Kansas Legislative Research Department

Kansas Legislator Briefing Book

Prepared for the 2018 Kansas Legislature

Kansas Legislators are called upon to make decisions on many issues that come before the Legislature. In addition, members of the Legislature are frequently asked by constituent groups to discuss public policy issues in a community forum in their districts. The purpose of the Kansas Legislator Briefing Book is to assist members in making informed policy decisions and to provide information in a condensed form that is usable for discussions with constituents—whether in their offices in Topeka or in their districts.

This publication contains several reports on new topics plus reports from the prior version. Most of the reports from the prior version have been updated with new information.

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Kansas Legislator Briefing Book 2018

Agriculture and Natural Resources

A-1 Waters of the United States

U.S. Supreme Court decisions in 2001 and 2006, along with subsequent guidance issued by the Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps), failed to resolve confusion over the definition of "waters of the United States" (WOTUS), a key term in determining whether water is subject to the federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA). Whether specific waters are within the jurisdiction of the CWA is significant because those waters are subject to stringent water quality and pollution control requirements.

In April 2014, the EPA and the Corps jointly published a proposed rule relating to the CWA. The proposed rule updated the existing rule to comply with Supreme Court decisions; specifically, it addressed the definition of the waters of the United States by making it clear such waters include not only navigable waters but also waters with a "significant nexus" to navigable waters.

In July and September 2014, EPA leadership, in its official blogs, stated Spring 2015 was the target for publishing the final rules; however, the proposed rules would not be finalized until the report titled "Connectivity of Streams and Wetlands to Downstream Waters: A Review of Synthesis of the Scientific Evidence" (Report) was finalized. The final Report was published in January 2015. (For more information on the final Report, see below.)

On June 29, 2015, the final rule was published in the *Federal Register* and became effective on August 28, 2015. The EPA published a chart identifying the differences between the proposed rule and the final rule. The chart can be viewed at *https://archive.epa.gov/epa/sites/production/files/2015-05/documents/fact_sheet_summary_final_1.pdf*.

On June 30, 2015, the Kansas Attorney General announced Kansas joined eight other states to file a lawsuit against the EPA and the Corps. Twenty-two other states have divided into four groups and filed similar lawsuits. The complaint argues the final rule usurps the states' primary responsibility for the management, protection, and care of the intrastate waters and lands. The complaint also asks for the rule to be declared illegal, an injunction to be issued to prevent enforcement, and an order requiring the agencies to draft a new rule that complies with the law as it relates to states' authority.

The complaint can be accessed at http://1.usa.gov/1U4xXLR.

On August 27, 2015, a federal district court judge for the District of North Dakota issued an injunction to block the rule from going into effect until a full trial on the legality of the rule could be conducted. There were differing opinions over whether the injunction applied only to the 13 states named in the lawsuit or whether the injunction applied to the rule nationwide.

On October 9, 2015, the Court of Appeals for the Sixth Circuit issued a stay of the rule nationwide pending further order of the Court. The Court stated the EPA's new guidelines for determining whether water is subject to federal control—based mostly on the water's distance and connection to larger water bodies—is at odds with a key Supreme Court ruling. The jurisdiction of the Sixth Circuit Court of Appeals to hear issues related to the Clean Water Rule was challenged. In February 2016, a three-judge panel of the Sixth Circuit Court held it does have such jurisdiction. In January 2017, the Supreme Court agreed to review the Sixth Circuit ruling that an appellate court, not a district court, has jurisdiction to rule on WOTUS. The Supreme Court may not issue a ruling until June 2018.

According to the EPA website, in response to this stay, the EPA, Department of Army, and the Corps resumed nationwide use of the agencies' prior regulations defining WOTUS. On February 28, 2017, the President of the United States issued an Executive Order directing EPA and Department of the Army to review and rescind or revise the 2015 Rule. The website states the EPA, Department of Army, and the Corps are in the process of reviewing the 2015 rule and considering a revised definition of WOTUS consistent with the Executive Order.

The EPA and Department of Army (the agencies) are proposing a rule to rescind the Clean Water Rule and re-codify the regulatory text that existed prior to 2015 defining WOTUS. On June 27, 2017, EPA Administrator Scott Pruitt, along with Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works, signed the proposed rule. The comment period will close on September 27, 2017.

The agencies will pursue a second rulemaking in which the agencies will engage in a substantive re-evaluation and revision of the definition of WOTUS.

History of the Clean Water Act and Waters of the United States

The CWA governs pollution of the nation's surface waters. It was originally enacted in 1948 and completely revised in 1972. In the 1972 legislation, a declaration was made to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The goals were to achieve zero discharge of pollutants by 1985 and obtain water quality that was both "fishable and swimmable" by mid-1983. Even though the dates have passed, the goals and efforts to attain those goals remain.

In 1987, multiple amendments were made to the CWA that turned the focus to nonpoint source pollution (storm water runoff from farm lands, forests, construction sites, and urban areas) and away from point source pollution (wastes discharged from discrete sources, such as pipes and outfall). States were directed to develop and implement nonpoint pollution management programs. Qualified states have the authority to issue discharge permits to industries and municipalities and to enforce permits. Kansas is authorized to administer this permit program.

The CWA is carried out by both federal and state governmental agencies. The federal government sets the agenda and standards for pollution abatement, and states carry out day-to-day implementation and enforcement.

Jurisdiction is a point of uncertainty and contention when state and federal governments are required to enforce the CWA. The CWA defines the term "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source." Under the CWA, the term "navigable waters" means "the waters of the United States, including the territorial seas." A Codified Federal

Regulation expands the definition of "traditional navigable waters" as "waters subject to the ebb and flow of the tide, or waters that are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce." 33 CFR § 328.3(a)(1).

U.S. Supreme Court Cases

Two U.S. Supreme Court cases address the issue of jurisdiction as it pertains to navigable waters.

Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers (2001)

The Supreme Court held that the Corps exceeded its authority in asserting CWA jurisdiction over isolated intrastate, non-navigable waters based on their use as a habitat for migratory birds. The *Solid Waste Agency of Northern Cook County* (SWANCC) ruling eliminated CWA jurisdiction over isolated waters that are intrastate and nonnavigable, where the sole basis for asserting CWA jurisdiction is:

- The actual or potential use of the waters as habitat for migratory birds that cross state lines in their migrations;
- Any of the factors listed in the Migratory Bird Rule, such as use of the water as habitat for federally protected endangered or threatened species; or
- Use of the water to irrigate crops sold in interstate commerce.

Rapanos v. United States (2006)

The *Rapanos* case addressed whether a wetland or tributary is a water of the United States. The Justices issued five separate opinions with no single opinion commanding a majority of the Court; therefore, the EPA and the Corps issued a memorandum to provide clarification of the findings shared by a majority of Justices as it relates to jurisdiction. The findings of *Rapanos* are as follows:

- The CWA has jurisdiction over the following waters:
  - Traditional navigable waters;
  - Wetlands adjacent to traditional navigable waters;
  - Non-navigable tributaries to traditional navigable waters that are relatively permanent, where the tributaries typically flow year-round or have continuous flow at least seasonally; and
  - Wetlands that directly abut such tributaries;
- The CWA has jurisdiction over the following waters if a fact-specific analysis determines they have a significant nexus with a traditional navigable water:
  - Non-navigable tributaries that are not relatively permanent;
  - Wetlands adjacent to non-navigable tributaries that are not relatively permanent; and
  - Wetlands adjacent to but that do not directly abut a relatively permanent non-navigable tributary;
- The CWA does not have jurisdiction over the following features:
  - Swales or erosional features; and
  - Ditches excavated wholly in and draining only uplands and that do not carry a relatively permanent flow of water; and
- The significant nexus standard should be applied as follows:
  - A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by all wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of the downstream traditional navigable waters; and
  - Significant nexus includes consideration of hydrologic and ecologic factors.

Connectivity of Streams and Wetlands to Downstream Waters: A Review of Synthesis of the Scientific Evidence

The final Report published in January 2015 was used to inform the EPA and the Corps in drafting the final rule. (The full report can be accessed at http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=296414.) The final Report made the following conclusions:

- The scientific literature unequivocally demonstrates that streams, regardless of their size or frequency of flow, are connected to downstream waters and strongly influence their function;
- The scientific literature clearly shows that wetlands and open waters in riparian areas (transitional areas between terrestrial and aquatic ecosystems) and floodplains are physically, chemically, and biologically integrated with rivers *via* functions that improve downstream water quality. These systems act as effective buffers to protect downstream waters from pollution and are essential components of river food webs;
- There is ample evidence that many wetlands and open waters located outside of riparian areas and floodplains, even when lacking surface water connections, provide physical, chemical, and biological functions that could affect the integrity of downstream waters. Some potential benefits of these wetlands are due to their isolation rather than their connectivity. Evaluations of the connectivity and effects of individual wetlands or groups of wetlands are possible through case-by-case analysis;
- Variations in the degree of connectivity are determined by the physical, chemical, and biological environment and by human activities. These variations support a range of stream and wetland functions that affect the integrity and sustainability of downstream waters; and
- The literature strongly supports the conclusion that the incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed.

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Commerce, Labor, and Economic Development

B-1 Department of Commerce

The Kansas Department of Commerce (Department) is the cabinet agency concerned with economic development. Under the Office of the Secretary, there are two divisions and two commissions: Business and Community Development, Workforce Services, the Athletic Commission, and the Creative Arts Industries Commission.

Business and Community Development Division

In 2012, the Department combined the Business, Rural, and Trade Development divisions into the Business and Community Development Division. The new Division works to improve the Kansas economy through the creation and retention of jobs and capital investment, as well as to improve the quality of life in communities, particularly in rural areas. The Division is composed of seven program sections: Business and Community Development Assistance, Business and Community Finance and Incentives, Business Recruitment and Relocation, Rural Opportunity Zones, Minority and Women Business Development, the Innovation Growth Program, and Trade Development.

Business and Community Development Assistance

Business and Community Development Assistance determines the eligibility of various tax credits and loan funds for business clients. Commerce staff may act as a liaison with other state agencies, such as the Departments of Revenue, Labor, or Health and Environment, to ensure licensing requirements are met. Rural communities are assisted in developing community-driven strategic plans to attract businesses, workers, and investment. Financial and planning assistance may come from the following programs.

The Kansas Downtown Redevelopment Act. This act encourages entrepreneurs to locate and invest their businesses in central business districts or distressed neighborhoods. Property tax relief is offered in available areas designated by local governments and, subsequently, are reviewed and approved by the Department of Commerce.

Kansas PRIDE. This is a community-initiated effort that helps local leaders prepare for and manage change, addressing such issues as planning, community services, and enrichment, and the Department of Commerce determines the eligibility for several financial incentives and tax credits. The Department then monitors the compliance of businesses and individuals for the duration of the incentive or tax credit agreement. (The Department also administers the Sales Tax Revenue (STAR) Bond Program, which is discussed briefly in this article.) The purposes and criteria for several financial incentives are outlined below.

Kansas Certified Development Companies (CDCs). These companies are not-for-profit corporations that contribute to the economic development of their communities or regions. CDCs work with the U.S. Small Business Administration and private lenders to provide financing to small businesses. The 12 CDCs in Kansas can be found at *kacdc.com*. CDCs' loan packages often contain multiple sources of project funding, providing the small business customer with an optimal combination of rates and terms.

Community Development Block Grant (CDBG) Program. This program distributes federal funds to Kansas cities and counties looking to improve their communities. To receive funds, a project must meet at least one of the following federally mandated criteria:

- Benefits low- and moderate-income individuals;
- Removes or prevents slum or blight conditions; or
- Eliminates an urgent need created by a disaster when local funds are unavailable.

Kansas Community Service Program (CSP). This program gives not-for-profit organizations a way to improve capital fundraising drives for community service, crime prevention, or health care projects. Tax credit awards are distributed through a competitive application process. Based on the scope and cost of the proposed project, applicants may request up to $250,000 in tax credits. Applicant organizations in rural areas, defined as having less than 15,000 in population, are eligible for a 70 percent credit. Applicant organizations in non-rural areas are eligible for a 50 percent credit.

Energy incentives. Various incentives are offered to Kansas businesses and producers engaged in conventional and renewable energy production.

High Performance Incentive Program (HPIP). This program provides tax incentives to employers that commit to pay above-average wages and enhance their workers' skill development. HPIP offers employers four potential benefits:

- A 10 percent income tax credit for eligible capital investment at a company's facility that exceeds $50,000—or $1.0 million in the five metro counties of Douglas, Johnson, Sedgwick, Shawnee, and Wyandotte. The tax credit may be carried forward and used in any of the next 16 years in which the facility re-qualifies for HPIP;
- A sales tax exemption to use in conjunction with the company's capital investment at its facility;
- A training tax credit, worth up to $50,000; and
- Priority consideration for access to other business assistance programs.

Individual Development Account (IDA). The IDA promotes self-sufficiency for low-income Kansans in a matched savings program. The tax credits, approximately $500,000 awarded to selected community-based organizations, are used to leverage donations, which will serve as a match for savings in an IDA. Savings accrued in IDAs may be used for home ownership, residence repairs, business capitalization, and post-secondary education.

Kansas Industrial Training and Retraining Programs (KIT/KIR). These programs assist employers with training workers, whether on-site or in a classroom. The KIT Program may be used to assist firms involved in both pre-employment and on-the-job training, giving firms and prospective employees an opportunity to evaluate one another before making employment

commitments. The KIR Program helps companies that are likely to terminate employees because of obsolete or inadequate job skills and knowledge. Eligible industries include basic enterprises that are incorporating new technology into their operations or diversifying production. At least one current employee must be trained to qualify for assistance.

Kansas Partnership Fund. Initially funded by legislative appropriation, the Fund provides low-interest loans to cities and counties for infrastructure improvements that support Kansas basic enterprises, including manufacturing, mining, agriculture, and interstate transportation. Wholesale trade, financial services, business services, and tourism activities, if primarily undertaken for out-of-state markets, also are considered to be Kansas basic industries, as well as research and development of new products or technologies. All city and county units of government, regardless of size, are eligible to apply for loans.

Other sources of income for this revolving loan fund are the sale of revenue bonds through the Kansas Development Finance Authority (KDFA) and contributions by public or private entities. Loan interest rates are adjustable, indexed annually to either the federal discount rate or the average interest rate earned by the Economic Development Initiatives Fund during the previous year, whichever is greater.

Private Activity Bonds (PABs). These bonds are federally tax-exempt bonds. The types of bonds that qualify for tax-exempt status include:

- Exempt facility bonds;
- Qualified mortgage bonds;
- Qualified veterans' mortgage bonds;
- Qualified small issue bonds;
- Qualified student loan bonds;
- Qualified redevelopment bonds; and
- Qualified 501(c)(3) bonds.

Under the federal volume cap for 2017, Kansas has a bond allocation of $305.3 million. The primary demand for bond allocation in Kansas has been for the issuance of exempt facility bonds, mortgage revenue bonds, and qualified small issue bonds, sometimes called industrial revenue bonds (IRBs). Exempt facility bonds are used to finance public infrastructure facilities pertaining to mass commuting, water, sewage, solid, or hazardous waste; heating or cooling utilities; and qualified residential rental projects. Mortgage revenue bonds (MRBs) and mortgage credit certificates (MCCs) are issued to provide first-time home buyers an enhanced opportunity to finance the purchase of a new home. Persons meeting certain financial and demographic guidelines are able to achieve substantial savings over the life of a home mortgage through the use of these programs. Kansas legislation allows cities, counties, or the KDFA to issue IRBs for industrial or other authorized purposes, such as to purchase land; pay the cost of constructing and equipping new facilities; or to purchase, remodel, or expand existing facilities.

Promoting Employment Across Kansas Act (PEAK). This act gives qualified companies an incentive to locate or expand business operations and jobs in Kansas by allowing them to retain Kansas payroll withholding. A company must commit to creating five new jobs in non-metropolitan counties—or ten new jobs in the metropolitan counties of Shawnee, Douglas, Wyandotte, Johnson, Leavenworth, and Sedgwick—over a two-year period. The company must also pay wages for the PEAK jobs that meet or exceed the county median or average wage or North American Industry Classification System (NAICS) average wage for that industry. Qualified applicants may include for-profit companies in eligible NAICS codes, as well as headquarters for not-for-profit organizations. Applicants must offer adequate health insurance coverage, as defined by KAR 110-21-1, to their full-time employees and pay at least 50 percent of the premium.

Depending on the number of PEAK jobs to be filled in Kansas and their wage levels, the Secretary of Commerce may approve benefit periods for a maximum of ten years. Companies that had entered into the program prior to January 1, 2013, may request an extension of the benefit period for up to two years from the Secretary of Commerce. During the benefit period, participating PEAK companies may retain up to 95 percent of the payroll withholding tax of PEAK-eligible jobs.

Caps are applied on the aggregate amounts of benefits received by companies that are expanding or relocating in Kansas. In FY 2018, the cap is $36.0 million and is $42.0 million in FY 2019 and subsequent fiscal years. Commencing January 1, 2013, and ending June 30, 2018, the Secretary may utilize the PEAK Program to retain jobs of a qualified existing Kansas company. Benefits for retaining existing jobs are capped at $1.2 million in FY 2015 through FY 2018.

Small Communities Improvement Program (SCIP). This program sets aside $500,000 annually for small communities that are undertaking improvement projects through self-help and volunteerism. The competitive program is designed to assist communities with populations of 5,000 or less that are ineligible for other assistance and may not have the capacity to provide matching funds. The maximum award for a single project is $125,000. Self-help and volunteerism must result in savings of at least 40 percent of the project's marketplace price. Communities must validate the impact the project will have on the quality of life for their residents.

Sales Tax and Revenue (STAR) Bonds. STAR Bonds allow city or county governments, subject to approval from the Department of Commerce, to issue special revenue bonds for the financing of the infrastructure necessary for a major economic development project. A form of tax increment financing (TIF), the proceeds from the incremental increase of sales tax revenue within the STAR Bond district, including state sales tax and transient guest tax revenues, may be used to pay off the bonds. (See *Briefing Book article B-2 STAR Bonds* for more details.)

State Small Business Credit Initiative (SSBCI). This initiative provides federal matching funds to eligible businesses through a network of partners. The Kansas Capital Multiplier Loan Fund provides businesses with matching loans, up to 9.0 percent of the private capital invested. Loans may range from $25,000 to $500,000. The Fund provides businesses with matching equity, up to 9.0 percent of the private equity invested. Eligible businesses include technology and bioscience companies working with a state entrepreneurial center or a university center of excellence. Rural businesses, businesses in distressed urban areas, or businesses with local angel investment may qualify. Equity investment may range from $25,000 to $250,000. Additional information may be found at *www.NetWorkKansas.com*.

Work Opportunity Tax Credit (WOTC). This tax credit encourages private employers to hire within one of several targeted groups of job candidates who traditionally face barriers to employment, such as public assistance recipients, unemployed or disabled veterans, or ex-felons. The tax credit reduces an employer's federal income tax liability by as much as $2,400 per qualified new worker in the first year of employment, with employers hiring disabled veterans saving up to $9,600 in the first year of employment.

Job Creation Program Fund (JCPF). This Fund, administered by the Secretary of Commerce in consultation with the Secretary of Revenue and the Governor, aims to promote job creation and economic development by funding projects related to: the major expansion of an existing commercial enterprise, the relocation to Kansas of a major employer, the award of a significant grant that has a financial matching requirement, the potential departure from the state or the substantial reduction of an existing employer's operations, training activities, the potential closure or substantial reduction of a major state or federal institution, projects in counties with at least a 10 percent decline in population over the last decade, or other unique economic development opportunities.

The 2.0 percent of withholding tax receipts, which previously was dedicated to the Investments in Major Projects and Comprehensive Training (IMPACT) Program, is deposited in the JCPF, provided the current debt services, including administrative expenses, of the IMPACT Program have been met. Effective July 1, 2014, the Secretary of Revenue shall annually estimate the amount of net tax savings realized under the provisions of 2011 House Sub. for SB 196, and that amount is deposited in the JCPF. The Secretary of Commerce is required to annually report to legislative leadership and the tax and commerce committees on the expenditures from the Fund.

Business Recruitment and Relocation

The Recruitment and Relocation Section, working with site consultants and out-of-state businesses, promotes Kansas as a locale for businesses to move a portion or all of their operations. In each of five regions of the country (the East Coast, the Great Lakes, the Mid-Central, Missouri, and the West Coast), a regional office engages in recruitment activities, including identifying client needs, possible site locations, and available state and local resources. Emphasis is placed upon attracting businesses, both domestic and foreign, involved in the industries of alternative energy, distribution, bioscience, and advanced manufacturing.

Rural Opportunity

Started in 2011, Rural Opportunity Zones (ROZs) are designed to reverse population declines in rural areas of Kansas. Statute designates 77 counties as ROZs, including Allen, Anderson, Barber, Bourbon, Brown, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Clay, Cloud, Coffey, Comanche, Decatur, Doniphan, Edwards, Elk, Ellsworth, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Haskell, Hodgeman, Jackson, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Linn, Logan, Marion, Marshall, Meade, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Ness, Norton, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Republic, Rice, Rooks, Rush, Russell, Scott, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Trego, Thomas, Wabaunsee, Wallace, Washington, Wichita, Wilson, and Woodson.

The program has two incentives:

- A state income tax exemption for up to five years to individuals who move to a ROZ county from outside the state. Individuals must not have lived in Kansas for the past five years nor have an income of more than $10,000 per year over the past five years from a Kansas source; and
- Student loan forgiveness, up to $3,000 per year with a $15,000 maximum benefit, for individuals who graduate from an accredited post-secondary institution and move to a ROZ county. The incentive is a county-state partnership, and counties must choose to participate.

As of 2016, 69 counties joined the student loan forgiveness program. Those counties that do not participate include Anderson, Chase, Jackson, Linn, Logan, Sumner, and Wabaunsee.

Minority and Women Business Development

The Office of Minority and Women Business Development encourages the development of minority- and women-owned businesses. Information and referrals are provided in the areas of procurement, contracting and subcontracting, financing, and business management. The Office partners with other business advocates to sponsor business education workshops and seminars.

Kansas Statewide Certification Program. The Office also administers the Kansas Statewide Certification Program in which women and minority businesses can be certified as a Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE), or Women Business Enterprise (WBE). Certification may increase opportunities for those businesses to gain contracts and subcontracts from governmental and private entities committed to the inclusion of less advantaged persons. Program services are free.

Innovation Growth Program

The Innovation Growth Program provides Kansas entrepreneurs and technology companies with technical expertise, research, and other services designed to help those businesses grow and succeed. The Program, comprised of elements of the former Kansas Technology Enterprise Corporation (KTEC), offers expertise in four basic areas.

Research to Support Industry. University-based centers of excellence provide access to research and technical expertise for companies and entrepreneurs seeking to develop new products or solve problems with new technologies.

Entrepreneurial Centers. These business incubators provide services to technology companies in their early-stage development phase. Services range from preparing entrepreneurs to approach capital partners, to forming joint ventures and new companies around technologies, to accessing expertise housed at state universities.

Mid-America Manufacturing Technology Center (MAMTEC). MAMTEC works to increase the competitive position of small- and mid-sized Kansas manufacturers by helping to improve their productivity and expand their capacity.

Angel Investment resources. Regional networks of angel investors and angel tax credits help to meet the financing needs of Kansas entrepreneurs by serving as a catalyst to stimulate the flow of private investment capital in promising early stage ventures. Angel networks identify and fund promising start-up business opportunities. Kansas income tax credits are available to individuals who provide seed-capital financing for emerging Kansas businesses engaged in the development, implementation, and commercialization of innovative technologies, products, and services.

Trade Development. The Trade Development Section works to increase the international sales of goods and services produced in Kansas. Private companies can receive counseling regarding exports, marketing, international regulations, and searches for agents or distributors. International trade representatives are utilized on a contractual basis to provide contacts in Brazil, China, South Korea, India, Japan, Mexico, Taiwan, and other countries in Asia, Europe, and Latin America. Kansas vendors are recruited to attend international trade shows. The Section organizes trade missions and hosts foreign delegations when they visit Kansas.

Workforce Services Division

KANSASWORKS. The Department of Commerce is responsible for the State's workforce system called KANSASWORKS. Established through the federal Workforce Investment Act (WIA) of 1998 and Gubernatorial Executive Order No. 01-06, KANSASWORKS links businesses and employers with job seekers and educational institutions that provide training. KANSASWORKS' goal is to provide persons looking for work a "one-stop shop" to find employment, training, and information about Unemployment Insurance benefits. Workforce Services determines employers' eligibility for several of the employee-related incentives and training programs previously mentioned in this article. If a business faces mass layoffs, a rapid response team can be sent out to the employer's facility to provide job counseling for soon-to-be displaced workers. The Division also administers the following programs.

Business Executive and Industry Liaisons (BEILs). Liaisons work closely with the Business Development Division to identify the workforce demands of companies either planning to expand or locate to Kansas.

Federal Bonding Program. This program provides individual fidelity bonds to employers for applicants who are denied coverage because of a criminal record, history of chemical abuse, lack of employment history, or dishonorable discharge. Each bond's coverage is for $5,000 for six months. The program is free to employers and job applicants.

Older Kansans Employment Program (OKEP). This program assists Kansans over 55 years of age with employment placement services.

Kansas Registered Apprenticeship. This program combines classroom instruction with on-the-job training. Apprenticeships may last one to six years, depending upon the occupation and the industry's standards. A specialized form of Apprenticeship Program is the Early Childhood Association Apprenticeship Program (ECAAP), which, in partnership with community colleges,

certifies people working in childcare and early education.

Incumbent Worker Training Program. Financed by WIA, this program provides grants to employers for training expenses associated with: avoidance of mass layoff, the development of a best practice model, industries endorsed by a local workforce board, or a significant occupational demand.

Foreign Labor Certification. This certification qualifies an employer to hire foreign or alien workers if an employer cannot find qualified U.S. workers available to fill vacancies.

Workforce Services works with an advisory State Board, which is appointed by the Governor and comprised of 19 members, including employers, human resources specialists, higher education administrators, and state officials. At the local level, the state is divided into five areas. Each area has a local board of directors with headquarters in Great Bend (Area I), Topeka (Area II), Kansas City (Area III), Wichita (Area IV), and Pittsburg (Area V). The five areas provide workforce services at 28 workforce centers across the state.

Agency Funding from the Economic Development Initiatives Fund (EDIF)

The statutes governing the EDIF provide that it shall be used to finance programs "supporting and enhancing the existing economic foundation of the state and fostering growth . . . to the state's economic foundation." With the exception of a statutory $2.0 million transfer to the State Water Plan Fund, the Legislature annually appropriates the EDIF for individual projects and programs deemed to support and enhance the State's economic foundation.

The EDIF is funded through the State Gaming Revenue Fund (SGRF). A portion of state revenue from both the Kansas Lottery and parimutuel wagering is transferred to the SGRF. That fund is used essentially as a holding fund from which further transfers are made on a monthly basis. No more than $50.0 million may be credited to the SGRF in any fiscal year. Amounts in excess of $50.0 million are credited to the State General Fund.

Commissions

The Kansas Athletic Commission and the Kansas Creative Arts Industries Commission, both statutorily created, are organized within the Department of Commerce.

Kansas Athletic Commission. This Commission, comprised of five members appointed by the Governor and serving four-year terms, administers the laws governing wrestling and regulated sports, including professional boxing, kickboxing, and mixed martial arts. The Commission, in cooperation with the Boxing Commissioner, works to ensure the health and safety of contestants, fair and competitive bouts, and the protection of the general public. Regulatory responsibilities include the licensing and supervision of referees, judges, physicians, managers, contestants, timekeepers, seconds, promoters, and matchmakers for contests as well as event oversight.

The Kansas Creative Arts Commission. This Commission, comprised of 11 members appointed by the Governor and legislative leadership, promotes the growth of creative industries in Kansas. This is pursued through two grant programs: the Strategic Investment Program, which supports the development and operation of art organizations, and the Arts Integration Program, which facilitates the involvement of the arts in education and community development goals.

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Commerce, Labor, and Economic Development

B-2 Statewide STAR Bond Authority

STAR Bond Q&A

What is a STAR Bond?

A STAR Bond is a tax increment financing program that allows city governments to issue special revenue bonds, which are repaid by all of the revenues received by the city or county from incremental increases in transient guest taxes, local sales taxes, and use taxes collected from taxpayers doing business within the designated portion of the city's "sales tax and revenue" (STAR) Bond district. All or a portion of the increased state sales and use tax revenues also may be used to repay the bonds, which typically have a 20-year repayment period.

What type of project can use STAR Bond financing?

- A project with at least a $50 million capital investment and $50 million in projected gross annual sales revenues;
- A project located outside of a metropolitan statistical area that has been found by the Secretary of Commerce (Secretary) to be in an eligible area under Tax Increment Financing law and of regional or statewide importance;
- A major commercial entertainment and tourism area as determined by the Secretary;
- Auto racetrack facilities, multi-sport athletic complexes, river walk canal facilities, historic theaters, the Manhattan Discovery Center, the Wyandotte County Schlitterbahn Project, museum facilities, or a major motorsports complex in Shawnee County; or
- A project involving buildings 65-years-old or older and include contiguous lots that are vacant or condemned.

Is any project specifically excluded from use of STAR Bonds?

Projects including a gaming casino are specifically excluded from use of STAR Bonds.

How does the STAR Bond project work?

The law allows the governing body of a city to establish one or more special bond projects in any area in the city or outside of a city's boundaries with the written approval of the county commission. However, each special bond project must be approved by the Secretary based on the required feasibility study prior to utilizing STAR Bonds.

The city also is required to propose a project plan, hold a hearing on the plan, and adopt the project plan. One mandated component of the project plan is a marketing study conducted to examine the impact of the special bond project on similar businesses in the projected market area.

Finally, the city must complete a feasibility study, which includes:

- Whether a project's revenue and tax increment revenue and other available revenues are expected to exceed or be sufficient to pay for the project costs;
- The effect, if any, the project will have on any outstanding special obligation bonds payable from the revenues used to fund the project;
- A statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;
- Visitation expectations, the unique quality of the project, an economic impact study, and integration and collaboration with other resources or businesses;
- The quality of service and experience provided as measured against national consumer standards for the specific target market;
- Project accountability, measured according to best industry practices;
- The expected return on state and local investment that the project is anticipated to produce;
- A statement concerning whether a portion of the local sales and use taxes are pledged to other uses and are unavailable as revenue for the project and, if the revenues are so committed, a detailed explanation of the commitment and the effect; and
- An anticipated principal and interest payment schedule on the bond issue.

The Secretary places a limit on the total amount of STAR Bonds that may be issued for any project.

A city also is required to have an annual certified public accountant audit of each project. STAR Bond districts are prohibited from including real property that was part of another project or district unless that project or district has been approved by the Secretary prior to March 1, 2016. A district is limited to those areas being developed and any areas reasonably anticipated to directly benefit the project. However, STAR Bond districts created and approved in 2017 or later must exclude tax increment revenues derived from retail automobile dealers. If a STAR Bond district adds area, the base tax year for the newly annexed area will be the 12-month period immediately prior to the month in which the new area is added to the district.

What are the constraints placed on the developer?

The developer of a special bond project is required to commence work on the project within two years from the date of adoption of the project plan. If the developer does not commence work on the project within the two-year period, funding for the project ceases and the developer has one year to appeal to the Secretary for re-approval of the project. If the project is re-approved, the two-year period for commencement applies.

Also, the law requires that Kansas residents be given priority consideration for employment in construction projects located in a special bond project area.

What are eligible uses for STAR Bond proceeds?

- Purchase of real property, which may be acquired by means of eminent domain;
- Relocation assistance for property owners moving out of the project district;

- Site preparation work, including relocations of utilities;
- Drainage conduits, channels, levees, and river walk canal facilities;
- Parking facilities, including multi-level parking structures devoted to parking only;
- Street improvements;
- Street light fixtures, connection, and facilities;
- Utilities located within the public right-of-way;
- Landscaping, fountains, and decorations;
- Sidewalks and pedestrian underpasses or overpasses;
- Drives and driveway approaches located within the public right-of-way of an auto racetrack facility, major multi-sport athletic complex, museum facility, and major motorsports complex; and
- Up to 1.0 percent of the bond proceeds, but not exceeding $200,000, plus any actual administrative costs incurred by the Department of Commerce (Department) that exceed the fee.

What are ineligible uses for the STAR Bond proceeds?

Costs incurred in connection with the construction of buildings or other structures are not eligible. In addition, proceeds are not available for fees and commissions paid to real estate agents, financial advisors, or any other consultants who represent the developer or any other businesses considering locating or located in a redevelopment district; salaries for local government employees; moving expenses for employees of the businesses locating within the redevelopment district; property taxes for businesses that locate in the redevelopment district; lobbying costs; bond origination fees paid to the city; any personal property as defined in KSA 79-102; or travel, entertainment, and hospitality.

Other Important Information

All cities that have projects financed with STAR Bonds are to prepare and submit an annual report to the Secretary by October 1 of each year. The Department compiles an annual report on all STAR Bond projects and submits them to the Governor and the Senate Committee on Commerce and the House Committee on Commerce, Labor and Economic Development by January 31 of each year. For the past three calendar years and year to date, each STAR Bond district must report the following information:

- The amount of sales and use tax collected;
- The amount of bond payments and other expenses incurred;
- The amount of bonds issued and the balance of bonds, by district and by project;
- The remaining cash balance in the project to pay for future debt service and other permissible expenses;
- Any new income producing properties brought into the district, identifying the base amount of revenue the State would retain and the incremental amount that goes to the district;
- The amount of bonds issued to repay private investors, identifying the share of the indebtedness financed by private and public financing;
- The percentages of state and local effort committed to the district; and
- The number of visitors to the district, identifying the number of in-state and out-of-state visitors.

