

LEGISLATIVE UPDATE

KANSAS COUNTY & DISTRICT ATTORNEYS ASSOCIATION – JUNE 23, 2023

JASON THOMPSON, SENIOR ASSISTANT REVISOR OF STATUTES

I. Background Information

(A) The Kansas Office of Revisor of Statutes (ksrevisor.org)

- (1) K.S.A. 46-1211 establishes the Office and names the Revisor of Statutes the head of the Office. The Revisor is appointed by, and serves under the direction of, the Legislative Coordinating Council (LCC) and may appoint assistants and employees as authorized by the LCC. The Revisor and all assistant revisors are licensed Kansas attorneys.
- (2) The Office is responsible for: Drafting bills, resolutions and other legislative documents; providing legal consultation for members of the Legislature and legislative committees; conducting legal research; supervising revisions and compilations of the general laws of Kansas; preparing and publishing the Kansas Statutes Annotated and cumulative supplements thereto; recommending to legislative committees such bills that will update or clarify existing laws; and performing other duties as provided by law and as directed by the LCC. The Office provides staff members to attend meetings of all special committees, select committees, and standing committees.
- (3) Attorneys in the Office work for the Kansas Legislature and are prohibited from providing legal advice to the general public.

(B) The Kansas Legislative Process (kslegislature.org)

- (1) Only legislators and legislative committees may request that a bill or amendment be drafted by the Office and only legislators and legislative committees may introduce legislation or amendments. You must ask a legislator or committee to request our Office to draft the legislation or amendment for you. You can then work with a member of the Office staff to draft the legislation or amendment.
- (2) Kansas has an open legislative process. All committee action on bills and amendments is conducted in open session. The public is invited to attend any of the meetings. Detailed information regarding legislative committees, including committee assignments, schedules, and minutes, is available on the Kansas Legislature website. To testify at a hearing on any bill, you should contact the committee secretary whose name and telephone number also appear with the Committee Agenda.

- (3) According to the Kansas Constitution, no law may be enacted except by bill. Accordingly, proposed laws are introduced and passed in bill form, and each is known as a “House Bill” or “Senate Bill.” The laws passed at each session of the Legislature are printed in an indexed volume known as the Session Laws (sos.ks.gov/publications/session-laws.html).
- (4) All general laws passed by the Legislature during the session are integrated into the body of existing law and become a part of the Kansas Statutes Annotated (K.S.A.). New sections are assigned appropriate numbers and all such materials, both new and amendatory, are published by the Office either in revised and republished volumes of the K.S.A. or in the cumulative supplement to existing volumes of the K.S.A.

(C) KCDAA Legislative Proposals

Steve Kearney, KCDAA Executive Director: “Each year, following adjournment of the previous Session, the KCDAA solicits legislative proposals from the entire membership for consideration by the Legislative Committee and the Board of Directors for the upcoming legislation session. Once the legislative committee has vetted the proposals, taking into consideration the membership-wide need for the legislation, its likelihood of being passed, and possible opposition to the bill, a proposed agenda is recommended to the KCDAA Board for further discussion and official adoption of the KCDAA’s legislative priorities.”

(D) Legislative History

Committee testimony and official committee minutes are maintained by Legislative Administrative Services (kslegislature.org/las/). Most information from the 2011-2012 Legislative Sessions to the present is available on the Kansas Legislature website.

II. KCDAA 2023 Legislative Agenda Items

(A) Statutory Speedy Trial

- (1) Proposal: “Further fixes to statutory speedy trial. This bill would consider defendants arraigned from 2020 to May 1, 2023, as having been arraigned on May 1, 2023. It adds relevant factors in assessing good cause for rescheduling a trial. Proposal submitted by Sedgwick County.”
- (2) HB 2121 requested for introduction by KCDAA and sponsored by Committee on Judiciary
- (3) Enacted into law by: Sub HB 2121 - Extending the suspension of statutory speedy trial time limitations and providing that time during the COVID-19 public health emergency shall not be assessed against the state.
 - Session Law Ch. 15; Effective April 20, 2023 (Kansas Register).
 - Extends the suspension in all criminal cases until March 1, 2024; no time between March 19, 2020, and March 1, 2024, shall be assessed against the state for any reason;

any person arraigned before March 1, 2024, shall be deemed to have been arraigned on March 1, 2024.

