

July 2020

KSSC Second Quarter Newsletter

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Preorder the 2020 DRM!

The 2020 Desk Reference Manual is now available for preorder [here](#).

Credit cards are accepted.

Farewell and Congratulations to George “Ebo” Browne!

Congratulations to Ebo Browne who has taken a position with the Bureau of Justice Statistics with the United States Department of Justice in Washington, D.C. While at the Sentencing Commission, Ebo served in many capacities. In his role as a Research Analyst, he designed and developed the KSSC Justice Reinvestment Graduated Sanctions database, monitored and evaluated offenders’ LSI-R information state-wide, and participated in legislative impact assessments. He most recently served as the Senior Research Analyst. As Senior Research Analyst, Ebo managed the database for the research department, authored the agency’s annual report, and acted as the Statistical Analysis Center (SAC) Director for the state of Kansas among many other duties. One of his main duties as the SAC director was the application and administration of state justice statistics (SJS) grants. Ebo worked on the 2018 SJS grant which allocated funds to the Kansas SAC to develop an electronic infrastructure for publishing [dashboards](#) online through Tableau. Most recently, Ebo worked on the 2019 SJS grant to support the utilization of telecommunication services for substance abuse treatment in rural communities. Ebo’s contributions to the Sentencing Commission are too many to name. We appreciate all of the hard work Ebo has done for our agency. Congratulations, Ebo!



Webinar Update

The KSSC will be hosting a webinar on August 26th at 11:00. The webinar will cover PSI and Special Sentencing Rules. Click [here](#) to register.

For more information on KSSC training, contact Francis Givens at francis.givens@ks.gov.

SB 123 Updates

Program changes, effective July 1, are detailed [here](#).

Form Updates

2020 Sentencing Forms have been updated [here](#) to reflect changes in the law.

2020 Legislative Summary

2020 Legislative Changes to the KSGA and Related Criminal Law

The COVID-19 pandemic reached Kansas during the 2020 Legislative Session. As a result, the end of the session focused on economic and public safety measures for Kansans. Of the 1,352 bills available for passage from the House and Senate, only 13 (1.1%) became law. The following is the only relevant criminal law bill that was signed into law by the Governor. Senate Sub for House Bill 2034 Restitution Orders Senate Sub. for HB 2034 amends law related to court orders for restitution by criminal defendants. Under previous law, a court was required to order restitution unless the court found compelling circumstances that would render a plan of restitution unworkable. The bill amends this provision to require a court to order restitution and to specify that ordered restitution shall be due immediately, unless the court orders that the defendant be given a specified time to pay or be allowed to pay in specified installments, or the court finds compelling circumstances that would render restitution unworkable, either in whole or in part. The bill amends continuing provisions requiring the court to state reasons for unworkability on the record and requiring the court to initiate collection proceedings if the defendant is in noncompliance with the restitution order after 60 days to reflect the above amendments. The collection provisions also are amended to reflect enacted changes to related statutes. A provision is added to allow a defendant subject to a restitution order entered prior to the effective date of the bill to file a motion prior to December 31, 2020, proposing payment of restitution in specified installments, if the order does not give the defendant a specified time to pay or set payment in specified installments. The court may recall the restitution order from the assigned agent until the court rules on the motion. If the court does not order payment in specified installments, or if the defendant does not file a motion by the above date, the restitution will be due immediately. The bill specifies the above amendments are procedural in nature and shall be construed and applied retroactively. The bill amends the statute governing conditions of probation or suspended sentence to direct that reparation or restitution in such cases be made in accordance with the procedure amended by the bill.

The 2020 Sentencing Forms have been updated to reflect this change. Click [here](#) to access the 2020 forms.



APPELLATE UPDATE*

- The Kansas Supreme Court held that “...the K.S.A. 2017 Supp. 22-3716(c)(9)(B) exception, which allows a trial court to revoke a probationer's probation without first imposing graduated sanctions if the probation was granted as a result of a dispositional departure, applies only to probationers whose offenses or crimes of conviction occurred on or after July 1, 2017.” *State v. Coleman*, Nos. 118,673, 118,674, 118,675, 2020 WL 1814334, at *4 (Kan. April 10, 2020).
- In a case where the defendant was sentenced to life without parole, the Kansas Supreme Court found that an unworkable order of restitution was imposed because the district court acknowledged that the amount would never get paid, the defendant would be in prison for life and the court did not order restitution be paid from prison. See *State v. Tucker*, No. 119,242, 2020 WL 3117018 at *3 (Kan. June 12, 2020).
- The Kansas Supreme Court held that the *Wetrich* test should also be used for Kansas crimes committed before the sentencing guidelines used the person or nonperson designations. *State v. Coleman*, 460 P.3d 368, 369 (Kan. April 3, 2020).
- In a case where the defendant’s consecutive sentences included both on-grid and off-grid offenses, the Kansas Supreme Court held that the defendant should have been sentenced to lifetime parole because the supervision period following his prison release should be based on his off-grid offenses. See *State v. Satchell*, No. 116,151, 2020 WL 3479152 at *9 (Kan. June 26, 2020).
- The Court of Appeals ruled that the holding in *Wetrich* does not apply to DUI cases because the Legislature has amended K.S.A. 8-1567 to permit charging and sentencing enhancements for DUIs based on out-of-state convictions under statutes that are comparable to Kansas law—meaning “similar to” rather than the same as or narrower than Kansas law. See *State v. Mejia*, No. 121,475, 2020 WL 2602059 at *1 (Kan. App. May 22, 2020).
- The Court of Appeals recently held that the statutory amendment eliminating the 120/180 day probation violation sanctions only applies to probationers who committed their underlying crimes after July 1, 2019. See *State v. Ratliff*, No. 121,800, 2020 WL 2097488 at *2 (Kan. App. May 1, 2020) (unpublished opinion).
- In a case where the defendant committed attempted failure to register as a drug offender when the offense was a person felony, the Court of Appeals recently applied *Keel* to rule that the prior registration offense should be classified as a non-person felony because when the defendant committed the current conviction, the failure to register offense was classified as a nonperson felony. See *State v. Timmons*, No. 120,251, 2020 WL 2503273 at *5 (Kan. App. May 15, 2020)(unpublished opinion).
- The Court of Appeals recently ruled that section 5 of the Kansas Constitution Bill of Rights does not prohibit the KSGA's use of judicial findings of criminal history. See *State v. Albano*, No. 120,767, 2020 WL 1814326 *10 (Kan. App. April 10, 2020).
- The Court of Appeals held that Kansas law requiring lifetime supervision on convictions for sexually violent crimes does not violate equal protection of the law under the Equal Protection Clause of the Fourteenth Amendment as compared to other offenders convicted of serious offenses because the groups are not similarly situated in light of the special risk of recidivism for sexually violent offenders and need for greater supervision after release. See *State v. Little*, No. 120,214, 2020 WL 3116357 at *3 (Kan. App. June 12, 2020).

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