Reauthorized in 2017, the authority to issue debt pursuant to the STAR Bond Financing Act will sunset on July 1, 2020, unless continued by an act of the Legislature. During FY 2018, there is a 12-month moratorium on the approval of new STAR Bond districts, but cities with existing districts may continue to develop projects.

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Commerce, Labor, and Economic Development

B-3 Unemployment Insurance Trust Fund

Overview

The Kansas Unemployment Insurance (UI) Trust Fund was created in 1937 as the state counterpart to the Federal Unemployment Insurance Trust Fund. The Fund provides income stability for Kansas citizens during times of economic difficulty while stimulating economic activity. UI is a federal program managed by the State. Changes to Employment Security Law cannot take effect until approved by the U.S. Department of Labor. The Legislature has modified the provisions of the Kansas Employment Security Law several times over the past two decades.

State Fund Contributions

Contributions to the UI Trust Fund are made by Kansas employers and are governed by KSA 44-710a. The Fund is designed to be self-correcting during economic cycles. Moneys in the Fund accumulate during periods of economic expansion; benefits are distributed during economic recessions.

Unemployment rates increase when contribution rates increase, while contribution rates decline during better economic times. The State charges employers a fee on the first $14,000 of wages paid to each employee. This is called the taxable wage base. In rate year 2016, the taxable wage base increased from $12,000 to $14,000. The amount collected from employers varies depending upon the presence or absence of several factors or conditions, such as employer classifications. Employers in Kansas can be classified as a new employer, an entering and expanding employer, a positive balance employer, or a negative balance employer.

New employers in the construction industry with less than 3 years of employment history are charged a fee amount equal to 6.0 percent of their taxable wage base. For new employers who are not in the construction industry and have fewer than 24 months of payroll experience, the contribution rate is 2.7 percent.

After receiving notice from the Kansas Department of Labor regarding contributions owed for the upcoming rate year, a new

employer has 30 days to request an alternative rate be applied if the employer can provide information that the employer's operation has been in existence in another state for a minimum of 3 years prior to moving to Kansas.

If that condition is met, the employer's contribution rate will be equal to the rate previously charged by another state provided that rate was not less than 1.0 percent. In order to retain the reduced contribution rate, the employer must maintain a positive account balance throughout the 4-year period the reduced rate is in effect.

Employers with an employment history of at least 3 years qualify for experience-based ratings.

Employers are classified as positive balance when their total contributions to the UI Trust Fund exceed the amount of unemployment benefits charged to their accounts. Positive balance employers are grouped into 27 rate groups, depending upon their unemployment experience, and a specific contribution rate is determined for each employer.

The standard rates for the positive groups range from 0.2 percent for rate group 1 and increase by 20 basis points in each subsequent rate group until 5.4 percent is established for rate group 27.

Employers not classified as negative balance employers are eligible to receive a fee discount of 25.0 percent if all reports are filed and contributions are made by January 31. This discount does not apply if other discounts provided by law are in effect or if the Fund's balance is insufficient.

Employers are classified as negative balance when their total contributions to the Fund do not exceed the amount of unemployment benefits charged to their accounts. They are grouped into 11 rate groups. The standard rates for the negative groups range from 5.6 percent for rate group N1 and increase by 20 basis points in each subsequent rate group until 7.6 percent is established for rate group N11.

The solvency adjustment, which is based upon the UI Trust Fund's reserve ratio (the Fund's balance as of July 31, divided by total payroll for contributing employers) and the average high benefit cost rate (an average of the three highest ratios of benefits paid to total wages in the most recent 20 years) is applied to all experience rated employers, which range from a maximum of 1.6 percent to a minimum of -0.5 percent. Employers have the choice to make additional contributions to the Fund in order to become positive balance employers and qualify for an experience-based rating with lower contribution rates.

Federal Unemployment Trust Fund

In addition to the contributions to the UI Trust Fund, employers are taxed by the Federal Unemployment Tax Act (FUTA).

Employers pay a rate of 6.0 percent on the first $7,000 of income; however, the federal government provides a tax credit of 5.4 percent against this rate for states with an unemployment insurance program in compliance with federal requirements.

This yields an effective contribution rate of 0.6 percent for Kansas employers. FUTA funds are used for administrative purposes and to fund loans for state unemployment insurance programs when they become insolvent.

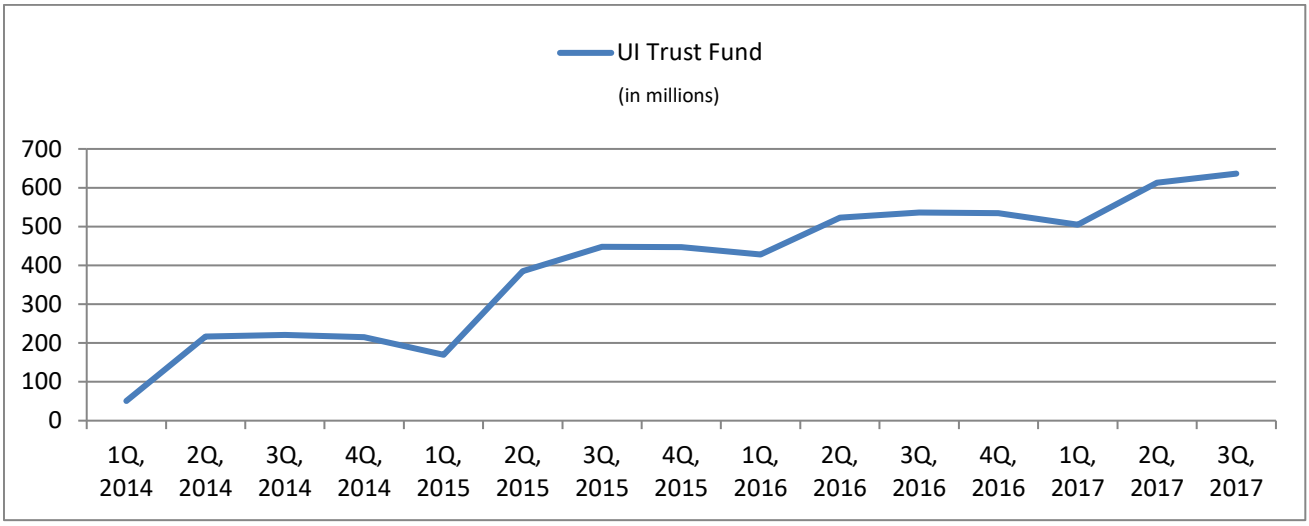
Solvency of UI Trust Fund

Kansas uses the Average High Cost Multiple (AHCM), as recommended by the U.S. Department of Labor, to ensure the UI Trust Fund is adequately funded. The AHCM is the number of years a state can pay benefits out of its current Trust Fund balance if it were required to pay benefits at a rate equivalent to an average of the three highest 12-month periods in the past 20 years.

The primary determinants of the Trust Fund depletion rate are the benefits paid out, the number of persons to whom unemployment is paid, and the amount of time for which benefits are paid.

Current Status of the Fund

If a future recession were severe enough to deplete the UI Trust Fund, which happened during the Great Recession, the Kansas Department of Labor is authorized to borrow from the federal Labor Department, Pooled Money Investment Board (PMIB), or both to make weekly benefit payments. The State General Fund is not obligated to ensure the solvency of the UI Trust Fund. Likewise, the UI Trust Fund may not be used for non-employment security purposes. Federal UI loans must be paid in a single lump sum plus interest, which is waived if a state's UI trust fund was sufficiently solvent prior to the loan. Failure to repay the loan results in the FUTA tax credit for employers being reduced by an additional 0.3 percent annually until the debt is repaid.



Source: Weekly UI Reports, Kansas Department of Labor

Employee Benefits

An individual is eligible for unemployment compensation when that person has lost employment through no fault of his or her own. Termination or resignation generally disqualifies a person from receiving UI benefits; however, Kansas Employment Security Law allows for several exceptions to this prohibition.

The amount of money an employee can receive in benefits will vary depending on the level of compensation the employee received during employment and the length of time the employee can receive benefits. However, there are strict upper and lower limits on benefit payments to prevent over- and under-compensation. If the Kansas Department of Labor determines a person made a false statement or representation when applying for benefits, that person is disqualified from receiving benefits for five years.

Calculating the Weekly Benefit

The weekly benefit amount is what the claimant will receive each week in unemployment compensation. The weekly benefit amount is determined by multiplying 4.25 percent times the highest earning quarter in the first four of the last five completed calendar quarters. KSA 44-704(c) limits the weekly benefit amount to either $474 or 55.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year, whichever is greater. Subsection (d) of the same statute guarantees that employees will receive at least 25.0 percent of the average weekly wages paid to employees in insured work in the previous calendar year.

Calculating the Length of Compensation

During a standard or non-recessionary period, an employee's duration of benefit is calculated in one of two ways, whichever is less. First, an

employee can receive weekly compensation for a specified number of weeks, or second, the duration of benefits is determined by multiplying one-third times the total benefits received in the first four of the last five completed calendar quarters. The weekly benefits amount is divided into the total benefits received in order to determine the number of weeks an employee can receive compensation. If the unemployment rate for Kansas is equal to or greater than 6.0 percent, a person is eligible for a maximum of 26 weeks of benefits. If the unemployment rate is less than 6.0 percent but greater than 4.5 percent, a person is eligible for 20 weeks of benefits. A person is eligible for 16 weeks of benefits if the unemployment rate is equal to or less than 4.5 percent. For purposes of this provision, the law calculates the unemployment rate using a 3-month, seasonally adjusted rolling average.

The federal Emergency Unemployment Compensation Act of 2008 (Act) extends an employee's duration of benefits by 20 weeks and has an additional Tier 2 trigger to provide 13 weeks of compensation when unemployment exceeds 6.0 percent, for a total of 33 weeks above the 26 weeks of unemployment compensation in nonrecessionary periods. All benefits paid under the Act are paid from federal funds and do not impact the UI Trust Fund balance. Under KSA 44-704(a), Kansas will provide an additional 13 weeks of unemployment compensation when the Kansas economy hits one of several indicators, including an unemployment rate of at least 6.5 percent for the previous three months. An applicant can receive less than 13 weeks of extended state benefits in the event his or her original eligible benefit period was less than 26 weeks based on the one-third calculation. Under state law, extended Kansas benefits are paid 50.0 percent from the UI Trust Fund and 50.0 percent from the Federal Unemployment Account.

Enforcement of the UI System

In 2013, the Legislature authorized the Secretary of Labor to hire special investigators with law enforcement capabilities to investigate UI fraud, tax evasion, and identity theft.

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Education

C-1 Career Technical Education in Kansas

In 2012, legislation (SB 155) launched a new plan to enhance career technical education (CTE) in Kansas with the purpose of better preparing high school students for college and careers. Beginning with the 2012-2013 school year, Kansas high school students could qualify for free college tuition in approved technical courses offered at Kansas technical and community colleges. The program also initially provided school districts with a $1,000 incentive for each high school student who graduated from that district with an industry-recognized credential in a high-need occupation.

The 2015 Legislature changed the incentive to a prorated amount not to exceed $750,000 in total. During the 2016 Session, the appropriated amount decreased from $750,000 to $50,000 for FY 2016 and FY 2017, which is estimated to cover the cost of the certification examinations only.

The 2017 Legislature moved the $50,000 incentive funds from the Kansas Board of Regents (KBOR) to the Kansas Department of Education (KSDE) for FY 2018 and FY 2019.

The appropriated amount for tuition was prorated in FY 2016 and FY 2017 as there was no increase in appropriations and the amount did not cover all participants in the program. Proration will continue for FY 2018 and FY 2019 if the Governor or the Legislature does not increase the funding for this program.

Occupations on the qualifying credential incentive list can be found on the KBOR website. The list currently includes, but is not limited to, the following occupations:

- Heavy and tractor-trailer truck drivers;
- Computer support specialists;
- Nursing assistants;
- Automotive service technicians and mechanics;
- Machinists;
- Farm equipment mechanics;
- Firefighters;
- Carpenters;
- Welders;
- Electricians;
- Plumbers and pipefitters;
- Sheet metal workers; and

- Heating, air-conditioning, and refrigeration mechanics and installers.

Student Participation

Since the program's inception, the number of students participating in postsecondary career technical education has grown significantly, resulting in a growth of college credit hours generated and credentials earned by high school students. The following table published on the KBOR website summarizes the increase in participation over time.

	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017*
Participating Head Count	3,475	3,870	6,101	8,440	10,275	10,023	10,666
College Credit Hours Generated	28,000	28,161	44,087	62,195	76,756	79,488	85,302
Credentials Earned		548	711	1,419	1,682	1,224	1,458
* preliminary numbers							

National Recognition

In 2013, the Career Technical Education Initiative received national recognition as one of the "Top Ten Innovations to Watch" from The Brookings Institution. The same year, Martin Kollman of KSDE and Lisa Beck of KBOR published the article "Free CTE College Tuition and Certification Funding: KS SB 155 at Work" in the September issue of *Techniques*, a national monthly magazine published by the Association for Career and Technical Education.

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Education

C-2 Kansas Degree Prospectus

SB 193, which was introduced during the 2015 Session and its contents were passed in HB 2622 during the 2016 Session, requires the Kansas Board of Regents (KBOR) to publish a degree prospectus for each undergraduate degree program offered by each postsecondary educational institution featuring information and statistics on the degree program. The information required in the degree prospectus includes a description of the degree; the average years taken to obtain the degree; the expected number of credit hours required to obtain the degree; the aggregate cost and cost per year incurred by an individual to obtain the degree; the aggregate degree investment an individual incurred subtracting grants and scholarships awarded; the median wage of recent graduates from such degree program and median wages after five years; the percent of graduates from such institution who obtain the degree and become employed in the field; the percent of graduates who are employed within one year from entry into the workforce; and the number of years required to fully recoup the degree investment an individual incurred.

Kansas DegreeStats (*www.ksdegreestats.org*) was built in response to this legislation using data from real Kansas graduates. The tool includes nearly 600 different degrees and reports on the typical resident tuition, fees, room and board, and books and supply costs for each degree program; the typical length of time students took to complete each degree program; and the funding sources contributed to this investment—data on scholarships and grants received, loans, and the personal investment made by the individuals who graduated from the degree program.

KBOR has included a link to the degree prospectus information on its official website and requires each postsecondary educational institution to make such information available through a link on the home page of each institution's official website. The degree prospectus information is promoted on web pages dedicated to the promotion of a degree program and provided to students who inquire about the degree program and on hard-copy materials concerning the degree program.

The legislation requires the degree prospectus information to be provided for any state education institution and municipal university for school year 2016-2017 and all future years and requires the information to be provided by community colleges,

technical colleges, and institutes of technology for school year 2017-2018 and all future years. This information is also available at *www.ksdegreestats.org*.

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Education

C-3 School Finance—Recent Legislative Changes

The 2015, 2016, and 2017 Legislatures enacted major changes to school finance.

2015. Legislation in 2015 repealed the School District Finance and Quality Performance Act (SDFQPA) that was passed in 1992 and, in its place, created the Classroom Learning Assuring Student Success (CLASS) Act. The CLASS Act provided a block grant of funding for each school district for school years 2015-2016 and 2016-2017.

2016. The 2016 Legislature, in both its Regular Session and its Special Session, altered the formula for providing Supplemental General State Aid for FY 2017 and amended laws related to virtual school state aid, the Extraordinary Need Fund (ENF), and federal funding for certain pre-kindergarten programs.

Legislation passed in the 2016 Special Session reinstated the Supplemental General State Aid and Capital Outlay State Aid formulas in effect prior to the enactment of the CLASS Act, which the 2016 Legislature fully funded. In addition, the Special Session legislation reduced the amount of funding school districts were entitled to receive under the block grant for full-time virtual school students for FY 2017 from $5,600 to $5,000.

Legislation directed the State Board of Education (Board) to review applications for funds from the ENF. In determining a district's need, the Board must consider:

- Any extraordinary increase in enrollment for the current school year;
- Any extraordinary decrease in assessed valuation for the current year;
- Any other unforeseen acts or circumstances substantially impacting a district's general fund budget for the current year; and
- In lieu of any of the above, whether the district has reasonably equal access to substantially similar educational opportunities through similar tax effort.

Special Session legislation set expenditure limits on the ENF at $13.0 million and provided no moneys may be expended from the ENF in FY 2017 until the sale or merger of the Kansas Bioscience Authority (KBA) is complete. The legislation directs the first $25.0

million in proceeds from the sale or merger to be deposited in the State General Fund. If the remaining proceeds are less than $13.0 million, the amount of money appropriated to the ENF will be reduced by the amount of the shortfall.

2017. Legislation in 2017 enacted the Kansas School Equity and Enhancement Act, which reinstituted a weighted enrollment formula similar to the SDFQPA. Weightings include at-risk students, declining enrollment, high-density at-risk students, bilingual students, low enrollment, high enrollment, new school facilities, ancillary school facilities, cost of living, career technical education, and transportation.

The weighted enrollment of a school district is once again multiplied by a coefficient to determine the aid the district receives in its general fund. This multiplier—formerly known as base state aid per pupil—is now referred to as base aid for student excellence.

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Federal and State Affairs

D-1 Amusement Parks

History of Amusement Parks

The modern amusement park can trace its roots back to early county fairs and carnivals. In Kansas, the first state fair was held in 1913 in Hutchinson. However, county fairs had been held at that location since 1873. The origin of traveling carnivals may be traced back to the 1893 Columbian Exposition in Chicago. The Exposition, also known as the World's Fair, introduced many new inventions, including the Ferris Wheel.

Although the Ferris Wheel was introduced in 1893, the first amusement rides are thought to have been built in the 1870s. As for roller coasters, the world's first coaster opened in 1884 at Coney Island, New York. It was there in 1895 that the first amusement park was constructed. Previously, rides were operated individually. Ten years later, in 1905, the first amusement park in Kansas was constructed in Wichita when Wonderland Amusement Park was built on a sandbar in the Arkansas River. The park was in operation until 1918.

Other amusement parks were eventually developed in the state, including Joyland Amusement Park in Wichita, which operated from 1949 until 2004. Today, traveling carnivals continue to operate in the state, along with the Kansas State Fair, which is held each September. In addition, water parks and municipal pools are regulated by state law, provided their attractions fall within established definitions.

Regulation in Kansas

Since 1977, 18 bills have been introduced to either establish new regulations or to amend existing laws concerning amusement parks. Four of those bills have been enacted.

Bill Number	General Subject	Outcome
1976 SB 842	Amusement Park Insurance	Died on Senate Calendar
1976 HB 2933	Amusement Safety Act	Died in Committee
1983 SB 198	Automatic Amusement Devices	Died in Committee
1983 HB 2547	Automatic Amusement Devices	Died in Committee
1986 SB 597	Amusement Park Regulation	Died in Committee
1993 HB 2401	Amusement Park Insurance	Be Not Passed Committee
1997 HB 2024	Amusement Park Permits, Inspections	Died in Committee
1998 HB 2722	Amusement Park Licensing	Died in Committee
1999 HB 2040	Amusement Park Regulation	Died in Conference Committee
1999 HB 2005	Amusement Park Insurance	Enacted
2001 HB 2120	Amusement Park Regulation	Died in Committee
2005 HB 2510	Coin Operated Machines	Died in Committee
2005 HB 2524	Coin Operated Machines	Died in Committee
2007 SB 193	Amusement Park Regulation	Added to HB 2504
2007 HB 2504	Amusement Park Regulation	Enacted
2008 HB 2616	Amusement Park Regulation	Added to HB 2504
2017 HB 2389	Amusement Park Regulation	In House Federal and State Affairs Committee (Contents inserted into 2017 House Sub. for SB 70)
2017 House Sub. for SB 70	Amusement Park Regulation	Enacted
2017 House Sub. for SB 86	Amusement Park Regulation	Enacted (Repealed House Sub. for SB 70)

Many of the bills in the above table concerned establishing baseline regulations and insurance requirements. However, no insurance requirements were created in statute until 2000. Furthermore, no statutes regarding regulation of amusement rides were enacted until 2008 with the passage of the Kansas Amusement Ride Act (Act). During the 2017 Session, the Act was further amended and expanded.

2000 HB 2005-Kansas Amusement Ride Insurance Act

This bill established that amusement rides shall not be operated in the state unless the owner has a liability insurance policy that provides for coverage of up to $1.0 million in the aggregate. If the owner of the ride was a subdivision of the State, or a nonprofit organization, that individual would not be required to carry such insurance. In addition, city or county governments could establish and enforce safety standards for amusement rides and could establish higher amounts of required insurance.

In the 1999 Legislative Session, HB 2040 was introduced, which would have established statutory regulations over amusement rides and established permit and inspection provisions. However, the bill died in Conference Committee.

2008 HB 2504—Kansas Amusement Ride Act

HB 2504 (2008) was drafted after a 2007 interim study by the Special Committee on Federal and State Affairs. After enactment, the provisions became the first oversight of amusement rides in Kansas law. Under the new law, amusement ride

owners would be required to inspect rides set up at a permanent location yearly and to conduct non-destructive testing. Inspections could be conducted by park employees, provided that they held a National Association of Amusement Ride Safety Officials (NAARSO) Level I certification. Additionally, rides at a temporary location would be required to be inspected every 30 days.

The bill also provided that injuries of patrons must be reported to the park. If a serious injury occurred, operation of the ride would cease until the ride was re-inspected. Further, criminal penalties were established for knowing operation in violation of the statute. The bill also provided rule and regulation authority to the Secretary of Labor and also directed the Secretary to develop an inspection checklist and to conduct random inspections of rides.

2017 House Sub. for SB 70

The bill, prior to repeal and replacement by passage of 2017 House Sub. for SB 86, addressed regulation of amusement rides through many different categories, including the following:

- Permits;
- Registration;
- Amusement Ride Safety Fund;
- Injury reporting;
- Liability insurance;
- Definitions;
- Qualified inspectors;
- Inspections;
- Records;
- Standards for ride construction;
- Nondestructive testing;
- Criminal penalties; and
- Rule and regulation authority.

2017 House Sub. for SB 86

The bill, as enacted, repealed the provisions of House Sub. for SB 70. The bill included the same provisions of House Sub. for SB 70, as described above, and made further amendments. The amendments included:

- Directs the Secretary of Labor to promulgate rules and regulations before January 1, 2018;
- Requires the Secretary to give owners a reasonable amount of time to comply with the Act;
- Removes language regarding liability insurance requirements for home-owned amusement rides;
- Requires a certificate of inspection for permit issuance;
- Adds commercial zip lines to the definition of “amusement ride”;
- Amends the definition of “serious injury” to include other injuries that require immediate medical treatment; and
- Requires the Secretary to conduct compliance audits in place of random inspections.

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Federal and State Affairs

D-2 Carrying of Firearms

Background

Kansas generally has not restricted gun laws at the state level since statehood. Prior to 2006, open carry of firearms was legal in the state except where prohibited by local ordinance. The state also had no provisions for concealed carry of firearms until 2006 when the Personal and Family Protection Act was enacted.

The Personal and Family Protection Act (2006 SB 418)

Enactment made Kansas the 47th state to allow concealed carry and made it the 36th state that "shall issue" concealed carry permits. In other words, under the new law, Kansas would be required to issue a concealed carry permit to any person who met the education requirements, could lawfully possess a firearm, and who paid the licensing fee. Permits were issued beginning on January 1, 2007.

2013 Legislative Changes (2013 HB 2052)

The 2013 Legislature passed Senate Sub. for HB 2052, which added new sections to the Personal and Family Protection Act (PFPA), primarily authorizing concealed carry of handguns by licensees into certain public buildings enumerated in the legislation. Also passed was SB 21, which enacted firearms-related amendments.

2015 Legislative Changes (2015 SB 45)

SB 45 (2015) allowed the concealed carry of a firearm without a concealed carry license issued by the State as long as the individual carrying the firearm is not prohibited from possessing a firearm under either federal or state law.

2017 Legislative Changes (2017 Senate Sub. for HB 2278)

Senate Sub. for HB 2278 (2017) exempted the following institutions from a general requirement in law that public buildings have adequate security measures in place before the concealed carry of handguns can be prohibited:

- State- or municipal-owned medical care facilities and adult care homes;
- Community mental health centers;
- Indigent health care clinics; and
- Any buildings located in the health care district associated with the University of Kansas Medical Center.

Carrying of Concealed Weapons

Prior to the enactment of 2015 SB 45, Kansas citizens who wished to carry a concealed firearm in the state were required to possess a permit issued by the Kansas Attorney General. However, after January 1, 2014, any person who could lawfully possess a handgun in the state could carry it concealed without a permit. This makes Kansas a "constitutional carry" state. If a Kansas resident desires to carry a concealed handgun in a different state, they would need a Kansas concealed carry permit, provided the state recognizes Kansas-issued permits.

Permit Qualifications

The applicant must:

- Be 21 years of age or older;
- Live in the county in which the license is applied for;
- Be able to lawfully possess a firearm;
- Successfully complete the required training course; and
- Pay the permit fee to the Attorney General's Office ($100).

Unlicensed Concealed Carry

Since the enactment of 2015 SB 45, citizens have been able to carry concealed firearms in the state without a permit. However, the law provides some exceptions. Private property owners can exclude weapons from their premises. Additionally, state or municipal buildings must allow citizens to carry concealed firearms, unless adequate security is present. Adequate security as defined by law includes armed guards and metal detectors at every public access entrance to a building. Furthermore, state or municipal employers may not restrict the carry of concealed firearms by their employees, unless adequate security is present at each public access entrance to the building. Correctional facilities, jails, and law enforcement agencies may exclude concealed weapons in all secured areas, and courtrooms may be excluded, provided that adequate security is present at each public access entrance.

Public Buildings Exceptions

Under the PFPA, several types of public buildings are excluded and are allowed to ban concealed firearms for a period of four years.

State- or Municipal-Owned Hospitals, Mental Health Centers, Community Mental Health Centers

Senate Sub. for HB 2278 (2017) exempted the following institutions from a general requirement in law that public buildings have adequate security measures in place before the concealed carry of handguns can be prohibited: state- or municipal-owned medical care facilities and adult care homes; community mental health centers; indigent health care clinics; and any buildings located in the health care district associated with the University of Kansas Medical Center.

Public College Campuses

Under the PFPA, Board of Regents institutions were able to exclude concealed firearms from their campuses until July 1, 2017. Now, Board of Regents institutions must allow concealed firearms in buildings in which adequate security is not provided. The Board of Regents adopted a policy that stated those who carry on campus must be 21 years of age. Further, they must completely conceal their weapon, and the safety must be engaged. Each university has adopted its own concealed weapons policy in accordance with the law. Kansas is one of 21 states whose laws state that public universities must allow concealed weapons on their campuses.

State Capitol Building

Under the PFPA, the State Capitol building is excluded from the definition of state and municipal building. Furthermore, the law states that citizens may carry a concealed firearm within the building, provided they are lawfully able to possess a firearm.

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Federal and State Affairs

D-3 Legalization of Medical and Recreational Marijuana

Although the use of medical or recreational marijuana is not legal in Kansas, several bills recently have been introduced to change the law. Medical marijuana use is legal in several states, and recreational use of marijuana is legal in eight states and the District of Columbia. This article summarizes the bills that have been introduced in Kansas and provides an overview on the legalization and decriminalization that has occurred in other states.

Medical Use of Marijuana

History of Legislation in Kansas

In the last 13 years, 14 bills were introduced in the Kansas Legislature addressing the topic of medical marijuana. None of the bills were recommended for passage; however, during the 2015 Legislative Session, HB 2282 advanced out of its original committee and its contents passed the House Committee of the Whole as an amendment to HB 2049. HB 2282, as amended, would have allowed use of medical hemp preparations to treat or alleviate a patient's condition causing seizures, including those characteristic of epilepsy. The bill was withdrawn from General Orders in the House of Representatives and referred to the House Committee on Appropriations, where it died. (*Note*: See additional information about HB 2049 under the heading "Penalties and Decriminalization" on the following page.)

In 2010, HB 2610 would have allowed for the creation of not-for-profit Compassionate Care Centers and for these facilities to issue registration certificates, registry identification cards, and marijuana to patients. The bill would have allowed patients and caregivers to possess certain amounts of marijuana plants, usable marijuana, and seedlings of unusable marijuana. Also, the bill would have provided patients and caregivers with certain levels of immunity from arrest, prosecution, or other civil penalties. Finally, the bill would have prohibited discrimination against patients from schools, landlords, employers, and other entities.

Slight variations of 2010 HB 2610 were introduced in 2011 (HB 2330), 2012 (SB 354), 2013 (HB 2198 and SB 9), 2015 (HB 2011 and SB 9), and 2017 (SB 155, SB 187, and HB 2348).

Sub. for SB 155 (2017) would amend law concerning nonintoxicating cannabinoid medicine (NICM). Under the bill, no person could be arrested, prosecuted, or penalized in any manner for possessing, utilizing, dispensing, or distributing any NICM or any apparatus or paraphernalia used to administer the medicine. The bill would specify the physicians issuing recommendation orders for NICM and pharmacists dispensing or distributing NICM could not be subject to arrest, prosecution, or any penalty, including professional discipline. The bill was recommended for passage by the Senate Committee on Federal and State Affairs and is on General Orders in the Senate Committee of the Whole.

Other States

The District of Columbia and 29 states have laws legalizing medical marijuana and cannabis programs. The laws in these states meet the following criteria: protection from criminal penalties for using marijuana for a medical purpose; access to marijuana through home cultivation, dispensaries, or some other system that is likely to be implemented; allowance for a variety of strains; and allowance of either smoking or vaporization of marijuana products, plant material, or extract.

Another 17 states allow use of low THC, high cannabidiol products for specific medical conditions or as a legal defense. Both Missouri and Iowa enacted laws in 2014 to allow cannabidiol oil to be prescribed to individuals who suffer from intractable epilepsy, a seizure disorder in which a patient's seizures fail to come under control with treatment.

Recreational Use of Marijuana

Other States

The District of Columbia and eight states (Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, and Washington) have legalized the recreational use of marijuana as of October 2017. In November 2016, voters in four states approved the recreational use of marijuana, in addition to the four states (and District of Columbia) that approved it in 2012 and 2014. Nineteen states had bills before legislatures in 2017 to advance or allow the use of recreational marijuana for adults.

The 2017 Vermont Legislature passed a bill to legalize recreational marijuana, but the Governor vetoed it.

In November 2016, Maine voters approved the legalization of recreational marijuana; however, in November 2017, the Governor vetoed a bill that would have implemented the law.

Penalties and Decriminalization

Kansas

SB 112 (2017) reduced the severity level for unlawful possession of drug paraphernalia from a class A to a class B nonperson misdemeanor when the drug paraphernalia was used to cultivate fewer than five marijuana plants or used to store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body. This provision became effective July 1, 2017.

HB 2049 was introduced during the 2015 Legislative Session. As introduced, the bill would have decreased the penalty for possession of marijuana in certain circumstances. The bill, as amended by the House Committee of the Whole, would have allowed use of medical hemp preparations to treat or alleviate a patient's condition causing seizures and would have created the Alternative Crop Research Act that would have allowed the Kansas Department of Agriculture to cultivate and promote the research and development of industrial hemp. In 2016, the contents of the bill decreasing the criminal penalty in certain circumstances were inserted into HB 2462. HB 2462 was approved by the Governor on May 13, 2016. The remainder of the contents from HB 2049, as amended by the House Committee of the Whole, were not included and did not become law.

Wichita City Ordinance

In April 2015, Wichita passed an ordinance during the general election that lessened the penalty for first-time marijuana possession. The new ordinance would impose up to a $50 fine for first-time possession of a small amount of marijuana. After the election, Kansas Attorney General Derek Schmidt filed a lawsuit against the City of Wichita seeking to have the ordinance declared null and void.

On May 13, 2015, the Kansas Supreme Court ordered the City of Wichita not to enforce the marijuana ordinance until the Court could issue a ruling on its validity. The ordinance conflicts with state law, where marijuana possession is a misdemeanor punishable by up to a year in jail and a $2,500 fine.

The Kansas Supreme Court heard oral arguments on September 17, 2015. In its January 2016 ruling, the Court struck down the ordinance, citing the proponents' failure to comply with statutory procedures in filing its proposal with the city clerk. Therefore, the Court declined to rule on the merits of the case.

On June 6, 2017, the Wichita City Council voted to preliminarily approve the reduction of the penalty for first-time marijuana offenses. The Council will take another vote at a later date to finalize the reduction.

Other States

The District of Columbia and 22 states have decriminalized the use of small amounts of marijuana. Additional decriminalization efforts were introduced in 11 states in 2017.

In addition to legalization and decriminalization, efforts to reduce penalties related to marijuana were before 21 state legislatures in 2017.

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Federal and State Affairs

D-4 Liquor Laws

Kansas laws concerning intoxicating liquor are included in the Liquor Control Act, the Cereal Malt Beverage Act, the Club and Drinking Establishment Act, the Nonalcoholic Malt Beverages Act, the Flavored Malt Beverages Act, the Beer and Cereal Malt Beverages Keg Registration Act, the farm winery statutes, the microbrewery statutes, and the microdistillery statutes.