(B) Crimes of Burglary and Aggravated Burglary

- (1) Proposal: “Fixing a loophole in the burglary statute that does not allow for the crime to be prosecuted when the inherent crime is a violation of a protective order. Proposal submitted by Johnson County.”
- (2) SB 73 requested for introduction by KCDA and sponsored by Committee on Judiciary
- (3) Enacted into law by: SB 174 - Increasing the criminal penalties for battery of a healthcare provider; adding the placing of controlled substances into pills into the definition of manufacture; increasing the criminal penalties for manufacturing fentanyl and for manufacturing or distributing any controlled substances that are likely to be attractive to minors because of their appearance or packaging; creating a special sentencing rule to make sentences for distributing fentanyl presumptive imprisonment; excluding materials used to detect the presence of fentanyl, ketamine or gamma hydroxybutyric acid from the definition of drug paraphernalia; adding domestic battery and violation of a protection order to the crimes that a person can have the intent to commit when committing burglary or aggravated burglary; increasing criminal penalties for the crime of interference with law enforcement when the violation involves fleeing from a law enforcement officer; and authorizing the attorney general to prosecute certain crimes that are part of an alleged course of criminal conduct that occurred in two or more counties.
 - Session Law Ch. 94; Effective July 1, 2023.
 - Intent to commit a domestic battery or violation of a protection order included in the elements of burglary and aggravated burglary; current law of intent to commit a felony, theft or sexually motivated crimes remains; several other bills “bundled” together.

(C) Penalties for Hate Crimes

- (1) Proposal: “Amending hate crime statutes in Kansas from a reason for upward departure to presumptive prison. Proposal submitted by Leavenworth County.”
- (2) HB 2217 - Requiring that a criminal sentence be presumptive imprisonment if a person felony was committed against a person based on that person’s actual or perceived race, color, religion, ethnicity, national origin or sexual orientation.
 - Requested for introduction by KCDA and sponsored by Committee on Judiciary; referred to Committee on Corrections and Juvenile Justice; no further action; remains in committee for 2024 Session.

(D) Domestic Violence and Intimate Partner Violence

- (1) Proposal: “Narrowing the domestic violence statutes to apply solely to ‘intimate partner’ relationships. The bill will also add elements for the court to consider when granting bail to a person charged under the domestic violence statute. Proposal submitted by Johnson County.”
- (2) HB 2128 - Creating definitions of “intimate partner” and “intimate partner violence” in the Kansas criminal code and requiring certain considerations be made in determining bond when a crime is committed against an intimate partner.
 - Requested for introduction by KCDAA and sponsored by Committee on Judiciary; referred to Committee on Corrections and Juvenile Justice; no further action; remains in committee for 2024 Session.

(E) Petitions for Forensic DNA Testing

- (1) Proposal: “Changing the DNA statutes to avoid testing immaterial or irrelevant evidence. Proposal submitted by Sedgwick County.”
- (2) HB 2129 - Requiring defendants who petition the court for forensic DNA testing to notify the court when such testing is complete and request a hearing based on whether the evidence is favorable or unfavorable.
 - Requested for introduction by KCDAA and sponsored by Committee on Judiciary; referred to Committee on Judiciary; hearing January 30, 2023, but no further action; remains in committee for 2024 Session.

(F) Hearsay Evidence Exception for Statements Made to Translators

- (1) Proposal: “Adding a hearsay exception to statute to allow for statements made to a translator. Proposal submitted by Wyandotte County.”
- (2) SB 72 - Adding an exception to the hearsay rule to allow admission of statements made to a translator without the testimony of the translator.
 - Requested for introduction by KCDAA and sponsored by Committee on Judiciary; referred to Committee on Judiciary; hearing February 7, 2023, but no further action; remains in committee for 2024 Session.

III. Laws of Interest Enacted in the 2023 Session of the Kansas Legislature

- (A) SB 217 - Including the conduct of utilizing any electronic tracking system or acquiring tracking information to determine the targeted persons location, movement or travel patterns in the crime of stalking when done as part of an unlawful course of conduct and authorizing orders to prohibit such conduct under the Kansas family law code, the revised Kansas code for care of children, the

protection from abuse act and the protection from stalking, sexual assault or human trafficking act and increasing the time of an initial restraining order and possible extensions issued in a protection from abuse order or a protection from stalking, sexual assault or human trafficking order.

- Session Law Ch. 78; Effective July 1, 2023.

(B) S Sub for HB 2010 - Updating a statutory cross reference to provide proper jury instruction in cases when a defendant lacks the required mental state to commit a crime; increasing the penalty for certain violations of criminal discharge of a firearm when a person was present in the dwelling, building, structure or motor vehicle at which the offender discharged a firearm; enacting the reduce armed violence act to increase the criminal penalties for certain violations of criminal possession of a weapon by a convicted felon that involve firearms; providing that the service of postrelease supervision period shall not toll except as otherwise provided by law; and allowing certain nondrug offenders to participate in a certified drug abuse treatment program.

