for the county where the agency is located a certified letter notifying the agency it is out of compliance. Upon receipt of the letter, no forfeiture proceedings may be filed on property seized by the agency. Once the agency has achieved compliance with the reporting requirements, the KBI must send the agency and the county or district attorney a certified letter notifying the agency it is in compliance and forfeiture proceeding filings may continue under SASFA. Each year, on or before April 15, the KBI must report to the Legislature any agencies in the state that have failed to come into compliance with the reporting requirements for the agencies' funds.

The bill amends the Kansas Open Records Act to provide that, except for requests of summary data compiled from information submitted by multiple agencies or as otherwise provided by law, requests for records submitted to the Repository shall be directed to the agency from which the records originated.

### ***Amendments to SASFA Sections***

The bill amends multiple sections of SASFA, as follows.

#### ***Exemptions***

The statute governing exemptions is amended to require a common carrier be an actual consenting party or privy to a violation of SASFA before the carrier's conveyance is subject to forfeiture, rather than allowing forfeiture upon the appearance of consent or being privy to a violation. This statute is also amended to clarify a reference to owners or interest holders who acquire the property after the conduct giving rise to forfeiture.

#### ***Seizure of Property—County or District Attorney and Attorney General Requirements***

The bill amends the statute governing the seizure of property to clarify that the county or district attorney has 14 days to accept or decline a written request for forfeiture from a local or state agency. For those cases where the county or district attorney approves another attorney to represent a local agency in the forfeiture proceeding, the bill prohibits the county or district attorney from approving an attorney with whom the county or district attorney has a direct or indirect financial interest. Similarly, for state agencies, the Attorney General is prohibited from approving an attorney with whom the Attorney General has a direct or indirect financial interest. A county or district attorney and the Attorney General are prohibited from requesting or receiving any referral fee or personal financial benefit from any proceeding under the SASFA.

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### *Commencement of Forfeiture Proceedings—Service of Notice*

The statute governing commencement of forfeiture proceedings is amended by specifying that the various types of service of the required notice are to be accomplished and are effective pursuant to the Code of Civil Procedure. The bill extends the circumstances under which service by publication is allowed, to include where service by certified mail was attempted but was not effective.

The bill requires an affidavit describing the essential facts supporting forfeiture and copies of Judicial Council forms for petitioning for recognition of an exemption and for making a claim be included with the notice.

### *Recognition of Exemption*

The statute governing recognition of exemption is amended to require, rather than allow, the plaintiff's attorney to make an opportunity to file a petition for recognition of exemption available, and to require the plaintiff's attorney to acknowledge this opportunity in the notice of pending forfeiture.

The time provided for an owner of or interested holder in the property to file a claim or a petition for recognition of exemption is extended from 30 days to 60 days, and the bill states that such claims or petitions must "substantially comply" with the requirements for claims. The time for the plaintiff's attorney to provide the seizing agency and the petitioning party with a written recognition of exemption and statement of nonexempt interests in response to each petitioning party is reduced from 120 days to 90 days after the effective date of the notice of pending forfeiture.

The time provided for an owner of or interest holder in any property declared nonexempt to file a claim is extended from 30 days to 60 days after the effective date of the notice of the recognition of exemptions and statement of nonexempt interests.

The time before the recognition of exemption and statement of nonexempt interests becomes final if no claims are filed is extended from 30 days to 60 days, in keeping with the time extensions described above.

### *Claims; In Rem Proceedings*

The sections governing claims and *in rem* proceedings are amended to extend the time provided for an owner or interest holder in property to file a claim or answer from 30 days to 60 days. Attestation requirements that the claim or answer and all supporting documents be in affidavit form, signed under oath, and sworn to by the affiant are removed, leaving only the requirement that the claim or answer be signed by the claimant under penalty of perjury. A possible penalty of making a false writing is removed.

The bill removes requirements that the claim or answer set forth the date, identity of the transferor, and a detailed description of the circumstances of the claimant's acquisition of an interest in the property; the specific provision of SASFA relied on in asserting the property is not subject to forfeiture; all essential facts supporting each assertion; and the specific relief sought. It adds a requirement that the claim or answer include a detailed description of when and how the claimant obtained an interest in the property.

The bill specifies substantial compliance with the claim or answer requirements shall be deemed sufficient and add a provision allowing the right against self-incrimination to be asserted in a claim or answer. If the right is asserted, the court may, at its discretion, draw an adverse

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inference from the assertion against the claimant, but the adverse inference may not, by itself, be the basis of a judgment against the claimant.

The bill amends the section governing claims by removing a prohibition against granting an extension of time to file a claim except for good cause.

The bill further amends the section governing *in rem* proceedings to remove provisions governing discovery and a requirement the court hold a hearing on the claim within 60 days after service of the petition.

### ***Time to File a Claim in In Personam Proceedings***

The statute governing *in personam* proceedings is amended to extend the time in which an owner of or interest holder in property that has been forfeited and whose claim is not precluded may file a claim from 30 days to 60 days after initial notice of pending forfeiture or after notice following the entry of an order of forfeiture, whichever is earlier.

### ***Rebuttable Presumptions and Elements***

The bill amends the section governing judicial proceedings to remove a rebuttable presumption that certain items found in close proximity to contraband or an instrumentality of conduct giving rise to forfeiture are the proceeds of conduct giving rise to forfeiture or were used or intended to be used to facilitate the conduct.

A rebuttable presumption that property is subject to forfeiture if the seizing agency establishes three elements is amended to remove the presumption and instead state that the totality of the circumstances shall determine if the property of a person is subject to seizure, while the elements in continuing law are changed to non-exclusive factors to be considered and a fourth factor (proximity to contraband or an instrumentality giving rise to forfeiture) is added.

The bill removes a rebuttable presumption that property in or upon which controlled substances are located at the time of seizure was being used or intended for use to facilitate an act giving rise to forfeiture.

A provision preventing a defendant convicted in a criminal proceeding from denying the essential allegations of the criminal offense in a later forfeiture proceeding is changed to prevent the defendant from denying the elements of the criminal offense.

A provision allowing only the plaintiff's attorney to file a motion to stay discovery against the criminal defendant and seizing agency in civil proceedings during a related criminal proceeding is amended to remove the language limiting filing to the plaintiff's attorney.

### ***Disposition of Forfeited Property***

The statute governing disposition of forfeited property is amended to specify an exclusive list of 12 special, additional law enforcement purposes for which proceeds from forfeiture may be used. The bill requires moneys in the funds containing forfeiture proceeds to be separated and accounted for in a manner that allows accurate tracking and reporting of deposits and expenditures of proceeds from forfeiture credited to the fund, proceeds from pending forfeiture actions under SASFA, and proceeds from forfeiture actions under federal law.

Previously existing reporting requirements are moved within this section and a sunset date for these requirements of July 1, 2019, is added in light of the bill's new reporting requirements.

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### *Technical Amendments*

The bill makes various technical changes to update or correct statutory references and ensure consistent wording throughout statutes.

