SELECTED ATTORNEY GENERAL OPINIONS ON TOPICS RELATED TO THE KSGA AND SENTENCING ISSUES SINCE 1993

(Updated through Atty. Gen. Op. No. 2007-27 and posted with the most recent first.)

Attorney General Opinion No. 07-26. Dated 8/30/07. Synopsis: Municipal courts have subject matter jurisdiction to hear certain ordinance violations that could be prosecuted as felony crimes in district court. Convictions under such ordinances will be misdemeanor convictions - not felony convictions. Moreover, a municipal court has jurisdiction in third and subsequent driving under the influence (DUI) violations where: (1) the ordinance violation occurred on or after July 1, 2006; and (2) the city has enacted an ordinance subsequent to July 1, 2007 giving its municipal court jurisdiction over third and subsequent DUI ordinance violations. Cited herein: K.S.A. 2006 Supp. 8-1567, as amended by L. 2007, Ch. 168, § 2 and L. 2007, Ch. 181, § 9; K.S.A. 12-4101; 12-4104, as amended by L. 2007, Ch. 168, § 3; 21-3105; K.S.A. 2006 Supp. 21-3412a, 21-3701, 21-3707; K.S.A. 22-2601, 65-4162. PJM:MF:jm

Attorney General Opinion No. 03-32. Dated 11/20/03. Synopsis: The term "driver," as used in the Kansas Uniform Commercial Drivers' License Act, means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver's license; the term does not include a person who merely holds a commercial driver's license but does not otherwise fall within that definition. Diversion for driving under the influence of alcohol offenses is precluded for commercial "drivers," even though a diversion would appear on the driver's record. Plea negotiations or charging amendments that result in convictions for lesser or fewer traffic infractions or offenses than originally charged are not precluded. Cited herein: K.S.A. 8-1013; K.S.A. 2002 Supp. 8-1567, as amended by L. 2003, ch. 100, § 1; K.S.A. 8-2,128, as amended by L. 2003, ch. 42, § 3; L. 2003, ch. 42, § 2 (to be codified at K.S.A. 2003 Supp. 8-2,150); 49 U.S.C. § 31311; 49 C.F.R. part 383; 49 C.F.R. § 383.5, § 384.225, § 383.226. CN.

Attorney General Opinion No. 03-21. Dated 07/20/03. Synopsis: In view of the requirement in K.S.A. 2002 Supp. 8-1567(g) (regarding fourth or subsequent DUI offenders) that postrelease supervision commence upon the expiration of imprisonment, a court should not sentence such offender to serve a period of imprisonment to be immediately followed by a period of probation which in turn is followed by one-year period of postrelease supervision. If a fourth or subsequent DUI offender's postrelease supervision is revoked, a Department of Corrections facility would be the appropriate institution in which to confine the offender. Cited herein: K.S.A. 2002 Supp. 8-1567, as amended by L. 2003 , ch. 100 § 1; K.S.A. 2002 Supp. 21-4704; 75-5217; L. 2002, Ch. 50 § 1. CN.

Attorney General Opinion No. 03-20: Dated 07/14/03. Synopsis: K.S.A. 2002 Supp. 22-4908 removes the power of any court to relieve a covered offender of the duty to register as required by K.S.A. 2002 Supp. 22-4201 et seq. However, registration is not required if, prior to July 1, 2001, the person qualified for and went through the process authorized by K.S.A. 22-4908 prior to its 2001 amendment. If persons receiving an expungement prior to July 1, 2001 have not complied with the process set forth in the prior version of K.S.A. 22-4908, registration duties are not negated by an

expungement order from this or any other state's courts. Cited herein: K.S.A. 2002 Supp. 21-3110a; 21-4619; K.S.A. 22-4901; 22-4902; 22-4904; 22-4906; 22-4908; 22-4909; 38-1610. TMN