State and Local Regulatory Authority

The Division of Alcoholic Beverage Control (ABC) and the Director of ABC within the Kansas Department of Revenue (KDOR) have the primary responsibility for overseeing and enforcing Kansas intoxicating liquor laws. As part of its regulatory authority under the different liquor acts, ABC issues 17 different licenses and 5 different permits for the manufacture, distribution, and sale of alcoholic liquor.

County and city governments also have considerable regulatory authority over the sale of intoxicating and alcoholic liquors and cereal malt beverages in the State of Kansas. Article 15 §10 of the *Kansas Constitution* allows the Legislature to regulate intoxicating liquor. Cities and counties have the option to remain "dry" and exempt themselves from liquor laws passed by the state, or local units of government can submit a referendum to voters proposing the legalization of liquor in the local jurisdiction. If such a referendum is passed by a majority of the locality's voters, alcoholic liquor becomes legal in the city or county and will be subject to state, county, and city laws, ordinances, and regulations.

The Liquor Control Act

The Liquor Control Act grants the state its regulatory power to control the manufacture, distribution, sale, possession, and transportation of alcoholic liquor and the manufacturing of beer. Cities and counties are able to regulate certain aspects, such as the time and days for the sale of alcoholic liquor, but local governments cannot adopt laws that conflict with the provisions of the Liquor Control Act.

Farm wineries, farm winery outlets, microbreweries, microbrewery packaging and warehousing facilities, and microdistilleries also are regulated by the Liquor Control Act.

The Cereal Malt Beverage Act

Local governments have additional authority under the Cereal Malt Beverage Act. According to statute, applications for cereal malt beverage licenses are made either to the city or county government, depending on where the business is located.

As long as any local regulations and ordinances adopted are consistent with the Cereal Malt Beverage Act, the board of county commissioners or the governing body of a city may set hours and days of operation, closing time, standards of conduct, and adopt rules and regulations concerning the moral, sanitary, and health conditions of licensed premises. If the local government does not set hours and days of operation, the default hours and days provided in the Cereal Malt Beverage Act govern the sale of cereal malt beverages. Counties and cities also may establish zoning requirements that regulate establishments selling cereal malt beverages and that may limit them to certain locations.

The Cereal Malt Beverage Act also allows local governments some discretion in revoking licenses and actually requires such action by local governments in specific situations.

The Club and Drinking Establishment Act

In Kansas, the sale of alcoholic liquor by the drink is controlled by the Club and Drinking Establishment Act.

The board of county commissioners may submit a proposition to voters to: (1) prohibit the sale of individual alcoholic drinks in the county, (2) permit the sale of individual alcoholic drinks only if an establishment receives 30.0 percent of its gross receipts from food sales, or (3) permit the sale of individual alcoholic drinks only if an establishment receives some portion of gross receipts from food sales. If a majority of voters in the county vote in favor of the proposition, the ABC Director must respect the local results when issuing or denying licenses in that county.

Additionally, the county commissioners are required to submit a proposition to the voters upon receiving a petition if the petition is signed by at least 10.0 percent of voters who voted in the election for the Secretary of State the last time that office was on the ballot in a general election. The petition must contain the language required in KSA 41- 2646(3)(b), and the petition must be filed with the county election officer.

The Nonalcoholic Malt Beverages Act

Retail sales of nonalcoholic malt beverages are controlled by the Liquor Control Act, the Club and Drinking Establishment Act, or the Cereal Malt Beverage Act, depending on which act the retailer is licensed under for selling or providing the nonalcoholic malt beverage.

The Flavored Malt Beverage Act

Kansas adopted the federal definitions of flavored malt beverages (FMB). However, the federal government does not offer FMB licenses or impose penalties in Kansas. The ABC is responsible for FMB regulation and penalties associated with FMBs in the state. Because FMBs are cereal malt beverages, they are regulated under the Cereal Malt Beverage Act.

The Beer and Cereal Malt Beverage Keg Registration Act

Retailers selling kegs are regulated under the Liquor Control Act or the Cereal Malt Beverage Act, depending on the type of alcoholic beverage(s) the retailer is selling.

Although local governments have delegated authority under the Cereal Malt Beverage Act, city and county ordinances that conflict with the Beer and Cereal Malt Beverage Keg and Registration Act are void.

Liquor Taxes

Currently, Kansas imposes three levels of liquor taxes. For more information, see article *J-4, Liquor Taxes*.

2017 Changes to Liquor Laws—House Sub. for SB 13; Sub. for HB 2277

House Sub. for SB 13

Expanded sale of strong beer. The bill allows convenience, grocery, and drug stores licensed to sell cereal malt beverages (CMB), defined as any fermented but undistilled beverage with an alcohol weight of 3.2 percent or less, to sell beer containing not more than 6.0 percent alcohol by volume on and after April 1, 2019. Also effective April 1, 2019, any person with a retailer's license to sell alcoholic liquor (beer, wine, and distilled spirits) may sell CMB. Liquor retailers may sell other goods or services, provided the amount of nonalcoholic sales—excluding the sales of lottery tickets, cigarettes, and other tobacco products—does not exceed 20.0 percent of the retailer's total gross sales. Liquor retailers may continue to provide product for resale by bars, restaurants, clubs, and caterers. Distributors may establish minimum quantities and dollar amounts for orders of CMB and alcoholic liquor. Ten years after the bill's effective date, the Director of Alcoholic Beverage Control must conduct a market impact study on the sale of beer by persons holding CMB licenses, which must be reported in the 2029 Legislative Session.

Sub. for HB 2277

Common Consumption Areas. The bill allows a city or county to establish one or more common consumption areas by ordinance or resolution and designate the boundaries of these areas. Common consumption area permits can be issued to cities, counties, Kansas residents, or organizations with a principal place of business in Kansas and approved by the respective city or county. Common consumption area permit holders are liable for liquor violations occurring within the common consumption area the permit identifies. Licensees are liable for violations on their individual premises.

Class B Clubs. The bill also removes from current law a ten-day waiting period for an applicant to become a member of a class B club.

2016 Changes to Liquor Laws—SB 326

Microbrewery production limits. The legislation increased the allowable amount of beer manufactured with a microbrewery license to 60,000 barrels of domestic beer in a calendar year for each microbrewery license issued in the state. If a licensee has a 10.0 percent or greater ownership interest in one or more entities that also hold a microbrewery license, the aggregate amount of beer manufactured by all licenses under such common ownership cannot exceed 60,000 barrels.

The legislation allowed microbrewery licensees also licensed as a club or drinking establishment to sell and transfer domestic beer to that club or drinking establishment. Microbrewery licensees also are able to remove hard cider produced by the licensee from the licensed premises for delivery to licensed wine distributors.

Hard cider. The legislation allowed a microbrewery to manufacture and distribute not more than 100,000 gallons of hard cider, as defined by the bill. Under prior law, microbreweries could manufacture only beer.

Residency requirements. The legislation amends the Liquor Control Act to remove the one-year residency requirement for microbrewery, microdistillery, and farm winery licensees. Microbrewery, microdistillery, and farm winery licensees still are required to be Kansas residents.

2015 Changes to Liquor Laws—HB 2223

Infusion. The legislation allowed drinking establishments to sell and serve alcoholic liquor infused with spices, herbs, fruits, vegetables, candy, or other substances intended for human

consumption if no additional fermentation occurs during the process.

Citations. In addition to making changes to the required contents of citations, the legislation specified when issuing a citation for a violation of the liquor laws, agents of the ABC must deliver the citation issued to a person in charge of the licensed premises at the time of the alleged violation.

Previously, the law required delivery of the citation to the person allegedly committing the violation.

Powdered alcohol. The legislation banned clubs, drinking establishments, caterers, holders of temporary permits, and public venues from selling, offering to sell, or serving free of charge any form of powdered alcohol.

Automated wine devices. The legislation allowed public venues, clubs, and drinking establishments to offer customer self-service of wine from automated devices on licensed premises. Licensees are required to monitor and have the ability to control the dispensing of wine from the automated devices.

Eligibility for licensure. The legislation added to the list of persons who cannot receive liquor licenses any person who, after a hearing before the Director of ABC, is found to have held an undisclosed beneficial interest in a liquor license obtained through fraud or a false statement on the application for the license. The legislation also established requirements for limited liability companies applying for a liquor license.

Alcohol consumption on Capitol premises. The legislation allowed consumption of alcoholic liquor on the premises of the Capitol for official state functions that are nonpartisan in nature. Any such function must be approved by the Legislative Coordinating Council before the consumption of alcoholic liquor may begin.

Alcohol consumption on unlicensed premises. The legislation provided that patrons and guests of unlicensed businesses will be allowed to consume alcoholic liquor and cereal malt beverages on the premises of unlicensed business property if the following conditions are met:

- The business, or any owner of the business, has not had a license issued under the Kansas Liquor Control Act or the Club and Drinking Establishment Act revoked for any reason;
- No charge is made by the business for the privilege of possession or consumption of alcohol on the premises or for mere entry onto the premises; and
- Any alcoholic liquor remains in the personal possession of the patron, it is not sold, offered for sale, or given away by the owner or employees of such business, and no possession or consumption takes place between 12 a.m. and 9 a.m.

Alcohol consumption for catered events. The legislation allowed the consumption of alcoholic liquor at catered events held on public property where the caterer has provided 48-hour notice to ABC.

Notification requirements. The legislation changed the required notification caterers must give to ABC by requiring electronic notice 48 hours before an event. Previously, the law required a caterer to provide notice to ABC 10 days before any event and provide notice to the Chief of Police or Sheriff where the event was to occur.

Distributor sampling. The legislation allowed alcoholic beverage distributors to provide samples of spirits, wine, and beer or cereal malt beverages to alcoholic beverage retailers and their employees and other alcoholic beverage distributors and their employees in the course of business or at industry seminars.

Vineyard permits. The legislation allowed any person engaged in business as a Kansas vineyard with more than 100 vines to apply for an annual permit. The permit authorizes the following on the premises specified in the permit:

- The sale of wine in the original, unopened container;
- The serving of wine by the drink; and

- Conducting wine tastings in accordance with existing law.

Location of certain licensees. The legislation allowed cities to pass ordinances allowing liquor retailers, microbreweries, microdistilleries, and farm wineries to locate within 200 feet of any public or parochial school, college, or church in a core commercial district.

Temporary permits: State Fair. The legislation allowed the Director of ABC, on or after July 1, 2016, to issue a sufficient number of temporary permits for the sale of wine in unopened containers and the sale of beer, wine, or both by the glass on the State Fairgrounds. The number of permits issued must be consistent with the requirements of the State Fair Board.

Farmers' market permits. The legislation allowed farm wineries to sell wine at farmers' markets. Applications for these permits must include the location(s) of the farmers' markets at which wine will be sold.

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Federal and State Affairs

D-5 Lottery, State-owned Casinos, Parimutuel Wagering, and Tribal Casinos

Article 15, Section 3 of the *Kansas Constitution* prohibits lotteries and the sale of lottery tickets forever. The prohibition was adopted by convention, approved by voters in 1859, and approved by the Legislature in 1861. Exceptions to the prohibitions were added in 1974 to allow for bingo and bingo games (see the memorandum entitled "Charitable Gaming-Raffles and Bingo") and in 1986 to allow for the Kansas Lottery (including state-owned casinos, since 2007) and parimutuel wagering on dog and horse races.

Revenue. Kansas laws provide for the allocation of Lottery revenues to the State Gaming Revenues Fund (SGRF), State General Fund (SGF), Expanded Lottery Act Revenues Fund (ELARF), and Problem Gambling and Addictions Grant Fund. In FY 2017, these funds received a total of $162.3 million.

Kansas Regular Lottery

In 1986, Kansas voters approved a constitutional amendment to provide for:

- A State-owned lottery; and
- A sunset provision prohibiting the operation of the State Lottery unless a concurrent resolution authorizing such operation was adopted by the Kansas Legislature. The 2007 Legislature extended the lottery until 2022 and required a security audit of the Kansas Lottery be completed at least once every three years.

The 1987 Kansas Legislature approved implementing legislation that:

- Created the Kansas Lottery to operate the State Lottery;
- Established a five-member Lottery Commission to oversee operations;
- Required at least 45.0 percent of the money collected from ticket sales to be awarded as prizes and at least 30.0 percent of the money collected to be transferred to the SGRF;
- Exempted lottery tickets from sales tax; and

- Allowed liquor stores, along with other licensed entities, to sell lottery tickets.

Lottery games receipts from the sale of tickets and online games are deposited by the Executive Director of the Kansas Lottery into the Lottery Operating Fund in the State Treasury. Moneys in that fund are used to:

- Support the operation of the lottery;
- Pay prizes to lottery winners by transfers to the Lottery Prize Payment Fund;
- Provide funding for veterans and individuals suffering from problem gambling, alcoholism, drug abuse, and other addictive behaviors *via* transfers to the SGRF; and
- Provide funding for correctional facilities, juvenile facilities, economic development, and the SGF *via* transfers to the SGRF.

Veterans Benefit Lottery Game. The 2003 Legislature passed HB 2400 authorizing the Kansas Lottery to sell an instant ticket game, year-round, benefiting veterans' programs. Pursuant to KSA 74-8724, net profits are distributed accordingly:

- 40.0 percent for Kansas National Guard educational scholarships and for other purposes directly benefiting members of the Kansas Army and Air National Guard and their families;
- 30.0 percent for the use and benefit of the Kansas Veterans' Home, Kansas Soldiers' Home, and Veterans Cemetery System; and
- 30.0 percent for the Veterans Enhanced Service Delivery Program.

State-owned Casinos

The 2007 Legislature enacted SB 66, commonly referred to as the Kansas Expanded Lottery Act (KELA), authorizing a state-owned and operated lottery involving electronic gaming and racetrack gaming facilities. A proviso in KELA stated that any action challenging the constitutionality of KELA shall be brought in Shawnee County District Court.

In *State ex rel. Morrison v. Kansas Lottery 07C-001312*, the Shawnee County District Court ruled KELA was constitutional because of the State's selection of casino managers and electronic games, monitoring of managers' daily activities, ownership of gaming software, and control over revenue distribution demonstrate ownership and operation of a lottery involving electronic gaming. In *State ex rel. Six v. Kansas Lottery*, 186 P. 3d 183 (Kan. 2008), the Kansas Supreme Court upheld the district court's ruling on the constitutionality of KELA.

Revenue. In FY 2017, revenue from the Kansas Regular Lottery was transferred from the SGRF in the following manner:

Veterans' Programs	$ 1,255,812
Economic Development Initiatives Fund	42,364,000
Juvenile Detention Fund	2,496,000
Correctional Institutions Building Fund	4,932,000
Problem Gambling Grant Fund	80,000
State General Fund	25,695,877[1]
Total	**$ 75,255,881**

1 Pursuant to statute, no more than $50.0 million from online games, ticket sales, and parimutuel wagering revenues can be transferred to the SGRF in any fiscal year. Amounts in excess of $50.0 million are credited to the SGF, except when otherwise provided by law.

Where can state casinos be located in Kansas?

KELA created gaming zones for expanded gaming.

One casino may be built in each zone:

- Wyandotte County (Northeast Kansas Gaming Zone);
- Crawford and Cherokee counties (Southeast Kansas Gaming Zone);
- Sedgwick and Sumner counties (South Central Kansas Gaming Zone); and

- Ford County (Southwest Kansas Gaming Zone).

Who owns and operates the casinos?

The Kansas Lottery Commission has ownership and operational control. In addition, the Lottery is authorized to enter into contracts with the gaming managers for gaming at the exclusive and nonexclusive (parimutuel locations) gaming zones.

Who is responsible for regulation?

The Kansas Racing and Gaming Commission (KRGC) is responsible for oversight and regulation of lottery gaming facility operations.

What are the required provisions of any Lottery gaming facilities contract?

KSA 74-8734 details the requirements of gaming facility contracts. Among other things, the contracts must include an endorsement from local governments in the area of the proposed facility and provisos that place ownership and operational control of the gaming facility with the Kansas Lottery, allow the KRGC complete oversight of operations, and distribute revenues pursuant to statute. The contracts also must include provisions for the payment of a privilege fee and investment in infrastructure. The 2014 Legislature passed HB 2272, which lowered the privilege fee in the Southeast Gaming Zone from $25.0 million to $5.5 million and lowered the investment in infrastructure in the Southeast Gaming Zone from $225.0 million to $50.0 million.

The Lottery solicits proposals, approves gaming zone contracts, and submits the contracts to the Lottery Gaming Facility Review Board for consideration and determination of the contract for each zone. The Board is responsible for determining which lottery gaming facility management contract best maximizes revenue, encourages tourism, and serves the best interests of Kansas. The KRGC provides administrative support to the Board.

Revenue. Pursuant to KSA 74-8768, exanded gaming revenues deposited into the ELARF may only be used for state infrastructure improvements, the University Engineering Initiative Act, and reductions of state debt, the local *ad valorem* tax, and the unfunded actuarial liability of the Kansas Public Employees Retirement System (KPERS). In FY 2017, expenditures and transfers from the ELARF included:

KPERS Bonds Debt Service	$	33,057,308
Public Broadcasting Council Bonds		440,862
Statehouse Renovation		91,008
Kan-Grow Engineering Funds		10,500,000
KPERS Actuarial Liability		35,430,948
Total	**$**	**79,520,126**

Parimutuel Wagering

In 1986, voters approved a constitutional amendment authorizing the Legislature to permit, regulate, license, and tax the operation of horse and dog racing by *bona fide* non-profit organizations and to conduct parimutuel wagering. The following year, the Kansas Parimutuel Racing Act was passed:

- Creating the Kansas Racing Commission, later renamed the KRGC, which is authorized to license and regulate all aspects of racing and parimutuel wagering;
- Permitting only non-profit organizations to be licensed and allowing the licenses to be for an exclusive geographic area;
- Creating a formula for taxing the wagering;
- Providing for simulcasting of both interstate and intrastate horse and greyhound races in Kansas and allowing parimutuel wagering on simulcast races in 1992; and

- Providing for the transfer from the State Racing Fund to the SGRF of any moneys in excess of amounts required for operating expenditures.

There are currently no year-round parimutuel racetracks operating in Kansas; therefore, there was no revenue transfer to the SGRF from parimutuel racing.

Racetrack Gaming Facilities

Who decides who receives the racetrack gaming facility management contract?

The Kansas Lottery is responsible for considering and approving proposed racetrack gaming facility management contracts with one or more prospective racetrack gaming facility managers.

The prospective managers must have sufficient financial resources and be current in filing taxes to the state and local governments. The Lottery is required to submit proposed contracts to KRGC for approval or disapproval.

What are the required provisions of any racetrack gaming facilities contract?

A person who is the manager of a lottery gaming facility is ineligible to be a manager of a racetrack facility in the same gaming zone. KSA 74-8741 details the requirements of racetrack gaming facility contracts. Among other things, the contract must include language that allows the KRGC complete oversight of operations and the distribution of revenue pursuant to statute.

What racetrack facilities are permitted to have slot machines?

The passage of 2007 SB 66 created gaming zones for casinos and parimutuel racetracks housing electronic gaming machines. Currently, there are no racetrack facilities operating in Kansas. In the future, the Kansas Lottery can negotiate a racetrack gaming facility management contract to place electronic gaming machines at one parimutuel license location in each of the gaming zones, except for the Southwest Gaming Zone and Sedgwick County in the South Central Gaming Zone (voters in these gaming zones did not approve the placement of electronic gaming machines at parimutuel locations).

Tribal-State Gaming

In 1995, the State of Kansas and each of the four resident tribes in Kansas entered into tribal state gaming compacts to allow Class III (casino) gaming at tribal casinos.

In accordance with the federal Indian Gaming Regulatory Act (IGRA), all four of the compacts approved by the Kansas Legislature were forwarded to the Bureau of Indian Affairs and were approved. At the present time, all four resident tribes have opened and are operating casino gaming facilities:

- Kickapoo Tribe opened the Golden Eagle Casino in May 1996;
- Prairie Band Potawatomi Nation opened a temporary facility in October 1996 and then Harrah's Prairie Band Casino in January 1998 (in 2007, Harrah's relinquished operation of the casino to the Prairie Band Potawatomi Nation);
- Sac and Fox Tribe opened the Sac and Fox Casino in February 1997; and
- Iowa Tribe opened a temporary facility in May 1998 and then Casino White Cloud in December 1998.

Revenue. Financial information concerning the operation of the four casinos is confidential. Under the existing compacts, the State does not receive revenue from the casinos, except for its oversight activities.

State Gaming Agency. The State Gaming Agency (SGA) was created by executive order in August 1995, as required by the tribal-state gaming compacts. Passage of the Tribal Gaming Oversight Act during the 1996 Legislative Session attached the SGA to the KRGC for budget purposes. All management functions of the SGA are administered by the Executive Director of SGA.

The gaming compacts define the relationship between the SGA and the tribes: regulation of the gaming facilities is performed by the tribal gaming commission, but enforcement agents of the SGA also work in the facilities on a daily basis and have free access to all areas of the gaming facility. The compacts also require the SGA to conduct background investigations on all gaming employees, manufacturers of gaming supplies and equipment, and gaming management companies and consultants. The SGA is funded through an assessment process, established by the compacts, to reimburse the State of Kansas for the costs it incurs for regulation of the casinos.

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Federal and State Affairs

D-6 Sanctuary Jurisdictions

In the wake of the repeal of the Deferred Action for Childhood Arrivals (DACA) policy, sanctuary jurisdictions have received more attention. The term has been defined in a Department of Justice memorandum to include jurisdictions who "willingly refuse to comply with 8 USC 1373" and are not eligible to receive federal grants administered by the Department of Justice or the Department of Homeland Security. 8 USC 1373 prohibits state and local jurisdictions from restricting communication to federal officials information regarding citizenship or immigration status.[1]

Additionally, the term "sanctuary jurisdiction" has been used to refer to jurisdictions with particular policies regarding immigration. Specifically, the term is used to refer to jurisdictions with policies that limit involvement in federal immigration enforcement.[2]

The policies of most sanctuary jurisdictions fall into one of three categories: limiting arrests for federal immigration violations; limiting police inquiries into persons' immigration status; and limiting information sharing with federal immigration authorities.

Limiting Arrests for Federal Immigration Violations

Jurisdictions that limit arrests for federal immigration violations can be described as "Don't Enforce" jurisdictions. Violations of federal immigration law can be classified as either civil or criminal offenses. For example, overstaying a visa is a civil offense, and removal may only be accomplished through a civil proceeding. In contrast, unlawful entry is a criminal offense.

Some jurisdictions prohibit police from detaining or arresting aliens for civil violations of federal immigration law. Others prohibit police from making arrests for criminal violations of federal immigration law. There are also jurisdictions that prohibit detention or arrests for either type of violation. It should be noted, although federal immigration law allows states and localities to engage in enforcement of federal immigration laws, nothing compels participation.[3]

Pursuant to 8 USC 1357 (a), local and state jurisdictions may only enforce immigration laws under an agreement between the U.S. Attorney General and the state or local jurisdiction. These agreements include enforcement activities, such as interrogation for purposes of determining lawful presence; arrest for certain violations, and searches within reasonable distance of the U.S. border.

Limiting Police Inquiries into Persons' Immigration Status

Jurisdictions that limit police inquiries into a person's immigration status can be described as "Don't Ask" jurisdictions. Examples of restrictions include: police may not question persons about their immigration status, except as part of a criminal investigation; police may not initiate police activities for the purpose of determining a person's immigration status; police may not question crime victims and witnesses about their immigration status; and police may not gather information regarding a person's immigration status except as required by law.

Limiting Information Sharing with Federal Immigration Authorities

Jurisdictions that limit information sharing with federal immigration authorities can be described as "Don't Tell" jurisdictions. Examples of restrictions include: police may not notify federal immigration authorities about release of aliens unless convicted of certain felonies; police may not disclose information about the immigration status of a person unless that individual is suspected of engaging in criminal activity other than unlawful presence; and police may not disclose information unless required by law.

Role of the Federal Government

Immigration laws are strictly under the jurisdiction of the federal government, as such powers have been found to be within the scope of federal authority by the U.S. Supreme Court.[4] Since that ruling, Congress has expanded federal immigration law and the enforcement of that law. Immigration and Customs Enforcement (ICE) agents handle enforcement under the Department of Homeland Security (DHS). ICE agents may arrest and interrogate those suspected of unlawful presence.[5] In addition, DHS may issue a detainer to a local jurisdiction.[6] A detainer is a request by ICE to hold an arrested individual or convicted criminal being released from state or local jails until ICE can pick them up for deportation.[7] Individuals may not be held for more than 48 hours.

Stakeholders argue that detainers violate the Fourth Amendment of the *U.S. Constitution* because ICE does not have probable cause before issuance of a detainer. Additionally, stakeholders argue that detainers violate the Fifth Amendment because ICE does not provide notice when a detainer is issued. While federal courts have upheld this position, there has been no decision issued by the U.S. Supreme Court.

Recent Federal Legislation

2017 HR 3003—No Sanctuary for Criminals Act

The No Sanctuary for Criminals Act would expand what is required of cities regarding federal immigrant enforcement and allow the government to deny jurisdictions' federal law enforcement funds if they do not comply. The bill has passed the House of Representatives and is awaiting introduction in the Senate as of October 19, 2017.

2015 HR 3009—Enforce the Law for Sanctuary Cities Act

The Enforce the Law for Sanctuary Cities Act would have withheld federal law enforcement funding for those jurisdictions that chose not to enforce federal immigration laws. The bill passed in the House of Representatives and died at the end of the term.

Department of Justice Grant Conditions

Proposed federal legislation, such as 2017 HR 3003, would condition the receipt of federal grant moneys on cooperation with federal law enforcement in immigration matters. One such grant program is the Edward Byrne Memorial Justice Assistance Grants, administered by the Department of Justice. The Byrne Grants provide funds to cities for law enforcement purposes.

On June 25, 2017, U.S. Attorney General Jeff Sessions announced new conditions would be imposed on grant recipients of Byrne funds.[8] Namely, grant recipients must:

- Prove compliance with federal law that bars cities or states from restricting communications between DHS and ICE about the immigration or citizenship status of a person in custody;
- Allow DHS officials access into any detention facility to determine the immigration status of any aliens being held; and
- Give DHS 48 hours notice before a jail or prison releases a person when DHS has sent over a detention request so federal agents can arrange to take custody of the alien after he or she is released.

The City of Chicago filed a case in federal court asking for the directive to be struck down as unconstitutional.[9] On September 15, 2017, a judge issued a preliminary injunction against the directive, striking the latter two conditions as being unconstitutional because only Congress can impose grant conditions. It should be noted this is not a definitive ruling on the constitutional issues presented; rather, a preliminary injunction means only that there is a likelihood the conditions would be found to be unconstitutional. It is anticipated that both the Department of Justice and the City of Chicago will appeal the ruling.

Additional lawsuits have been filed regarding an Executive Order issued by President Trump on January 25, 2017, which sought to withhold federal grant moneys from jurisdictions that did not comply with 8 USC 1373.[10] The State of California and the City of San Francisco filed a lawsuit seeking an injunction of the executive order on January 31, 2017.[11] In response to the filing, a federal judge issued an order that directed federal agencies not to follow the Executive Order. The Department of Justice has since filed an appeal.

Role of State Governments

The role of states in immigration enforcement is limited by express or implied preemption due to federal law in the area. In other words, states cannot establish policies related to immigration where federal law has expressly limited such policies or where federal law is so comprehensive that Congress has signaled its intent to wholly occupy the regulatory field. The concept of preemption is what led the U.S. Supreme Court to invalidate several state immigration measures in *Arizona v. United States*.[12]

On the other hand, the federal government cannot "commandeer" state or local governments into assisting with federal law enforcement.[13] However, reporting requirements and other federal measures requiring state or local cooperation may be acceptable in certain circumstances.[14]

Recent Kansas Legislation

2017 SB 158—Prohibiting Adoption of Sanctuary Policies

The bill would prohibit municipalities and state agencies from adopting a "sanctuary policy." Any municipality that enacted or adopted a sanctuary policy would be deemed ineligible to receive any moneys from a state agency it is otherwise entitled to and would remain ineligible until the sanctuary policy was repealed or no longer in effect. SB 158 is on General Orders in the Kansas Senate as of June 10, 2017.

1 National Conference of State Legislatures, *What's a Sanctuary Policy? FAQ on Federal, State and Local Action on Immigration Enforcement*, 28 July 2017.
2 Herman, Sarah S., Congressional Research Service, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*, 23 March 2017.
3 *Id.*
4 *Chy Lung v. Freeman,* 92 U.S. 275 (1876).
5 8 U.S.C. 1357.
6 8 C.F.R. 287.7.
7 National Conference of State Legislatures, *What's a Sanctuary Policy? FAQ on Federal, State and Local Action on Immigration Enforcement*, 28 July 2017.
8 *Press Release 17-826*, Department of Justice, 25 July 2017.
9 *City of Chicago v. Sessions,* No. 1:17-cv-5720 (N.D. Ill. 2017).
10 Trump, Donald, Executive Order: Enhancing Public Safety in the Interior of the United States, 25 January 2017, *https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united*.
11 *City and County of San Francisco v. Trump*, No. 3:17-cv-00485 (N.D.Cal. 2017).
12 *Arizona v. United States*, 132 S. Ct. 2492 (2012).
13 *Printz v. United States*, 521 U.S. 898 (1997).
14 Garcia, Michael John and Manuel, Kate M., Congressional Research Service, S*tate and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*, 10 July 2015.

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Financial Institutions and Insurance

E-1 Kansas Health Insurance Mandates

Background

Health insurance mandates in Kansas law apply to:

- Individual health insurance policies issued or renewed in Kansas; and
- Group health insurance policies issued or renewed in Kansas. (The individual and group health policies are often referred to as accident and health or accident and sickness insurance policies in Kansas law.) Exceptions are noted below.
- Health Maintenance Organizations (HMOs) are included in the listing of policy issuers.

These mandates do not apply to:

- Self-insured health plans (ERISA plans*). Self-insured plans are governed by federal laws and are enforced by the U.S. Department of Labor. States cannot regulate these self-insured plans.
- Supplemental benefit policies. Examples include dental care, vision (eye exams and glasses), and hearing aids.

* ERISA = The Employee Retirement Income Security Act of 1974; states' laws that relate to employee benefits are pre-empted under this act.

Since 1973, the Kansas Legislature has added new statutes to insurance law that mandate certain health care providers be paid for services rendered (provider mandates) and be paid for certain prescribed types of coverage or benefit (benefit mandates).

Provider mandates. The first mandates enacted in Kansas were on behalf of health care providers. In 1973, optometrists, dentists, chiropractors, and podiatrists sought and secured legislation directing insurers to pay for services the providers performed if those services would have been paid for by an insurance company if they had been performed by a practitioner of the healing arts (medical doctors and doctors of osteopathy). In 1974, psychologists sought and received approval of reimbursement for their services on the same basis. In that same year, the Legislature extended the scope of mandated coverages to all policies renewed or issued in Kansas by or for an individual who resides in or is employed in this state (extraterritoriality). Licensed special social workers obtained a mandate in 1982. Advanced nurse practitioners received recognition for reimbursement for services in 1990. In a

1994 mandate, pharmacists gained inclusion in the emerging pharmacy network approach to providing pharmacy services to insured persons.

Benefit mandates. The first benefit mandate was passed by the 1974 Legislature to require coverage for newborn children. The newborn coverage mandate has been amended to include adopted children and immunizations, as well as a mandatory offer of coverage for the expenses of a birth mother in an adoption. The Legislature began its first review into coverage for alcoholism, drug abuse, and nervous and mental conditions in 1977. The law enacted that year required insurers to make an affirmative offer of such coverage, which could be rejected only in writing. This mandate also has been broadened over time, first by becoming a mandated benefit and then as a benefit with minimum dollar amounts of coverage specified by law.

In 1988, mammograms and pap smears were mandated as cancer patients and various cancer interest groups requested mandatory coverage by health insurers. In 1998, male cancer patients and cancer interest groups sought and received similar mandated coverage for prostate cancer screening. After a number of attempts over the course of more than a decade, supporters of coverage for diabetes were successful in securing mandatory coverage for certain equipment used in the treatment of the disease, as well as for educational costs associated with self-management training.

TABLE A—KANSAS PROVIDER AND BENEFIT MANDATES

Provider Mandates	Year	Mandates	Year
Optometrists	1973	Newborn and Adopted Children	1974
Dentists	1973	Alcoholism	1977
Chiropractors	1973	Drug Abuse	1977
Podiatrists	1973	Nervous and Mental Conditions	1977
Psychologists	1974	Mammograms and Pap Smears	1988
Social Workers	1982	Immunizations	1995
Advanced Registered Nurse Practitioners	1990	Maternity Stays	1996
Pharmacists	1994	Prostate Screening	1998
		Diabetes Supplies and Education	1998
		Reconstructive Breast Surgery	1999
		Dental Care in a Medical Facility	1999
		Off-Label Use of Prescription Drugs*	1999
		Osteoporosis Diagnosis, Treatment, and Management	2001
		Mental Health Parity for Certain Brain Conditions	2001
		Autism Spectrum Disorder	2014

* Off-label use of prescription drugs is limited by allowing for use of a prescription drug (used in cancer treatment) that has not been approved by the federal Food and Drug Administration (FDA) for that covered indication if the prescription drug is recognized for treatment of the indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

Legislative Review

Kansas law (KSA 40-2249a) requires the Legislature to review all State-mandated health insurance coverage periodically. KSA 40-2248 requires the person or organization seeking a mandated coverage for specific health services, specific diseases, or certain providers of health care services as part of individual, group, or blanket health insurance policies to submit to the legislative committees assigned to review the proposal an impact report that assesses both the social and financial effects of the proposed mandated coverage. The law also requires the Commissioner of Insurance to cooperate with, assist, and provide information to any person or organization required to submit an impact report.

