

## KSSC Third Quarter Newsletter

### IN THIS ISSUE:

- Agency Updates
- 2020 KSSC Legislative Proposals
- Appellate Update

### Order the 2020 DRM!

The 2020 Desk Reference Manual is now available to order [here](#). New laminates are also available.

**Credit cards are accepted.**

### Congratulations to John Grube!

KSSC is pleased to announce that John Grube will serve as Senior Research Analyst for the agency as well as the Statistical Analysis Center (SAC) Director for the state of Kansas. Each State SAC is led by a director who manages the day-to-day operations. Confirmed by the U.S. Department of Justice, Bureau of Justice Statistics, the SAC Director must have extensive knowledge of research methodology and statistical analyses techniques, as well as the ability to design and conduct research studies, and produce and present findings in written and oral presentations. In his current capacity as the senior research analyst, his duties include serving as the database manager for the research department and author of the agency's annual report.

Mr. Grube earned a Bachelor of Arts in Sociology from the University of Kansas in 2007 and a Master of Science in Criminology from Oklahoma City University in 2008. Obtaining his Juris Doctorate degree from Washburn University School of Law in 2012, Mr. Grube is also a licensed attorney. He previously served as an assistant district attorney in Wyandotte County, Kansas and worked as an appellate attorney for the Kansas State Board of Indigents' Defense Service (BIDS). Prior to law school, Mr. Grube worked as a police officer for the Kansas City Kansas Police Department. John is currently a Ph.D. candidate in the Sociology/Criminology program at Kansas State University. Congratulations, John!

### SB 123 Fall Webinar

The SB 123 Fall Conference, held on October 20, was a resounding success! The day covered virtual topics from billing to HIPAA compliance. The focus was to educate treatment providers and probation officers in implementing best practices within the SB 123 substance abuse treatment program. Many thanks to all the presenters who volunteered their time. If you missed it, presentations will be available shortly in the SB 123 [Training](#) section of the KSSC website.



### Updates

At the October KSSC meeting, the Commission voted, beginning July 1, 2021, to utilize the Level of Service/Case Management Inventory (LS/CMI) for men and the Women's Risk Needs Assessment (WRNA) for women as presentence assessments, replacing the LSI-R.



# 2021 KSSC Legislative Proposals

As passed by the Commission at the 2020 Annual Workshop

The links below represent the anticipated bills the KSSC plans to reintroduce or support in the upcoming session. The Sentencing Commission is open to suggestions and input. Bill language will be finalized by the end of the year. If you have a legislative idea, please email [here](#).

1.	Amending the requirements for offender registration. See <a href="#">2020 HB 2474</a> (Judicial Council) and <a href="#">2019 HB 2051</a>
2.	Allowing earned discharge credit for people on probation. See <a href="#">2019 HB 2052</a> . Consider “substantial compliance” definition at October meeting.
3.	Increasing felony loss thresholds for certain property crimes – Eleven property crimes proposed to be raised from \$1,000 to \$1,500 for felony threshold. See <a href="#">2020 HB 2485</a> .
4.	Changing certain penalties for drug crimes. See <a href="#">2019 HB 2047</a> .
5.	Requiring legislative members of the sentencing commission to be members of senate judiciary and house corrections and juvenile justice as set forth in <a href="#">KSA 74-9102</a> . See <a href="#">2020 HB 2493</a> .
6.	Clarifying concurrent or consecutive sentencing for persons convicted of new crimes while on release for a felony. See <a href="#">KSA 21-6604(f)(4)</a> , <a href="#">KSA 21-6606(d)</a> and <a href="#">2019 HB 2046</a> .
7.	Extending terminal medical release to inmates in the custody of the department of corrections with a condition likely to cause death within 120 days. See <a href="#">2020 HB 2469</a> .
8.	Creating a drug abuse treatment program for people on diversion and allowing county attorneys to enter into agreements with court services and community corrections for supervision. See <a href="#">2020 HB 2002</a> .
9.	Clarifying jurisdiction and supervision of offenders in a certified drug abuse treatment program – All parties must agree to the transfer to offender’s SB 123 probation to the location where offender would be receiving usual courtesy supervision. See <a href="#">2020 HB 2470</a> .
10.	Amending the criminal penalties for unlawful tampering with electronic equipment (SL6 np) – If an offender is on felony supervision and commits this crime, the violation would be a severity level 8, nonperson felony. If on misdemeanor supervision or court-ordered supervision in any civil case the violation would be a class A nonperson misdemeanor. See <a href="#">2020 HB 2494</a> .
11.	Modification of Care and Treatment Law – Allowing courts to prohibit possession of a firearm in a temporary custody order pursuant to the care and treatment act for mentally ill persons. See <a href="#">2020 HB 2551</a> .
12.	Modify Good Time and Program Credits – Current 15%-20% good time credit would be modified to 25% for person and 40% for nonperson felonies. Program credit would be increased from 120 to 150 days. See <a href="#">2020 HB 2004</a> .
13.	Early prison release for certain drug offenders SL 2-5 and direct commits can apply for release after 50% service of sentence in KDOC.
14.	Expand drug grid presumptive probation to 3H-I, 4G-I, and 5A-D. Border boxes expanded to 3G.
15.	Codify the definition of “absconder” in statute. Include “knowingly” language. See <a href="#">St. v. Dooley</a> .
16.	Special Rule #26 – Determining prior convictions when charging drug crimes in same complaint. Adopted language to include two or more prior convictions. <a href="#">KSA 2019 Supp. 21-6805(f)(1)</a> .