Attorney General Opinion No. 02-29: Dated 06/13/02. Synopsis: Records concerning "custody time," *i.e.* records that disclose the actual amount of time a specific individual has been incarcerated, that are in the possession of a county sheriff's office, qualify as public records as defined by K.S.A. 45-217(f). Because public agencies that possess custody time information may obtain, handle or create records containing that type of information in different ways, the facts of each situation will dictate what laws may apply to require, restrict or allow providing access to or copies of the records containing custody time information. If the "custody time" information is contained in a report made to or obtained from a central repository under the Criminal History Record Information Act, that type of information and record is closed in many instances, and records of that type should only be made available to entities as set forth in that Act and related regulations. If "custody time" information is contained in a police blotter or a court record, that type of record is not considered criminal history record information and is presumptively open under the Kansas Open Records Act. Cited herein: K.S.A. 17-2234; K.S.A. 21-3914; 21-4709; 21-4715; 22-2101; K.S.A. 2001 Supp. 22-4701; K.S.A. 22-4705; 22-4707; K.S.A. 2001 Supp. 22-5001; 45-215; 45-217; 45-218; 45-219; 45-220; K.S.A. 2001 Supp. 45-221; K.A.R. 10-12-2; 10-12-3; 28 U.S.C. § 534. TMN

Attorney General Opinion No. 02-22: Dated 05/08/02. Synopsis: An administrative judge may certify more than one community-based alcohol and drug safety action program in a judicial district. The administrative judge may not designate one of the programs to serve as the financial administrator of the alcohol and drug safety action fund. Cited herein: K.S.A. 8-1008. CN

Attorney General Opinion No. 02-14: Dated 02/26/02. Synopsis: Pursuant to K.S.A. 2001 Supp. 21-3110a, it is our opinion that information contained in expunged municipal court records may be legally provided by a municipal court clerk to any entity that meets the definition of "a criminal justice agency" as set forth in K.S.A. 2001 Supp. 22-4701 when that criminal justice agency has a legitimate need for such information. Cited herein: K.S.A. 8-1560d; 12-4106; 12-4201; 12-4412; 12-4509; 12-4516; 12-4516a; 21-2410; K.S.A. 2001 Supp. 21-3110a; 21-3827; K.S.A. 21-4605; K.S.A. 2001 Supp. 21-4619; 22-2410; 22-4701; K.S.A. 22-4704; 22-4705; 22-4707; 38-1607; 38-1608; K.A.R. 10-9-1; 10-12-2. TMN

Attorney General Opinion No. 01-48: Dated 10/22/01. Synopsis: Entering into a municipal diversion agreement is a "conviction" for purposes of enhanced punishment under K.S.A. 2000 Supp. 8-1567, regardless whether the diversion agreement is expunged pursuant to K.S.A. 2000 Supp. 12-4516. Cited herein: K.S.A. 2000 Supp. 8-1567, as amended by L. 2001, Ch. 200, § 14; K.S.A. 12-4416; K.S.A. 2000 Supp. 12-4516. MF

Attorney General Opinion No. 01-45: Dated 09/27/01. Synopsis: K.S.A. 2000 Supp. 21-2511, as amended by L. 2001, Ch. 208, § 2, requires persons convicted or adjudicated for the commission of certain offenses to submit blood and saliva specimens to the Kansas Bureau of Investigation for analysis, storage, processing and inclusion in the Federal Bureau of Investigation's combined DNA index system for forensic DNA law enforcement purposes. Subsection (a)(3) of this statute, as

amended, makes its provisions retroactive to any person convicted or adjudicated for the commission of the listed offenses, including those added by the 2001 Legislature, prior to the effective date of the act if that person is presently confined as a result of that conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 2000 Supp. 21-4603, 22-3717, as amended by L. 2001, Ch. 200, § 15, or K.S.A. 38-1663. Persons who are under court supervision ordered pursuant to one of these three statutes are subject to the submission requirements of K.S.A. 2000 Supp. 21-2511, as amended. Cited herein: K.S.A. 2000 Supp. 21-2511, as amended by L. 2001, Ch. 208, § 2; 21-4603; 22-3717, as amended by L. 2001, Ch. 200, § 15; K.S.A. 22-3722; 38-1663. JLM

Attorney General Opinion No. 00-59: Dated 11/20/00. Synopsis: A district court can extend a term of probation in a felony case if a defendant has failed to pay restitution. If a defendant has failed to pay fines and costs in a felony case, a district court can extend probation upon a finding of necessity pursuant to subsection (c)(8) of K.S.A. 1999 Supp. 21-4611, as amended by L. 2000, Ch. 182, § 6.