*Approved April 2, 2018*

**HB 2516** creates law providing for immunity from civil liability for damage to a motor vehicle for a person who enters the vehicle, by force or otherwise, to remove a vulnerable person or domestic animal, if the person entering:

- Determines the vehicle is locked or there is otherwise no reasonable method for the vulnerable person or domestic animal to exit the vehicle without assistance;
- Has a good faith and reasonable belief, based upon known circumstances, that entry is necessary because the vulnerable person or domestic animal is in imminent danger of suffering harm;
- Ensures law enforcement is notified or calls 911 before or immediately after entering the vehicle;
- Uses no more force to enter the vehicle and remove the vulnerable person or domestic animal than is necessary; and
- Remains with the vulnerable person or domestic animal in a safe location in reasonable proximity to the vehicle until law enforcement or a first responder arrives.

The bill defines “domestic animal” to include a dog, cat, or other animal that is domesticated and may be kept as a household pet. This does not include livestock, as defined elsewhere in statute, or other farm animals.

The bill defines “vulnerable person” to mean an adult whose ability to perform the normal activities of daily living or to provide for such adult’s own care or protection is impaired or a minor.

The bill defines “motor vehicle” by reference to the definition in the statutes governing vehicle registration.

*Approved April 6, 2018*

**HB 2524** creates law allowing a court, at a hearing on a petition filed pursuant to the Protection from Abuse Act (PFAA) or Protection from Stalking or Sexual Assault Act (PFSSAA), to issue an order directing a wireless services provider (provider) to transfer the billing responsibility for and rights to the wireless telephone number or numbers to the petitioner if the petitioner is not the account holder, to ensure the petitioner and any minor children in the care of the petitioner may maintain their existing wireless telephone numbers. The forms for the petition and order shall be prescribed by the Judicial Council and supplied by the clerk of the court.

This order shall be a separate order directed to the provider and must list the name and billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers will be transferred, and each telephone number to be transferred.

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If the order is made in conjunction with a PFSSAA petition, the court must ensure the petitioner's address and telephone number are not disclosed to the account holder. If the order is made in conjunction with a petition filed under the PFAA, the court must direct that the petitioner's information remain confidential if the court finds the petitioner's address, telephone number, or both need to remain confidential.

The order must be served on the provider's agent for service of process listed with the Secretary of State. The provider must notify the petitioner if the provider cannot operationally or technically effectuate the order due to circumstances including, but not limited to:

- The account holder already terminating the account;
- Differences in network technology preventing the functionality of a device on the network; or
- Geographic or other limitations on network or service availability.

Upon transfer of billing responsibility for and rights to a number or numbers to the petitioner, the petitioner shall assume all financial responsibility for the transferred number or numbers, monthly service costs, and costs for any wireless device associated with the number or numbers.

The bill states a provider is not prohibited from applying any routine and customary requirements for account establishment to the petitioner as part of the transfer of billing responsibility, including, but not limited to, identification, financial information, and customer preferences.

The bill states it will not affect the ability of the court to apportion the assets and debts of the petitioner and account holder or the ability to determine the temporary use, possession, and control of personal property pursuant to the statute governing division of property under the Revised Kansas Family Law Code.

The bill states, notwithstanding any other provision of law, no wireless services provider or its officers, employees, assigns, or agents would be liable for civil damages or criminal liability in connection with compliance with a transfer issued under its provisions or for failure to process such order.

The bill requires any provider operating in Kansas to adhere to an order issued under its provisions and prohibits a provider from charging a fee for the services provided pursuant to the bill.

The bill provides the definitions of "wireless services" and "wireless services provider" are the same as provided in the statute governing siting of wireless infrastructure.

*Approved April 5, 2018*

**HB 2581** amends law related to the crime of giving a false alarm.

The bill renames the offense as "making an unlawful request for emergency service assistance" and its definition is amended to include transmitting or communicating false or misleading information in any manner to request emergency service assistance, including law enforcement, fire, medical, or other emergency service knowing at the time there is no reasonable ground for believing assistance is needed.



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The crime continues to be a Class A nonperson misdemeanor, except including false information that violent criminal activity or immediate threat to a person's life or safety has or is taking place continues to be a severity level 7, nonperson felony, except in the following circumstances added by the bill:

- If bodily harm results from the response by emergency services, the offense is a severity level 6, person felony;
- Great bodily harm resulting from the response by emergency services is a severity level 4, person felony; and
- Death resulting from the response by emergency services is a severity level 1, person felony.

The bill clarifies use of an electronic device or software to alter, conceal, or disguise the source of the request or the identity of the person making such request continues to be a level 10, nonperson felony.

The bill provides that it shall not be a defense that the person who suffered bodily harm, great bodily harm, or death contributed, or others contributed, to such person's harm or death. Persons who make an unlawful request for emergency service assistance may also be prosecuted for any form of homicide.

*Approved April 12, 2018*

## **Legislation in Conference Committee**

**House Sub for SB 179** would create and amend law to establish juvenile crisis intervention centers (intervention centers) and procedures for admission of juveniles to such centers.

### ***Establishment of Intervention Centers***

The bill would create law describing an intervention center as a facility that provides short-term observation, assessment, treatment and case planning, and referral for any juvenile experiencing a mental health crisis that causes the juvenile to be likely to cause harm to self or others. The bill would describe required parameters for intervention centers in several areas, including access to various services, construction and environmental features, and policies and procedures for operation and staff monitoring for intervention center entrances and exits.

The bill would require intervention centers to provide treatment to juveniles admitted to the centers, as appropriate while admitted.

An intervention center could be on the same premises as another licensed facility, but the living unit of the intervention center would have to be maintained in a separate, self-contained unit. An intervention center could not be located in a city or county jail or a juvenile detention facility.

A juvenile could be admitted to an intervention center when:

- The head of the center determines the juvenile is in need of treatment and is likely to cause harm to self or others;

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- A qualified professional from a community mental health center (CMHC) has given written authorization for the juvenile to be admitted to an intervention center; and
- No other more appropriate treatment services are available and accessible to the juvenile at the time of admission.

A juvenile could be admitted to an intervention center for not more than 30 days, and a parent with legal custody or a legal guardian of the juvenile could remove the juvenile from the center at any time. If the removal could cause the juvenile to become a child in need of care pursuant to the Revised Kansas Code for Care of Children (CINC Code), the head of the intervention center could report such concerns to the Department for Children and Families (DCF) or could request the county or district attorney to initiate proceedings under the CINC Code. If the head of the intervention center determines such a request to the county or district attorney is the most appropriate action, the head of the intervention center shall make the request and keep the juvenile in the intervention center for an additional 24-hour period to initiate the appropriate proceedings.

Upon a juvenile's release from an intervention center, the CMHC where the juvenile is expected to be discharged would be required to be involved with discharge planning. The head of the intervention center would be required to give written notice of the date and time of discharge, within seven days prior to discharge, to the patient, the CMHC where the juvenile is expected to be discharged, and the patient's parent, custodian, or legal guardian.