## APPELLATE UPDATE\*

- The Kansas Supreme Court recently held the residual clause in the statute prohibiting possession of weapon by convicted felon, K.S.A. 2019 Supp. 21-6304, defining weapon as "any other dangerous or deadly cutting instrument of like character" is unconstitutionally vague because it fails to provide an explicit and objective standard of enforcement. See *State v. Harris*, No. 116,515, 467 P.3d 504 Syl. ¶ 1 (Kan. July 17, 2020).
- The Court of Appeals found that, "the Kansas Legislature amended K.S.A. 21-6811(e) (3), adding subsection B, and providing a new framework for deciding whether prior out-of-state crimes should be classified as person or nonperson offenses in calculating criminal history when a defendant is sentenced on or after May 23, 2019, the date the amended statute became effective. This framework, which requires a sentencing judge to compare the enumerated circumstances listed in K.S.A. 2019 Supp. 21-6811(e)(3) (B)(i) or (ii) to the elements of the prior out-of-state conviction, legislatively overrules the comparable offense analysis previously required by the rule in *State v. Wetrich*, 307 Kan. 552, 412 P.3d 984 (2018)." *State v. Baker*, No. 122,169, 2020 WL 5581730, Syl. ¶ 3 (Kan. App. September 18, 2020).
- The Court of Appeals held that the 2019 amendment to the intermediate sanctioning scheme at K.S.A. 22-3716 does not apply retroactively to probation violators whose crimes were committed before the effective date of the amendment. *State v. Dominguez*, No. 121,618, 2020 WL 5079777 at \*5 (Kan. App. August 28, 2020).
- The Court of Appeals ruled that when Special Rule 10 applies (defendant committed new felony while on felony bond), the sentencing judge is required to run the sentences consecutively unless the defendant shows manifest injustice. See *State v. Vaughn*, No. 121,340, 2020 WL 4725785 at \*4 (Kan. App. August 14, 2020).
- When multiple sentences in different cases are imposed on the same day, the Kansas Court of Appeals ruled that a judge has the discretion to impose concurrent or consecutive sentences regardless of the mandatory provisions of K.S.A. 2019 Supp. 21-6606 (c), (d), and (e). *State v. Dunham*, No. 121,081, 2020 WL 4380894, Syl. ¶ 3 (Kan. App. July 31, 2020).
- The Court of Appeals recently declined to extend the *Wetrich* "identical-or-narrower" test to apply to the classification of post-KSGA Kansas convictions as person or non-person felonies. See *State v. Lyon*, No. 120,993, 2020 WL 4250685 at \*8 (Kan. App. July 24, 2020).
- In a case where the defendant had prior municipal ordinance violations from Missouri, the Court of Appeals held that the violations could not be used to determine the defendant's criminal history score because municipal ordinance violations are not crimes under Missouri state law. See *State v. Cross*, No. 121,517, 2020 WL 5079891 at \*4 (Kan. App. August 28, 2020)(unpublished opinion).
- The Court of Appeals recently held that a defendant's lack of prior convictions for domestic violence offenses is not a substantial and compelling reason to depart from the presumptive sentence. See *State v. Montgomery*, No. 122,237, 2020 WL 4249425 at \*3 (July 24, 2020)(unpublished opinion).

\*This is not an exhaustive list of all cases affecting sentencing. To review all recent cases, click [here](#).