The social and financial impacts to be addressed in the impact report are outlined in KSA 40-2249.

Social impact factors include:

- The extent to which the treatment or service is generally utilized by a significant portion of the population;
- The extent to which such insurance coverage is already generally available;
- If coverage is not generally available, the extent to which the lack of coverage results in unreasonable financial hardship on those persons needing treatment;
- The level of public demand for the treatment or service;
- The level of public demand for individual or group insurance coverage of the treatment or service;
- The level of interest of collective bargaining organizations in negotiating privately for inclusion of this coverage in group contracts; and
- The impact of indirect costs (other than premiums and administrative costs) on the question of the costs and benefits of coverage.

The financial impact factors include the extent to which the proposal would increase or decrease the cost of the treatment or service; the extent to which the proposed coverage might increase the use of the treatment or service; the extent to which the mandated treatment or service might serve as an alternative for a more expensive treatment or service; the extent to which insurance coverage of the health care service or provider can reasonably be expected to increase or decrease the insurance premium and administrative expenses of the policyholders; and the impact of proposed coverage on the total cost of health care.

State Employee Health Benefit Plan Study. KSA 40-2249a provides, in addition to the impact report requirements, that any new mandated health insurance coverage approved by the Legislature is to apply only to the state health care benefits program for a period of at least one year beginning with the first anniversary date of implementation of the mandate following its approval. On or before March 1, after this one-year period has been applied, the Health Care Commission is to report to the President of the Senate and the Speaker of the House of Representatives the impact the new mandate has had on the state health care benefits program, including data on the utilization and costs of the mandated coverage. The report also is to include a recommendation of whether the mandated coverage should be continued by the Legislature to apply to the state health care benefits program or whether additional utilization and cost data are required.

Recent Review and Legislation

2009 Session

During the 2009 Session, both provider and benefits coverage requirements legislation was introduced. The legislation introduced included: certain professionals, Behavioral Sciences Regulatory Board (BSRB) (SB 104, HB 2088); assignment of benefits (HB 2128); autism spectrum disorder (SB 12, HB 2367); dietary formulas (HB 2344); colorectal cancer screening (HB 2075/Sub. for HB 2075, SB 288); mental health parity–full coverage (SB 181, HB 2231); and orally administered anticancer medications (SB 195). Additionally, the Insurance Department requested language to clarify the state's existing

mental health parity requirements to meet compliance requirements of the federal HR 1424. The language of SB 49 was amended during the conference committee process and was incorporated in 2009 HB 2214.

Legislative review (KSA 40-2249a). The Senate Financial Institutions and Insurance Committee and the House Insurance Committee also received briefings, during the regular session, from Committee staff on the current and recently considered health insurance mandates. Testimony was also received from interested parties.

2010 Session—An Emerging Trend: the Study Directive

The 2010 Legislature reviewed carryover mandates legislation and also introduced new measures for consideration. A modified version of 2009 SB 195 (oral anticancer medications; parity of pharmacy and medical benefits) was amended into 2010 SB 390, a bill updating requirements on insurers for genetic testing. Ultimately, the oral anticancer medication provisions were enacted in Senate Sub. for HB 2160, a bill that incorporated both oral anticancer medication provisions and an autism benefits study in the State Employee Health Plan (SEHP). Those provisions, introduced in 2010 SB 554, are discussed below. The Legislature further considered the reimbursement of services provided by certain licensees of the BSRB, as proposed in 2010 HB 2546 (identical to 2009 SB 104 and 2009 HB 2088, with technical amendments). The Legislature again considered a bill that would have required health insurance plans to provide coverage for telemedicine, defined by the bill as using telecommunications services to link health care practitioners and patients in different locations. The bill was jointly referred to two House committees and died in Committee.

The study before the law. The Legislature's review and response to health insurance mandates has recently included a new direction: the study before the mandate is considered and passed by the Legislature. As prescribed by the 1999 statute, a mandate is to be passed by the Legislature, applied to the SEHP for at least one year, and then a recommendation is made about continuation in the Plan or statewide (KSA 40-2249a). Legislation in 2008 (HB 2672) directed the Kansas Health Policy Authority (KHPA) to conduct a study on the impact of extending coverage for bariatric surgery in the State Employee Health Benefit Plan (corresponding mandate legislation in 2008: SB 511, HB 2864). No legislation requiring treatment for morbid obesity (bariatric surgery) was introduced during the 2009-2010 Biennium.

Sub. for HB 2075 (2009) would have directed the KHPA to study the impact of providing coverage for colorectal cancer screening in the SEHP, the affordability of the coverage in the small business employer group, and the state high risk pool (corresponding legislation in 2009: SB 288, introduced HB 2075). The study bill was re-referred to the House Insurance Committee and no action was taken by the 2010 Legislature.

During the 2010 Session, the House Insurance Committee again considered the reimbursement of services provided by certain BSRB licensees (SB 104; HB 2088 and HB 2546). The House Committee recommended a study by KHPA on the topic of requiring this reimbursement. The study design would have included determining the impact that coverage has had on the SEHP, providing data on utilization of such professionals for direct reimbursement for services provided, and comparing the amount of premiums charged by insurance companies that provide reimbursement for these provider services to the amounts of premiums charged by insurers that do not provide direct reimbursement. Under SB 388, KHPA would also have been required to conduct an analysis to determine if proactive mental health treatment results in reduced expenditures for future mental and physical health care services. SB 388 died in conference committee. The study requirement was also included as a proviso to the Omnibus appropriations bill (SB 572, section 76). The proviso was vetoed by the Governor; the veto was sustained.

Autism benefit. Finally, the 2010 Legislature again considered mandating coverage for certain services associated with the treatment of Autism

Spectrum Disorders (ASD). Senate Sub. for HB 2160 requires the Health Care Commission, which administers the SEHP, to provide for the coverage of services for the diagnosis and treatment of ASD in any covered individual whose age was less than 19 years during the 2011 Plan Year. Services provided by the autism services provider must include applied behavioral analysis when required by a licensed physician, licensed psychologist, or licensed specialist clinical social worker. Benefits limitations were applied for two tiers of coverage: a covered person whose age is between birth and age 7, cannot exceed $36,000 per year; and a covered person whose age is at least 7 and less than 19, cannot exceed $27,000 per year. The Health Care Commission was required to submit on or before March 1, 2012, a report to the Senate President and the House Speaker that included information (*e.g.* cost impact utilization) pertaining to the mandated ASD benefit coverage provided during the 2011 Plan Year. The Legislature was permitted to consider in the next session following the receipt of the report whether to require the coverage for ASD to be included in any individual or group health insurance policy, medical service plan, HMO, or other contract that provides for accident and health services and is delivered, issued for delivery, amended, or renewed on or after July 1, 2013.

Senate Sub. for HB 2160 also required all individual or group health insurance policies or contracts (including the municipal group-funded pool and the SEHP) that provide coverage for prescription drugs, on and after July 1, 2011, to provide coverage for prescribed, orally administered anticancer medications used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits. The Health Care Commission, pursuant to KSA 40-2249a, was required to submit a report to the Senate President and the House Speaker that indicated the impact the provisions for orally administered anticancer medications had on the state health care benefits program, including data on the utilization and costs of such coverage. The report also was required to include a recommendation on whether the coverage should continue for the state health care benefits program or whether additional utilization and cost data is required. The report was required to be provided to the legislative representatives on or before March 1, 2011.

The 2012 Legislature considered legislation (HB 2764 and SB 226) to enact ASD coverage requirements for covered individuals under the age of 19, similar to those requirements specified in 2010 Senate Sub. for HB 2160; the proposed requirements, however, would have applied to all individual and group health insurance policies, plans, and contracts subject to state law. The 2012 bills exempted the proposed ASD coverage from the test track requirements specified in KSA 40-2249a.

HB 2764, as amended by the House Committee of the Whole, also would have required coverage in the State's Medicaid Autism Waiver, Children's Health Insurance Program (CHIP), and other Medicaid programs covering children. The bill, among other things, also would have required a study to determine the actual cost of providing coverage for the treatment and diagnosis of ASD in any individual living in Kansas who is under the age of 19. HB 2764, as amended, passed the House and was referred to a Senate Committee. Attempts to advance the bill to Senate General Orders failed and the bill died in Committee. ASD legislation was introduced during the 2013 Session (SB 175; HB 2317 and HB 2395.)

The Health Care Commission opted to continue ASD coverage in the SEHP, as had been required under the 2010 law for Plan Year 2011, for both Plan Year 2012 and Plan Year 2013. In June 2013, the Health Care Commission authorized a permanent ASD benefit (*Note*: Coverage affected by 2014 law).

The 2014 Legislature again considered ASD coverage in HB 2744. Following amendments in the House Committee and House Committee of the Whole, the bill passed the Senate and was signed into law on April 16, 2014. The bill required health insurance coverage for the diagnosis and treatment of ASD in children under the age of 12 years and also created the Applied Behavior Analysis (ABA) Licensure Act. The bill required

large health insurance plans to provide ASD coverage effective January 1, 2015; extended this autism coverage requirement to grandfathered individual or small group plans effective July 1, 2016; placed limits on ABA coverage, with higher limits for the first 4 years beginning with the later of the date of diagnosis or January 1, 2015, for children diagnosed with ASD between birth and 5 years of age and then reduced limits for children less than 12 years of age; defined terms related to ASD; phased in licensure requirements for ABA providers and allowed for exemption from licensure for certain providers; required the BSRB to adopt rules and regulations for the implementation and administration of the Act; authorized the BSRB to take disciplinary action as to the licenses of licensees and applicants for licensure; and applied the ASD coverage requirement to all insurance policies, subscriber contracts or certificates of insurance available to individuals residing or employed in Kansas, and to corporations organized under the Nonprofit Medical and Hospital Service Corporation Act. (The 2015 Legislature modified the definitions of "small employer" and "large employer.") The SEHP updated its benefits coverage for Plan Year 2015 to reflect the changes enacted in HB 2744.

2017-2018. The House Insurance Committee held hearings on two benefit mandate bills, HB 2103 (amino acid-based elemental formula) and HB 2021 (hearing aids). No formal committee action was taken during the 2017 Session; however, a SEHP study has been requested relating to HB 2103. Telehealth and telemedicine legislation, including proposed insurance coverage requirements, were assigned to the 2017 interim Special Committee on Health.

Affordable Care Act Requirements— Essential Benefits

The federal Affordable Care Act (ACA) does not directly alter or preempt Kansas or other states' laws that require coverage of specific benefits and provider services. However, the law (Section 1302(b) of the ACA and subject to future federal regulations by the U.S. Department of Health and Human Services [HHS]), directs the Secretary of HHS to determine the "essential health benefits" to be included in the "essential health benefits" package that Qualified Health Plans (QHPs) in the Exchange marketplaces are required to cover (coverage effective beginning in 2014). "Essential health benefits," as defined in Section 1302(b), include at least the following general categories:

- Ambulatory patient services;
- Emergency services;
- Hospitalization;
- Maternity and newborn care;
- Mental health and substance use disorder services, including behavioral health treatment;
- Prescription drugs;
- Rehabilitative and habilitative services and devices;
- Laboratory services;
- Preventive and wellness and chronic disease management; and
- Pediatric services, including oral and vision care.

Insurance policies are required to cover these benefits in order to be certified and offered in Exchanges; additionally, all Medicaid State plans must cover these services by 2014. Women's preventive health services were separately defined by federal regulation in August 2011 (*Federal Register* Vol. 76, No. 149: 46621-46626) and required that "a group health plan or health insurance issuer must cover certain items and services, without cost-sharing." Coverages included annual preventive-care medical visits and exams, contraceptives (products approved by the FDA), mammograms, and colonoscopies.

Under the ACA, QHPs are not barred from offering additional benefits. However, starting in 2014, if a state law mandates coverage not included in the final HHS "essential benefits" list of coverages, the State must pay any additional costs for those benefits for Exchange enrollees.

Benchmark. HHS issued a bulletin on December 16, 2011, to provide information about the approach the agency plans to take in its rule-making for defining "essential benefits." The bulletin outlined a "benchmark approach" that would allow states the ability to choose from the following benchmark health plans (a benchmark

plan would reflect the scope of benefits and services offered by a "typical employer plan"):

- One of the three largest small group health plans in the state by enrollment;
- One of the largest state employee health plans by enrollment;
- One of the three largest federal employee health plans by enrollment; or
- The largest HMO plan offered in the state's commercial market by enrollment.

Should a state choose not to select a benchmark, the default option would become the small group plan with the largest enrollment. In 2010, the Insurance Department contracted with Milliman, Inc., to analyze plans and related benefits and services available in Kansas. "The Milliman Report" analyzed nine plans, and its findings were included in a September 2012 public hearing on essential benefits and selection of a benchmark for Kansas.

The Commissioner of Insurance submitted the following recommendations and conclusions to the Governor for consideration of a state Essential Health Benefit benchmark:

- Recommend: Selection of the largest small group plan, by enrollment; the Blue Cross Blue Shield of Kansas Comprehensive Plan.
- Recommend: Supplementing the recommended benchmark plan with the required pediatric oral and vision benefits available in the Kansas CHIP.
- Conclusion: Anticipate further guidance from HHS on the definition of "habilitative services" later in the fall of 2012. No specific recommendation was made by the Commissioner.

Twenty-five states, Kansas included, did not provide a recommendation on a benchmark plan to HHS by the September 30, 2012 deadline; therefore, HHS assigned those states the largest small group plan as the benchmark for 2013-2016 (in August 2015, HHS extended the plans to 2017).

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Financial Institutions and Insurance

E-2 Kansas Uniform Consumer Credit Code

Background

Enacted in 1973, the Kansas Uniform Consumer Credit Code (UCCC or Code) applies to all aspects of consumer credit addressing transactions for personal, family, and household purposes. UCCC transactions include consumer sales (closed-end or revolving, including retail credit card purchases), consumer loans (including purchases using bank credit cards), and consumer leases. Consumer transactions may involve the consumer and retail merchants; banks, savings and loan associations, and credit unions; licensed lenders, including finance companies; and lender credit card companies. In general, transactions greater than $25,000 are outside the scope of the UCCC, but any transaction may become a consumer credit transaction if the parties to the agreement choose to do so.

The Office of the State Bank Commissioner provides oversight of the UCCC. During the 1998 Interim, the Special Committee on Financial Institutions and Insurance studied reorganization of the financial institutions' regulatory agencies. Committee recommendations included consolidation of the Office of the Consumer Credit Commissioner with the Office of the Bank Commissioner. As a result of action by the 1999 Legislature, the Office of the Consumer Credit Commissioner was abolished and the powers and functions transferred to the Office of the State Bank Commissioner (OSBC). A Deputy Commissioner of Consumer Mortgage and Lending was created, and the Deputy Commissioner was designated as the Administrator of the UCCC.

Interest Rates

The UCCC establishes three categories of interest rates: closed-end or installment rates (KSA 16a-2-201); open-end or revolving credit rates (KSA 16a-2-202); and lender rates (KSA 16a-2-401). Closed-end installment contracts calculate in advance the amount financed and the finance charge and provide payment of the calculated total in equal installments at equal intervals, *e.g.*, auto loans. Open-end credit includes revolving credit accounts offered by retailers and lines of credit (*e.g.* bank credit cards) that are payable in amounts, usually monthly, that are a percentage of the outstanding balance. Lender rates are those charged on

loans made by licensed lenders, by supervised financial institutions, and by lender credit card arrangements.

Under current law, closed-end, open-end, and lender rate consumer credit transactions allow a seller to set a finance charge at "any rate agreed to by the parties," subject to the statutory limits of prepaid finance charges. The limitations and computations for the finance charges are as follows:

- **Closed-end consumer credit sales**
  - *Sales, other than manufactured homes:* maximum amount is 2 percent of the amount financed or $100, whichever is less; or
  - *Sales, manufactured homes:* maximum amount is 5 percent of the amount financed (fee must be used to reduce or "buy-down" the interest rate of the sale).
- **Open-end consumer credit sales**
  - *Average daily balance:* finance charge is calculated on the sum of the amount of actual daily balances each day during the billing cycle divided by the number of days in the billing cycle; or
  - *Ending balance:* finance charge is calculated on the unpaid balance of the account at the end of the billing cycle.
- **Lender credit sales**
  - *Periodic rate ceilings (loans other than first or second mortgage):* 36 percent per year on the portion of the unpaid balance that is $860 or less, and 21 percent per year on the portion of the unpaid balance that exceeds $860 (subject to limitations on prepaid finance charges);
  - *Periodic rate ceilings (loans secured by second mortgage, manufactured homes):* 18 percent per year. The rate would apply to any first mortgage loans made subject to the UCCC; or
  - *Prepaid finance charges on consumer loans:*
    - First or second mortgage loan or certain manufactured home loans, not to exceed 8 percent of the amount financed; however, the total of all prepaid finance charges payable to the lender cannot exceed 5 percent of the amount financed; or
    - Other consumer credit loans: maximum amount is 2 percent of the amount or $100, whichever is less.
  - *Payday loan transactions are subject to special limitations for finance charges:*
    - The loans and the cash advance must be $500 or less with a finance charge not to exceed 15 percent of the amount of the advance. In addition, the Code includes a provision that the contract interest rate after maturity cannot be more than 3 percent per month.

History of Interest Rates Charges

In 1980, the Kansas Legislature amended KSA 16a-2-201 to allow a seller in a closed-end credit sale or in an open-end sale to charge 18 percent interest as an alternative to other specified rates, including 21 percent on $300 or less, 18 percent on amounts between $300 and $1,000, and 14.45 percent on amounts in excess of $1,000. KSA 16a-2-401 was amended to allow a supervised financial institution to charge 18 percent interest without being a lender licensed by the Consumer Credit Commissioner. The rate charges were sunset at periods of one (1980-1982) and two years (1983-1987). In 1988, the Legislature (SB 507) amended the rates on closed-end credit sales by reducing, from three to two, the applicable interest rates, establishing:

- 21 percent on the first $1,000; and
- 14.45 percent on amounts over $1,000; or 18 percent on the outstanding balance.

Interest rates on open-end credit sales also were amended to allow for an alternate rate. SB 507

also authorized a nonrefundable origination fee not to exceed 2 percent or $100 on closed-end credit sales. The 1993 Legislature amended the Code to allow that on and after January 1, 1994, all finance charges on consumer loans and consumer credit sales be computed on the unpaid principal balances by the actuarial method. Precomputed contracts created on and after January 1, 1994, were prohibited.

Legislative Review

1999 Legislature—Sub. for SB 301

The 1999 Legislature amended several sections of the UCCC relating to rates, terms, and conditions on consumer credit sales and consumer loans for personal, family, or household purposes, and allowed certain real estate transactions to be brought under the Code, specifying the rates, terms, and conditions for such loans. The legislation also added new sections to the Code that imposed new obligations on persons making loans under the Code.

Changes to the law included:

- Striking the definition of "origination fee" and adding a definition of "prepaid finance charge," which for a consumer loan secured by a first or second mortgage may not exceed 8 percent of the amount financed (aggregate 5 percent), and for any other consumer loan and, for closed-end consumer credit sales, the prepaid finance charge may not exceed the lesser of 2 percent of the amount financed or $100.
- Establishing that the finance charge on a consumer loan or consumer credit sale must be computed by using either the 365/365 or 360/360 method, but not on a 365/360 method (lender may assume that a month has 30 days, regardless of the actual numbers of days in a month).

In regard to consumer loan rate ceilings, the legislation:

- Removed the interest rate limitation on open-end consumer loans, including lender credit cards;
- Maintained a maximum interest rate of 36 percent on the first $860 of a closed-end consumer loan;
- Increased the maximum allowable interest rate on amounts of a closed-end consumer loan in excess of $860, from 18 percent to 21 percent (not applicable to loans secured by a first or second mortgage); and
- Established 18 percent as the maximum rate of interest that may be charged on a loan secured by a first or second mortgage, if the parties to the loan agree in writing to make the loan under the Code.

In addition, finance charges under the Code were amended to:

- Delete the cap on annual fees that may be charged for the privilege of using an open-end credit account; and
- Allow a creditor to charge fees on an annual or monthly basis, over limit fees, and cash advance fees on open-end credit in an amount agreed to by the consumer.

2000 Legislature

The 2000 Legislature amended the Code to allow a seller to impose a prepaid finance charge in an amount not to exceed 5 percent for the purpose of reducing the interest rate on the sale of a manufactured home. Another bill (HB 2691) clarified the interest rate on a closed-end loan may be 36 percent on the first $860 financed and 21 percent on the balance of the loan that exceeds $860.

2005 Legislature—Senate Sub. for HB 2172

The 2005 Legislature amended several provisions of the Kansas Mortgage Business Act (KMBA) and the Code. The UCCC provisions:

- Established a contract rate to replace the annual rate in prior law. Calculations

utilizing the 365/365 method and the 360/360 method for the rate of the finance charge remain unchanged;

- Amended provisions for the computation of finance charges for consumer loans secured by a first or second lien real estate mortgage by creating an amortization method: contract rate divided by 360 and the resulting rate is multiplied by the outstanding principal amount and 30 assumed days between scheduled due dates. The provision allows a creditor to assume there are 30 days in the computational period, regardless of the actual number of days between the scheduled dates;
- Amended the license requirements for individuals making supervised loans by requiring an applicant to provide evidence in the form and manner prescribed by the Administrator of the UCCC that establishes the applicant will maintain a satisfactory minimum net worth to engage in the credit transactions for which the applicant has proposed;
- Replaced the references in the bill to "supervised loans" with "loans for personal, family, or household purposes";
- Clarified references to applicants and licensees to include persons the applicant or licensee contracts with or employs who is directly engaged in lending activities;
- Amended annual reporting requirements to include a provision to prevent alteration or any other destruction of records with the intent to impede, obstruct, or influence any investigation by the Administrator;
- Amended the requirement for first and second loan consumer mortgages to allow that a mortgage not be recorded if moneys are not available for disbursal to the mortgagor upon expiration of all applicable waiting periods as required by law, unless the individual informs the mortgagor in writing of a definite date by which payment is to be made and obtains written permission for the delay;
- Authorized a statute of limitations for prosecution of crimes under the Code, no more than five years after the alleged violation. A restitution provision was added and includes that an order may include an interest rate not to exceed 8 percent; and
- If deemed necessary by the Administrator, required fingerprinting of applicants, licensees, copartnerships or associations, any agents, or others directly engaged in lending activities.

UCCC—Payday Loan Regulation

The 2005 legislation also amended the finance charges for payday loans under the UCCC (KSA 16a-2-404). The finance charge for cash advances equal to or less than $500 is to be an amount not to exceed 15 percent of the amount of the cash advance. The bill also required publication of the notice in Spanish in payday loan agreements and included protections for military borrowers. (See *E-3 Payday Loan Regulation and Update on Small Dollar Lending in Kansas* for an in-depth discussion on payday loan laws and regulatory activities.)

Other Legislative Review—2005-2006

In addition to the enacted measures discussed previously, the Legislature reviewed the following proposed amendments to the UCCC.

HB 2143 would have amended the Code to allow a seller to charge an interest rate not to exceed 21 percent per year. The interest rate ceiling applies to the finance charges under the UCCC: closed-end consumer credit sales; open-end credit sales; and lender credit sales. The bill also would have removed the authority to impose deferral charges on closed-end consumer credit sales. Under current law, the finance charge rates are not capped and instead are subject to the rate agreed to by the parties to the transaction with established limitations on any prepaid finance charges.

HB 2278 would have amended the Code by creating an alternate finance charge to the

finance charges currently specified in KSA 16a-2-401, providing for a sliding-scale rate structure for closed-end consumer installment loans financed between $100 and $1,500. Specifically, the bill would have allowed a licensee to charge in lieu of the charges specified in current law:

- A loan acquisition charge, not exceeding the lesser of 10 percent of the financed amount or $75; and
- A monthly installment account handling charge, based on a sliding-scale rate. For example, an account handling charge for a loan financed in the amount of $550 would be up to $17.50, while the charge for a $1,100 loan would be an amount up to $22.50.

The bill would have defined the terms of the loan with a minimum of 4 months and a maximum amount of 18 months and 5 days. The bill also would have addressed loan refund rates, prepayments, notification, and contract rates. The rates and charges created by the bill would not apply to payday loans.

During the 2005 Interim, the Special Committee on Financial Institutions and Insurance was charged, among other things, to review HB 2143 and to study the current finance charges, rates, and terms under the UCCC and the impact of the Code on financial institutions, loan companies, and Kansas consumers, and the current regulatory environment in Kansas. The Committee concluded the interest rate ceiling legislation (HB 2143) should not be recommended and the alternate finance charge for closed-end consumer installment loans legislation (HB 2278) should not be recommended to the 2006 Legislature and recommended new legislation to address the requested HB 2278 amendments. SB 376 was introduced during the 2006 Session. The bill received a hearing in the Senate Committee on Financial Institutions and Insurance, but no further action was taken, and with HB 2143 and HB 2278, died at the end of the 2006 Session.

Recent UCCC Amendments

The 2009 Legislature amended the UCCC in 2009 SB 240. The bill was requested by the OSBC in response to the requirements of Title V (the Secure and Fair Enforcement [S.A.F.E.] for Mortgage Licensing Act) of the Federal Housing and Economic Recovery Act of 2008. The bill made amendments to both the KMBA and the UCCC to include prohibited acts and define the practices and registration requirements of residential mortgage loan originators. Among the requirements, mortgage loan originators are required to submit certain application and related information to a nationwide mortgage loan originator registry (established by the S.A.F.E. Act). Information reported to the registry includes violations of the law (loan originators), as well as enforcement actions. Kansas entered the registry in 2010.

The 2010 Legislature amended the Code in SB 410. The bill prohibits retailers from imposing a surcharge on a cardholder who uses a debit card in lieu of a cash payment. Under prior law, the prohibition applied only to credit card holders.

The 2011 Legislature modified Code licensee fee provisions to change the percentage remitted to the State General Fund from 20 to 10 percent.

2017 legislative study. The Legislative Coordinating Council directed a study of legislation relating to the Code and regulation of small dollar lending in Kansas. The Special Committee on Financial Institutions and Insurance was convened in October 2017 to study the impact of 2017 HB 2267. This review included a study of current finance charges, rates, and terms under the UCCC; the impact of the proposed legislation and potential modifications related to the Consumer Financial Protection Bureau's anticipated Final Rule on small dollar lending on financial institutions, loan companies, and Kansas consumers; and the current regulatory environment in Kansas.

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Financial Institutions and Insurance

E-3 Payday Loan Regulation and Update on Small Dollar Lending in Kansas

The Kansas Legislature began its review of payday lending during the 1991 Session. At that time, the Consumer Credit Commissioner requested legislation, citing a concern that check cashing for a fee had become a prevalent practice in Kansas and was being conducted in a manner violating the Kansas Uniform Consumer Credit Code (UCCC or Code). The unregulated entities were advancing money and agreeing to hold a post-dated check for a specified, short period of time and were collecting charges exceeding those allowed under the UCCC.

The Consumer Credit Commissioner indicated to the Senate Committee on Financial Institutions and Insurance (Senate Committee) there appeared to be both a need for this type of service and a need to regulate the activity in a manner that allowed the activity to take place lawfully while at the same time providing protection to consumers utilizing the check-cashing service. The Attorney General also concurred that such practice violated the UCCC and consequently, had taken action to enforce the law against the payday lenders. The financial records of seven companies were subpoenaed and examined, and all but one of those companies closed their businesses in Kansas.

SB 363 (1991) addressed the concern about excessive interest charges and fees, and the Attorney General supported its passage. In some instances, the annual percentage rate (APR) on these short-term loans ranged from 600.0 percent to 1,600.0 percent. Despite these rates, neither the Commissioner nor the Office of the Attorney General had received many complaints. When the companies closed, the Attorney General received a number of telephone calls from consumers asking when those companies would reopen. Although the bill was recommended favorable for passage by the Senate Committee, it was defeated on final action by a vote of 6-32. The Senate later reconsidered its action and sent the bill back to the Senate Committee for possible action at a later date.

Review of payday loan regulation continued for a second year. During the 1992 Session, the Senate Committee further considered SB 363, and the House Committee on Commercial and Financial Institutions reviewed HB 2749. The House Committee recommended its bill favorable for passage. On final action in the

House, a member reported in his vote explanation that passage of such legislation would burden poor consumers as it would raise the interest rate tenfold from 36.0 percent to 360.0 percent. Several members changed their votes, and the legislation was killed. When the Senate returned to its consideration of payday loan regulation, the Consumer Credit Commissioner explained the House action on HB 2749 and rebutted the conclusion that the bill raised interest rates. The Senate Committee received favorable testimony from both the Office of the Attorney General and the payday loan industry and voted to amend SB 363 by inserting the provisions of HB 2749. SB 363, as amended, passed the Senate 40-0 and was referred to the House Committee, which recommended it favorable for passage after considerable discussion. Ultimately, the bill died at the end of the 1992 Session.

In the Legislature's third year of consideration of payday loan legislation, the House and Senate agreed on 1993 HB 2197, and the bill was signed by the Governor with an effective date of April 8, 1993. This new law, made supplemental to and a part of the UCCC, applied to short-term consumer loan transactions with a single repayment schedule, for which cash is advanced in an amount equal to or less than the maximum allowed to a supervised lender ($680) and subject to the following conditions:

- On any amount up to and including $50, a finance charge of $5.50 could be charged; on amounts in excess of $50 but not more than $100, the finance charge could be 10.0 percent of the amount, plus a $5.00 administrative fee;
- On amounts in excess of $100 but not more than $250, the finance charge could be 7.0 percent of the amount with a $10 minimum, plus a $5.00 administrative fee; and
- For amounts in excess of $250 but less than the maximum amount, the finance charge could be 6.0 percent of the amount with a minimum of $17.50, plus a $5.00 administrative fee.

The law also provided:

- The maximum term of the loan cannot exceed 30 days;
- The contract interest rate after maturity cannot be more than 3.0 percent per month;
- No charge for insurance or any other charge can be made of any nature except as provided, including cashing the loan proceeds if given in a check;
- No loan made under this section may be repaid with the proceeds of another loan made by the same lender;
- If cash is advanced in exchange for a personal check and the check is returned for insufficient funds, only a return check charge provided in the UCCC is allowed; and
- Certain loans made under this section may be unconscionable conduct—the Consumer Credit Commissioner is to consider in making such a finding the ability of the borrower to repay the loan and whether the loan meets the amount and terms limitations of this section.

Kansas was one of the first states to enact legislation specific to the regulation of payday loans.

The payday loan statute remained substantively unchanged for a number of years. There have been attempts, however, to amend the law. In 1999, for example, a model act drafted by the Consumer Federation of America was introduced in Kansas as SB 272. The proponent of SB 272 explained at the time of its introduction that it was "legislation addressing the exorbitant interest rates charged by payday loan companies and how such consumer issues fall under the auspices of the UCCC." At the time of the hearing on the bill, other than the sponsor, there were no proponents present to testify on its behalf. The Acting Consumer Credit Commissioner commented to the Senate Committee the bill "would substantially alter the rates charged by payday loan companies." In testimony on another UCCC bill (SB 301) before the Senate Committee, the Attorney General advised that while the "Office does not take complaints on consumer credit, the Attorney General is of the opinion that the payday

loan industry is not in the best interest of society as it spirals people into bankruptcy." Opponents of the bill, several operators of payday loan shops in the state, argued that reducing the allowable interest rate charge to 36.0 percent would have the effect of putting them out of business. The Senate Committee took no action on the measure.

SB 301, as enacted in 1999, made several significant changes in the UCCC. Among those changes was the transfer for the enforcement of the UCCC from the Consumer Credit Commissioner to a newly designated position of Deputy Commissioner for Consumer and Mortgage Lending and the elimination of interest rate caps on consumer loans.

One effect of the interest rate amendment was to remove the escalator provision, which adjusted the dollar amount of consumer loans subject to the then highest allowed interest rate. Since that dollar amount also was the cap for payday loans, the bill established that amount, $860, as the new cap on payday loans.

During the 2001 Session, the Deputy Commissioner (who is the Code Administrator) requested the passage of HB 2193, which would limit the number of loans a consumer could have from a single payday lender to two at any one time and require a "Notice to Borrower" appear on each loan agreement stating that Kansas law prohibits a lender and its related interest from having more than two loans outstanding to the same borrower at any one time. While the bill was amended by the House Committee of the Whole, those amendments were removed from the bill, and the bill passed as proposed by the Deputy Commissioner. During the 2002 Session, HB 2877 was introduced, which would have reduced the allowable charges permitted on payday loans. On loan amounts up to and including $50, the charge would have been reduced from $5.50 to $4.00; on amounts in excess of $50 but not more than $100, the charge would have been reduced from 10.0 percent to 8.0 percent; on amounts in excess of $100 but not more than $250, the charge would have been reduced from 7.0 percent to 5.0 percent and the minimum allowable charge would have been reduced from $10 to $8; and on amounts of $250 but not greater than $860, the charge would have been reduced from 6.0 percent to 4.0 percent and the minimum reduced from $17.50 to $12.50.