The bill would prohibit state agencies from administering or reimbursing state Medicaid services to any juvenile admitted to an intervention center through a managed care delivery system pursuant to a waiver granted by the U.S. Centers for Medicare and Medicaid Services (CMS) under Section 1115 or 1915 of the federal Social Security Act. Any services provided to a juvenile in an intervention center that qualify for Medicaid reimbursement under state or federal law would have to be reimbursed at a fee-for-service rate allowed by the CMS. The bill would not prohibit the Department of Health and Environment (KDHE) from administering or reimbursing state Medicaid services to any juvenile admitted to an intervention center pursuant to the waiver granted under Section 1915(c) of the federal Social Security Act, provided that such services are not administered through a managed care delivery system, or from reimbursing any state Medicaid services that qualify for reimbursement and that are provided to a juvenile admitted to an intervention center, subject to the above limitations. The bill would state it would not impair or otherwise affect the validity of any contract in existence on July 1, 2018, between a managed care organization and KDHE to provide state Medicaid services. On or before January 1, 2019, the Secretary of Health and Environment would be required to submit to the CMS any approval request necessary to implement these provisions.

On or before January 1, 2019, the Secretary for Children and Families, in consultation with the Attorney General, would be required to promulgate rules and regulations to implement the law created by the bill.

The Secretary for Children and Families would be required to provide an annual report of information regarding outcomes of juveniles admitted into intervention centers to the Joint Committee on Corrections and Juvenile Justice Oversight, the House Committee on Corrections and Juvenile Justice, and the Senate Committee on Judiciary. The report would be required to include the number of admissions, releases, and lengths of stay for juveniles admitted to intervention centers; services provided to admitted juveniles; needs of admitted juveniles determined by evidence-based assessment; and success and recidivism rates, including

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information on the reduction of involvement of the child welfare system and juvenile justice system.

The Secretary of Corrections would be permitted to enter into memoranda of agreement with other cabinet agencies to provide funding, not to exceed \$2,000,000 annually, from the Evidence-based Programs Account of the State General Fund (SGF) or other available appropriations for juvenile crisis intervention services.

The bill would define “juvenile” as a person less than 18 years of age. It would also provide definitions of “likely to cause harm to self or others,” “treatment,” and “qualified mental health professional.”

### ***Amendments to Existing Law***

The bill would amend various statutes to incorporate use of intervention centers, as follows.

#### *CINC Code Amendments*

The bill would amend the statute governing when a law enforcement officer (LEO) may take a child into custody to require an LEO to take a child under 18 years of age into custody when the LEO reasonably believes the child is experiencing a mental health crisis and is likely to cause harm to self or others.

The bill would amend the statute governing delivery of a child taken into custody by an LEO to allow an LEO to deliver a child taken into custody without a court order to an intervention center after written authorization by a CMHC. The bill also would non-substantively restructure the list of delivery alternatives in this section.

The bill would require, when an LEO takes a child into custody because the LEO reasonably believes the child is experiencing a mental health crisis and is likely to cause harm to self or others, the LEO place the child in protective custody. The LEO could deliver the child to an intervention center after written authorization by a CMHC, but the child could not be placed in a juvenile detention facility or other secure facility.

The bill would amend the statutes governing ex parte protective custody orders and temporary custody orders to allow placement, after written authorization by a CMHC, with an intervention center. The circumstances justifying an entry of a temporary custody order would be amended to include probable cause to believe the child is experiencing a mental health crisis and is in need of treatment.

Throughout the amended CINC Code statutes, the term “forthwith” would be replaced with “promptly.”

#### *Juvenile Justice Code Amendment*

The bill would amend the statute in the Revised Kansas Juvenile Justice Code governing taking juveniles into custody to allow an officer, when a juvenile cannot be delivered to the juvenile’s parent or custodian, to (in addition to continuing options) deliver the juvenile to an intervention center, if the juvenile is determined to not be detention eligible based on a standardized

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detention risk assessment tool and is experiencing a mental health crisis, after written authorization by a CMHC.

### *Account Amendments*

The bill would amend the statute establishing the Evidence-based Programs Account of the SGF to allow expenditures from the account for the development and implementation of evidence-based community programs and practices for juveniles experiencing mental health crises, including intervention centers.

### *Technical Amendments*

The bill would make technical amendments to statutory references.

### *Status-In Conference Committee*

**SB 261**, as amended, would amend the statute governing disposition of docket fees to extend from June 30, 2019, until June 30, 2021, the period during which the State Treasurer shall deposit and credit the first \$3.1 million to the Electronic Filing and Management Fund (Fund). Beginning with the fiscal year ending June 30, 2022, the bill would increase from \$1.0 million to \$1.5 million the amount the State Treasurer would be directed to deposit and credit to the Fund in subsequent years.

The bill would also amend law requiring an appraisal prior to the State purchasing or disposing of any real property. The bill would transfer the duty to appoint a disinterested appraiser from the Judicial Administrator to the Director of Property Valuation, the head of the Department of Revenue's Division of Property Valuation. Similarly, if the county assessment value of the real property is over \$200,000, the bill would allow the Director of Property Valuation to appoint three disinterested appraisers, rather than the Judicial Administrator.

The bill would be in effect upon publication in the Kansas Register.

### *Status-In Conference Committee*

**SB 281**, as amended, would amend the Protection from Stalking or Sexual Assault Act to apply to victims of human trafficking. The bill would rename the act the Protection from Stalking, Sexual Assault, or Human Trafficking Act and would define "human trafficking" as any act that would constitute the following crimes as defined in Kansas criminal law: human trafficking, aggravated human trafficking, commercial sexual exploitation of a child, and selling sexual relations. Similarly, "human trafficking victim" would be defined as a victim of one of these crimes.

The bill would revise who may seek relief on behalf of a minor child under the Protection from Abuse and Protection from Stalking, Sexual Assault, or Human Trafficking Acts. Specifically, when a minor child is alleged to be a human trafficking victim, the bill would allow the following

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to seek relief on the minor's behalf: a parent of the minor child; an adult residing with the minor child; the child's court-appointed legal custodian or court-appointed legal guardian; a county or district attorney; or the attorney general. Additionally, the bill would allow the child's court-appointed legal custodian or court-appointed legal guardian to seek relief on behalf of a minor child under the Protection from Abuse Act and the Protection from Stalking, Sexual Assault, or Human Trafficking Act. Under continuing law in these acts, parents and adults residing with the minor are authorized to seek relief on behalf of a minor not alleged to be a human trafficking victim.

The bill would allow a court to enter an order restraining the defendant from following, harassing, telephoning, contacting, recruiting, harboring, transporting, or committing or attempting to commit human trafficking upon the human trafficking victim or otherwise communicating with the human trafficking victim. The order would be required to contain a statement that violation of the order may constitute an offense under the Kansas Criminal Code, and the accused may be prosecuted, convicted of, and punished for such offense.

The bill would replace references in the Protection from Abuse and Protection from Stalking, Sexual Assault, or Human Trafficking Acts to "district judge" with "judge of the district court."

The bill would also make conforming amendments to statutes within the Protection from Stalking, Sexual Assault, or Human Trafficking Act and would amend the crime of violation of a protective order, a class A misdemeanor, to include knowingly violating a protection from human trafficking order.