Regarding certain felony cases, a district court can impose a longer period of probation for failure to pay fines and costs upon a finding that the "welfare of the inmate will not be served by the length of the probation term." Cited herein: K.S.A. 1999 Supp. 21-4611, as amended by L. 2000, Ch. 182, § 6. MF

Attorney General Opinion No. 99-45: Dated 09/07/99. Synopsis: Amendments contained in L. 1998, Ch. 131 allowing expungement of arrest and diversion records should be applied retroactively. Cited here: K.S.A. 1998 Supp. 21-4619; 22-2410. SP

Attorney General Opinion No. 98-42: Dated 08/04/98. Synopsis: For purposes of calculating a defendant's criminal history, the language of K.S.A. 1997 Supp. 21-4711(a) manifests the intent of the Legislature that every three prior adult convictions or juvenile adjudications of assault occurring within *any* period of three years shall be rated as one adult conviction or one juvenile adjudication of a person felony. Cited herein: K.S.A. 21-3408; 21-4701; K.S.A. 1997 Supp. 21-4711. CN

Attorney General Opinion No. 97-101: Dated 12/31/97. Synopsis: When a juvenile offender is required by a diversion agreement or probation order to register under the Kansas Offender Registration Act, the registration information is open to the public. Further, a juvenile who is found guilty in an extended jurisdiction juvenile prosecution has a conviction that must be recorded in the criminal justice information system central repository because a conviction is a reportable event pursuant to K.S.A. 22-4705(a)(5). The Kansas Offender Registration Act requires persons who are "offenders" as defined by the Act to comply with its provisions. "Offender" is defined to include any person who is *convicted* of the offenses listed in the Act. A juvenile who is found guilty in an extended jurisdiction juvenile prosecution proceeding has a conviction for the offense charged and if, as a result of the conviction, the juvenile falls within the parameters of the Kansas Offender Registration Act, the juvenile must comply with its provisions. A juvenile who is required to comply with the Kansas Offender Registration Act must provide information that includes offenses committed and, if the juvenile was convicted of the offense(s), the juvenile must include the dates of any convictions. Cited herein: K.S.A. 22-4701, as amended by L. 1997, Ch. 156, § 39; 22-4705; 22-

4707; 22-4901, as amended by L. 1997, Ch. 181, § 7, 22-4902, as amended by L. 1997, Ch. 181, § 8; K.S.A. 1996 Supp. 22-4904, as amended by L. 1997, Ch. 181, § 9; 22-4907, as amended by L. 1997, Ch. 181, § 12; K.S.A. 22-4909, as amended by L. 1997, Ch. 181, § 14; K.S.A. 1996 Supp. 38-1617, as amended by L. 1996, Ch. 229, § 57; 38-1618, as amended by L. 1997, Ch. 156, § 53; K.S.A. 38-1636, as amended by L. 1997, Ch. 156, § 58; K.S.A. 1996 Supp. 38-16,126, as amended by L. 1997, Ch. 156, § 79. MF

Attorney General Opinion No. 97-50: Dated 06/18/97. Synopsis: A Kansas county may contract with an out of state public agency for the housing of convicted adult misdemeanants and adjudicated juvenile offenders. Any such contract entered by a county in relation to adjudicated juvenile offenders must require the out of state public agency to conform with applicable requirements in relation to confinement of juveniles. Cited herein: K.S.A. 19-101; K.S.A. 1996 Supp. 19-101a; K.S.A. 12-2901; K.S.A. 1996 Supp. 38-1602, as amended by 1997 SB 69, § 44; K.S.A. 38-1691, as amended by 1997 SB 69, § 75; 38-16,111, as amended by 1997 SB 69, § 177; K.S.A. 19-1901. CN

Attorney General Opinion No. 96-83: Dated 11/14/96. Synopsis: Municipal courts have jurisdiction over juveniles who are charged with violating cigarette or tobacco infraction ordinances. Cited herein: K.S.A. 12-4113, 12-4209, 12-4212, and 12-4214, as amended by L. 1996, Ch. 214, § 18-21; K.S.A. 1995 Supp. 12-4305, as amended by L. 1996, Ch. 214, § 22; K.S.A. 21-3105, as amended by L. 1996, Ch. 214, § 24; K.S.A. 1995 Supp. 38-1602, as amended by L. 1996, Ch. 229, § 40; K.S.A. 79-3321, as amended by L. 1996, Ch. 214, § 7. MF