HB 2877 did not have a hearing and died in the House Committee on Financial Institutions at the end of the 2002 Session. The Chairpersons of the House Committee on Financial Institutions and the Senate Committee requested, and the Legislative Coordinating Council created, an interim Special Committee on Financial Institutions and Insurance to study, among other topics, the regulation of payday loans and entities making such loans, including allowable loan rates and charges; loan terms and conditions and collection issues; and appropriate levels of regulation of lenders, including the activities of some lenders to associate with federally chartered financial institutions and then claim exemption from state regulation. The Special Committee on Financial Institutions and Insurance did not meet during the 2002 Interim, nor complete a report on its assigned subject matter.

The 2004 Legislature passed a measure, HB 2685, addressing the regulation of payday loans.

The bill:

- Established a seven-day minimum term for any loan;
- Limited the number of loans to three for any borrower within a 30-day period and required lenders to keep a journal of all loan transactions, which includes the name, address, and telephone number of the borrower, and the date each loan is made and the date each is due;
- Required the lender, upon receipt of a check from the borrower, to immediately stamp the check with an endorsement that states: "Negotiated as part of a loan made under KSA 16a-2-404. Holder takes subject to claims and defenses of maker. No criminal prosecution";
- Allowed a borrower, under the terms specified, to rescind the transaction without cost not later than the end of the business day following the day on which the transaction was made; and

- Outlined a list of acts or practices prohibited in connection with a payday loan.

The Senate Committee also reviewed a payday loan bill, SB 439, that would have created a maximum loan amount ($500, rather than $860) and a flat fee (not more than $15 per $100 loaned). The bill received a hearing, but no action was taken on the bill, and the bill died in Committee.

Finance Charge, Protections for Military Borrowers

The Office of the State Bank Commissioner's (OSBC) representatives brought legislation to the 2005 Legislature to enhance enforcement of both mortgage brokers under the Kansas Mortgage Business Act and supervised lenders under the Code. Senate Sub. for HB 2172 contained the provisions of another measure, Sub. for SB 223, which included provisions for both mortgage brokers and supervised lenders. In addition to the new enforcement powers and penalties created by the bill, the legislation also amended the finance charges for payday loans under the UCCC (KSA 16a-2-404). The finance charge for cash advances equal to or less than $500 is to be an amount not to exceed 15.0 percent of the amount of the cash advance. The bill also required publication of the notice in payday loan agreements in Spanish.

In addition, Senate Sub. for HB 2172 enacted new law concerning military borrowers, with lender provisions to:

- Not garnish any wages or salary for service in the U.S. Armed Forces;
- Defer all collection activity against a borrower who is deployed to combat or combat support posting for the duration of such posting;
- Not contact any person in the military chain of command of a borrower in an attempt to make collection;
- Honor all terms of the repayment agreement; and
- Not make any loan to any military borrower whenever the base commander has declared such person's place of business off limits to military personnel.

A "military borrower" is defined as any member of the U.S. Armed Forces, any member of the National Guard, or any member of the Armed Forces Reserve.

The Special Committee on Financial Institutions and Insurance convened during the 2005 Interim to study topics that included a broad review of the UCCC. A proposed non-depository lending model, a closed-end installment loan (proposed in 2005 HB 2278, 2006 SB 376), was reviewed by the Committee. A hearing was held on SB 376 during the 2006 Session, but no action was taken on the bill and it died in Committee.

Recent Legislative Proposals

The regulation of payday lending again was addressed during some recent legislative sessions. SB 217 (2007) and HB 2244 (2007) would have added requirements to the law regulating payday lenders. Under the proposals, consumers would not be allowed to have more than two outstanding loans at any one time and they would not be allowed more than five consecutive loans with the same lender. Under terms of both bills, a statewide database would have been developed to ensure compliance. The House Committee on Insurance and Financial Institutions held a hearing on HB 2244 and a related bill, HB 2245 (addressing vehicle title loans), during the 2007 Session; no action was taken on either bill at the time of the hearing. The 2008 Legislature introduced an additional measure to address payday lending, HB 2717 (a bill similar to HB 2244), without the database requirements. No action was taken on the payday lending legislation or the vehicle title legislation during the 2007-2008 Biennium. Similar legislation was not introduced during the 2009 Session.

The 2010 Legislature introduced legislation (SB 503) that would have required a $1 surcharge to be assessed on each payday and title loan. The surcharge would have been paid by the borrower to the lender and then remitted to

the OSBC. The moneys would then have been transferred to the Professional Development Fund (Department of Education) and expended to fund professional development programs or topics that dealt with personal financial literacy. The OSBC had indicated in the fiscal note that the bill would generate approximately $1.2 million from the estimated $1.2 million payday and title loans that will be issued in FY 2011. The bill was referred to the Senate Committee; the bill died in Committee.

The 2013 Legislature introduced legislation, SB 30 and HB 2036, that would have amended the UCCC to prevent lenders from making payday loans to a consumer that already has two outstanding loans with any lender. Restrictions would have been established on the amount of consecutive loans allowable between a particular borrower and lender. Additionally, the bill would have permitted the Code Administrator to establish an internet database; a verification fee of up to $1.00 could be charged by the OSBC/vendor to each lender that would be required to access the database prior to making a new loan. SB 30 was referred to the Senate Committee and HB 2036 was referred to the House Committee on Financial Institutions. The bills died in their respective committees.

The 2015 Legislature introduced SB 100, which would have set a single finance charge not to exceed 36.0 percent for closed-end credit consumer loans. SB 100 was referred to the Senate Committee. A hearing was not held on the bill, and the bill died in the Committee. During the 2016 Legislative Session, HB 2695 was introduced and referred to the House Committee on Insurance and Financial Institutions. HB 2695 would have added a new section to the UCCC, to be known as the "Respectful Lending to Kansas Seniors Act." The bill would have placed a 36.0 percent interest cap on payday loans for senior citizen consumers, as well as allowed a modification for a senior citizen's federal adjusted gross income for the taxable year. A hearing was not held on the bill, and it died in committee.

Special Committee on Financial Institutions and Insurance. The 2017 Legislature introduced HB 2267, which would, among other things, amend provisions in the Code relating to consumer loans and would impose a cap of 36.0 percent annual percentage rate on all consumer loans with open-end credit, including all fees, interest, and charges. The bill would also amend the definition of "consumer loan" and rules relating to how consumer loans can be repaid by borrowers and how many consumer loans a single borrower can have outstanding from a single lender. The bill and related regulatory review was assigned by the Legislative Coordinating Council to the interim Special Committee. The Special Committee met in October 2017.

Small Dollar Lending Activity in Kansas

During the Special Committee meeting, the Deputy Commissioner addressed trends in small dollar lending, noting some lenders have moved away from the traditional payday loan model and into an installment loan product (also permitted under the UCCC) and a growing challenge in unlicensed lenders that operate primarily, or only, online.

Data provided by the Deputy Commissioner summarized small dollar loans provided by licensees: payday only (49); payday only branches (136); payday and title (10); payday and title branches (74); title only (7); and title only branches (42). The number of locations for these loans totals 318 (66 companies, 252 branches). The CY 2016 loan volume for payday loans was an estimated $325 million (in 2012, the volume was an estimated $410 million).

The OSBC—Division of Consumer and Mortgage Lending maintains an online database available to the public of entities that are authorized to engage in the practice of consumer lending or mortgage business entities, as well as those lenders. The searchable database contains the license number, company name, company location, date of next renewal, and notes the status of each license. This information is accessible on the OSBC's website at https://online.osbckansas.org/Lookup/LicenseLookup.aspx.

Federal Financial Regulatory Reform, Consumer Protections and Payday Loans

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act into law ("Dodd-Frank Act," PL 111-203). Title X of the Dodd-Frank Act, entitled the Consumer Financial Protection Act of 2010, established the Consumer Financial Protection Bureau (CFPB) within the Federal Reserve System with rulemaking, enforcement, and supervisory powers over a number of financial products and services and the entities selling them (including payday and student loans). The law also transferred to the CFPB the primary rulemaking and enforcement authority over several federal consumer protection laws, including the Truth in Lending Act. The CFPB does not, however, have the authority to establish usury limits (such as a cap on interest rates) on payday loans. Among the provisions applicable to the use of payday loans (short-term loan products) is Title XII of the Dodd-Frank Act, the Improving Access to Mainstream Financial Institutions Act of 2010.

The CFPB has been evaluating what rules may be appropriate to address the "sustained use of short-term, high-cost credit products" (various types of small dollar loans). In June 2016, the CFPB proposed a rule intended to require lenders to "take steps to make sure consumers have the ability to repay their loans" and include other borrower protections to address debit fees assessed on payday loans. The comment period closed on October 7, 2016 (see *Federal Register* for the Final Rule, 12 CFR part 1041). On October 5, 2017, the CFPB issued its final rule. The implementation period will be 21 months following the formal publication of the rule. The rule covers short-term loans less than 45 days in duration that are open-end or closed-end, as well as longer-term loans more than 45 days in duration that are either open-end or closed-end and have a balloon payment feature.

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Health and Social Services

F-1 Foster Care

Foster Care Services

Foster care services are provided when the court finds a child to be in need of care pursuant to the Revised Kansas Code for the Care of Children, KSA 38-2201 to 38-2283. Child in Need of Care (CINC) proceedings can be divided into two categories: those concerning children who lack adequate parental care or control, or have been abused or abandoned; and those concerning children who commit certain offenses listed in KSA 38-2202(d)(6)-(10). This article focuses on the first group.

Foster care services in Kansas were privatized in 1997 due in part to longstanding concerns about the quality of services for children in state custody, in addition to a 1989 class action lawsuit alleging the Department of Social and Rehabilitation Services (SRS), now known as the Department for Children and Families (DCF), failed to care adequately for children who may have been victims of abuse or neglect. The court approved a settlement in 1993 containing 153 requirements with which SRS was required to comply within certain time frames. SRS did not achieve compliance with many of the settlement requirements for handling cases, and in early 1996, SRS officials informed the Legislature they were moving toward privatization to improve the quality and efficiency of services. After what contractors conceded was a chaotic transition, SRS was found to have successfully completed its settlement terms in 2002.

Currently, DCF contracts with two service providers in four regions for foster care placements, adoptions, and family preservation services: Saint Francis Community Services, which provides service to the West and Wichita regions, and KVC Health Systems, Inc., which provides service to the East and Kansas City regions. The service providers subcontract with other providers. Several other agencies throughout the state are involved with foster care, such as the Kansas Children's Service League and the Children's Alliance of Kansas. These agencies and others provide a variety of services, including information and resources for current and prospective foster parents.

Preliminary Issues for CINC Proceedings

CINC proceedings typically begin with a report to DCF, which may be made by anyone who suspects a child may be in need of care.

Additionally, the following are required to report any suspicion of abuse or neglect:

- Persons providing medical care or treatment;
- Persons licensed by the State to provide mental health services;
- Teachers and other employees of educational institutions;
- Licensed child care providers;
- Firefighters, emergency medical services personnel, and law enforcement officers;
- Juvenile intake and assessment workers, court services officers, and community corrections officers;
- Case managers and mediators appointed to help resolve any contested issue of child custody, residency, visitation, parenting time, division of property, or other issue; and
- Persons employed by or working for an organization that provides social services to pregnant teenagers.

Reports can be made to local law enforcement when DCF is not open for business. Once a report is received, KSA 38-2226 requires DCF and law enforcement to investigate the validity of the claim and determine whether action is required to protect the child. When a report indicates there is serious physical harm to, serious deterioration of, or sexual abuse of the child and action may be required to protect the child, DCF and law enforcement conduct a joint investigation. If there are reasonable grounds to believe abuse or neglect exist, DCF must take immediate steps to protect the health and welfare of the child, as well as that of other children under the same care.

KSA 38-2231 requires law enforcement to place a child in protective custody when an officer reasonably believes the child will be harmed if not immediately removed from the situation where the child was found or the child is a missing person. A court may not remove a child from parental custody unless it finds there is probable cause to believe: the child is likely to be harmed if not immediately removed from the home; allowing the child to remain in the home is contrary to the welfare of the child; or immediate placement is in the child's best interests. The court also must find there is probable cause to believe reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home, or an emergency exists that threatens the child's safety.

To issue an *ex parte*[1] order for protective custody, the court also must find there is probable cause to believe the child is in need of care. An *ex parte* order must be served on the child's parents and any other person having legal custody of the child. Along with the order, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental, or emotional abuse from residing in the child's home; visiting, contacting, harassing, or intimidating the child, another family member, or witness; or attempting to visit, contact, harass, or intimidate the child, another family member, or witness. A restraining order must be served on the alleged perpetrator.

The court may place the child in the protective custody of: a parent or other person having custody of the child; another person, who is not required to be licensed under the Kansas law governing child care facilities; a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary for Children and Families (Secretary). Once issued, an *ex parte* order typically will remain in effect until the temporary custody hearing.

When a court evaluates what custody, visitation, or residency arrangements are in the best interests of a child no longer residing with a parent, KSA 38-2286 requires substantial consideration of a grandparent who requests custody, which must be included in the record. The court must consider the wishes of the parents, child, and grandparent; the extent to which the grandparent has cared for the child; the intent and circumstances under which the child is placed with the grandparent; and the physical and mental health of all involved individuals. If the court places the child in the

custody of the Secretary for placement (rather than a grandparent), the law requires substantial consideration of a grandparent who requests placement in the evaluation for placement. If the grandparent is not selected, the Secretary must prepare and maintain a written report with specific reasons for the finding.

Court Proceedings

CINC Petition

If DCF determines it is not otherwise possible to provide services necessary to protect the interests of the child, it must recommend that the county or district attorney file a CINC petition. Pursuant to KSA 38-2233, the county or district attorney will then review the facts, recommendations, and any other evidence available and determine whether the circumstances warrant filing a petition. If warranted, KSA 38-2214 provides the county or district attorney prepares and files the petition, the contents of which are outlined in KSA 38-2234, and appears and presents evidence at all subsequent proceedings. KSA 38-2233 also allows an individual to file a CINC petition and be represented by the individual's own attorney in the presentation of the case.

Once filed, if the child is in protective custody, KSA 38-2235 allows the court to serve a copy of the petition on all parties and interested parties in attendance at the temporary custody hearing or issue summons to all those persons if not present. Otherwise, KSA 38-2236 instructs the court to serve the guardian *ad litem*[2] (GAL) appointed to the child, custodial parents, persons with whom the child is residing, and any other person designated by the county or district attorney with a summons and a copy of the petition, scheduling a hearing within 30 days of when the petition was filed. Grandparents are sent a copy of the petition by first class mail.

Interested Parties and Attendance at Court Proceedings

In addition to receiving notice of hearings, KSA 38-2241 gives parties and interested parties the right to present oral or written evidence and argument, call and cross-examine witnesses, and be represented by an attorney. Grandparents are interested parties in CINC proceedings and have participatory rights, subject to the court's restriction on participation if it is in the child's best interests. Other interested parties may include persons with whom the child has resided or shares close emotional ties and other persons as the court allows based on the child's best interests.

KSA 38-2247 allows anyone to attend CINC proceedings leading up to and including adjudication, unless the court determines closed proceedings or the exclusion of an individual would be in the child's best interests or is necessary to protect the parents' privacy rights. Dispositional proceedings for a child determined to be in need of care, however, may be attended only by the GAL, interested parties and their attorneys, officers of the court, a court-appointed special advocate, the custodian, and any other person the parties agree to or the court orders to admit. Likewise, the court may exclude a person if it determines it would be in the best interests of the child or the conduct of the proceedings.

Temporary Custody Hearing

KSA 38-2243 governs temporary custody hearings, which must be held within three business days of a child being placed in protective custody. Notice of the hearing must be provided to all parties and nonparties at least 24 hours prior to the hearing. After the hearing, the court may enter a temporary custody order if there is probable cause to believe the child is a danger to self or others, is not likely to be available within the jurisdiction of the court for future proceedings, or the child's health or welfare may be endangered without further care. The court may modify this order during the pendency of the proceedings to best serve the child's welfare and can enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse. The court may place the child with a parent or other person having custody of the child; another person who is not required to be licensed under the Kansas law governing child care facilities;

a youth residential facility; a shelter facility; or, under certain circumstances, the Secretary.

Order of Informal Supervision

At any time after the petition is filed and prior to an adjudication, a court can enter an order for continuance and informal supervision pursuant to KSA 38-2244, placing conditions on the parties and entering restraining orders as needed. The order can continue for up to six months and may be extended for an additional six months. If the child is not placed with a parent, the court must give substantial consideration to a grandparent who requests custody, as discussed above.

Adjudication and Disposition

KSA 38-2251 requires the court to enter a final adjudication or dismissal of a CINC petition within 60 days of the filing of the petition, unless good cause for a continuance is shown on the record. KSA 38-2250 specifies the petitioner must prove by clear and convincing evidence the child is in need of care. Otherwise, KSA 38-2251 requires the court to dismiss the proceedings. If the child is found to be in need of care, however, pursuant to KSA 38-2253, the court will receive and consider information concerning the child's safety and well-being and enter orders concerning custody and a case plan, which governs the responsibilities and time lines necessary to achieve permanency for the child.

Prior to entering an order of disposition, KSA 38-2255 requires the court to consider the child's physical, mental, and emotional condition and need for assistance; the manner in which the parent participated in the abuse, neglect, or abandonment of the child; any relevant information from the intake and assessment process; and evidence received at disposition concerning the child's safety and well-being. Based on these factors, the court may place the child with a parent; a relative of the child; another person who is not required to be licensed under the Kansas law governing child care facilities; any other suitable person; a shelter facility; a youth residential facility; or, under certain circumstances, the Secretary. This placement will continue until further order of the court. Along with the dispositional order, the court may grant reasonable visitation rights upon finding visitation would be in the child's best interests or may enter a restraining order against an alleged perpetrator of physical, sexual, mental, or emotional abuse.

Permanency

If the child is placed with a parent, KSA 38-2255 allows the court to impose terms and conditions to assure the proper care and protection of the child, including supervision of the child and parent, participation in available programs, and any special treatment the child requires. If permanency is achieved with one parent without terminating the other's parental rights, the court may enter child custody orders, including residency and parenting time, determined to be in the child's best interests and must complete a parenting plan pursuant to KSA 60-1625.

If the child is not placed with a parent, a permanency plan must be developed and submitted to the court within 30 days of the dispositional order by the person with custody of the child or a court services officer, ideally in consultation with the child's parents. KSA 38-2263 outlines the required contents of the plan, including descriptions of the child's needs and services to be provided in addition to whether the child can be "reintegrated," *i.e.* reunited with a parent or parents. If there is disagreement among the persons necessary to the success of the plan, a hearing will be held to consider the merits of the plan.

KSA 38-2255 lists the relevant factors in determining whether reintegration is a viable alternative, including, among others, whether the parent has committed certain crimes, previously been found unfit, and worked towards reintegration. If reintegration is not a viable alternative, within 30 days, proceedings will be initiated to terminate parental rights, place the child for adoption, or appoint a permanent custodian. A hearing on the termination of parental rights or appointment of a permanent custodian will be held within 90 days. An exception exists when

the parents voluntarily relinquish parental rights or consent to the appointment of a permanent custodian.

KSA 38-2269 allows courts to terminate parental rights if it finds by clear and convincing evidence the parent is unfit by reason of conduct or condition that renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future. Further, it lists factors the court can consider to determine parental unfitness and provides a parent may be found unfit if the court finds the parent has abandoned the child; custody of the child was surrendered or the child was left under such circumstances that the identity of the parents is unknown and cannot be determined, in spite of diligent searching; and the parents have not come forward to claim the child within three months after the child is found. Finally, KSA 38-2271 outlines circumstances that create a presumption of unfitness, including: a previous finding of unfitness; two or more occasions in which a child in the parent's custody has been adjudicated a child in need of care; failure to comply with a reasonable reintegration plan; and conviction of certain crimes. Parents bear the burden of rebutting these presumptions by a preponderance of the evidence. When the court finds a parent is unfit, it can authorize an adoption if parental rights were terminated, appoint a permanent custodian, or continue permanency planning. Preference for placement is given to relatives and persons with whom the child has close emotional ties.

A permanency plan may be amended at any time upon agreement of the plan participants. If the permanency goal changes, however, a permanency hearing will be held within 30 days, as outlined in KSA 38-2264 and 38-2265. Even without a change in the permanency goal, KSA 38-2264 requires a permanency hearing be held within 12 months after a child is removed from the home and at least annually thereafter. If parental rights are terminated or relinquished, the requirements for permanency hearings will continue until the child is adopted or a permanent custodian is appointed. When permanency has been achieved with either a parent or nonparent to the satisfaction of the court, the court will close the case.

Fiscal Year 2017 Statewide Foster Care Statistics

An average of 335 children were removed from the home and placed into foster care each month with a total number of 4,020 children placed during fiscal year (FY) 2017. An average of 296 children exited foster care placement outside of their home each month, with a total of 3,553 children exiting. In 66 percent of cases, the primary reason for removal was abuse or neglect. A majority of children in out-of-home settings were placed in family foster homes, and the most common permanency goal was reunification. The total average out-of-home placement length of stay was 18.9 months with reunification as the leading reason for ending placement. Further information on statistics, as well as current figures and regional data, can be found at *http://www.dcf.ks.gov/services/PPS/Pages/FosterCareDemographicReports.aspx*.

Recent Legislation and Reform Efforts

In addition to many existing workgroups, task forces, and committees that consider possible reforms to the CINC process and the delivery of foster care services, standing and special legislative committees also have considered changes in recent years. Most recently, the 2017 Legislature established the Child Welfare System Task Force. More details regarding these efforts follow.

Legislation

Beginning in 2011, the Legislature made changes to the law to expand the rights of grandparents, designating them as interested parties (2011 House Sub. for SB 23) and requiring substantial consideration of grandparents who request custody when a child is removed from parental custody (2012 SB 262).

In 2014, a foster parents' bill of rights, Sub. for SB 394, was introduced, considered, and ultimately

referred to the Judicial Council and to the Special Committee on Judiciary for interim study. The Special Committee recommended introduction of a bill proposed by the Judicial Council and that additional consideration be given to the grievance process. That bill was introduced in 2015 as SB 37, which was heard by the Senate Judiciary Committee; however, the Committee did not take action on the bill.

In 2016, the House and Senate Judiciary Committees discussed variations on legislation introduced in 2015 concerning use of a power of attorney to delegate care and custody of a child to another, which had been referred to the Judicial Council for further study. The 2016 Legislature ultimately passed SB 418, the Host Families Act, which allows a child placement agency or charitable organization to provide temporary care of children by placing a child with a host family. Host families are subject to screening and background checks and do not receive payment other than reimbursement for actual expenses. The Act also allows DCF to provide information about respite care, voluntary guardianship, and support services, including organizations operating programs under the Act, to families experiencing financial distress, unemployment, homelessness, or other crises and to parents or custodians during a child protective investigation that does not result in an out-of-home placement due to abuse of a child.

Placement must be voluntary and shall not be considered an out-of-home placement, supersede any court order, or preclude any investigation of suspected abuse or neglect. A parent may place a child by executing a power of attorney that delegates to a host family any powers regarding the care and custody of the child, except power to consent to marriage or adoption, performance or inducement of an abortion, or termination of parental rights. The power of attorney may not be executed without the consent of all individuals with legal custody of the child, and execution is not evidence of abandonment, abuse, or neglect.

The power of attorney may not exceed one year but may be renewed for one additional year. The bill includes an exception, however, for parents serving in the military, who may delegate powers for a period longer than one year if on active duty service, but no more than the term of active duty service plus 30 days. A parent executing a power of attorney under the Act can revoke or withdraw the power of attorney at any time. Upon such withdrawal or revocation, the child must be returned to the parent as soon as reasonably possible.

Additionally, 2016 SB 418 specified nothing in the CINC Code compels a parent to medicate a child if the parent is acting in accordance with a physician's medical advice, and in these circumstances, absent a specific showing of a causal relation between the actions and harm to the child, a parent's actions do not constitute a basis for determination that a child is a CINC, removal of custody of a child, or termination of parental rights. Further, the bill allowed county or district attorneys from another jurisdiction to access the official file and social file in a CINC proceeding when involved with a pending CINC case involving any of the same parties or interested parties.

Special Committee on Foster Care Adequacy

The Legislative Coordinating Council created a Special Committee on Foster Care Adequacy in 2015 and again in 2016 to study DCF oversight of foster care contractors; whether a working group would aid in addressing foster care concerns; and the selection, qualification, and responsibilities of foster parents. The 2015 Special Committee recommended evidence-based, peer-reviewed research on family structure be given high priority when considering best interests and making foster care placement decisions. Additionally, it recommended introduction of legislation creating a joint committee to oversee foster care or alternatively, that a Senate committee and a House committee be charged with reviewing the topic of foster care.

The 2016 Special Committee studied similar issues and considered a two-part report of DCF released by the Legislative Division of Post Audit (LPA). The 2016 Special Committee identified a number of concerns and recommended: reintroduction of a bill establishing a foster care

oversight task force; expanded use of citizen review boards in CINC cases; affirmation of the right of biological parents and grandparents to visitation; the Legislature address the LPA findings on foster care and adoption and concerns raised by the audit; DCF investigate the value of additional vendors for foster care programs; DCF report annually to Senate and House standing committees; and the LPA committee consider addressing concerns regarding the low response rate to LPA's survey of public employees and contractor employees.

LPA Reports on Foster Care and Adoption

Parts 1, 2, and 3 of the report entitled "Foster Care and Adoption in Kansas: Reviewing Various Issues Related to the State's Foster Care and Adoption System" are available at http://kslpa.org/index.php.

Part 1 identified concerns and made recommendations related to ongoing efforts to improve child protective services; failure to consistently perform background checks for foster parents and to conduct monthly in-person visits; and foster homes with insufficient sleeping space and insufficient financial resources.

Part 2 looked at compliance with state and federal law and found DCF had not followed some of the safety and living condition requirements reviewed in Part 1. Further, it found DCF had materially complied with most, but not all, federal requirements in 2014 and 2015 and had exceeded half of the federal outcome requirements in FY 2016 but did not meet others. Finally, it found DCF must implement a program improvement plan to address issues identified by a 2015 federal review.

Part 3 examined whether the Kansas foster care system's had sufficient capacity to provide necessary foster care services, finding issues with staffing shortages, large caseloads, and low morale among caseworkers. Children in foster care received most of the physical and mental health services they needed, with exceptions. Many counties and cities did not appear to have enough licensed foster homes, although there were sufficient open beds statewide. DCF could be more proactive in monitoring and collecting management information about the foster care system, but has recently begun to expand its use of data in overseeing the foster care system. LPA identified several children who were placed in foster homes that did not comply with licensing standards, but noted that DCF is making significant changes to the inspection process.

Part 3 also looked at Kansas' performance on federal outcomes for children and families over time, finding no significant change from 2000 to 2013 and noting the significant limitations of these outcome measures, including for comparison between states.

Finally, Part 3 compared the cost of the State directly providing foster care and adoption services with maintaining the current privatized system, estimating such transition would incur up to $8 million more in ongoing costs and significant start-up costs. LPA also noted the other significant factors that would have to be considered in making such a transition.

Child Welfare System Task Force

The 2017 Legislature passed House Sub. for SB 126, which directs the Secretary for Children and Families to establish a Child Welfare System Task Force to study the child welfare system in the State of Kansas. The bill specifies various entities and stakeholders to be represented on the Task Force (including six legislators) and directs the Task Force to convene working groups to study the following topics: the general administration of child welfare by DCF; protective services; family preservation; reintegration; foster care; and permanency placement. Additionally, the Task Force and each working group are directed to study the following topics:

- The level of oversight and supervision by DCF over each entity that contracts with DCF to provide reintegration, foster care, and adoption services;
- The duties, responsibilities, and contributions of state agencies, nongovernmental entities, and service

providers that provide child welfare services in the State of Kansas;
- The level of access to child welfare services, including, but not limited to, health and mental health services and community-based services, in the State of Kansas;
- The increasing number of children in the child welfare system and contributing factors;
- The licensing standards for case managers working in the child welfare system; and
- Any other topic the Child Welfare System Task Force or working group deems necessary or appropriate.

The appointments of Task Force members were completed in July 2017, and the Task Force began meeting in August 2017. Working group appointments were completed in September 2017 and began meeting in October 2018.

SB 126 requires the Task Force to submit a preliminary progress report to the Legislature by January 8, 2018, and a final report to the Legislature by January 14, 2019. The final report must include, but is not limited to:

- Recommended improvements regarding the safety and well-being of children in the Kansas child welfare system;
- Recommended changes to law, rules and regulations, and child welfare system processes; and
- Whether an ongoing task force or similar advisory or oversight entity could aid in addressing child welfare concerns and any other topics the Task Force deems appropriate.

1 Ex parte orders are orders issued involving one party, usually for temporary or emergency relief.
2 For more information on the role of the GAL, see KSA 38-2205.

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Health and Social Services

F-2 Medicaid Waivers

This article provides information related to the history of Medicaid waivers in the United States, Medicaid waivers specific to Kansas, and the history of waiver integration proposals.

The History of Medicaid

In the United States

Medicaid is a partnership between the federal government and the states with shared authority and financing, created by Congress in 1965 (Title XIX of the Social Security Act). The program was designed to finance health care services for low-income children, their parents, the elderly, and people with disabilities. Medicaid has become the nation's largest source of funding to provide health services to low-income people.

State participation in Medicaid is optional. However, the federal government's financial share of Medicaid financing creates an incentive for the states. To date, no state has declined to participate. All 50 states, American Samoa, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands participate and administer their own Medicaid plans. Although all states participate, eligibility varies widely because the states can choose to cover additional people and services above and beyond the federal minimum requirements.

Medicaid Expansion

Provisions of the federal Patient Protection and Affordable Care Act (referred to throughout this article as ACA) expanded Medicaid to all Americans under age 65 whose family income is at or below 133 percent of federal poverty guidelines by January 1, 2014. Under the provisions of the ACA, if a state did not expand Medicaid, the state risked losing its entire federal Medicaid allotment.

The Medicaid expansion provision led to challenges to the U.S. Supreme Court. On June 28, 2012, the Supreme Court ruled in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519,132 S. Ct. 2566, 183 L. Ed. 2d 450 (2012), that Congress may not make a state's entire existing Medicaid funding contingent upon

the state's compliance with the ACA provision regarding Medicaid expansion. Consequently, Medicaid expansion is voluntary and has become a highly discussed topic in state legislatures across the country.

As of September 14, 2017, 31 states and the District of Columbia have expanded Medicaid, and 19 states have not participated in expansion.

KanCare: Medicaid in Kansas

Kansas participates in Medicaid, but has not expanded the program under the ACA. In 2017, legislative action was taken to expand Medicaid in the state through HB 2044. The bill passed the Legislature, but was vetoed by the Governor. The House of Representatives was unable to override the Governor's veto, so Kansas remains a non-Medicaid expansion state.

Kansas administers Medicaid through the program known as KanCare. KanCare was launched in January 2013 and currently serves more than 415,000 Kansans. Some of the services provided under KanCare include: doctor's office visits and hospital care, behavioral health services, dental and vision care, medicine, non-emergency medical transportation, nursing facility services, weight-loss surgery, and contractor specific value-added services.

The Kansas Department of Health and Environment (KDHE) and the Kansas Department for Aging and Disability Services (KDADS) administer the KanCare program. KDHE maintains financial management and contract oversight as the single state Medicaid agency, while KDADS administers the Medicaid waiver programs for disability services, mental health, and substance abuse and operates the state hospitals and institutions. Additionally, Kansas contracts with three Managed Care Organizations (MCOs) to coordinate health care for nearly all Medicaid beneficiaries. The MCOs are Amerigroup of Kansas, Inc., Sunflower State Health Plan, and UnitedHealthcare Community Plan of Kansas.

Each Medicaid consumer in the state is enrolled with one of the KanCare health plans. Consumers have the option during open enrollment once a year to change to a different KanCare health plan if they wish to do so.

KDHE will submit a request to extend the KanCare program under a Section 1115 waiver to the Centers for Medicare and Medicaid Services (CMS). (*Note*: See "Types of Medicaid Waivers Approved by CMS" below for more information on Section 1115 waivers.) The current KanCare demonstration expires December 31, 2017. KDHE is requesting a one-year extension of the current KanCare demonstration. The requested extension period is for January 1, 2018, through December 31, 2018. KDHE is not requesting any changes to the demonstration for the one-year extension period.

Types of Medicaid Waivers Approved by CMS

Sections 1115 and 1915 of the Social Security Act give the U.S. Secretary of Health and Human Services (HHS) authority to waive provisions of the law to encourage states to test new or existing ways to deliver and pay for health care services in Medicaid and the Children's Health Insurance Program (CHIP). A state must apply for and receive approval from CMS in order to operate a waiver. This article discusses Section 1115 Research and Demonstration Projects, Section 1915(b) Managed Care Waivers, and Section 1915(c) Home and Community Based Services Waivers. Additionally, the article will discuss Section 1332 State Innovation Waivers, which are authorized under the ACA and not the Social Security Act.

Section 1115 Research & Demonstration Projects

Section 1115 of the Social Security Act gives the Secretary of HHS authority to approve experimental, pilot, or demonstration projects. The purpose of these demonstrations is to give states additional flexibility to design and improve their Medicaid programs. These demonstrations can expand eligibility to individuals who are not

otherwise Medicaid or CHIP eligible, provide services not typically covered by Medicaid, and use innovative service delivery systems that improve care, increase efficiency, and reduce costs.