### *Status-In Conference Committee*

**SB 288** would repeal statutes making it a misdemeanor, subject to a fine of \$100, imprisonment in the county jail for up to 30 days, or both, if a person knowingly:

- Causes or procures any process issued from a justice's court in a civil suit to be served on Saturday upon a person whose religious faith recognizes Saturdays as the Sabbath or who shall serve any such process made returnable on that day; or
- Procures any such suit pending in court against such person to be adjourned for trial on Saturday.

### *Status-In Conference Committee*

**SB 296**, as amended, would provide that evidence of misuse or nonuse of a safety belt may be considered by the trier of fact in a civil action in which the plaintiff has asserted a product liability claim, as defined in statute, against an automobile manufacturer alleging harm caused by a defective vehicle occupant protection system, for the purpose of determining causation, the absence of a defect or hazard, or negligent design or construction.

### *Status-In Conference Committee*

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**SB 310** would amend law governing the crime of escape from custody. Specifically, the bill would amend the definition of “escape” to include failure to return to custody following temporary leave lawfully granted by a custodial official authorized to grant such leave.

*Status-In Conference Committee*

**House Sub for SB 374**, as amended, would amend law concerning driving under the influence of alcohol, drugs, or both (DUI). Specifically, the bill would amend statutes governing the crimes of operating or attempting to operate a commercial motor vehicle under the influence (commercial DUI); implied consent; and tests of blood, breath, urine, or other bodily substance. The bill also would repeal the crime of test refusal.

### ***Commercial DUI***

The bill would amend language in the commercial DUI implied consent statute to state a person who drives a commercial motor vehicle “consents” to take a test or tests of that person’s blood, breath, urine, or other bodily substance. Current law states a person is “deemed to have given consent” to tests of blood, breath, or urine. The bill would amend the commercial DUI statute to provide a person commits the crime if the person commits an offense “otherwise comparable” to DUI, as defined in Kansas law.

### ***Commercial DUI and DUI Changes***

The bill would amend provisions in the commercial DUI and DUI statutes concerning supervision upon release from imprisonment to provide an offender for whom a warrant has been issued by the court alleging a violation of such supervision would be considered a fugitive from justice if it is found the warrant cannot be served. If it is found the offender has violated the provisions of this supervision, the court would determine whether the time from the issuing of the warrant to the date of the court’s determination of an alleged violation, or any part of it, would be counted as time served on supervision. Further, the bill would allow the term of supervision to be extended at the court’s discretion beyond one year. Any violation of the conditions of such extended term of supervision could subject such person to the revocation of supervision and imprisonment in jail of up to the remainder of the original sentence, not the term of the extended supervision.

Within both statutes, the bill would amend the one-month imprisonment enhancement for convicted persons who had one or more children under the age of 14 in the vehicle at the time of the offense. The bill would specify the enhancement would apply to “any person 18 years of age or older” when one or more children under the age of 18 are in the vehicle at the time of the offense.

In subsections within those statutes stating the fact a person is or has been entitled to lawful use of a drug is not a defense, the bill would replace a reference to a DUI “involving drugs” with references to the subsections in the DUI statute that apply to drugs or a combination of drugs and alcohol.

The bill would remove a requirement for the court to electronically report every diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation

## ***Legislative Update***

of commercial DUI to the Division of Vehicles. Under continuing law, diversions are not available for commercial DUI.

The bill would amend the definition of “conviction” in these statutes to:

- Replace the phrase “a violation of a crime” with “an offense”;
- Replace the term “state” with “jurisdiction” and remove a provision specific to acts committed on a military reservation; and
- Replace the phrase “a crime” with the phrase “an offense that is comparable to the offense” described in the statute.

The bill would provide that, for the purposes of determining whether an offense is comparable, the following shall be considered:

- The name of the out-of-jurisdiction offense;
- The elements of the out-of-jurisdiction offense; and
- Whether the out-of-jurisdiction offense prohibits conduct similar to the conduct prohibited by the closest approximate Kansas offense.

In the DUI statute, the bill would require the court to electronically report any finding regarding the alcohol concentration in the offender’s blood or breath.

### ***DUI Implied Consent***

The bill would amend language in the DUI implied consent statute to state a person who operates or attempts to operate a vehicle “may be requested” to submit to one or more tests of the person’s blood, breath, urine, or other bodily substance. The bill would remove language stating a dead or unconscious person shall be deemed not to have withdrawn consent. Further, the bill would add language requiring the test to be administered at the direction of a law enforcement officer, and the law enforcement officer would determine which manner of test is to be conducted or requested. This would replace language requiring a law enforcement officer to request the person to submit to testing after providing required notice (described below) and to select the test or tests to be done.

The bill would remove language requiring law enforcement to request a person to submit to a test deemed consented to if at the time of the request the officer has reasonable grounds to believe the person was DUI. Instead, the bill would add language stating one or more tests could be required of a person when, at the time of the request, a law enforcement officer has probable cause to believe the person has committed the crime of DUI. The bill also replaces “reasonable grounds” with “probable cause” elsewhere in the bill to reflect this change in the required standard.

The bill would also revise language in this subsection to allow a test when a person has been involved in a motor vehicle accident or collision resulting in personal injury or death. This new language would replace provisions that distinguish between personal injury and serious injury or death when the operator could be cited for any traffic offense. The bill would remove a definition for “serious injury” and other references to these provisions to reflect this change.

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The bill would remove “accident” from language allowing a law enforcement officer directing administration of a test to act on the basis of the collective information available to law enforcement officers involved in the investigation or arrest.

### ***DUI Testing***

#### *Notice When Requesting a Test and Exceptions*

The bill would remove provisions governing the oral and written notice required to be given to a person when requesting a test or tests of blood, breath, urine, or other bodily substance. Instead, the bill would add two new subsections governing notice for tests of breath or other bodily substance other than blood or urine and for tests of blood and urine.

The notice for tests of breath or other bodily substance other than blood or urine would state the following: there is no right to consult with an attorney regarding whether to submit to testing, but, after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing; if the person refuses to submit to and complete the test or tests, or if the person fails a test, the person’s driving privileges will be suspended for a period of at least 30 days and up to a year; refusal to submit to testing may be used against the person at any trial or hearing on a charge arising out of refusal to submit to testing or DUI, or both; and the results of the testing may be used against the person at any trial or hearing on a DUI charge.

The notice for tests of blood or urine would state the following: if the person refuses to submit to and complete the test or tests, or if the person fails a test, the person’s driving privileges will be suspended for a period of at least 30 days and up to a year; the results of the testing may be used against the person at any trial or hearing on a DUI charge; and after the completion of the testing, the person may request and has the right to consult with an attorney and may secure additional testing.

The bill would state nothing in this section would be construed to limit the right of a law enforcement officer to conduct any search of a person’s breath or other bodily substance, other than blood or urine, incident to a lawful arrest pursuant to the U.S. Constitution, with or without providing the person the notice outlined above for requesting a test of breath or other bodily substance, other than blood or urine, nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search. Additionally, the bill would state nothing in this section would be construed to limit the right of a law enforcement officer to conduct or obtain a blood or urine test of a person pursuant to a warrant under the Kansas Code of Criminal Procedure, the U.S. Constitution, or a judicially recognized exception to the search warrant requirement, with or without providing the person the notice outlined above for requesting a test of blood or urine, nor limit the admissibility at any trial or hearing of alcohol or drug concentration testing results obtained pursuant to such a search. Similarly, the bill would state nothing in this section would be construed to limit the admissibility at trial of test results obtained pursuant to a judicially recognized exception to the warrant requirement.