- Session Law Ch. 93; Effective July 1, 2023.

(C) HB 2021 - Requiring the secretary for children and families to assess certain children and the secretary of corrections to provide certain services to juveniles in detention; changing the criteria used to refer and admit juveniles to a juvenile crisis intervention center; allowing evidence-based program account money to be used on certain children; requiring the department of corrections to build data systems; and allowing for overall case length limit extensions for certain juvenile offenders.

- Session Law Ch. 96; Effective July 1, 2023.

(D) HB 2024 - Expanding legal surrender of physical custody of an infant to include newborn safety devices; requiring a referral of an alleged victim of child abuse or neglect for an examination as part of an investigation; creating a program in the department of health and environment to provide training and payment for such examinations; enacting the Representative Gail Finney memorial foster care bill of rights; and applying the federal Indian child welfare act to certain actions under the revised Kansas code for care of children.

- Session Law Ch. 70; Effective May 4, 2023 (Kansas Register).

(E) S Sub for HB 2127 - Permitting a prosecution for childhood sexual abuse to be commenced at any time, extending the time to file civil actions for recovery of damages caused by childhood sexual abuse and providing exceptions in the Kansas tort claims act for claims arising from such abuse.

- Session Law Ch. 28; Effective July 1, 2023.

(F) HB 2350 - Creating the crimes of human smuggling and aggravated human smuggling and providing penalties therefor.

- Session Law Ch. 89; Effective July 1, 2023.

IV. Legislation of Interest for the 2024 Session of the Kansas Legislature

- (A) SB 265 - Requiring a person convicted of an offense that resulted in the incapacitation or death of a victim who is the parent or guardian of a minor child to pay restitution in the form of child support and increasing the criminal penalties for repeat violations of a protective order.
- Requested for introduction by Senator McGinn and sponsored by Committee on Ways and Means (increasing the criminal penalties for repeat violations of a protective order); hearing in Committee on Judiciary and bill passed; Senate adopted floor amendment by Senator Haley (requiring a person convicted of an offense that resulted in the incapacitation or death of a victim who is the parent or guardian of a minor child to pay restitution in the form of child support) and bill passed as amended (40-0); referred to House Committee on Judiciary; remains in committee for 2024 Session.
- (B) SB 240 - Amending the crime of aggravated endangering a child to increase the criminal penalties in certain environments where any person is distributing, possessing with intent to distribute, manufacturing or attempting to manufacture fentanyl-related controlled substances.
- Requested for introduction by Johnson County Sheriff's Office and sponsored by Committee on Judiciary; referred to Committee on Judiciary; hearing February 20, 2023, but no further action; Leavenworth County Attorney Todd Thompson testified as a proponent on behalf of KCDAA; remains in committee for 2024 Session.
- (C) HB 2028 - Requiring certain records to be automatically expunged from a person's criminal record.
- Requested for introduction by Representative Curtis and sponsored by Committee on Judiciary; referred to Committee on Judiciary; hearing January 25, 2023; Leavenworth County Attorney Todd Thompson testified as a proponent (with opposition to automatic expungement for dismissed cases) on behalf of KCDAA; Committee Report recommending bill be passed as amended February 6, 2023; Stricken from Calendar February 23, 2023; would have to be filed as a new bill for 2024 Session.
- (D) Joint Committee on Corrections and Juvenile Justice Oversight
Statutory joint committee created by K.S.A. 46-2801; one planned topic is further study of HB 2021 and its components (discussed above).
- (E) Special Committee on Restricted Driving Privileges
Legislative Coordinating Council (LCC) approved two meeting days to "evaluate policy options and make recommendations for reform of the law pertaining to restricted driving privileges"; related to SB 2 - Authorizing certain individuals with revoked driver's licenses to be eligible for restricted driving privileges.

(F) Special Committee on Civil Asset Forfeiture

Legislative Coordinating Council (LCC) approved one meeting day to “study changes to the civil asset forfeiture statutes”; related to HB 2380 - Requiring a criminal conviction for civil asset forfeiture, remitting proceeds from civil asset forfeiture to the state general fund, increasing the burden of proof required to forfeit property, making certain property ineligible for forfeiture, providing persons involved in forfeiture proceedings representation by counsel and the ability to demand a jury trial and allowing a person to request a hearing on whether forfeiture is excessive.

V. Questions?

Contact Information

Jason Thompson, Senior Assistant Revisor of Statutes

E-mail: Jason.Thompson@rs.ks.gov

Phone: (785)296-2321