

## KSSC 4th Quarter Newsletter

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### *Happy New Year!*

May your New Year be filled with much joy, happiness and success. We look forward to working with you in the coming year.

-The staff of the Kansas Sentencing Commission

### Congratulations to Chris Mechler!

Congratulations to longstanding Commission member, Chris Mechler, on her retirement! Chris has served on the Commission since being appointed by former Chief Justice Kay McFarland on June 13, 2001. She has seen the criminal justice system evolve over the years and her significant contributions to the Commission have made Kansas a better place to live. Chris has played a vital role in the implementation and success of the SB 123 program. She was on the SB 123 Implementation Committee and she remained invested in the success of the program as the Subcommittee Chair. As one of the most active and long serving members, the Commission sincerely appreciates Chris' dedication and service.



Photo courtesy of OJA



*KSSC members and staff toured the Lansing Correctional Facility on October 24th, 2019. Thank you to Commission member Acting Sec. Zmuda for hosting the tour.*

### *Resources provided by KSSC:*

- **SAC Page:** Check out the new Statistical Analysis Center [Page](#) on KSSC's website. Included in this tab are [dashboards](#) that are intended to inform the public on criminal justice trends in Kansas.
- **Webinar:** KSSC will be hosting a webinar on HB 2170 on January 29th at 11:00. Email [francis.givens@ks.gov](mailto:francis.givens@ks.gov) to join the Webinar listserv!

## 2020 Legislative Proposals

The Commission has approved the following proposals:

- 1) Modify good time credit—current 15-20% credit for ongrid offenses would be increased to 50%;
- 2) Early discharge from probation—incentivize offenders to complete probation early with judicial hearing required after 50% service of probation term;
- 3) Offender Registration Act—remove drug crimes from Kansas Offender Registration Act and amend all payment violations of K.S.A. 22-4903(c)(3) to be punishable as a misdemeanor;
- 4) Reducing the length of sentence of drug severity level 5 possession crimes to be proportional with nondrug severity level 8 crimes;
- 5) Unlawful tampering with electronic monitoring equipment—amend K.S.A. 21-6322 from severity level 6 felony to a severity level 8 to be proportional with current escape from custody penalty;
- 6) Increase felony loss threshold to \$1,500 for 11 property crimes to be consistent with the current felony theft threshold;
- 7) Modification of Care and Treatment Law: Amends the Care and Treatment law during an involuntary commitment to allow for a mental illness determination at a temporary custody hearing with a finding that respondent is a danger to themselves or others. This finding would prohibit the respondent from purchasing a firearm until such time as the respondent petitions and receives approval from the court;
- 8) SB 123 program extended to diversion—allows for state funding of substance abuse treatment to incentivize offenders and lower costs to law enforcement, prosecutors and the courts;
- 9) Compassionate release policy—amend K.S.A. 22-3729(a)(1) to allow release of an inmate with a terminal illness likely to cause death within 90 days rather than the current 30 days;
- 10) Post-sentencing transfer of jurisdiction for 2003 SB 123 eligible cases—all parties must agree to transfer of jurisdiction to offender's current place of residence;
- 11) Resolve conflict of mandatory or discretionary consecutive sentences for new crimes while on felony bond in K.S.A. 21-6604(f)(4) and K.S.A. 21-6606(d); and
- 12) Designate certain legislative members for KSSC membership amending K.S.A. 74-9102.

**THE 2019 DESK REFERENCE MANUAL IS NOW AVAILABLE TO ORDER! [CLICK HERE](#) TO GET YOUR COPY.**

### APPELLATE UPDATE\*

- The Kansas Supreme Court found that the provision in the Kansas criminal threat statute, K.S.A. 2018 Supp. 21-5415(a)(1), that allows for a criminal conviction if a person makes a threat in reckless disregard of causing fear is unconstitutionally overbroad. *See State v. Boettger*, 450 P.3d 805, 806 (Kan. 2019).
- The Kansas Supreme Court recently held that lifetime post-release applies to offenders convicted of sexually violent offenses committed on or after July 1, 2006, regardless of whether the sentence is probation or prison. *See State v. Carpenter*, 2019 WL 6646507 (December 6, 2019).
- K.S.A. 2017 Supp. 22-3716(c)(9)(B) permits a district court to revoke a defendant's probation without having imposed a graduated sanction if probation was originally granted as the result of a dispositional departure. *State v. Tearney*, No. 120,340, 2019 WL 6973672 at \*1 (Kan. App. 2019)(unpublished opinion). The Court of Appeals held this dispositional departure exception, enacted on July 1, 2017, applies to probation violations which occur after July 1, 2013, even when those violations occurred before the dispositional departure exception. *Id.*
- The Kansas Court of Appeals held that, although the departure statute has a mitigating factor for harm significantly-less-than typical, the district court may not use greater-than-typical harm as an aggravating factor for a departure sentence. *See State v. Gibson*, No. 120,657, 2019 WL 6974259 at \*1 (Kan. App. 2019)(unpublished opinion).

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