The bill would amend a subsection stating no test results shall be suppressed because of technical irregularities in the consent or notice required. Instead, the bill would state no test results shall be suppressed because of irregularities not affecting the substantial rights of the accused in the consent or notice authorized. The bill would replace notice “required” with notice “authorized” elsewhere in the bill consistent with this change.



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The bill would state failure to provide any or all notice would not be an issue or defense in any action other than an administrative action regarding the subject's driving privileges.

### ***Collection of Test Samples***

The bill would revise law allowing a law enforcement officer to direct a medical professional to draw one or more samples of blood from a person to determine the blood's alcohol or drug concentration under certain circumstances. Pursuant to the bill, an officer could direct such withdrawal if the person has given consent, with or without the notice outlined above, and the officer has the required probable cause; law enforcement has obtained a search warrant authorizing the collection of blood from the person; or the person refuses or is unable to consent to submit to and complete a test, and another judicially recognized exception to the warrant requirement applies.

The bill would revise language in a subsection outlining who may perform such withdrawal of blood to apply when a law enforcement officer "is authorized to collect one or more tests of blood," rather than when an officer "requests a person to submit to a test." The bill would also clarify language prohibiting a medical professional from requiring a person to sign any additional consent or waiver form to prohibit the medical professional from requiring the person "that is the subject of the test or tests to provide any additional consent or sign any waiver form."

Similarly, the bill would revise language in a subsection outlining who may collect urine samples to apply when a law enforcement officer "is authorized to collect one or more tests of urine," rather than when an officer "requests a person to submit to a test."

The bill would clarify test results would be made available to any person submitting to testing "when available." The bill would also state any person who participates in good faith in the obtaining, withdrawal, collection, or testing of blood, breath, urine, or other bodily substance as authorized by law would not incur any civil, administrative, or criminal liability.

### ***Preliminary Testing***

The bill would revise the statute governing preliminary screening tests to remove provisions stating a person is deemed to have given consent to a preliminary screening test of the person's breath, saliva, or both and to remove notice provided at the time of the request. The bill would allow an officer to request a preliminary screening test of the person's breath, oral fluid, or both if otherwise permitted by law. The bill also replaces "saliva" with "oral fluid" elsewhere in the bill consistent with this change.

The bill provides preliminary screening tests of a person's oral fluid would be conducted in accordance with any rules and regulations adopted by the Kansas Bureau of Investigation (KBI). Additionally, the bill would amend statutes authorizing the Secretary of Health and Environment and the Director of the KBI to adopt rules and regulations concerning preliminary screening devices to clarify such devices could be used as aids in determining grounds for requesting testing pursuant to state law or as otherwise authorized by law.

### ***Repeal of the Crime of Test Refusal***

The bill would repeal the crime of test refusal, a class A, nonperson misdemeanor, for which penalties include between 90 days and 1 year of imprisonment and a fine of between \$1,250

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and \$1,750 for a first conviction. The bill would also remove references to this statute throughout numerous statutes and make other technical amendments to ensure statutory consistency.

### ***Status-In Conference Committee***

**HB 2458**, as amended, would create the crime of counterfeiting currency, amend law related to the crimes of mistreatment of a dependent adult and mistreatment of an elder person, and amend law related to the crimes of assault and battery of a law enforcement officer.

### ***Counterfeiting Currency***

The bill would create the crime of counterfeiting currency, which would be defined as doing any of the following with the intent to defraud:

- Making, forging, or altering any note, obligation, or security of the United States, which would be a severity level 7 nonperson felony if the total face value is \$25,000 or more and a severity level 8 nonperson felony if the total face value is less than \$25,000;
- Distributing, or possessing with the intent to distribute, any obligation or security of the United States knowing the obligation or security has been so made, forged, or altered, with the same penalties as above; or
- Possessing any paper, ink, printer, press, currency plate, or other item with the intent to produce any counterfeit note, currency, obligation, or security of the United States, which would be a severity level 9 nonperson felony.

### ***Mistreatment of a Dependent Adult and Mistreatment of an Elder Person***

The bill would amend law related to the crimes of mistreatment of a dependent adult and mistreatment of an elder person, as follows.

The bill would merge the two crimes into a single crime of mistreatment of a dependent adult or an elder person. Under current law, the two crimes include the same list of acts against their victims, with the exception of the act of committing mistreatment of a dependent adult by infliction of physical injury, unreasonable confinement, or unreasonable punishment of the adult. Thus, under the bill, this act also would become a crime when committed against an elder person. The bill also would add an additional act applicable to all victims: taking the personal property or financial resources of a victim for the benefit of the defendant or another person by taking control, title, use, or management of the personal property or financial resources of a victim through a violation of the Act for Obtaining a Guardian or Conservator.

The bill also would amend the penalty provisions of the crime where the penalty level depends on the monetary value of the personal property or financial resources to increase the ceiling for a misdemeanor from less than \$1,000 to less than \$1,500. The corresponding floor for the lowest felony penalty (severity level 7) and ceiling for an exception for multiple previous offenses would be changed to \$1,500.

The definition of “elder person” for purposes of the crime would be changed from 70 years of age or older to 60 years of age or older.

## ***Legislative Update***

In the first degree murder statute, the bill would add the crime to the list of inherently dangerous felonies for purposes of the felony murder rule. (Under the felony murder rule, first degree murder includes the killing of a human being committed in the commission of, attempt to commit, or flight from any inherently dangerous felony.)

### ***Assault and Battery of a Law Enforcement Officer***

The bill would amend the definition of a law enforcement officer for purposes of the crimes of assault and battery of a law enforcement officer by including uniformed or properly identified federal law enforcement officers while such officers are engaged in the performance of their duty. "Federal law enforcement officer" would be defined as a law enforcement officer employed by the U.S. federal government who, as part of such officer's duties, is permitted to make arrests and to be armed.

### *Status-In Conference Committee*

**HB 2479** would create and amend law related to criminal procedure, as follows.

### ***Stay During KSA 60-1507 Proceedings***

The bill would create law in the Kansas Code of Criminal Procedure providing for an automatic stay in an underlying criminal case when a district court has granted relief in a KSA 60-1507 proceeding and the prosecution files an appellate docketing statement appealing from the district court's decision. The time during the prosecution's appeal would not be counted for purposes of the speedy trial statute until the mandate in the appeal has issued. Despite the stay, the court could release the prisoner on bond, even where the prisoner has not filed a notice of appeal, pursuant to the statute governing release after conviction.

The stay could be lifted upon motion filed in the appellate court if the court finds the prisoner has made a strong showing the prisoner is entitled to relief and will be irreparably injured if the stay is not lifted. If the stay is lifted, the time during the prosecution's appeal still would not be counted for purposes of the speedy trial statute until the mandate in the appeal has issued, and the prisoner would be entitled to a new bond hearing in the underlying criminal case.