CMS uses general criteria to determine whether Medicaid or CHIP program objectives are met. These criteria include whether the demonstration will:

- Increase and strengthen overall coverage of low-income individuals in the state;
- Increase access to, stabilize, and strengthen providers and provider networks available to service Medicaid and low-income populations in the state;
- Improve health outcomes for Medicaid and other low-income populations in the state; or
- Increase the efficiency and quality of care for Medicaid and other low income populations through initiatives to transform service delivery networks.

In general, Section 1115 waivers are approved for a five-year period and can be renewed typically for an additional three years. Demonstrations must be "budget neutral" to the federal government, which means during the course of the project, federal Medicaid expenditures cannot be more than federal spending without the waiver.

Currently, there are 28 states that have approved Section 1115 waivers with CMS. Those states are: Alabama, Arizona, Arkansas, Colorado, Delaware, Florida, Hawaii, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Tennessee, Texas, Vermont, Washington, Wisconsin, and Wyoming. Additionally, several states have Section 1115 waivers that are pending approval with CMS. According to a search of the CMS website on September 14, 2017, KanCare is listed by CMS as pending approval. See *https://www.medicaid.gov/medicaid/section-1115-demo/demonstration-and-waiver-list/waivers_faceted.html* to search for the current status of states' waiver authority.

Seven states have sought Section 1115 waivers to implement Medicaid expansion. As of September 2017, Arizona, Arkansas, Iowa, Indiana, Michigan, Montana, and New Hampshire have approved waivers to implement Medicaid expansion in ways that extend beyond the flexibility provided by the federal law.

Section 1915(b) Managed Care Waivers

Section 1915(b) waivers are one of several options available to states that allow the use of managed care in the Medicaid program. Under the 1915(b) waiver, states have the following four options:

- 1915(b)(1): implement a managed care delivery system that restricts the types of providers people can use to get Medicaid benefits;
- 1915(b)(2): allow a county or local government to act as a choice counselor or enrollment broker in order to help people pick a managed care plan;
- 1915(b)(3): use the savings the state realizes from a managed care delivery system to provide additional services; and
- 1915(b)(4): restrict the number or type of providers who can provide specific Medicaid services (such as disease management or transportation).

Thus, the 1915(b) waivers allow the state to provide Medicaid services through managed care delivery systems, effectively limiting the consumer's choice of providers. Currently, there are 35 states that have approved Section 1915(b) waivers with CMS. Those states are: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Section 1915(c) Home and Community Based Services Waivers

The Medicaid Home and Community Based Services (HCBS) Waiver program is authorized under Section 1915(c) of the Social Security Act. Through the HCBS Waiver, states can assist Medicaid beneficiaries by providing a wide range of services that permit individuals to live in their homes or communities and avoid institutionalization. Programs can provide a combination of standard medical services and non-medical services. Standard medical services include, but are not limited to: case management, home health aide, personal care, adult day health services, and respite care. States can propose other services that may assist in diverting or transitioning individuals from institutional settings to their homes or communities.

Currently, 47 states and the District of Columbia have 1915(c) waivers approved with CMS. The only states that currently do not have an approved 1915(c) waiver with CMS are Arizona, Rhode Island, and Vermont.

Section 1332 State Innovation Waivers

Section 1115, Section 1915(b), and Section 1915(c) waivers are authorized under the Social Security Act. Section 1332 of the ACA permits a state to apply for a State Innovation Waiver (Section 1332 waiver). According to CMS, these waivers "allow states to implement innovative ways to provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver and provide coverage to a comparable number of residents of the state as would be covered absent a waiver, while not increasing the federal deficit." These waivers are available beginning January 1, 2017.

A state legislature must pass authorizing legislation to implement Section 1332 waiver-based reform. According to the National Conference of State Legislatures, at least 22 states have considered legislation to begin the Section 1332 waiver application process as of September 2017. The content and proposed state changes vary widely.

Fourteen states have enacted Section 1332 legislation. These states are: Alaska, California, Hawaii, Kentucky, Maine, Massachusetts, Minnesota, New Hampshire, Ohio, Oklahoma, Oregon, Rhode Island, Texas, and Vermont. Iowa has proposed a Section 1332 waiver *via* executive branch initiative and not through legislation action.

Upon enactment of legislation, the state submits a Section 1332 waiver application to CMS. CMS must then approve the application before the Section 1332 waiver may be implemented in the state. These waivers are approved for five-year periods, which can be renewed. Of the states that have enacted legislation, only two states have approved Section 1332 waivers. Hawaii's waiver, approved in December 2016, waived the ACA requirement that a Small Business Health Options Program (SHOP) operate in Hawaii and other provisions related to SHOP exchanges. Alaska's waiver, approved in July 2017, waives the ACA requirement to consider all enrollees in a market to be part of a single risk pool. Alaska's waiver permits the state to implement the Alaska Reinsurance Program for 2018 and future years.

Medicaid Waivers in Kansas

Current Medicaid Waivers

KanCare allows the state to provide all HCBS through managed care. Currently, Kansas operates seven separate 1915(c) waivers alongside a Section 1115 waiver. The seven 1915(c) waivers are: Autism, Frail Elderly (FE), Intellectual and Developmental Disabilities (I/DD), Physical Disabilities (PD), Serious Emotional Disturbance (SED), Technology Assisted (TA), and Traumatic Brain Injury (TBI).

To participate in a 1915(c) waiver, the individual requiring services must be financially and functionally eligible for Medicaid. Individuals with income above $747 a month must share in the cost of care, called the "client obligation." The client obligation is paid to a medical provider, not to the State of Kansas or to a KanCare MCO.

Additional information for each of the seven 1915(c) waivers follows.

Autism

The Autism Waiver provides services to children from the time of diagnosis of autism, Asperger syndrome, or pervasive developmental disorder–not otherwise specified until the child's sixth birthday. Autism services are limited to three years; however, an additional year may be submitted for approval. To qualify for an additional year of service, the child must meet eligibility based on the level of care assessment at the annual review on the third year of services, and data collected by the autism specialist must document continued improvement.

To apply for the waiver, a parent or guardian must complete an application. The application requests basic information about the child and the child's family. Also, the application requires the parent or guardian to indicate the screening tool used in the child's diagnosis and documentation of an autism diagnosis or a signature of a licensed medical doctor or psychologist.

The Autism Program Manager prescreens for the autism diagnosis and places the child on the proposed recipient list. As of July 31, 2017, there were 309 children on the proposed recipient list. Once a position becomes available, the Program Manager contacts the family to offer them the potential position. As of August 16, 2017, there were 60 children eligible to receive services under this waiver.

Kansas received direction from CMS to move consultative clinical and therapeutic services, intensive individual supports, and interpersonal communication therapy from the Autism Waiver to the Medicaid State Plan Amendment. The three services that will continue to be part of the Autism Waiver are: respite care, family adjustment counseling, and parent support and training. The Autism Waiver amendments were approved by CMS in June 2017.

Frail Elderly

The Home and Community Based Services Frail Elderly (HCBS/FE) Waiver provides home and community-based services to Kansas seniors as an alternative to nursing facility care. The waiver serves those individuals 65 and older who choose HCBS and are functionally eligible for nursing facility care. If applying for the FE waiver, the individual should contact their local Aging and Disability Resource Center (ADRC). There are 11 ADRCs in the state. Services and supports included under the HCBS/FE Waiver are: adult day care, assistive technology, attendant care services, nursing evaluation visit, personal emergency response, enhanced care services (previously referred to as sleep cycle support), medication reminder, oral health services, and comprehensive support and wellness monitoring. Assistive technology, comprehensive support, oral health, and enhanced care services are only available if a crisis exception is met. These services are based upon a consumer's need, which is determined by the consumer and a care coordinator.

As of August 16, 2017, there were 4,777 individuals eligible to receive services without the Money Follows the Person (MFP) program and 65 individuals eligible under the MFP program. The MFP program is a federal demonstration grant given to help individuals currently living in institutional settings to choose to transition into community-based services. Individuals must qualify for Medicaid and also qualify for either the HCBS/FE, HCBS/PD, HCBS I/DD, or TBI waivers to participate in the program.

According to KDADS, MFP federal grant funding is coming to an end, and KDADS' last transition from the federally funded MFP occurred June 30, 2017. However, grant funding will continue to be provided for up to 365 days of HCBS for those transitioned by June 30, 2017. KDADS will continue to work with the MCOs to transition individuals who meet the current MFP criteria.

Intellectual and Developmental Disability

The Home and Community Based Services Intellectual and Development Disability (HCBS I/DD) Waiver provides services to individuals five years of age and older with intellectual disabilities and developmental disabilities. In general, those with ID may be eligible if they have a diagnosed ID resulting in impaired function in at least two adaptive skills areas. Those with DD may be eligible if their disability started before age 22 and they have a substantial limitation in 3 areas of life functioning.

The point of entry into the HCBS I/DD Waiver is an individual's local community developmental disability organization (CDDO). The Program Manager provides final approval of program eligibility. As of August 16, 2017, there were 3,700 individuals on the HCBS I/DD waiting list.

Services and supports under the HCBS I/DD Waiver can include assistive services, adult day supports, financial management services, medical alert rental, overnight respite, personal care services, residential supports, specialized medical care, supported employment, supportive home care, and wellness monitoring. As of August 16, 2017, there were 8,884 individuals eligible to receive services without the MFP program and 40 individuals eligible under the MFP program.

Physically Disabled

The Home and Community Based Services Physically Disabled (HCBS/PD) Waiver provides services to individuals who are at least 16 years of age and no older than 65 years. The individual must be determined disabled by the Social Security Administration, need assistance to perform normal rhythm of the day, and meet the Medicaid nursing facility threshold.

The point of entry for the HCBS/PD Waiver is an individual's local ADRC. The Program Manager provides final approval of program eligibility. As of August 16, 2017, there were 953 individuals on the HCBS/PD waiting list. The following services and supports can be provided under the HCBS/PD Waiver as long as those services are approved by the MCO: personal services, assistive services, enhanced care services, and personal emergency response systems and installation. As of August 16, 2017, 5,917 individuals were eligible to receive services without the MFP program and 111 individuals were eligible under the MFP program.

Serious Emotional Disturbance

This Serious Emotional Disturbance (SED) Waiver provides services to individuals ages 4-18 who are experiencing a serious emotional disturbance. An age exception for clinical eligibility may be requested for participants under the age of 4 and over the age of 18 through the age of 21. The waiver is designed to divert the individual from psychiatric hospitalization to intensive home and community-based supportive services.

Services and supports under this waiver include attendant care, independent living and skills building, short-term respite care, parent support and training, professional resource family care, and wraparound facilitation. As of August 16, 2017, there were 3,643 individuals eligible to receive services under this waiver.

On April 28, 2017, KDADS received CMS approval for the renewal of the SED waiver. Currently, the local community mental health center (CMHC) provides all eligibility determinations, plan of care development, and provision of services. According to KDADS, CMS has said CMHCs cannot continue to perform all of these tasks without addressing conflicts of interest. Thus, KDADS is pursuing a contact with third-party assessor to perform side-by-side assessments.

Technology Assisted

The Technology Assisted (TA) Waiver provides services to people through the age of 21 who require substantial and ongoing daily care comparable to the care provided in a hospital. The individual is determined TA program eligible if he or she is 0-21 years of age, is chronically ill or medically fragile, requires the use of primary medical technology on a daily basis (*i.e*. ventilator,

trach, g-tube feeding), and meets the minimum nursing acuity level of care threshold for the specified age group. The point of contact for the program is the Children's Resource Connection.

Services and supports under this waiver can include financial management services, health maintenance monitoring, intermittent intensive medical care service, specialized medical care, long-term community care attendant, medical respite, and home modification services. As of August 16, 2017, there were 482 individuals eligible to receive services under this waiver.

Traumatic Brain Injury

The Traumatic Brain Injury (TBI) Waiver provides services to individuals ages 16-65 who have sustained a traumatic brain injury and would otherwise require institutionalization in a TBI rehabilitation facility. The TBI Waiver is a short-term rehabilitative program.

The brain injury must be traumatically acquired, *i.e.* caused by an external physical force. The common injuries resulting in trauma to the brain include, but are not limited to: falls, which involve a forceful blow to the head, not generally consistent with concussion or minor injury; motor vehicle accidents with resulting head trauma; struck by or against, including collision with a moving or stationary object; and assaults involving repeated blows to the brain. If a traumatic brain injury is obtained prior to the age of 21, the individual may be considered developmentally disabled and will be referred to the CDDO prior to a TBI screening.

The point of entry for an individual is their local ADRC. Services and supports under this waiver may include financial management services, personal care services, assistive services, rehabilitation therapies, home delivered meals, medication reminder services, and transitional living skills. As of August 16, 2017, there were 438 individuals eligible to receive services without the MFP program and 5 individuals eligible under the MFP program.

Waiver Integration

In the summer of 2015, KDHE and KDADS announced a plan to fully integrate the seven 1915(c) waivers into the 1115 waiver. Under this waiver integration plan, entrance to HCBS would remain the same, but services would fall into two broader categories: children's services and adults' services. The new integrated waiver would be called KanCare Community Care. KDHE and KDADS planned for this waiver integration to begin on January 1, 2017, if approved by CMS.

KDHE and KDADS held public information sessions and stakeholder workgroups regarding the planned integration and continued forward with the proposal. However, the House Committee on Health and Human Services (House Committee) appointed a subcommittee to study the issue during the 2016 Legislative Session. The subcommittee issued a report proposing a bill to be considered by the House Committee requiring legislative approval of waiver integration and prohibiting implementation of waiver integration prior to January 1, 2018. The subcommittee also recommended KDHE report on the status of waiver integration planning to the Legislature in January 2017 and March 2017.

2016 HB 2682 was introduced in the House Committee. The bill would have prohibited any state agency from making any changes to waiver services without express legislative authorization. The bill was heard by the House Committee, but died in that Committee. However, in the 2016 omnibus appropriations bill, House Sub. for SB 249, language was added directing no expenditures could be made during FY 2016 and FY 2017 to proceed with waiver integration if the proposed integration was planned to occur prior to FY 2019.

In 2017, a HCBS integration proviso was added to the omnibus appropriations bill, Senate Sub. for HB 2002. The proviso would have prohibited the integration, consolidation, or otherwise altering the structure of HCBS waivers, or submitting a proposal to combine, reassign, or otherwise alter the designated responsibilities to provide intake, assessment, or referral services for medical services, behavioral health services,

transportation, nursing facilities, other long-term care, or HCBS waivers prior to FY 2020. This proviso was line-item vetoed by the Governor. In his veto message, the Governor stated concern over the broad nature of the proviso language and its potential to limit changes to non-HCBS programs within KDADS. The veto message also stated the Brownback administration would not integrate or consolidate HCBS waivers, nor make any substantive changes to the intake, assessment, and referral system for the HCBS I/DD waiver without meaningful engagement with stakeholders and approval of the Legislature.

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Health and Social Services

F-3 Provider Assessments

Provider Assessment

A provider assessment is a mechanism used to maximize the amount of federal funding for the state by collecting new state funds that may be used to draw down additional federal funds. This mechanism can result in increased Medicaid payments for the specified providers assessed for Medicaid-eligible services.

In order to implement a provider assessment, the federal Centers for Medicare and Medicaid Services (CMS) must first review and approve the provider assessment model designed by the State. CMS guidelines state that for a provider assessment to be approved, it must be uniformly enforced across all providers. Certain categories of providers can be excluded, but all providers of that category type then must be excluded from the assessment. In addition, CMS guidelines state that no provider within an assessed category is allowed to be excluded, even if that provider is negatively impacted. This means that all providers must be included in the provider assessment, even if some may experience a negative fiscal impact.

For FY 2016–FY 2017, 49 states and the District of Columbia had some form of Medicaid-related provider assessments. Currently, Kansas has two implemented provider assessments: one for hospitals and one for nursing facilities. The State has authorized an additional provider assessment to be submitted if CMS were to approve the category of Home and Community Based Services providers for individuals with intellectual/developmental disabilities. The models for provider assessments vary by state based on the population needs and structure of the provider system being assessed. For example, some states assess funds from nursing facilities based on how many Medicaid days a resident spends in a licensed nursing bed. However, in Kansas, the 2010 Legislature passed a version that assesses funds annually based on licensed nursing facility beds.

Health Care Access Improvement Program

The Health Care Access Improvement Program (HCAIP), established by 2004 Senate Sub. for HB 2912, was created to use an annual assessment on inpatient services provided by hospitals

and on non-Medicare premiums collected by health maintenance organizations (HMOs) to improve and expand health care in Kansas for low income persons (KSAs 65-6208 through 65-6220). The assessment paid by hospitals is used as a state match to draw down additional federal funding. The HMOs' assessment was not implemented, although additional revenues are collected from HMOs through a privilege fee.

Some hospital providers that are state agencies, state educational institutions, or critical access hospitals are exempt from the provider assessment. The State mental health hospitals and developmental disability hospitals also are exempt. The hospital provider assessment amount is an annual assessment of 1.83 percent on hospital inpatient services of net inpatient operating revenue. The HMOs' assessment amount was to be an annual assessment of 5.90 percent of net revenue. No funds collected through HCAIP are allowed to be transferred to the State General Fund at any time.

The 2012 Legislature approved HB 2416, which changed a hospital's base fiscal year for net inpatient operating revenue used to calculate the hospital provider assessment. The bill amended the statute that addresses the annual assessment on inpatient services imposed on each hospital provider to base the assessment on an amount equal to 1.83 percent of each hospital's net inpatient operating revenue for FY 2010. If a hospital does not have a complete 12-month fiscal year for FY 2010, the assessment will be $200,000 until the hospital has completed its first 12-month fiscal year, at which time the assessment will be 1.83 percent of the net operating revenue of such hospital's first completed 12-month fiscal year.

The hospital portion of HCAIP stipulates not less than 80.0 percent of the funds collected from the hospital provider assessment can be disbursed to hospital providers through a combination of Medicaid access improvement payments and increased Medicaid rates on designated diagnostic related groupings, procedures, and codes. In FY 2017, this resulted in a net revenue of $51.9 million from all funding sources. In addition, no more than 20.0 percent of the funds collected from hospital provider assessment can be disbursed to doctors or dentists through increased Medicaid rates on designated procedures and codes. Finally, not more than 3.2 percent of the funds collected from the hospital provider assessment can be used to fund health care access improvement programs in undergraduate, graduate, or continuing medical education, including the Medical Student Loan Act.

Nursing Facility Quality Care Assessment

In 2010, Senate Sub. for Senate Sub. for Sub. for HB 2320 was enacted and established a provider assessment program for skilled nursing facilities, the Nursing Facility Quality Care Assessment, for up to $1,950 on each licensed bed within skilled nursing care facilities, which includes nursing facilities for mental health and hospital long-term care units and excludes the Kansas Soldiers' Home and the Kansas Veterans' Home from the assessment (KSA 75-7435). The 2016 Legislature passed Senate Sub. for HB 2365, which raised the maximum annual amount from $1,950 to $4,908 per licensed bed.

In FY 2017, there were 327 licensed skilled nursing facilities in Kansas operating as Medicaid providers.

Skilled nursing care facility licensed beds that are excluded from qualifying to be assessed up to the full amount of $4,908 include: continuing care retirement facilities (defined as facilities that must hold a certificate of registration from the Commissioner of Insurance); small skilled nursing care facilities (defined as less than 46 licensed nursing beds); and high federal Medicaid volume skilled nursing care facilities (defined as facilities having more than 25,000 federal Medicaid days). The amount assessed to these identified skilled nursing care facilities cannot exceed one-sixth, or a maximum of $818, of the actual amount assessed for the other skilled nursing care facilities.

All funds collected through the Nursing Facility Quality Care Assessment are used to finance initiatives designed to maintain or increase the quantity and quality of nursing care in licensed

facilities. No funds can be transferred to the State General Fund at any time or used to replace existing funding.

If any additional funds are available, they must be used for an increase of the direct health care costs center limitation up to 150 percent of the case mix adjusted median, and then for approved quality enhancement for skilled nursing facilities. At no point would any amount of the assessed funds be allowed to provide for bonuses or profit-sharing for any officer, employee, or parent corporation.

Assessed funds may be used to pay employees who are providing direct care to a resident in a skilled nursing facility.

The provider assessment originally was to sunset after the first four years of implementation, which would have been July 2014. After the first three years or July 2013, the assessment amount was to be adjusted to be no more than 60.0 percent of the assessment collected in previous years. During the first year of the Nursing Facility Provider Assessment, which started in July 2010, the assessment was used exclusively to pay for administrative expenses incurred by the Kansas Department on Aging (now the Kansas Department for Aging and Disability Services), increased nursing facility payments to fund covered services to Medicaid beneficiaries, restoration of the 10.0 percent provider reduction in effect for dates of service from January 1 through June 30, 2010, and restoration of funding for FY 2010 rebasing and inflation to be applied to rates in FY 2011.

During the second year of the Nursing Facility Quality Care Assessment, the 2010 law's 10.0 percent provider reduction no longer needed to be restored, but increased payments to nursing facilities, reimbursement of administration costs, and rebasing and inflation were applied. In FY 2017, the provider assessment resulted in $39.9 million from all funding sources for increased payments to providers.

The 2013 Legislature passed HB 2160, which amended the statute that created a provider assessment on licensed beds in skilled nursing care and eliminated the sunset provision in the law. The expiration of the assessment program was extended for two additional years, or until July 1, 2016. The bill also eliminated the provision directing that after the first three years, the assessment amount was to be adjusted to no more than 60.0 percent of the assessment collected in previous years. The 2016 Legislature extended the expiration date of the assessment by four years, from July 1, 2016, to July 1, 2020, in Senate Sub. for HB 2365. The bill also requires the implementation of the statutory three-year rolling average to determine nursing facilities' reimbursement rates, notwithstanding the provisions of the 2015 Appropriations Bill for FY 2017.

Developmental Disabilities Provider Assessment

The 2011 Legislature passed SB 210, which created a provider assessment model for Home and Community Based Services Developmental Disabilities (HCBS/DD) providers and based assessments on the gross revenues received for providing services to individuals with developmental disabilities. Gross revenues excluded any charitable donations. The assessed funds could be used to draw down additional federal match funds that could be used for enhanced rates to providers.

The provider assessment for developmental disabilities providers has not been implemented as the providers are not an approved class of providers on which a provider assessment can be levied. The assessment would be contrary to federal regulations on managed care.

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Health and Social Services

F-4 The Opioid Crisis

Background, Definitions, and Statistics

According to the Centers for Disease Control and Prevention (CDC), drug overdose is now the leading cause of accidental death in the United States, with around 64,000 deaths in 2016. Over 53,000 of these deaths can be attributed to opioids, with 20,145 related to synthetic opioids, and over 15,000 related to heroin, leading many to label this an opioid crisis.[1] For perspective, on an average day in 2015, more than 650,000 opioid prescriptions were dispensed, 3,900 people began abusing prescription opioids, and 580 people began using heroin for the first time.[2] Currently, the CDC states an average of 91 people die every day from an opioid-related overdose. This includes all opioids, not just prescription opioids. Nearly 80 percent of new heroin users began by abusing prescription opioids according to the U.S. Attorney's Office. In 2015, almost 2.0 million people suffered from prescription opioid abuse disorders, and nearly 600,000 suffered from a heroin use disorder, according to the CDC. While the crisis has affected every demographic group in the United States, non-Hispanic whites between the ages of 18-25 seem to be most hard hit.[3] As of 2013, the CDC estimated the total economic burden of the opioid crisis at about $78.5 billion a year. This includes the cost of health care, lost productivity, addiction treatment, and criminal justice involvement.

New synthetic opioids that have begun to appear more frequently in the United States are intensifying the opioid crisis and increasing overdoses. A White House press briefing stated deaths due to synthetic opioids increased by almost 75 percent between 2014 and 2015, with a total of 9,580 deaths in 2015.[4] Fentanyl, which is 50 times more potent than heroin, is one of the driving forces behind the continued opioid crisis. While some fentanyl is made in professional labs, much of what is on the street is illicitly manufactured and often mixed with heroin or cocaine, sometimes without the user's knowledge. Just 2.0 milligrams of fentanyl is enough to be lethal. Police officers and first responders are particularly at risk as inhaling even a few airborne particles can induce an overdose. Fentanyl analogues have also been increasing in recent years. These opioids can be so strong that multiple doses of naloxone may be required to reverse an overdose.

National Opioid Legislation

The opioid epidemic has been addressed by Congress and the President many times in the past two years. President Obama signed into law the Comprehensive Addiction and Recovery Act and appropriated funds to each of the 50 states through the 21st Century Cures Act. To date, 67 bills have been introduced in the 115th Congress that address the opioid epidemic in some capacity. President Trump issued an executive order that created a national opioid commission, and through 2017 HR 244, appropriated $153 million to combat the opioid crisis.

States' Responses

The opioid crisis has now become a top priority in every state. However, the impact varies considerably between states, with West Virginia, New Hampshire, Kentucky, Ohio, and Rhode Island experiencing the largest number of overdoses. And while the opioid crisis has shown few signs of slowing, there has been some progress among states to combat further acceleration. Below are some of the approaches states have initiated.

Compact to Fight Opioid Addiction

In response to the crisis, 46 governors including Governor Brownback, signed the Compact to Fight Opioid Addiction at the 2016 National Governors Association Winter Meeting.[5] The Compact states its goals are to: reduce inappropriate opioid prescribing; change the nation's understanding of opioids and addiction; and ensure a pathway to recovery for individuals with addiction.

Prescription Drug Monitoring Programs

All 50 states have a prescription drug monitoring program (PDMP) in place. A PDMP is a statewide database that tracks the prescribing and dispensing of all controlled substances. State requirements vary concerning who and what is tracked, who is required or authorized to check or submit information, and the frequency information needs to be checked and updated. Many states share their data with other state's PDMPs and authorized users in those states. However, there are no federal regulations requiring states to share their information with all other states or the federal government.

Limiting Prescriptions

Some states have begun looking into placing limitations on opioid prescriptions. The Association of State and Territorial Health Officials (ASTHO) says 9 states currently have laws limiting initial opioid prescriptions to a 7-day supply instead of the previous 30-day supply. The only exception is New Jersey with a 5-day prescription limit. More states have begun to consider similar legislation as well. Other states, and even health insurance companies, are also utilizing prior authorization as a tool to limit the quantities of opioids dispensed. As of the end of 2016, 18 states had some form of legislation in place concerning prior authorization for prescription opioids.

Opioid Intervention Court

Buffalo, New York, created the nation's first opioid crisis intervention court after determining its ordinary drug treatment court was not enough to combat the opioid crisis. The court can get addicts into treatment in a matter of hours, instead of days; requires them to check in with a judge every day for a month; and utilizes strict curfews. It has been funded *via* a U.S. Justice Department grant with the intent of treating 200 people in a year. During the 2 months since the program began, none of the 80 people in the program had overdosed.

Good Samaritan Overdose Immunity Laws

Forty states and the District of Colombia have enacted some form of a Good Samaritan or 911 drug immunity law according to the National Conference of State Legislatures (NCSL). These laws provide immunity from arrest, charge, or prosecution for certain controlled substance possession and paraphernalia offenses, when someone is either experiencing an opioid-related overdose or is calling 911 to seek medical

attention for someone else suffering from an opioid-related overdose. What is covered under the law varies depending on the state.

Naloxone Access

Forty-seven states have passed legislation to expand access to naloxone in some form.[6] Naloxone, also known by the brand name Narcan, is an opioid antagonist, which means it can bind to opioid receptors and reverse or block the effects of other opioids, thereby reversing opioid induced overdoses. It can be administered *via* nasal spray or injected into the outer thigh muscle, veins, or under the skin. New evidence has shown that opioid-related deaths have been reduced by 9 to 11 percent in states that have promoted naloxone.[7] Most states have also passed laws to allow first responders to carry and administer naloxone. As of July 2017, the Prescription Drug Abuse Policy System (PDAPS) stated all 50 states have expanded the law to include the general public as well. Some states, such as Arizona, Maryland, and New Mexico, have utilized Medicaid to purchase naloxone to promote access for the public. Some states are also providing at-risk inmates naloxone and training on how to use it upon their release from jail. Officials hope this will reduce overdose deaths as well as expand the community's knowledge about naloxone and how to use it to save others.

Medication Assisted Treatment

Substance Abuse and Mental Health Services Administration (SAMHSA) states 49 states have federally certified treatment locations.[8] However, the laws concerning the programs and requirements vary by state. Medication assisted treatment (MAT) works to normalize brain chemistry and body functions, block the euphoric effects of opioids, and relieve physiological cravings. All three Food and Drug Administration (FDA)-approved medications have different licensure requirements, with Methadone requiring a SAMHSA certification, Buprenorphine requiring federal licensure, and Naltrexone requiring an individual licensed to prescribe medicines.[9] According to the Commission on Combating Drug Addiction, only about 10 percent of conventional drug treatment facilities in the United States provide MAT for opioid addiction.

Needle Exchanges

Forty states and the District of Columbia have some form of a needle exchange program.[10] Currently, only one in four drug users obtains all their needles from a sterile source. With the increase in heroin and other drugs injected *via* needle, there is also a rise in the number of HIV and hepatitis B and C. One way to help combat the spread of disease is to facilitate access to sterile needles *via* needle exchanges. The federal government lifted a ban on federal funding for needle exchanges in early 2016. Some states have also followed suit by making it easier for the establishment of needle exchanges. Many locations not only provide sterile needles but will also test for HIV and hepatitis B and C and provide condoms and naloxone. They will also help those who want to enter treatment find a program.

States and Cities Sue Drug Makers

Some cities and states have taken the fight against opioids to the door of opioid manufacturers. Mississippi was the first state to sue opioid manufacturers, Purdue Pharma and seven other companies, earlier this year. Ohio filed a lawsuit soon after against five drug manufacturers. Missouri and Oklahoma have also launched suits against opioid manufacturers. All the lawsuits allege that opioid manufacturers misrepresented the risks of opioids. Most recently, a group of state attorneys general announced a joint investigation into the marketing and sales practices of opioid manufacturers who they feel contributed to the opioid crisis.

Kansas

While Kansas has not been as deeply affected as other states by the opioid crisis, there were 150 deaths related to opioids in 2015.[11] The Kansas Bureau of Investigation also saw heroin importation increase 36 percent in 2015.[12] In response to the growing threat of the opioid

crisis, Kansas has begun to implement measures to mitigate the effects. Below are some of the measures Kansas has implemented.

Prescription Drug Monitoring Programs

K-TRACS, the state prescription drug monitoring program authorized by law in 2008, has been operating since April 1, 2011. The program provides a database of controlled substance prescriptions that have been dispensed by Kansas pharmacies and from out-of-state pharmacies to Kansas residents. The purpose of the database is to provide up-to-date web-based patient information to assist prescribers in providing appropriate treatment for their patients. Additionally, drugs federally scheduled in levels II through IV are monitored.

The program requires pharmacists to document prescription dispensing data on every written controlled substance prescription and allows both prescribers and pharmacists to check prescription histories to determine, in advance, if patients are acquiring drugs from multiple prescribers or pharmacies.

Drug Treatment Courts

Kansas has not established a statewide program for drug treatment courts. However, the cities of Kansas City, Lawrence, Topeka, and Wichita have developed their own municipal- or county-level programs. Drug treatment courts are established as an alternative to incarceration for those convicted of misdemeanors and offer treatment, support, and counseling. Many times, those who suffer from mental health disorders also suffer from addiction to drugs such as opioids. For some mental health courts, diagnosis of a major mental health disorder is required for participation. However, if the participant is also addicted to drugs, treatment for that addiction will coincide with treatment for the underlying mental health disorder.

Naloxone Access

On April 7, 2017, Governor Brownback signed HB 2217 into law expanding access to naloxone. HB 2217 amended the Kansas Pharmacy Act to create standards governing the use and administration of emergency opioid antagonists approved by the FDA to inhibit the effects of opioids and for the treatment of an opioid overdose. The bill required the Kansas Board of Pharmacy (Board) to issue a statewide opioid antagonist protocol, define applicable terms, establish educational requirements for the use of opioid antagonists, and provide protection from civil and criminal liability for individuals acting in good faith and with reasonable care in administering an opioid antagonist. The bill also requires the Board to adopt rules and regulations necessary to implement the provisions of the bill prior to January 1, 2018. The Board met this requirement in June 2017 (KAR 68-7-23).

Additionally, 2015 SB 102 would have required insurance providers to cover abuse-deterrent opioid analgesic drugs as preferred on their formulary.

Grant Moneys Received

Pursuant to the 21st Century Cures Act, each of the 50 states were authorized to receive federal grant money to combat the opioid epidemic. The first half of the funding was distributed on April 17, 2017, at which time, Kansas received $3.11 million from SAMHSA.

The FY 2017 Adult Drug Court and Veteran Treatment Courts Discretionary Grant Programs, administered by the U.S. Department of Justice, awarded the City of Wichita $398,972 to enhance its mental health court program.

Additionally, the Board is designated to receive $178,000 under the Harold Rogers Prescription Drug Monitoring Program, administered by the U.S. Department of Justice. The funds will allow prescribers in the state to submit quarterly reports and to compare their prescribing activity with other practitioners.