Attorney General Opinion No. 96-59: Dated 07/17/96. Synopsis: A third or subsequent domestic battery conviction is a "non grid" felony punishable by imprisonment in a state penal institution. A defendant should be sentenced for a third and subsequent domestic battery conviction to a determinate sentence within the range of 90 days to one year. An inmate serving a sentence in the custody of the secretary of corrections for a third or subsequent conviction of domestic battery is eligible to earn good time credits. Cited herein: K.S.A. 21-3412, as amended by 1996 SB 585; 21-4703; 21-4704; 21-4717, as amended by 1996 HB 2838; K.S.A. 21-4722, as amended by 1996 HB 2310. CN

Attorney General Opinion No. 96-58: Dated 07/17/96. Synopsis: Because section 11(d) of 1996 Senate Bill No. 585 provides for a substantive rather than a procedural or remedial change, and in the absence of legislative intent that it operate retroactively, in our opinion it should be applied prospectively to felony drug offenses committed after July 1, 1996 and not retroactively to felony drug offenses committed on or after July 1, 1993 but before July 1, 1996 even if the sentencing occurs after July 1, 1996. Cited herein: K.S.A. 21-4705, as amended by 1996 SB 585. CN

Attorney General Opinion No. 96-13: Dated 02/20/96. Synopsis: A victim impact statement which is part of the presentence investigation report and is prepared by either a victim or a victim advocate on behalf of a victim does not violate K.S.A. 21-3815 because it does not constitute an attempt to improperly influence a judge. Cited herein: K.S.A. 21-3815, 21-4604, 21-4714; 22-3424; K.S.A. 1995 Supp. 74-7333; Kan. Const., Art. 15, § 15. MF

Attorney General Opinion No. 95-98: Dated 10/06/95. Synopsis: The Kansas sex offender registration requirement is applicable to persons convicted of a sexually violent offense whether the final disposition is commitment to a prison, hospital or other institution, sentence to community corrections, or release by way of probation, suspended sentence or postrelease supervision. Cited herein: K.S.A. 1994 Supp. 22-4901; 22-4902; 22-4904; 22-4905; 22-4906. CN

Attorney General Opinion No. 95-50: Dated 05/15/95. Synopsis: A juvenile who is 16 years of age or over and has been detained - but not yet charged - for an act which would constitute the commission of a felony if committed by an adult is a "juvenile offender" as defined at K.S.A. 1994 Supp. 38-1602(b) and may not be detained in jail. However, a juvenile who falls within one of the exceptions to the definition of a "juvenile offender" contained in K.S.A. 1994 Supp. 38-1602(b)(3)-(7) or who falls within one of the jail prohibition exceptions contained in K.S.A. 38-1691, may be detained in jail. Cited herein: K.S.A. 1994 Supp. 8-2117; K.S.A. 32-1040; K.S.A. 1994 Supp. 38-1602; K.S.A. 38-1621; 38-1691. MF

Attorney General Opinion No. 95-41: Dated 04/07/95. Synopsis: "Good time credits" are applicable only to persons serving a sentence in the custody of the secretary of corrections upon conviction of a felony. Kansas statutes neither require nor authorize a county to develop a policy regarding good time credits for persons serving a sentence for a third or subsequent driving under the influence conviction. A person serving a sentence for a third or subsequent driving under the influence conviction in a county jail is thus not eligible for "good time credits."

In relation to persons convicted of a third or subsequent driving under the influence offense, substantive rights were affected by the 1994 amendments to K.S.A. 1993 Supp. 8-1567 and to K.S.A. 1993 Supp. 21-4704(i). Consequently the 1994 amendments should be applied prospectively, i.e. only to offenses committed after July 1, 1994. To the extent it conflicts with conclusions reached herein, Attorney General Opinion No. 94-161 is withdrawn. Cited herein: K.S.A. 1993 Supp. 8-1567; 21-4704; K.S.A. 1994 Supp. 8-1567; 21-3105; 21-4703; 21-4704; 21-4706; 21-4707; 21-4722; K.A.R. 44-6-146. CN

Attorney General Opinion No. 95-3: Dated 01/06/95. Synopsis: The sex offender registration act does not apply to juveniles who have been adjudged juvenile offenders pursuant to the juvenile offender code. However, if a juvenile is prosecuted as an adult and the prosecution results in a conviction for a sexually violent offense, the juvenile shall be required to register under the act. Cited herein: K.S.A. 1993 Supp. 22-4901; 22-4902; 22-4904; 22-4906, as amended by L. 1994, Ch. 107, §§ 1, 2, 3, 5; 22-4907; K.S.A. 38-1601; K.S.A. 1993 Supp. 38-1602, as amended by L. 1994, Ch. 270, 282, 337. MF

Attorney General Opinion No. 94-109: Dated 08/25/94. Synopsis: A juvenile offender does not meet the definition of a "sexually violent predator" and, therefore, the sexual predator act is not applicable to juvenile offenders.