### ***Juror Contact***

The bill would also add provisions to the Code of Criminal Procedure concerning contact of jurors following criminal actions. Immediately following discharge of the jury, the bill would allow the defendant, the defendant's attorney or representative, or the prosecutor or the prosecutor's representative to discuss the jury deliberations or verdict with a member of the jury only if the juror consents to the discussion and the discussion takes place at a reasonable time and place.

If such discussion occurs at any time other than immediately following the discharge of the jury, prior to discussing the jury deliberations or verdict with a member of a jury, the defendant, the defendant's attorney or representative, or the prosecutor or the prosecutor's representative would be required to inform the juror of the identity of the case, the party in the case that the person represents, the subject of the interview, the absolute right of the juror to discuss or not

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discuss the deliberations or verdict in the case with the person, and the juror's right to review and have a copy of any declaration filed with the court.

The bill would require any unreasonable contact with a juror by the defendant, the defendant's attorney or representative, the prosecutor, or the prosecutor's representative without the juror's consent to be immediately reported to the trial court. Any violation would be considered a violation of a lawful court order, which the bill provides would be punished as contempt of court.

The bill would require the court, on completion of a jury trial and before the jury is discharged, to inform the jurors they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone. Further, before the jury is discharged, the bill would require the judge to inform jurors of the consent required for a discussion with the parties, the obligation to report unreasonable contact, and that violation of the court order can be punished as contempt of court.

The bill would state nothing in the section would prohibit a law enforcement officer from investigating an allegation of criminal conduct.

### ***Grand Jury Procedure***

The bill would amend law concerning grand juries to require all proceedings before the grand jury, including all testimony, to be recorded. The grand jury would select the method of recording and could employ a certified shorthand reporter to make a stenographic record of all proceedings. The law currently requires the grand jury to employ a certified shorthand reporter. The bill would allow the grand jury to elect to record the proceedings utilizing a digital recording system maintained by the court, if such system is available.

The bill would also amend law concerning indictments to allow the presiding juror to sign the indictment "Presiding Grand Juror" rather than signing the presiding juror's name, which is required by current law. Additionally, the bill would amend a statute concerning amendment of an indictment to replace "the people" with "the prosecuting attorney" to clarify who would be able to order the amendment.

Finally, the bill would make technical changes to statutory references.

### ***Status-In Conference Committee***

**HB 2481**, as amended, would create the Adoption Protection Act and amend several provisions of the Kansas Adoption and Relinquishment Act.

### ***Adoption Protection Act***

The bill would create the Adoption Protection Act, which would state, notwithstanding any other provision of state law and to the extent allowed by federal law, no child placement agency (CPA), as defined by the bill, shall be required to perform, assist, counsel, recommend, consent to, refer, or otherwise participate in any placement of a child for foster care or adoption when the proposed placement of such child would violate such CPA's sincerely held religious beliefs.

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The bill would also prohibit 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:

- Denial of a license, permit, or other authorization; denial of renewal of the same; or revocation or suspension of the same by any state agency or political subdivision;
- Denial of any grant or contract, or participation in a program by any state agency or political subdivision; 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 bill would require the CPA's sincerely held religious belief be described in the CPA's organizing documents, written policies, or such other written document approved by the governing body of the CPA.

The provisions of the bill would not apply to any entity while the entity has a contract with the Department for Children and Families (DCF) as a case management contractor.

### ***Kansas Adoption and Relinquishment Act Amendments***

The bill would amend various provisions within the Kansas Adoption and Relinquishment Act (KARA), as follows.

#### *Definitions*

The bill would amend the definition of "residence of a child" and "place where a child resides" to mean the residence of any parent. The current definition states the residence of a child is the residence of the child's mother if the child's parents are not married or if the child's mother has established a separate, legal residence and the child resides with the mother or, alternatively, the residence of the child's father if the child's parents are married or, if not married, if the father has custody.

The bill would add a definition of "party in interest," which would mean:

- A parent whose parental rights have not been terminated;
- A prospective adoptive parent;
- An adoptive parent;
- A legal guardian of a child;
- An agency having authority to consent to the adoption of a child;
- The child sought to be adopted, if over 14 years of age and of sound intellect; or
- An adult adoptee.

The bill would move the definition of "professional" within the code and clarify it does not include a person who received solely reimbursement for expenses.

#### *Who May Adopt*

The bill would change the phrase "husband and wife" to "married adult couple" in the statute governing who may adopt.

## ***Legislative Update***

### *Consent to Adoption and Relinquishment*

The bill would clarify that it is the duty of the court to inform the consenting person or relinquishing person of the legal consequences of the consent or relinquishment; current law states the court's duty is to advise the consenting person or relinquishing person of the consequences of consent or relinquishment. The bill would also add a provision that states a consent or relinquishment may be given by any father or possible father 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 of the consent prior to its execution and such counsel is present at the execution of the consent.

The bill would provide that a relinquishment would be final when executed unless the relinquishing party, prior to the entry of a final order terminating parental rights, alleges and proves by clear and convincing evidence that the relinquishment was not freely and voluntarily given; the burden of proving the relinquishment was not freely and voluntarily given would be on the relinquishing party. The bill would provide that, if a parent has relinquished a child and the other parent does not relinquish the child, and the other parent's rights have not been terminated, the rights of the parent who relinquished would not be terminated, and full parental rights would be restored. The bill would remove a provision that terminates the right to receive notice in a subsequent adoption proceeding involving the child and a provision that terminates the rights of birth parents to inherit from or through such child upon relinquishment.

The bill would clarify a petition for adoption must include facts relied upon to deem a relinquishment was unnecessary, if the consent or relinquishment of either or both parents is not obtained, and to require a copy of any relinquishment to be filed with the petition for adoption.

### *Foreign and Out-of-State Adoptions*

The bill would amend the section governing foreign and out-of-state adoptions to specify that a document that is the functional equivalent of a Kansas consent or relinquishment would be valid if executed and acknowledged outside of Kansas or in a foreign country in accordance with the laws of Kansas or the laws of the place where executed. The bill would remove the requirement that a consent or relinquishment signed in a foreign country be acknowledged or affirmed in accordance with the law and procedure of the foreign country.

The section governing interstate adoption would be amended to specify that any professional providing services related to the placement of children or adoption who fails to comply with the Interstate Compact on the Placement of Children would be guilty of a class C nonperson misdemeanor; current law provides the penalty is a class C misdemeanor.

### *Payment for Adoption*

The bill would remove the requirement that legal and professional services performed outside the state shall not exceed customary fees for similar services when performed in Kansas. The bill would also remove related references limiting fees and expenses to those that are reasonable in Kansas or are based on fees in the state of Kansas.

### *Access to Adoption Records*

## ***Legislative Update***

In the section governing who may access adoption records, the bill would replace “the parties in interest and their attorneys” with “party filing for adoption or termination and that party’s attorney.” The bill would additionally grant access to such records to an adoptee who has reached the age of majority and the Disciplinary Administrator. The bill would move a provision providing access by the Commission on Judicial Performance to such records. The bill would remove an exclusion to the definition of “parties in interest” applicable to this section. The bill would add a provision that would allow any party in interest to request access to the files and records in an adoption proceeding prior to the final decree of adoption. After notice and a hearing and upon a written finding of good cause, a court could order that some or all of the files and records be open to inspection and copy by the moving party. The court could permit access to some or all of the files and records for good cause shown after the final decree of adoption. Provisions allowing DCF to make contacts at the request of various parties would be amended to include birth parents. The bill would also clarify that the legal guardian of the adopted adult could grant permission for DCF to share identifying information or request DCF contact the birth or genetic parents in the event of a health or medical need.