1 CDC. (2017, August 6). PROVISIONAL COUNTS OF DRUG OVERDOSE DEATHS, as of 8/6/2017. Retrieved from https://www.cdc.gov/nchs/data/health_policy/monthly-drug-overdose-death-estimates.pdf

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Health and Social Services

F-5 Recent Changes to Health Professions' Scope of Practice

This article provides information related to the legislative changes made to scopes of practice for health professions from 2010 to 2017. The health professions affected are: acupuncturists, addiction counselors, advanced practice registered nurses, applied behavior analysis service providers, crematory operators, dental hygienists, dentists, emergency medical services attendants, mental health technicians, naturopathic doctors, nurse-midwives, optometrists, pharmacists, pharmacy students or interns, pharmacy technicians, physical therapists, physician assistants, podiatrists, psychiatrists, and registered nurse anesthetists.

Acupuncturists

HB 2615 (2016) created the Acupuncture Practice Act, which provides for the licensure of acupuncturists by the Board of Healing Arts (active, exempt, and inactive licenses are created); exempts licensed physical therapists from the Acupuncture Practice Act when performing dry needling, trigger point therapy, or services specifically authorized under the Physical Therapy Practice Act; and exempts licensed acupuncturists from the Physical Therapy Practice Act. The Board of Healing Arts has adopted the required rules and regulations applicable to dry needling by physical therapists.

The practice of acupuncture includes, but is not limited to: techniques sometimes called "dry needling," "trigger point therapy," "intramuscular therapy," "auricular detox treatment," and similar terms; mechanical, thermal, pressure, suction, friction, electrical, magnetic, light, sound, vibration, manual treatment, and electromagnetic treatment; the use, application, or recommendation of therapeutic exercises, breathing techniques, meditation, and dietary and nutritional counselings; and the use and recommendation of herbal products and nutritional supplements, according to the acupuncturist's level of training and certification by the National Certification Commission for Acupuncture and Oriental Medicine, or its equivalent.

The practice of acupuncture does not include prescribing, dispensing, or administering any controlled substances as defined in KSA 2017 Supp. 65-4101 *et seq.* or any prescription-only drugs,

or the practice of the following: medicine and surgery, including obstetrics and the use of lasers or ionizing radiation; osteopathic medicine and surgery or osteopathic manipulative treatment; chiropractic; dentistry; or podiatry.

Additionally, the Acupuncture Practice Act provides a detailed list of the health professions exempt from acupuncture licensure.

Addiction Counselors

The Addiction Counselor Licensure Act (Act) was created by 2010 HB 2577.

Any person licensed as an addiction counselor, licensed addiction counselor, or substance abuse counselor prior to enactment of the bill was prohibited from practicing without being licensed under the Act and was required to meet the applicable requirements effective August 1, 2011.

However, the Act provided for grandfathering: anyone registered by the Behavioral Sciences Regulatory Board (BSRB), credentialed by the Department of Social and Rehabilitation Services (now known as the Department for Children and Families), or credentialed by the Kansas Association of Addiction Professionals as an alcohol and other drug abuse counselor or an alcohol and drug credentialed counselor licensed under the Act. A temporary license may be granted by the BSRB for a person waiting to take the examination for licensure.

Persons licensed under the Act and employees or professional associates of the licensee are required to disclose information acquired in rendering addiction counseling services under specific circumstances.

Subsequently, changes to the scope of practice for licensed addiction counselors (LACs) and licensed clinical addiction counselors (LCACs) were made by 2011 HB 2182. Case management was removed from the scope of addiction counseling. The independent practice of addiction counseling by LCACs was expanded to include not only the diagnosis and treatment of substance abuse disorders but also to allow for both independent practice and diagnosis and treatment of substance abuse disorders. The bill also allowed a LAC to practice in treatment facilities exempted under KSA 59-29b46(m). (Among the exempted facilities are licensed medical care facilities, licensed adult care homes, community-based alcohol and drug safety action programs, and state institutions at which detoxification services may have been obtained.) Individuals credentialed as alcohol and drug counselors who met the necessary requirements were allowed to be LCACs, engage in the independent practice of addiction counseling, and diagnose and treat substance use disorders.

SB 290 (2012) amended the Act to clarify the licensure requirements for LACs and LCACs and to address reciprocal licensure.

HB 2615 (2016) created a new category of licensure for master's level addiction counselors, who engage in the practice of addiction counseling limited to substance use disorders. The person is allowed to diagnose substance use disorders only under the direction of a LCAC, a licensed psychologist, a person licensed to practice medicine and surgery, or a person licensed to provide mental health services as an independent practitioner and whose licensure allows for the diagnosis and treatment of substance use disorders or mental disorders.

Effective September 1, 2016, pursuant to HB 2615, no person may engage in the practice of addiction counseling or represent oneself as a licensed master's addiction counselor, a master's addiction counselor, master's substance abuse counselor, or a master's alcohol and drug counselor without having first obtained a license as a master's addiction counselor. The requirement to practice only in a facility licensed by the Kansas Department for Aging and Disability Services (KDADS) was eliminated by the bill.

HB 2615 also grandfathered credentialed or registered alcohol and other drug counselors who complied with specific requirements prior to July 1, 2017. (*Note*: See page 10 for changes to the regulatory statutes administered by the BSRB for additional changes impacting multiple

professions, including those involved in addiction counseling.)

Advanced Practice Registered Nurses

In 2011, HB 2182 amended the Nurse Practice Act with regard to advanced practice registered nurses (APRNs). All references to an advanced registered nurse practitioner (ARNP) were changed in statute to APRN, and licensure of APRNs was required.

In 2016, HB 2615 authorized the Independent Practice of Midwifery Act by certified nurse-midwives who were licensed as APRNs. Further information is included in the section on nurse-midwives.

Applied Behavior Analysis Service Providers

HB 2744 (2014) created the Applied Behavior Analysis (ABA) Licensure Act for the licensure of ABA service providers by the BSRB. ABA means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

The bill established the licensed assistant behavior analyst (LaBA) and the licensed behavior analyst (LBA). The bill established a January 1, 2015, effective date of Autism Spectrum Disorder (ASD) coverage by large health insurance plans and extended the requirement to grandfathered individual and small group plans effective July 1, 2016. The licensure requirements for ABA providers were phased in and certain providers were exempt from licensure.

HB 2744 outlined a broader range of providers allowed to receive reimbursement for ABA services from January 1, 2015, through June 30, 2016. Reimbursement narrowed beginning July 1, 2016, to services provided by an autism services provider licensed or exempt from licensure under the ABA Licensure Act, except reimbursement is allowed for services provided by an autism specialist, an intensive service provider, or any other individual qualified to provide services under the Home and Community Based Services (HCBS) Autism Waiver administered by KDADS.

The bill required the BSRB to adopt rules and regulations for the implementation and administration of the ABA Licensure Act, by July 1, 2016. The BSRB has established these rules and regulations.

In 2015, the ABA Licensure Act was amended by HB 2352 with regard to the number of employees constituting a large and small employer, terms used in connection with group health benefit plans and the ASD coverage requirement. HB 2615 (2016) clarified the duties, powers, and functions of the BSRB as involving the regulation of individuals under several named acts, including the ABA Licensure Act.

Crematory Operators

In 2010, Senate Sub. for HB 2310 enacted new law to license crematory operators and made other changes governing cremation. A new definition of “crematory operator” was established and required that only licensed crematory operators may perform cremation.

Additionally, the term “crematory operator in charge” was amended to specify the person must be a licensed crematory operator and to require the individual to hold a funeral director’s license unless the crematory receives dead human bodies for cremation only through licensed funeral establishments. The bill also extended certain liability protections to crematory operators, embalmers, and assistant funeral directors.

Dental Hygienists

HB 2631 (2012) made several changes and additions to the Dental Practices Act for the purpose of expanding dental service in the state, including targeting children who are dentally underserved. The bill created an additional extended care permit (ECP) level of service

of dental hygienists, ECP III, for those dental hygienists who met the increased qualifications.

An ECP III does not have prescribing authority and must be sponsored by a dentist licensed in Kansas, as confirmed by a signed agreement stating the dentist will monitor the activities of the ECP III dental hygienist. A dentist is not allowed to monitor more than five ECP III dental hygienists. The ECP III is required to advise patients and legal guardians that the services provided are palliative or preventive and are not comprehensive dental diagnosis and care.

The tasks and procedures an ECP III may perform are limited to those activities that can be performed by a hygienist under the ECP I or ECP II, plus additional tasks that include the identification and removal of decay using hand instrumentation and placing a temporary filling; services related to dentures, including adjustment and checking for sore spots; smoothing of a sharp tooth with a slow speed dental hand-piece; use of a local anesthetic within certain limitations; extraction of deciduous teeth within certain limitations; and other duties delegated by the sponsoring dentist consistent with the Dental Practices Act. The bill also detailed the population to be served by an ECP III.

Dentists

HB 2182 (2011) amended the Dental Practices Act to allow for the franchise practice of dentistry. The bill also allowed licensed dentists to practice dentistry as employees of a general hospital in counties with populations of less than 50,000.

A special volunteer dental license was established in HB 2631 (2012) for dentists who are retired from active practice and wish to donate their expertise for the dental care and treatment of indigent and underserved persons in Kansas. The bill set forth stipulations related to this license, including that no payment of an application fee, license fee, or renewal fee is required and no continuing education is required for issuance or renewal. Dentists with a special volunteer dental license are limited to providing dental care without payment or compensation only to underserved and indigent persons in the state.

Emergency Medical Services Attendants

House Sub. for SB 262 (2010) amended the statutes related to Emergency Medical Services (EMS). The bill changed the titles of EMS attendants as follows: “emergency medical technician–intermediate” (EMT-I) changed to “advanced emergency medical technician” (AEMT); “first responder” changed to “emergency medical responder” (EMR); and “mobile intensive care technician” (MICT) changed to “paramedic.”

The bill established a scope of practice for the professions by rules and regulations established by the Kansas Board of Emergency Medical Services (Board). The professions were required to complete a course of instruction approved by the Board and specifically be authorized to perform activities by medical protocol.

The changes made in 2010 allowing EMS attendants to transition from authorized activities to scope of practice, renaming attendant levels to reflect national nomenclature, and allowing for enhanced skills sets to create the ability to provide a higher level of care were amended again in 2011 by HB 2182. The 2011 changes were to support the transition and to provide options for those required to meet the transition requirements. EMS attendants were allowed the option to transition to a lower level of certification. In addition, the 2011 changes allowed an EMT-I, an AEMT, an EMT, an EMT-defibrillator (EMT-D), and an EMR to provide medical services within their scope of practice when authorized by medical protocols or upon order when direct voice communication was maintained and monitored by specific authorized medical personnel.

In 2011, HB 2182 also changed the initiation date to allow attendants complete certification cycles to accomplish the transition requirements and provided the conditions to be met by each EMS certificate holder to transition to a higher level. The scopes of practice of an EMT-I, and AEMT, an EMT, an EMT-D, and an EMR were set out in detail by the bill. The term “medical advisor” was

replaced with "medical director" and each EMS was required to have a medical director whose duties included the implementation of medical protocols and the approval and monitoring of the attendants' education.

In 2016, HB 2387 made changes to the authorized activities of those who have certain EMS certifications. Under continuing law, each classification of EMS attendant is authorized to perform the interventions of the lower levels of certified attendants. The bill changes authorized activities by an EMT-I transitioning to an AEMT and updates and by EMTs and EMRs. The terms EMT, EMT-I, EMT-D, MICT, EMT-I/D, AEMT, and paramedic are removed from the list of those individuals at least one of which must be on each vehicle providing emergency medical services and replaces the list with a reference to an attendant certified under statutes applicable to those listed categories.

Mental Health Technicians

In 2017, HB 2025 amended the Mental Health Technician's Licensure Act. The bill changed the description of services in the definition of "practice of mental health technology" by deleting "responsible nursing for patients with mental illness or intellectual disability" and inserting "participation and provision of input into the development of person-centered treatment plans for individuals or groups of individuals specified in paragraph (b)" (those specified in paragraph (b) are "the mentally ill, emotionally disturbed, or people with intellectual disability") and by including facilitating habilitation of individuals. The bill also replaced the term "patient" with "individual."

Naturopathic Doctors

Among the changes made by 2010 House Sub. for SB 83 was the creation of the Naturopathic Doctors Licensure Act. The bill changed the regulatory status of naturopathic doctors with the Board of Healing Arts from registrants to licensees. In addition, the bill authorized naturopaths to form professional corporations and provided clarifying language that licensure does not require health insurance to provide covered services.

Nurse-Midwives

The Independent Practice of Midwifery Act (Midwifery Act) was created by 2016 HB 2615. Effective January 1, 2017, the Midwifery Act allows certified nurse-midwives to practice without a collaborative practice agreement under specific conditions set forth below and requires the certified nurse-midwife to hold a license from the Board of Nursing as an APRN and the Board of Healing Arts for the independent practice of midwifery. The bill required the Board of Healing Arts, in consultation with the Board of Nursing, to promulgate rules and regulations no later than January 1, 2017, pertaining to certified nurse-midwives engaging in the independent practice of midwifery and governing the ordering of tests, diagnostic services, prescribing of drugs, and referral or transfer to physicians in the event of complications or emergencies. No regulations have been adopted as of September 1, 2017.

"Independent practice of midwifery" means the provision of clinical services by a certified nurse-midwife without the requirement of a collaborative practice agreement with a person licensed to practice medicine and surgery. The clinical services are limited to those associated with a normal, uncomplicated pregnancy and delivery, including the prescription of drugs and diagnostic tests, the performance of an episiotomy or a repair of a minor vaginal laceration, the initial care of the normal newborn, and family planning services, including treatment or referral of a male partner for sexually transmitted infections.

The standards of care in the ordering of tests, diagnostics services, and the prescribing of drugs shall be those standards that protect patients and are comparable to those for persons licensed to practice medicine and surgery providing the same services.

The bill also prohibited nurse-midwives engaged in the independent practice of midwifery from performing or inducing abortions or from prescribing drugs for an abortion.

Optometrists

In 2010, HB 2584 allowed optometrists to dispense ophthalmic lenses with medication evenly over any period of time required, a change from no more than a 24-hour supply of medication in ophthalmic lenses.

In 2012, HB 2525 updated the optometry law to reflect the single licensure level of optometrists required by the Board of Examiners in Optometry by eliminating language referring to three different levels of licensure, as well as clarifying the minor surgical procedures optometrists may perform.

Pharmacists, Pharmacy Students or Interns, and Pharmacy Technicians

In 2010, HB 2448 allowed a pharmacist, or a pharmacy student or intern working under the direct supervision and control of a pharmacist, to administer the influenza vaccine to a person six years of age or older. The bill also allowed a pharmacist to report the immunizations to the vaccinee's primary care provider by electronic facsimile, e-mail, or other electronic means in addition to by mail.

The Pharmacy Act was amended by 2012 SB 211 to add a second exception to the requirement that pharmacists fill all prescriptions in strict conformity with the directions of the prescriber. The exception allows a pharmacist to provide up to a three-month supply of a prescription drug that is not a controlled substance or a psychotherapeutic drug when a practitioner has written a drug order to be filled with a smaller supply, but the prescription includes enough refills to fill a three-month supply.

Another statutory exception allows a pharmacist who receives a prescription order for a brand-name drug to substitute a different brand in order to achieve a lesser cost to the purchaser, unless the prescriber has instructed the prescription be dispensed as written or as communicated, or the federal Food and Drug Administration has determined the generic prescription medication is not bioequivalent to the prescribed brand name prescription medication.

Senate Sub. for HB 2055 (2017) added a third exception to the requirement prescriptions be filled in strict conformity with any directions of the prescriber to address biological products. The bill allows a pharmacist to exercise brand exchange (substitution) without prior approval from the prescriber, unless certain conditions exist. A pharmacist who receives a prescription order for a biological product may exercise brand exchange with a view toward achieving a lesser cost to the purchaser, unless the prescriber has instructed the prescription be dispensed as written or as communicated or the biological product is not an interchangeable biological product for the prescribed biological product. The bill required pharmacists to notify the patient and prescriber of the substitution of a biological product after the exchange has occurred and established recording requirements for biological product substitutions.

The bill also defined "biological product" and "interchangeable biological product" and clarified the definition of a "brand exchange" to distinguish between a brand exchange for a prescribed drug product and brand exchange for a prescribed biological product, provided for emergency refills of biological products by pharmacists, and addressed allowable charges for brand exchange of biological products.

Additionally, Senate Sub. for HB 2055 required the Board of Pharmacy to adopt rules and regulations restricting the tasks a pharmacy technician may perform prior to passing any required examinations and required every pharmacy technician registered after July 1, 2017, to pass a certified pharmacy technician examination approved by the Board of Pharmacy. No rules and regulations have been adopted as of September 1, 2017.

Senate Sub. for HB 2146 (2014) amended the "practice of pharmacy" definition to include performance of collaborative drug therapy management pursuant to a written collaborative practice agreement with one or more physicians who have an established physician-patient relationship. Other definitions added to the Pharmacy Act were "collaborative practice

agreement" and "collaborative drug therapy management."

A collaborative practice agreement is a written agreement or protocol between one or more pharmacists and one or more physicians providing for collaborative drug therapy management.

The collaborative practice agreement must contain conditions or limitations pursuant to the collaborating physician's orders and be within the physician's lawful scope of practice and appropriate to the pharmacist's training and experience.

Collaborative drug therapy management allows a pharmacist to perform patient care functions for a specific patient delegated to the pharmacist by a physician through a collaborative practice agreement. A physician who enters into an agreement remains responsible for the care of the patient throughout the collaborative drug therapy management process. Under this management process, a pharmacist cannot alter a physician's orders or directions, diagnose or treat any disease, independently prescribe drugs, or independently practice medicine and surgery.

Senate Sub. for HB 2146 also provided for the registration, discipline, training, and oversight of pharmacist interns. These new provisions relating to pharmacist interns are considered part of the Pharmacy Act. The bill authorized the Board of Pharmacy to adopt rules and regulations necessary to ensure pharmacist interns are adequately trained as to the nature and scope of their duties. No such rules or regulations have been adopted as of September 1, 2017. Pharmacist interns must work under the direct supervision and control of a pharmacist who is responsible to determine the pharmacist intern is in compliance with applicable rules and regulations of the Board of Pharmacy and is responsible for the acts and omissions of the pharmacist intern in performing the intern's duties.

The Pharmacy Act was amended in 2017 HB 2030 to change, from 18 to 12 years of age, the minimum age for a person to whom a pharmacist or a pharmacy student or intern working under the direct supervision and control of a pharmacist is authorized to administer a vaccine, other than the influenza vaccine, pursuant to a vaccination protocol and with the requisite training. Continuing law requires immunizations provided under the authorization of the Pharmacy Act be reported to appropriate county or state immunization registries. The bill allowed the person vaccinated or, if the person is a minor, the parent or guardian of the minor, to opt out of the registry reporting requirement.

Physical Therapists

The Physical Therapy Practice Act was amended by 2010 House Sub. for SB 83 with regard to the licensure of physical therapists by creating two new licensure categories: "exempt license" and "federally active license."

The bill authorized the Board of Healing Arts to issue an "exempt license" to a person who is not regularly engaged in the practice of physical therapy in Kansas and who does not hold himself or herself out to the public as being professionally engaged in the practice of physical therapy. The exempt licensee may serve as a paid employee or unpaid volunteer of a local health department or an indigent health care clinic. Individuals holding an exempt license are not required to have professional liability insurance coverage.

The Board of Healing Arts is authorized to issue a "federally active license" only to a person who meets the requirements for a license to practice physical therapy in Kansas and who practices that branch of physical therapy solely in the course of employment or active duty in the U.S. government or any of its departments, bureaus, or agencies.

The federally active license holder may engage in limited practice outside the course of federal employment consistent with the scope of practice of exempt licenses, except the scope of practice is limited to providing direct patient care services, supervision, direction, or consultation for no compensation. The license holder is permitted to receive payment for subsistence and actual expenses incurred in providing such services. The license holder is permitted to render professional

services as a charitable health care provider, but is not required to maintain individual professional liability insurance.

In 2013, HB 2066 amended the Physical Therapy Practice Act to allow physical therapists to initiate a physical therapy treatment without referral from a licensed health care practitioner. In prior law, physical therapists were allowed only to evaluate patients without physician referrals and to initiate treatment after approval by certain health care providers.

HB 2066 also required physical therapists, in instances where treatment of a patient occurs without a referral, to obtain a referral from an appropriate licensed health care practitioner to continue treatment if, after 10 patient visits or a period of 15 business days from the initial treatment visit (follows the initial evaluation), the patient is not progressing toward documented treatment goals as demonstrated by objective, measurable, or functional improvement, or any combination of these criteria.

When a patient self-refers to a physical therapist, the physical therapist is required, prior to commencing treatment, to provide written notice to the patient that a physical therapy diagnosis is not a medical diagnosis by a physician. The bill also provided that new provisions of law created by the bill were not to be construed to prevent a hospital or ambulatory surgical center from requiring a physician order or referral for physical therapy services for a patient currently being treated in such facility.

HB 2066 also authorized physical therapists to perform wound debridement services only after approval by a person licensed to practice medicine and surgery or other licensed health care practitioner in appropriately related cases. The bill deleted the requirements limiting physical therapists to evaluation of patients without a physician referral and the conditions and time frame specified for permitted evaluation and treatment without referral. Prior to this bill, physical therapists were permitted to initiate treatment only after approval by a licensed physician, a licensed podiatrist, a licensed physician assistant or a licensed advanced practice registered nurse, working pursuant to the order or direction of a licensed physician, a licensed chiropractor, a licensed dentist, or licensed optometrist in appropriately related cases. The bill also deleted provisions authorizing physical therapists to initiate treatment under the approval of a healing arts practitioner licensed by another state.

HB 2615 (2016) amended the Physical Therapy Practice Act to include the practice of dry needling within the scope of practice for licensed physical therapists, exempted licensed physical therapists from the Acupuncture Practice Act when performing dry needling, and exempted licensed acupuncturists from the Physical Therapy Practice Act. The Board of Healing Arts has adopted the required rules and regulations applicable to dry needling.

Physician Assistants

HB 2673 (2014) made changes to the Kansas Physician Assistant Licensure Act to replace the statutory limitation on the number of physician assistants (PAs) that may be supervised by a physician and directed the Board of Healing Arts to establish regulations imposing limits appropriate to different patient care settings and creating new licensure designations for PAs. In 2015, Senate Sub. for HB 2225 amended the statutory limitation on the number of PAs a physician may supervise to two until January 11, 2016.

The bill also created licensure designations of “active license” and “licensure by endorsement,” and eliminated the designation of a “federally active license.”

Additionally, the practice of a PA was expanded to allow a PA, when authorized by a supervising physician, to dispense prescription-only drugs according to rules and regulations adopted by the Board of Healing Arts governing prescription-only drugs, when dispensing is in the best interest of the patient and pharmacy services are not readily available, and the amount dispensed is not in excess of the quantity necessary for a 72-hour supply. The effective date of a PA’s authority to dispense prescription-only drugs was amended

by Senate Sub. for HB 2225 to an effective date of January 11, 2016.

Senate Sub. for HB 2225 amended the Physician Assistant Licensure Act to create the designations of "exempt license" and "federally active license."

An "exempt license" may be issued to a licensed PA who is not regularly engaged in PA practice in Kansas and does not hold himself or herself out publicly to be engaged in such practice. An exempt licensee is entitled to all privileges of a PA, is subject to all provisions of the Physician Assistant Licensure Act, and is allowed to be a paid employee of a local health department or an indigent health care clinic.

The Board of Healing Arts may issue a "federally active license" to a licensed PA who practices as a PA solely in the course of employment or active duty with the federal government. Under this designation, a person may engage in limited practice outside the course of federal employment consistent with the scope of practice of the exempt licensees, except the scope is limited to: performing administrative functions; providing direct patient care services gratuitously or providing supervision, direction, or consultation for no compensation (payment for subsistence allowances or actual and necessary expenses incurred in providing such services is allowed); and rendering professional services as a charitable health care provider.

Senate Sub. for HB 2225 also allowed a PA to write do-not-resuscitate (DNR) orders if delegated the authority by a physician, and revised the DNR statutory form to include a PA signature line.

It should be noted, with the enactment of 2017 Sub. for SB 85 (Simon's Law), a DNR or similar physician's order cannot be instituted for an unemancipated minor unless at least one parent or legal guardian of the minor has been informed, orally and in writing, of the intent to institute the order. A reasonable attempt to inform the other parent must be made if the other parent is reasonably available and has custodial or visitation rights. The information need not be provided in writing if, in reasonable medical judgment, the urgency of the decision requires reliance on providing the information orally. The bill provides that either parent or the unemancipated minor's guardian may refuse consent for a DNR or similar order, either orally or in writing. Further, the bill provides that no DNR or similar order can be instituted, orally or in writing, if there is a refusal of consent.

Senate Sub. for HB 2225 also changed "written protocol" to "written agreement" and "responsible physician" to "supervising physician" with regard to the authority of a PA to prescribe drugs. The bill reverted to the use of the terms in law prior to July 1, 2014, but only until January 11, 2016, when the new terms became effective. Supervising physician means a physician who has accepted responsibility for the medical services rendered and the actions of the PA while performing under the direction and supervision of the supervising physician. The Board of Healing Arts has adopted the required rules and regulations governing the practice of PAs.

Podiatrists

The Podiatry Act was amended by 2014 HB 2673 to expand and clarify the scope of podiatry and podiatric surgery and to create a Podiatry Interdisciplinary Advisory Committee to the Board of Healing Arts to advise and make recommendations on matters relating to the licensure of podiatrists to perform surgery on the ankle. "Podiatry" was previously defined as the diagnosis and treatment of all illnesses of the human foot. The bill changed the definition of podiatry to mean the diagnosis and medical and surgical treatment of all illnesses of the human foot, including the ankle and tendons which insert into the foot as well as the foot. The bill prohibits podiatrists from performing ankle surgery unless the podiatrist has completed a three year post-doctoral surgical residency program in reconstructive rear foot/ankle surgery and is either board-qualified (progressing to certification) or board-certified in reconstructive rear foot/ankle surgery by a nationally recognized certifying organization acceptable to the Board of Healing Arts. Surgical treatment of the ankle by a podiatrist is required to be performed only in a medical care facility.

Psychiatrists

HB 2615 (2016) provided for a temporary license, not to exceed two years, to be issued to persons who have completed all requirements for a doctoral degree approved by the BSRB but have not received such degree conferral and who provide documentation of such completion.

Registered Nurse Anesthetists

In 2010, HB 2619 amended the scope of practice allowed for registered nurse anesthetists (RNAs). An RNA, upon the order of a physician or dentist and as a member of a physician- or dentist-directed health care team, is allowed to order or administer appropriate medication and anesthetic agents necessary to implement anesthesia plans of care pre- and post-analgesia and during the peri-anesthetic or pre-analgesic period and to order necessary medications and tests in the peri-anesthetic or peri-analgesic period and take appropriate action during that period.

Other Changes Related to Licensure of Health Professions

Changes made from 2014 to 2017 related to the BSRB and the Board of Healing Arts that affected multiple health professions are outlined below.

Behavioral Sciences Regulatory Board

HB 2615 (2016) standardized regulatory statutes administered by the BSRB that apply to psychologists, professional counselors, social workers, addiction counselors, and marriage and family therapists. The bill clarified the duties, powers, and functions of the BSRB as involving the regulation of individuals under the Social Workers Licensure Act, the Licensure of Master's Level Psychologists Act, the Applied Behavior Analysis Licensure Act, the Marriage and Family Therapists Licensure Act, and the Addiction Counselor Licensure Act. The standardized provisions pertain to licensure by reciprocity, the reasons for disciplinary action against a licensee, and the licensure fees charged by the BSRB.

The bill allows the BRSB to require fingerprinting and background checks on licensees, places licensed psychologists and social workers under the Kansas Administrative Procedure Act, establishes supervisory training standards for professional counselors and marriage and family therapists, and creates a new category of licensure for master's level addiction counselors.

Additionally, the bill requires a two-thirds majority vote of the BSRB to issue or reinstate the license of an applicant with a felony conviction. The bill updates several statutes by deleting the terms "state certified alcohol and drug abuse counselor" and "counselor" from applicable statutes and inserting "licensed addiction counselor," "licensed master's addiction counselor," and "licensed clinical addiction counselor" into applicable statutes.

Healing Arts Act

HB 2673 (2014) amended provisions of the Healing Arts Act related to institutional licenses. The bill removed the requirement for applicants who attend out-of-state schools of medicine or osteopathic medicine to have attended a school that has been in operation for at least 15 years. The requirement that the applicant has attended an institution whose graduates have been licensed in a state or states with standards similar to Kansas remains.

The bill removed the option for an institutional license holder to provide mental health services pursuant to written protocol with a person who holds a license that is not an institutional license. Instead, the institutional license holder is required to meet the previously optional requirements of employment by certain mental health facilities for at least three years and requiring the institutional license holder's practice be limited to providing mental health services that are a part of the licensee's paid duties, and are performed on behalf of the employer.

However, in 2017, Senate Sub. for HB 2027 amended the statute governing institutional licenses and restrictions placed on practice privileges of these license holders. The bill

reinserted the language removed in 2014 to allow for reinstatement of an institutional license of an individual who was issued an institutional license prior to May 9, 1997, and who is providing mental health services under a written protocol with a person who holds a Kansas license to practice medicine and surgery other than an institutional license.

The Healing Arts Act was again amended by 2015 Senate Sub. for HB 2225 to clarify a reentry license must be an "active" reentry license and to create a resident active license. A resident active license can be issued to a person who has successfully completed at least one year of approved postgraduate training; is engaged in a full-time, approved postgraduate training program; and has passed the examinations for licensure. The Board of Healing Arts is required to adopt rules and regulations regarding issuance, maintenance, and renewal of the license. These rules and regulations have not been adopted as of September 1, 2017. A resident active licensee is entitled to all privileges attendant to the branch of the healing arts for which such license is used.

Additionally, Senate Sub. for HB 2225 expanded the scope of the "special permit"—to include the practice of medicine and surgery—that may be issued by the Board of Healing Arts to any person who has completed undergraduate training at the University of Kansas School of Medicine who has not yet commenced a full-time approved postgraduate training program. The holder of the special permit is allowed to be compensated by a supervising physician, but is not allowed to charge patients a fee for services rendered; is not allowed to engage in private practice; is allowed to prescribe drugs, but not controlled substances; is required to clearly identify himself or herself as a physician in training; is not deemed to be rendering professional service as a health care provider for the purposes of professional liability insurance; is subject to all provisions of the Healing Arts Act, except as otherwise provided in the bill; and is required to be supervised by a physician who is physically present within the health care facility and is immediately available.

The special permit expires the day the holder of the permit becomes engaged in a full-time approved postgraduate training program or one year from issuance. The permit may be renewed one time. The Board of Healing Arts is allowed to adopt rules and regulations to carry out the provisions related to the special permit holder. No such regulations have been adopted as of September 1, 2017.

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Health and Social Services

F-6 State Hospitals

The Kansas Department for Aging and Disability Services (KDADS) is responsible for the administration of Larned State Hospital (LSH) and Osawatomie State Hospital (OSH) for Kansans suffering from mental illness and for the Kansas Neurological Institute (KNI) and Parsons State Hospital and Training Center (PSH) for individuals with intellectual and developmental disabilities. An overview of issues regarding OSH and LSH that came to the attention of the Legislature during the 2016 and 2017 sessions and an overview of state hospital financing is provided.

Osawatomie State Hospital

OSH was established in 1855 and provides services to adults diagnosed with psychiatric disorders regardless of ability to pay or legal status. OSH is licensed by the Kansas Department of Health and Environment (KDHE) to serve 206 patients and currently serves 146 individuals from 44 counties in Kansas in collaboration with 12 Community Mental Health Centers. These centers refer individuals to the hospital through a screening process; however, a moratorium on admissions above 146 was issued in mid-2015.

In addition to being licensed by KDHE, OSH receives oversight and certification from the federal Centers for Medicare and Medicaid Services (CMS). CMS issues Medicare and Medicaid Disproportionate Share for Hospital (DSH) programs payments to OSH. In December 2015, CMS decertified OSH and subsequently suspended Medicare and DSH payments.

Centers for Medicare and Medicaid Services Oversight. In 2014, OSH began having issues with maintaining census. OSH was over-census for 9 months from March 3 through December 6, 2014. The number of patients at OSH reached an overall 10-year high on August 23, 2014, with a weekly average of 251 patients. (OSH began maintaining census at its licensed capacity on December 13, 2014.) The increased census during this 9-month period triggered a CMS survey of OSH. On December 5, 2014, CMS sent a letter citing issues with the physical environment at OSH that had to be remediated to maintain certification. Renovations to complete a Plan of Correction for CMS began in Spring 2015. In May 2015, 60 beds were removed from use to complete the CMS-mandated construction. Approximately $3.5 million was added in a

2016 Governor's Budget Amendment to support individuals and communities impacted by the OSH reduced census during renovation.

On November 3, 2015, CMS conducted another survey at OSH amid concerns the nursing service requirements were not being met. On November 24, 2015, CMS released its survey findings stating, among other things, various nursing security protocols were not being followed. On December 21, 2015, CMS decertified OSH, citing the facility for issues related to patient health and safety. The main impact on funding was through the loss of DSH and Medicare reimbursements for any patients who would have been eligible during their treatment at OSH. (As of October 2017, OSH is still taking patients in accordance with the moratorium; CMS decertification pertains to billing rather than admissions.) KDADS estimates that during the period the hospital is decertified, the loss in combined revenue is roughly $1.0 million per month, starting January 2016, until the hospital is recertified.