The department of social and rehabilitation services (SRS) may disclose to the prosecuting attorney documentation of any treatment received at a state facility except for that involving the

diagnosis and/or treatment of alcohol or drug abuse problems. These latter records may not be disclosed unless a court order is secured pursuant to the requisites of 42 C.F.R. §§ 2.61 *et seq*. While disclosure of treatment may be required this does not give a license to treatment personnel to confiscate a patient's personal effects in order to build a case for civil commitment under the sexual predator act.

The 5th amendment's prohibition against self-incrimination does not apply to information and communication elicited during treatment. Therefore, SRS is not required to give Miranda-type warnings to patients during the course of their treatment.

Individuals who are confined under the sexual predator act have the right to conditions of reasonable care and safety and reasonably nonrestrictive confinement conditions depending upon the circumstances of each individual case. However, they must be kept in a secure facility so that they pose no danger to each other or to the public. Cited herein: K.S.A. 1993 Supp. 22-3303; 22-3428; K.S.A. 38-1601; 59-2903; K.S.A. 1993 Supp. 59-2931; K.S.A. 65-4050; 65-5225; 65-5602; 65-5603; L. 1994, Ch. 316. MF

Attorney General Opinion No. 94-70: Dated 05/27/94. Synopsis: The Kansas parole board remains under a statutory duty to conduct a revocation hearing for a parolee who, while on parole for a crime committed prior to July 1, 1993, commits a crime after July 1, 1993. Cited herein: K.S.A. 1993 Supp. 22-3717; 75-5217; 1994 S.B. 552, §§ 1, 4; 1994 H.B. 2332, §§ 66, 82, 94; L. 1973, Ch. 339, § 23; U.S. Const., Amend. XIV. RDS

Attorney General Opinion No. 93-114: Dated 08/17/93. Synopsis: The second proviso of section 12 of chapter 292 of the session laws of 1993 is an unconstitutional delegation of authority to the judiciary and, consequently, the appropriation amount remains in the general fund until the legislature convenes and a new appropriations statute is enacted. Furthermore, the state of Kansas is only responsible for paying the costs and expenses associated with post-conviction non-prison sanctions for felony offenders in an amount not to exceed the appropriation amount of $375,000 for fiscal year 1994. Cited herein: K.S.A. 20-348; K.S.A. 1992 Supp. 21-4502; K.S.A. 21-4603b; K.S.A. 75-5291; L. 1992, Ch. 239, §§ 238, 300; L. 1993, Ch. 292, § 12; Kan. Const., Art. 2, § 24; Art. 3, § 1. MDF

Attorney General Opinion No. 93-109: Dated 08/11/93. Synopsis: Court placement in a house arrest program does not satisfy the requirement of "48 consecutive hours' imprisonment" as that phrase is used in subsection (g) of the Kansas driving under the influence statute. Cited herein: K.S.A. 8-1567, as amended by L. 1993, Ch. 291, § 270; 21-4603b. CN

Attorney General Opinion No. 93-103: Dated 08/04/93. Synopsis: Court records of public judicial proceedings are exempt from the definition of criminal history record information under K.S.A. 1992 Supp. 22-4701(b)(3). The sentencing information and guilty or not guilty findings are part of the court records and therefore open to the public, unless there is other statutory restriction available to close them. Cited herein: K.S.A. 1992 Supp. 21-4605; 22-4701; K.S.A. 22-4705; 22-4712 (repealed, L. 1981, Ch. 158, § 3); K.S.A. 1992 Supp. 38-1507; 38-1607, as amended by L. 1993, Ch.

164, § 1; K.S.A. 45-215; K.S.A. 1992 Supp. 59-2122; K.S.A. 65-4608. NKF

Attorney General Opinion No. 93-11: Dated 01/22/93. Synopsis: Pursuant to the Kansas sentencing code neither court services officers nor community corrections officers have authority to unilaterally restrict the liberty of clients under their supervision. A statute which would purport to grant such authority to court services officers or community corrections officers without the benefit of a hearing would violate due process rights guaranteed under the fourteenth amendment to the United States constitution. Cited herein: K.S.A. 1992 Supp. 21-4602; 21-4603; 21-4610. CN