### ***Advertising Adoption and Adoption-Related Services***

The bill would add any person who advertises that such person will provide adoption-related services to the provision requiring disclosure in any advertisement of whether such person is licensed. The bill would also exempt DCF, an individual seeking to adopt a child, an agency, or an attorney from a prohibition on offering to adopt, find a home for, or otherwise place a child as an inducement to any parent, guardian, or custodian of a child to place such child in such person’s home, institution, or establishment.

### ***Venue***

The section governing venue in an agency adoption would be amended to clarify that venue could be in the county where the principal place of business for the child placing agency is located, and to provide that, in all adoptions, venue may be established in any county in Kansas if all parties in interest agree in writing.

### ***Jurisdiction***

The bill would provide that jurisdiction over adoption proceedings, including a proceeding to terminate parental rights, would be governed by the Uniform Child Custody Jurisdiction and Enforcement Act. The bill would remove all current provisions related to jurisdiction in the KARA. The bill would specify the notice provisions of the KARA would control in adoption proceedings.

### ***Background Information***

The bill would remove the requirement of filing with the petition any hospital records pertaining to the child, leaving only the requirement of a properly executed authorization for release of any hospital records pertaining to the child, which would be clarified. The bill would also clarify the continuing class C misdemeanor for intentional destruction of certain background information is a nonperson misdemeanor.

### ***Assessments***

## ***Legislative Update***

The bill would remove the requirement that reports of assessments of the advisability of an adoption in independent or agency adoptions be filed not less than ten days before the hearing on the petition. The ten-day limit for reports filed by nonresident petitioners would also be removed.

### *Notice*

The bill would amend notice for adoption hearings in the following manner:

- **Independent and stepparent adoptions.** The bill would require notice to possible parents, rather than presumed parents, and would add a requirement that the notice be given at least ten calendar days before the hearing. This section would also be amended to require notice be given to any person who has physical custody of the child, unless waived by that person, and would remove the requirement that notice be given to any other persons as the court may direct. The requirement of notice to an individual in loco parentis in an independent adoption would be removed;
- **Agency adoptions.** In addition to the required notice to the consenting agency, the bill would require notice be given to 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 by the person entitled to notice; and
- **Service.** The bill would specify notice of the hearing would be by personal service, certified mail return receipt requested, or in any other manner the court may direct.

### *Hearing*

In the statute governing hearings, the bill would clarify that, if a court enters a final decree of adoption after a hearing, that decree would terminate parental rights if not previously terminated. The bill would also amend references in this section to jurisdiction and a party in interest to align the section with other amendments made by the bill.

### *Termination of Parental Rights in Adoption and Relinquishment Proceedings*

In the statute governing termination of parental rights in adoption and relinquishment proceedings, the bill would remove provisions specific to termination of parental rights in stepparent adoptions.

The bill would direct a court to order publication notice of an adoption hearing if a father's whereabouts are unknown.

Existing provisions regarding filing of a petition to terminate parental rights would be removed. The bill would then specify that a petition to terminate parental rights may be filed independently or with a petition for adoption; if such petition is filed independently, the venue for the proceeding would be in the county in which the child or a parent resides or is found.

A parent, a petitioner for adoption, the person or agency having legal custody of the child, or the agency to which the child has been relinquished would be allowed to file a petition to terminate parental rights. The proceeding to terminate parental rights would have precedence over any other proceeding involving custody of the child, absent a court's finding of good cause, until a court enters a final order on the termination issues or until further orders of the court.



## ***Legislative Update***

The bill would add a requirement that notice given at least ten calendar days before the hearing, unless waived by the person entitled to notice. The bill would require proof of waiver of notice be filed with the court before the petition could be heard, as is proof of notice under current law.

References to “man” would be changed to “person,” “paternity” to “parentage,” “regard to” to “consideration of,” and “asserts” to “claims.”

With regard to the court’s consideration, order, and findings, the bill would:

- Clarify that finding the consent and relinquishment unnecessary may be part of the court’s conclusion;
- Change references to “next” to “immediately” with regard to timing requirements; and
- Replace a provision allowing the court to consider the best interests of the child with a requirement the court consider all of the relevant surrounding circumstances.

This section would also be amended to add a definition of “support,” which would mean monetary or non-monetary assistance that is reflected in specific and significant acts and sustained over the applicable period.

### ***Adult Adoptions***

The sections governing adoption of adults would be amended to state Kansas courts have jurisdiction over a proceeding for the adoption of an adult if the petitioner or adult adoptee resides in Kansas. In addition to the county in which the petitioner or adult adoptee resides, venue could be established in any county in Kansas if all parties in interest agree in writing to venue in that county. The bill would clarify a notice and hearing statute applies only to adult adoptions.

### ***Forms***

The bill would add the waiver of notice of hearing to the list of forms to be provided by the Judicial Council under the KARA.

### ***Technical Amendments***

The bill would correct a statutory reference to the definition of “maternity center” and make further technical amendments as requested by the Office of Revisor of Statutes.

### ***Status-In Conference Committee***

**HB 2571**, as amended, would amend the statute governing disclosure of audio or video recordings made and retained by law enforcement using a body camera or a vehicle camera (law enforcement recordings), as follows.

Under current law, the statute allows, in addition to any disclosure authorized under the Kansas Open Records Act (KORA), certain persons to request to listen to or view law enforcement recordings and requires the law enforcement agency to allow such listening or viewing. The bill

## ***Legislative Update***

would add a provision requiring the agency to allow the listening or viewing within 20 days after the request is made.

Under current law, an “heir at law” is one of the persons who may make the request. The bill would add the attorney for an heir at law to the list of persons who may make the request. The bill also would add a definition for “heir at law” to include an executor or an administrator of a decedent; the spouse of a decedent, if living; if there is no living spouse of a decedent, an adult child of a decedent, if living; or, if there is no living spouse or adult child of a decedent, a parent of a decedent, if living. (Note: Under current law, an executor or administrator of a decedent may make a request, so the bill only changes the organization, not the substance, of the law allowing these persons to make a request.)

In the list of requesters, the bill would change “a parent or legal guardian of a person under 18 years of age who is a subject of the recording” to “any parent or legal guardian of a person under 18 years of age who is a subject of the recording.”

The bill would clarify that requests to listen to or view a law enforcement recording are to be made in accordance with procedures adopted by public agencies pursuant to KORA requirements.

### *Status-In Conference Committee*

**HB 2579**, as amended, would create a civil cause of action allowing claimants to seek damages from the State for wrongful conviction.

### ***Establishing Eligibility for Damages***

A claimant would be entitled to damages if he or she establishes by a preponderance of evidence:

- The claimant was convicted of a felony crime and subsequently imprisoned;
- The claimant’s judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;
- The claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges, or finding of not guilty on retrial; and
- The claimant did not commit or suborn perjury, fabricate evidence, or by the claimant’s own conduct cause or bring about the conviction.

For these purposes, neither a confession nor admission later found to be false or a guilty plea would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about the conviction. Additionally, the bill would allow the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, in the interest of justice, to give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by such person or those acting on their behalf.

## ***Legislative Update***

The bill would require the suit, accompanied by a statement of the facts concerning the claim for damages and verified by the claimant, to be brought by the claimant within a period of two years after the dismissal of the criminal charges against the claimant, finding of not guilty on retrial, or grant of a pardon to the claimant. A claimant convicted, imprisoned, and released from custody before July 1, 2018, would be required to commence an action under this section no later than July 1, 2020.

The bill would specify the caption form for pleadings and require any claim filed under the bill be served on the Attorney General in accordance with the Code of Civil Procedure. The claim would be tried by the court and no request for jury trial would be permitted. The decision of the district court could be appealed directly to the Supreme Court pursuant to the Code of Civil Procedure.

### ***Monetary Damages***

A claimant entitled to damages would receive \$50,000 for each year of imprisonment, as well as not less than \$25,000 for each additional year served on parole or postrelease supervision or each additional year the claimant was required to register as an offender under the Kansas Offender Registration Act, whichever is greater. A claimant would not receive compensation for any period of incarceration during which the claimant was concurrently serving a sentence for a conviction of another crime for which such claimant was lawfully incarcerated. The bill would require the court to order the award be paid as a combination of an initial payment not to exceed \$100,000 and the remainder as an annuity not to exceed \$80,000 per year. The bill would allow the claimant to designate a beneficiary or beneficiaries for the annuity by filing such designation with the court. Alternatively, the bill would allow the court to order one lump sum payment if it finds it is in the best interests of the claimant.

If, at the time the judgment for the award is entered, the claimant has won a monetary award against or has entered into a settlement with the State or any political subdivision thereof in a civil action related to the same subject, the amount of the award in the action or received in the settlement agreement, minus any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement, would be deducted from the sum of money to which the claimant is entitled pursuant to the bill. The court would include in the judgment entry an award to the State of any amount deducted.

If, after the judgment is entered, the claimant wins a monetary award against or enters into a settlement with the State or any political subdivision thereof in a civil action related to the same subject, the claimant would be required to reimburse the State for the sum of money paid pursuant to the claim under the bill, minus any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement. The amount of the reimbursement would not exceed the amount of the monetary award the claimant wins for damages in the other civil action or receives in the settlement agreement.

### ***Fees, Costs, and Other Relief***

In addition to monetary damages, the bill allows the court to award other non-monetary relief as sought in the complaint, including, but not limited to counseling, housing assistance, and personal financial literacy assistance as appropriate. Further, the bill states claimants would be entitled to receive reasonable attorney fees and costs incurred in the action brought pursuant to

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the bill; receive tuition assistance; and participate in the state health care benefits program (Program).

### ***Tuition Assistance***

Claimants awarded tuition assistance would receive a waiver of tuition and required fees for attendance at a “postsecondary educational institution” (defined in the bill) for up to 130 credit hours and could attend either full time or part time. The Kansas Board of Regents (KBOR) would be authorized to make expenditures to reimburse each individual awarded tuition assistance for additional fees, including but not limited to fees for room and board, technical equipment, and course-required books. Further, the bill would prohibit delayed enrollment of an individual who is awarded tuition assistance because appropriations are not available for any additional fees provided to such individual. To remain eligible for tuition and fees waiver, the individual would be required to remain in good standing at the institution where the individual is enrolled and provide a written electronic copy of the court order awarding relief in the form of tuition assistance to the institution or KBOR. KBOR would be required to adopt rules and regulations to administer this tuition assistance.

### ***State Health Care Benefits***

On and after July 1, 2018, a claimant would have 31 calendar days from the date of judgment entered to complete or decline enrollment in the Program for the remainder of the plan year and for the next ensuing plan year. A claimant would be qualified to participate in the Program for the remainder of the claim year and the next ensuing plan year. A claimant would not be qualified to elect a high-deductible health plan and health savings account under the Program. The cost of premiums would be paid from the Tort Claims Fund and would not be charged to the claimant. The claimant would pay any applicable copayments, deductibles, and other related costs, however, and could elect to include the claimant’s dependents, in which case the claimant would be responsible for costs of premiums, copayments, deductibles, and other costs for covered dependents. The Attorney General would be required to provide assistance to obtain and maintain coverage including enrollment, maintenance of records, and other assistance.

### ***Certificate of Innocence; Expungement Orders***

If the court finds the claimant is entitled to a judgment, the bill would require the court to enter a certificate of innocence finding the claimant was innocent of all crimes for which the claimant was mistakenly convicted and order the associated convictions and arrest records expunged and purged from all applicable state and federal systems. The court would be required to enter the expungement order regardless of whether the claimant has prior criminal convictions. The bill would outline the required contents of the order of expungement, which would include a direction to the Kansas Bureau of Investigation (KBI) to purge the conviction and arrest information from the criminal justice information system central repository and all applicable state and federal databases. The clerk of the court would send a certified copy of the order to the KBI, which would then be required to 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 conviction and arrest. The KBI would be required to provide confirmation of such action to the court. If a certificate of innocence and an order of expungement are entered, the bill states the claimant would be treated as not having been arrested or convicted of the crime.

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Upon entry of a certificate of innocence, the bill would also require the court to order the expungement and destruction of the associated biological samples authorized by and given to the KBI in accordance with state law requiring collection of such samples in certain circumstances. The order would direct the KBI to expunge and destroy such samples and profile record. The clerk of the court would send a certified copy of the order to the KBI, which would be required to carry out the order and provide confirmation of such action to the court. The bill would state the KBI would not be required to expunge and destroy any samples or profile record associated with the claimant related to any offense other than the offense for which the court has entered a certificate of innocence.

The bill states the decision to grant or deny a certificate of innocence would not have a res judicata effect on any other proceedings.

### ***Kansas Department of Corrections Reentry Services***

The bill would state nothing in the bill would preclude the Kansas Department of Corrections (KDOC) from providing reentry services to a claimant that are provided to other persons, including, but not limited to, financial assistance, housing assistance, mentoring, and counseling. Such services would be provided while an action under this section is pending and after any judgment is entered, as appropriate for such claimant.

### ***Additional Responsibilities of the Attorney General***

When a judgment is entered, the Attorney General would be required to seek damages for the State of Kansas for the benefit of the State General Fund (SGF) from any persons who knowingly contributed to the wrongful conviction and imprisonment of the claimant to the extent the evidence in the case warrants such action. The Attorney General would also be required to prosecute ouster and criminal proceedings as the evidence in the case warrants.

Upon receiving a certified copy of the certificate of innocence and the judgment entry from the clerk of the court, the Attorney General would be required to pay any judgment through the procedure established in the Tort Claims Act.

The bill would amend the statute governing the Tort Claims Fund administered by the Attorney General to provide moneys in that fund could be used to pay judgments arising under the bill.

*Status-In Conference Committee*