On May 8th, 2017, federal CMS surveyors conducted a full recertification survey for the 60 beds of Adair Acute Care at OSH. On June 9, 2017, CMS released a report citing OSH for sanitation issues related to the kitchen, disease control for patients, and internal policies needing revisions. KDADS took corrective actions and requested CMS revisit. On August 11, 2017, CMS returned to survey issues previously cited at Adair Acute Care. CMS found no issues with Adair Acute Care for this limited scope deficiency survey. As of October 17, 2017, CMS has not returned to perform the second reasonable assurance survey to recertify the 60 beds for Medicare and Medicaid reimbursements, so OSH has not been recertified.

Moratorium. The Secretary for Aging and Disability Services (Secretary) declared a moratorium on OSH admissions on June 21, 2015, to control census during construction. OSH did not close nor stop admitting new patients; rather, the census was capped at 146 and a waiting list was created. KSA 2016 Supp. 59-2968 authorizes the Secretary to notify the Supreme Court of the State of Kansas and each district court with jurisdiction over all or part of the catchment area served by a state psychiatric hospital that the census of a particular treatment program of that state psychiatric hospital has reached capacity and no more patients may be admitted. Following notification that a state psychiatric hospital program has reached its capacity and no more patients may be admitted, any district court with jurisdiction over all or part of the catchment area served by that state psychiatric hospital, and any participating mental health center that serves all or part of that same catchment area, may request that patients needing that treatment program be placed on a waiting list maintained by that state psychiatric hospital. Patients are admitted in chronological order. At the Legislative Budget Committee meeting on October 5, 2017, the Secretary testified there was an average wait time of 30 hours to be admitted.

Larned State Hospital

LSH, located in south-central Kansas, is the largest psychiatric facility in the state and serves the western two-thirds of the state. The hospital serves adults with serious and persistent mental illnesses, most of whom have been deemed a danger to themselves or others. LSH has a Sexual Predator Treatment Program (SPTP) to treat offenders who have completed their prison sentences but have been involuntarily committed because a judge or jury found they were "sexually violent predators," which means they have a "mental abnormality or personality disorder" that makes it likely they will engage in sexual violence again if not treated. LSH is accredited by The Joint Commission and certified by CMS.

The SPTP, established by statute in 1994, provides for the civil commitment of persons identified by the law as sexually violent predators. KDADS states the program's two missions are to provide for the safety of Kansas citizens by establishing a secure environment in which persons identified as sexually violent predators can reside and to offer treatment with the aim of reducing their risk for re-offending while allowing motivated persons who complete treatment to return to society. The program serves adult male patients from the state who have been adjudicated through Kansas sexually violent predator treatment laws and are

committed for treatment under civil statues. In FY 2017, the average daily census for the SPTP program at the LSH campus totaled 232 patients and the average at the reintegration units totaled 29 patients.

Legislative Post Audits. The Legislative Division of Post Audit (LPA) completed two recent performance audits on the SPTP. The first, published in September 2013, looked at whether the program was appropriately managed to ensure the safety and well-being of program staff and offenders. Included in the audit findings was that a significant number of direct care staff positions were vacant; program staff worked a significant amount of overtime to provide safety, security, and treatment; and even with significant overtime, the program failed to meet its internal minimum staffing goals.

In April 2015, the second LPA performance audit report, "Larned State Hospital: Reviewing the Operations of the Sexual Predator Treatment Program, Part 2," considered how Kansas' SPTP compared to similar programs in other states and best practice and what actions could be taken to reduce the number of offenders committed to the SPTP.

The audit findings comparing Kansas' program to those in other states included: the Kansas program did not adhere to recommended practices for sexual predator programs to emphasize individualized treatment; residents completing the first five phases of the program were not necessarily equipped with the skills to be successful in finding a job or basic life skills; appropriate records and documentation to effectively manage the program were not maintained; and annual reports had not been filed as required by statute.

Additionally, the audit noted an insufficient local labor force will create staffing problems for the SPTP as it grows. The audit considered six options for reducing the resident population. Copies of the full audit reports and the highlights may be accessed at *http://www.kslpa.org/*.

Overtime All Funds Expenditures for the Kansas State Hospitals FY 2016 and FY 2017

	FY 2016	FY 2017
KNI	$ 104,355	$ 183,719
LSH	4,163,911	3,976,643
OSH	833,888	1,051,507
PSH	270,096	370,620

Staffing and management. Staffing shortages have persisted at LSH, resulting in an increase of overtime hours worked by existing staff. KDADS reported the hospital has struggled to recruit staff in a rural area with low unemployment. At the April 18, 2016, Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight (KanCare Oversight) meeting, Larned employees discussed staffing problems at LSH. The testimony outlined how mandatory overtime and limited time between shifts were taking a toll on workers and their families. Those testifying spoke as individuals and not as representatives of KDADS or other state agencies (*http://www.kslegislature.org/li/b2015_16/committees/ctte_jt_robert_g_bob_bethell_joint_committee_1/documents/minutes/20160418.pdf*). Then Interim Secretary Keck said staffing concerns at LSH were valid, and he has been working to improve employee morale since he took over in December 2015. In April 2017, Secretary Keck reported to the KanCare Oversight Committee staffing vacancies were decreasing and overtime was diminishing.

In April 2016, about 60 mental health inmates were moved between state facilities as a means to alleviate staffing shortages at LSH. The plan moved dozens of inmates with mental health issues from LSH units to another facility on the same campus run by the Department of Corrections. The inmates still receive psychiatrist services in the new location. Concern was expressed by a Kansas Organization of State Employees representative that some inmates who need psychiatric care would be moved to facilities where corrections staff do not have mental health training.

LSH also has faced management changes in recent years. The superintendent who had been at LSH since 2012 resigned in March 2016. The KDADS Commissioner of Behavioral Health Services served in an interim capacity until an interim superintendent was appointed in April 2016, while a search for a permanent superintendent took place. Bill Rein, former chief counsel for KDADS and most recently KDADS Commissioner of Behavioral Health Services, was named LSH Superintendent in June 2016. In August 2016, the LSH Chief Fiscal Officer (CFO) departed employment with the hospital. The CFO was facing a federal probe related to employment in a previous position. An audit of the hospital's finances was launched.

Additionally, the general counsel who leads the legal department at LSH was transferred to the KDADS central office in Topeka in May 2016. A legal assistant position also was moved. KDADS said the move would allow the agency to use its legal staff more efficiently by having an employee previously focused on one state hospital to assisting with other KDADS functions. Some OSH legal staff also were moved to the central office.

Recent legislative action. Several bills were considered during the 2016 and 2017 legislative sessions. In 2016, SB 407 revived a statute in the Sexually Violent Predator Act requiring annual examination and court review of persons in transitional release, providing procedures for hearings on whether such person is safe to be placed in conditional release, and setting the standard for court determination of whether the person is appropriate for conditional release. Another bill proposed was HB 2559, which would have required state agencies to develop minimum safe staffing levels, report whether they met those levels, and implement recruiting and retention plans if they fall below minimum staffing for two months. However, the bill died in Committee.

SB 477 was introduced in 2016 to form a ten-member oversight committee to oversee OSH and LSH. Duties of the committee would have included, among other things, monitoring both hospitals' patient populations and treatment outcomes, staffing issues, and patient and employee safety concerns. The bill died on General Orders in the Senate.

In 2016, the Legislature approved $17.0 million in extra funding for LSH and OSH. LSH received $450,000 to raise mental health technician pay—amounting to a 2.5 percent pay raise for mental health technicians, the same increase received by corrections officers.

During the 2016 Legislative Interim, the Special Committee on Larned and Osawatomie State Hospitals met on December 19 and 20. The Committee received updates on both hospitals, heard testimony from the public, and made recommendations to the 2017 Legislature. The Committee did not recommend proposed legislation. (Find the Report at *2017 Interim Committee Report on the Special Committee on Larned and Osawatomie State Hospitals*.)

Senate Sub. for HB 2278 was passed by the 2017 Legislature, exempting the state hospitals and other select entities from a general requirement in law that public buildings have adequate security measures in place before the concealed carry of handguns can be prohibited.

In 2017, the Legislature approved $11.8 million in FY 2017 and $6.6 million for FY 2018 as additional operating funding for OSH, primarily due to the hospital having lost federal funding due to decertification. The Legislature also added $4.7 million for both FY 2018 and FY 2019 to open at least 20 additional beds for patients at OSH or in the community. The Legislature added language requiring KDADS to complete an engineering survey on the buildings at OSH to determine which buildings could be renovated and which buildings should be demolished, and the costs associated with both options. The Legislature also required KDADS to issue a request for proposal (RFP) for the construction of a 100-bed psychiatric care facility at OSH.

The 2017 Legislature added $6.5 million in FY 2017, FY 2018, and FY 2019 for LSH to replace federal and other funding lost due to a decrease in the number of patients eligible for Medicaid and Medicare reimbursements and cost recoupment by CMS due to reconciliation of past patient categorizations.

State Hospital Financing

The state hospitals are primarily funded through three basic sources. The first is the State General Fund, which consists of money collected through various statewide taxes. The second is each hospital's fee fund, which includes collections from Medicare, private payments, Social Security, and insurance. The third source is federal Title XIX funding, also known as Medicaid. The federal Title XIX funding is transferred to the KDADS central pool and is then redistributed among the four state hospitals in amounts equal to its approved appropriations. State developmental disabilities hospitals (KNI and PSH) are Medicaid certified as intermediate care facilities for persons with developmental disabilities, and nearly all of the people living in the facilities are covered by Medicaid. The state developmental disabilities hospitals submit annual cost reports that establish *per diem* rates they charge to Medicaid for each day a person covered by Medicaid lives in the facility. The state mental health hospitals (LSH and OSH) establish *per diem* rates in much the same way as the state developmental disabilities hospitals, but are classified as institutions for mental disease. The result is, due to federal rules, most state mental health hospital patients are not eligible for standard Medicaid match, but these hospitals are eligible for Medicaid payments through the DSH program. This program assists all acute care hospitals that serve a disproportionately high number of indigent persons.

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Judiciary, Corrections, and Juvenile Justice

G-1 Child Custody and Visitation Procedures

Kansas defines "legal custody" as "the allocation of parenting responsibilities between parents, or any person acting as a parent, including decision making rights and responsibilities pertaining to matters of child health, education and welfare." KSA 2016 Supp. 23-3211. Within that context, Kansas law distinguishes between "residency" and "parenting time." Residency refers to the parent with whom the child lives, while parenting time consists of any time a parent spends with a child. The term "visitation" is reserved for time nonparents are allowed to spend with a child.

Initial Determination

The standard for awarding custody, residency, parenting time, and visitation is what is in the "best interests" of the child. Courts can determine these issues when a petition is filed for divorce; paternity; a protection order; guardianship of a minor; or adoption.

To determine custody, a court must have authority under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), KSA 2016 Supp. 23-37,101 to 23-37,405. The first time custody is considered, only a court in the child's "home state" may make a determination. Exceptions apply when there is no home state, there is a "significant connection" to another state, or there is an emergency, *e.g.,* the child has been abandoned or is in danger of actual or threatened mistreatment or abuse. After a court assumes home state jurisdiction, other states must recognize any orders it issues.

Legal custody can be either joint, meaning the parties have equal rights, or sole, when the court finds specific reasons why joint legal custody is not in the child's best interests. KSA 2016 Supp. 23-3206. After awarding legal custody, the court will determine residency, parenting time, and visitation.

Residency may be awarded to one or both parents, or, if the child is a Child in Need of Care (CINC) and neither parent is found to be fit, to a third party. In determining residency, KSA 2016 Supp. 23-3207 requires parents to prepare either an agreed parenting plan or, if there is a dispute, proposed parenting plans for the court to consider. For more information on parenting plans, see

KSA 2016 Supp. 23-3211 to 23-3214. Based on the principle that fit parents act in the best interests of their children, an agreed parenting plan is presumed to be in a child's best interests. Absent an agreement, however, or if the court finds specific reasons why the parenting plan is not in the child's best interests, it will consider all relevant factors, including those outlined in KSA 2016 Supp. 23-3203:

- Each parent's role and involvement with the child before and after separation;
- The desires of a child of sufficient age and maturity and the child's parents as to custody or residency;
- The child's age and emotional and physical needs;
- The interaction and interrelationship of the child with parents, siblings, and any other person who may significantly affect the child's best interests;
- The child's adjustment to the child's home, school, and community;
- Each parent's willingness and ability to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;
- Evidence of domestic abuse including physically- or emotionally-abusive behavior or threats or an act of domestic violence, stalking, or sexual assault;
- The ability of the parties to communicate, cooperate, and manage parental duties;
- The child's school activity schedule;
- The parties' work schedules;
- The location of the parties' residences and places of employment;
- The location of the child's school;
- Whether a parent or person residing with a parent is subject to the registration requirements of the Kansas Offender Registration Act, or any similar act; and
- Whether a parent or person residing with a parent has been convicted of child abuse.

Though not required, a court may appoint or authorize a lawyer or guardian *ad litem*, especially in contested cases, to ensure a child's interests are being represented. Guardians *ad litem*, regulated by Kansas Supreme Court Rules, serve as advocates for the child's best interests and present cases in the same manner as any other attorney representing a client.

Additionally, in determining child custody, residency, and parenting time, a 2016 amendment to KSA 23-3203 allows courts to order a parent to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and to follow all of the program's recommendations.

Modification

KSA 23-3218 allows courts to modify custody, residency, visitation, and parenting time orders, subject to the provisions of the UCCJEA, when a material change of circumstances is shown.

Pursuant to KSA 23-37,202, a state that previously exercised jurisdiction will have continuing authority over subsequent motions until it determines the child, child's parents, and any person acting as a parent either:

- No longer have a significant connection with that state and substantial evidence is no longer available in that state concerning the child's care, protection, training, and personal relationships; or
- A court of that state or of another state determines the child, child's parents, and any person acting as a parent do not presently reside in that state.

While a state exercises continuing jurisdiction, no other state may modify the order. If the state loses continuing jurisdiction, another state can modify an order only if it qualifies as a "home state."

To modify a final child custody order, KSA 2016 Supp. 23-3219 requires the party filing the motion to list all known factual allegations that constitute the basis for the change of custody. If the court finds the motion establishes a *prima facie* case, it will consider the facts of the situation to determine whether the order should be modified. Otherwise, it must deny the motion.

In an alleged emergency situation where the nonmoving party has an attorney, the court must first attempt to have the attorney present before taking up the matter. Next, the court is required to set the matter for review hearing as soon as possible after issuance of the *ex parte* order, but within 15 days after issuance. Third, the court must obtain personal service on the nonmoving party of the order and the review hearing. Finally, the court cannot modify the order without sworn testimony to support a showing of the alleged emergency (KSA 2016 Supp. 23-3219(b)(3)). Similarly, KSA 2016 Supp. 23-3218 states no *ex parte* order can change residency from a parent exercising *sole de facto* residency of a child to the other parent unless there is sworn testimony to support a showing of extraordinary circumstances.

Custodial Interference and the Kansas Protection from Abuse Act

KSA 2016 Supp. 21-5409 outlines the crimes of "interference with parental custody" and "aggravated interference with parental custody." "Interference with parental custody" is defined as "taking or enticing away any child under the age of 16 years with the intent to detain or conceal such child from the child's parent, guardian, or other person having the lawful charge of such child." Joint custody is not a defense. This crime is a class A person misdemeanor if the perpetrator is a parent entitled to joint custody of the child; in all other cases, it is a severity level 10, person felony. Certain circumstances raise the crime to "aggravated" interference, a severity level 7, person felony.

If a noncustodial parent believes the child needs protection from the custodial parent, the parent can take action under the Kansas Protection from Abuse Act, KSA 2016 Supp. 60-3101 to 60-3111, which allows a parent of a minor child to file a petition alleging abuse by another intimate partner or household member. The court must hold a hearing within 21 days of the petition's filing. Prior to this hearing, the parent who originally filed the petition may file a motion for temporary relief, to which the court may grant an *ex parte* temporary order with a finding of good cause shown. The temporary order remains in effect until the hearing on the petition, at which time the parent who filed the petition must prove abuse by a preponderance of the evidence. The other parent also has a right to present evidence. At the hearing, the court can grant a wide variety of protective orders it believes are necessary to protect the child from abuse, including awarding temporary custody.

Typically, the protective order remains in effect for a maximum of one year, but, on motion of the parent who originally filed the petition, may be extended for one additional year. Additionally, KSA 2016 Supp. 60-3107 requires courts to extend protection from abuse orders for at least two years and allows extension up to the lifetime of a defendant if, after the defendant has been personally served with a copy of the motion to extend the order and has had an opportunity to present evidence at a hearing on the motion and cross-examine witnesses, it is determined by a preponderance of the evidence that the defendant has either previously violated a valid protection order or been convicted of a person felony or conspiracy, criminal solicitation, or attempt of a person felony, committed against the plaintiff or any member of the plaintiff's household.

Violation of a protection order is a class A, person misdemeanor, and violation of an extended protection order is a severity level 6, person felony.

Military Child Custody and Visitation

There are additional legal considerations if either parent is a member of the military. For instance, the Servicemembers Civil Relief Act, 50 USC App. §§ 501-596, a federal law meant to allow deployed service members to adequately defend themselves in civil suits, may apply.

Additionally, if either parent is a service member, KSA 2016 Supp. 23-3213 requires the parenting plan to include provisions for custody and parenting time upon military deployment, mobilization, temporary duty, or an unaccompanied tour. Further, KSA 2016 Supp. 23-3217 specifies that those circumstances do

not necessarily constitute a "material change in circumstances," such that a custody or parenting time order can be modified. If an order is modified because of those circumstances, however, it will be considered a temporary order.

When the parent returns and upon a motion of the parent, the court is required to have a hearing within 30 days to determine whether a previous custody order should be reinstated. In the service member's absence, KSA 2016 Supp. 23-3217 also allows the service member to delegate parenting time to a family member or members with a close and substantial relationship to the child if it is in the best interests of the child, and requires the nondeploying parent to accommodate the service member's leave schedule and facilitate communication between the service member and his or her children.

Third Party Custody and Visitation

Custody

KSA 2016 Supp. 38-141 recognizes the rights of parents to exercise primary control over the care and upbringing of their children. This stance is consistent with the U.S. Supreme Court's recognition that a parent's fundamental right to establish a home and raise children is protected and will be disturbed only in extraordinary circumstances. *Troxel v. Granville*, 530 U.S. 57 (2000); *Meyer v. Nebraska*, 262 U.S. 390 (1923). As such, parents generally are awarded custody unless they have been determined unfit under the Revised Kansas Code for the Care of Children (CINC Code), KSA 2016 Supp. 38-2201 to 38-2286.

Aside from a proceeding conducted pursuant to the CINC Code, KSA 2016 Supp. 23-3207 allows a judge in a divorce case to award temporary residency to a nonparent if the court finds there is probable cause to believe the child is in need of care or neither parent is fit to have residency. To award residency, the court must find by written order the child is likely to sustain harm if not immediately removed from the home; allowing the child to remain in the home is contrary to the welfare of the child; or immediate placement of the child is in the best interest of the child.

The court also must find reasonable efforts have been made to maintain the family unit and prevent the unnecessary removal of the child from the child's home or an emergency exists that threatens the safety of the child.

In awarding custody to a nonparent under these circumstances and to the extent the court finds it is in the child's best interests, the court gives preference first to a relative of the child, whether by blood, marriage, or adoption, and then to a person with whom the child has close emotional ties. The award of temporary residency does not terminate parental rights; rather, the temporary order will last only until a court makes a formal decision of whether the child is in need of care. If the child is found not to be in need of care, the court will enter appropriate custody orders pursuant to KSA 2016 Supp. 23-3207 as explained above. If the child is found to be in need of care, custody will be determined pursuant to the CINC Code. For more information on CINC proceedings, see *F-1 Foster Care* in this Briefing Book.

Visitation

KSA 2016 Supp. 23-3301 allows a court to grant grandparents and stepparents visitation rights as part of a Dissolution of Marriage proceeding. Further, it gives grandparents visitation rights during a grandchild's minority if a court finds visitation would be in the child's best interests and a substantial relationship exists between the child and the grandparent.

Kansas courts applying these statutes have placed the burden of proof for these two issues on the grandparents and, absent a finding of unreasonableness, weigh grandparents' claims against the presumption that fit parents act in their child's best interests. See *In re Creach*, 155 P.3d 719, 723 (Kan. App. 2007).

Host Families Act

The Host Families Act, KSA 2016 Supp. 38-2401, *et seq.*, allows a child placement agency or charitable organization to provide temporary care of children by placing a child with a host family. Host families are subject to screening and background checks and do not receive payment other than reimbursement for actual expenses. The Act also allows the Kansas Department for Children and Families (DCF) to provide information about respite care, voluntary guardianship, and support services, including organizations operating programs under the Act, to families experiencing financial distress, unemployment, homelessness, or other crises and to parents or custodians during a child protective investigation that does not result in an out-of-home placement due to abuse of a child.

Placement must be voluntary and shall not be considered an out-of-home placement, supersede any court order, or preclude any investigation of suspected abuse or neglect. A parent may place a child by executing a power of attorney that delegates to a host family any powers regarding the care and custody of the child, except power to consent to marriage or adoption, performance or inducement of an abortion, or termination of parental rights. The power of attorney may not be executed without the consent of all individuals with legal custody of the child, and execution is not evidence of abandonment, abuse, or neglect.

The power of attorney may not exceed one year but may be renewed for one additional year. The bill includes an exception, however, for parents serving in the military, who may delegate powers for a period longer than one year if on active duty service, but no more than the term of active duty service plus 30 days. A parent executing a power of attorney under this act can revoke or withdraw the power of attorney at any time. Upon such withdrawal or revocation, the child must be returned to the parent as soon as reasonably possible.

Child Support and Enforcement

KSA 2016 Supp. 23-3001 and 23-3002 require courts to determine child support in any divorce proceeding using the Kansas Child Support Guidelines. Courts can order either or both parent to pay child support, regardless of custody. Child support also can be ordered as part of a paternity proceeding. KSA 2016 Supp. 20-165 requires the Kansas Supreme Court to adopt guidelines for setting child support and consider all relevant factors, including, but not limited to:

- The child's needs, age, need and capacity for education, and financial resources and earning ability;
- The parents' standards of living and circumstances, relative financial means, earning ability, and responsibility for the support of others; and
- The value of services contributed by both parents.

To execute this charge, the Kansas Supreme Court has appointed an advisory committee made up of individuals with experience in child support, including judges, attorneys, a law professor, an accountant, legislators, and parents. Further, an independent economist provides the advisory committee an analysis of state and national economic changes regarding the costs and expenditures associated with raising children. The guidelines are intended to be fair to all parties, easy to understand, and applicable to the many special circumstances that exist for parents and children.

Additional information about the Supreme Court guidelines is available at *http://www.kscourts.org/Rules-procedures-forms/Child-support-guidelines/default.asp*.

Once established, enforcement of support orders is governed by the Income Withholding Act, KSA 2016 Supp. 23-3101 to 23-3118 and 39-7,135.

DCF has privatized Child Support Services (CSS), contracting with four vendors who began providing services on September 16, 2013.

Contractor information is available at *http://www.dcf.ks.gov/services/CSS/Pages/Contractor-*

Information.aspx. CSS's responsibilities include establishing parentage and orders for child and medical support, locating noncustodial parents and their property, enforcing child and medical support orders, and modifying support orders as appropriate. CSS automatically serves families receiving Temporary Assistance for Needy Families (TANF), foster care, medical assistance, and child care assistance. Assistance from CSS is also available to any family who applies for services, regardless of income or residency.

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Judiciary, Corrections, and Juvenile Justice

G-2 Civil Asset Forfeiture

Civil asset forfeiture is the process through which a law enforcement agency may seize and take ownership of property used in the commission of a crime. This article provides an overview of the civil forfeiture laws in Kansas.

Overview of Kansas Civil Forfeiture Laws

Property and Conduct Subject to Civil Forfeiture

KSA Chapter 60, Article 41 covers asset seizure and forfeiture. Under KSA 2016 Supp. 60-4104, certain conduct can lead to civil asset forfeiture even without prosecution or conviction. This conduct includes, but is not limited to, theft, prostitution, human trafficking, and forgery. Under KSA 2016 Supp. 60-4105, every kind of property used during conduct giving rise to forfeiture, or obtained as a result of conduct giving rise to forfeiture, is subject to forfeiture.

There are certain exceptions under KSA 60-4106. For example, under KSA 60-4106(a)(1), real property or interests in real property cannot be seized unless the conduct leading to forfeiture is a felony. Under KSA 60-4106(a)(3), property is not subject to forfeiture if the owner received the property before or during the conduct giving rise to forfeiture and did not know about the conduct or made reasonable efforts to prevent the conduct.

Kansas Forfeiture Procedure

In Kansas, law enforcement officers may seize property with a warrant issued by the court, without a warrant if they have probable cause to believe the property is subject to forfeiture under the statutes, or constructively, with notice. KSA 2016 Supp. 60-4107. Under KSA 2016 Supp. 60-4107(d), the seizing agency must make reasonable efforts within 30 days to give notice of the seizure to the owner, interest holder, or person who had possession of the property.

Typically, the county or district attorney, the Attorney General, or an attorney approved by one of the two, will represent the law

enforcement agency in a forfeiture action. KSA 2016 Supp. 60-4107(g)-(i) provides a procedure the law enforcement agency must follow to secure representation in such a proceeding.

Under KSA 2016 Supp. 60-4109(a), a civil forfeiture proceeding commences when the attorney representing the law enforcement agency (the plaintiff's attorney) files a notice of pending forfeiture or a judicial forfeiture action. If the plaintiff's attorney does not initiate the forfeiture proceeding or the law enforcement agency does not pursue the forfeiture proceeding within 90 days against the property seized, and the property's owner or interest holder (the claimant) files a timely claim, the court must release the property to the owner (on the owner's request) pending further proceedings (KSA 2016 Supp. 60-4109(a)(1)).

Under KSA 2016 Supp. 60-4109(a)(1), the seized property cannot stay in the owner's possession more than 90 days without a court-authorized extension. Under KSA 2016 Supp. 60-4109(a)(2), if the owner files a petition for exemption to forfeiture under KSA 60-4110, the plaintiff's attorney can delay filing the judicial forfeiture proceeding for up to 180 days. To delay filing, the plaintiff's attorney must provide notice of exemption to any interest holders who filed petitions to have their interests exempt from forfeiture within 60 days after the effective date of the notice of pending forfeiture.

The plaintiff's attorney is also allowed, under KSA 2016 Supp. 60-4109(b), to file a lien on the forfeited property to cover necessary court costs, and the lien will constitute notice to any person claiming an interest in the property as along as it contains certain information.

Burden of Proof and Court Findings

Under KSA 2016 Supp. 60-4113(g), in a civil forfeiture proceeding, the plaintiff's attorney has the initial burden of proof and must prove, by a preponderance of the evidence, the property is subject to civil forfeiture. Then the burden of proof shifts to the claimant (the property owner or interest holder) to prove, by a preponderance of the evidence, the claimant's property interest is not subject to forfeiture. If the court finds the property is not subject to forfeiture, the property must be returned to the claimant. If the court finds the property is subject to forfeiture, the property is forfeited to the law enforcement agency that seized the property (2016 Supp. KSA 60-4113(h)). However, under KSA 60-4106(c), the court must restrict the scope of the forfeiture to ensure that it is proportionate with the conduct that gave rise to the seizure.

Use of Forfeited Property

When property is forfeited, the law enforcement agency can keep the property, transfer it to any government agency, destroy it, or use it for training purposes (KSA 2016 Supp. 60-4117(a)(1) and (a)(2)). The law enforcement agency also may sell the property. KSA 2016 Supp. 60-4117(a)(3)(A) requires property, other than real property, to be sold at public sale to the highest bidder. Real property may be sold at a public sale or through a real estate company (KSA 2016 Supp. 60-4117(a)(3)(B)).

Under KSA 2016 Supp. 60-4117(c)-(d), after the proceeds have been used to satisfy certain security interests or liens, expenses of the proceedings, reasonable attorney fees, and repayment of certain law enforcement funds, the remaining proceeds will go to the law enforcement agency's state forfeiture fund if the law enforcement agency is a state agency.

Recent Kansas Legislation

Kansas has enacted little legislation concerning civil forfeiture in the past few years. In 2016, HB 2460 created the crime of violation of a consumer protection order, related to door-to-door sales, and added the crime to conduct giving rise to civil forfeiture. In 2014, Kansas enacted legislation concerning civil forfeiture as it pertains to certain firearms (2014 HB 2578). That bill added language to KSA 2013 Supp. 22-2512 as to how seized firearms could be disposed of and specifications for notifying the owner of a seized weapon how

to retrieve it if the weapon can be returned. In 2013, the Legislature passed HB 2081, which added certain offenses to the conduct giving rise to civil forfeiture (indecent solicitation of a child, aggravated indecent solicitation of a child, and sexual exploitation of a child). It also added electronic devices to the list of items that could be seized.

Following a 2016 Legislative Division of Post Audit (LPA) report on civil asset forfeiture (detailed in the next section) and increased interest in the topic in Kansas and nationally, eight bills related to civil asset forfeiture were introduced during the 2017 Legislative Session. Of the eight bills, five bills (HB 2001, HB 2003, HB 2004, HB 2018, and HB 2116) received hearings in the House Committee on Judiciary, but no action was taken on the bills.

On February 17, 2017, the chairpersons of the House and Senate Committees on Judiciary jointly requested the Judicial Council study the five bills heard in the House Committee on Judiciary and report back to the Legislature before the next session. The Judicial Council anticipates a report will be available for review and approval by December 2017.

Other Developments

In July 2016, LPA released a report, "Seized and Forfeited Property: Evaluating Compliance with State Law and How Proceeds Are Tracked, Used, and Reported." The report compared Kansas' forfeiture process with those of four other states and the federal government. It also examined the seizure and forfeiture processes of two statewide and four local law enforcement agencies, finding that the agencies generally complied with major state laws and best practices, with few exceptions. It found the agencies generally complied with state laws for liquidating forfeited property, but several agencies were missing important controls. LPA also found the six agencies lacked important controls for tracking forfeiture proceeds, but appeared to have good processes for appropriate use of forfeiture proceeds. Also, while the state agencies complied with reporting requirements in state law, the local agencies did not. The report noted additional findings, including that broad discretion over the use of forfeiture proceeds could create a risk of use for operating funds, that certain agencies had conflicts of interest or lacked controls for drug buys, and that none of the agencies had complete and written policies and procedures for seized and forfeited property.

The report noted numerous specific recommendations had been made to the various agencies based upon the findings. It recommended the Legislature consider legislation clarifying KSA 2015 Supp. 60-4117(d)(3) and the use of forfeiture funds for operating expenses. The report also recommended the House and Senate Judiciary Committees consider introducing legislation to either create a more centralized reporting structure or consider eliminating the reporting requirement altogether.

The highlights and full report may be found on LPA's website: *www.kslpa.org*.

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Judiciary, Corrections, and Juvenile Justice

G-3 Death Penalty in Kansas

Background

On June 29, 1972, the U.S. Supreme Court, in *Furman v. Georgia*, 408 U.S. 238 (1972), held the imposition and execution of the death penalty, or capital punishment, in the cases before the court constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the *U.S. Constitution*. Justice Potter Stewart remarked that the death penalty was "cruel and unusual in the same way that being struck by lightning is cruel and unusual." That case nullified all capital sentences imposed without statutory guidelines.

In the following four years, states enacted new death penalty laws aimed at overcoming the Court's *de facto* moratorium on the death penalty. Several statutes mandated bifurcated trials, with separate guilt and sentencing phases, and imposed standards to guide the discretion of juries and judges in imposing capital sentences. In *Gregg v. Georgia*, 428 U.S. 153 (1976), the Court upheld the capital sentencing schemes of Georgia, Florida, and Texas. The Court found these states' capital sentencing schemes provided objective criteria to direct and limit the sentencing authority's discretion, provided mandatory appellate review of all death sentences, and allowed the judge or jury to take into account the character and record of an individual defendant.

The death penalty was reenacted in Kansas, effective on July 1, 1994. Governor Joan Finney allowed the bill to become law without her signature.

The Kansas Supreme Court, in *State v. Marsh*, 278 Kan. 520, 534–535, 102 P. 3d 445, 458 (2004), held that the Kansas death penalty statute was facially unconstitutional. The court concluded the statute's weighing equation violated the Eighth and Fourteenth Amendments to the *U.S. Constitution* because, "[i]n the event of equipoise, *i.e.*, the jury's determination that the balance of any aggravating circumstances and any mitigating circumstances weighed equal, the death penalty would be required." Id., at 534, 102 P. 3d, at 457. The U.S. Supreme Court reversed the Kansas Supreme Court's judgment and held the Kansas capital sentencing statute is constitutional. In June 2006, the Court found the Kansas

death penalty statute satisfies the constitutional mandates of *Furman* and its progeny because it "rationally narrows the class of death-eligible defendants and permits a jury to consider any mitigating evidence relevant to its sentencing determination. It does not interfere, in a constitutionally significant way, with a jury's ability to give independent weight to evidence offered in mitigation."

Kansas Capital Murder Crime

In Kansas, the capital murder crimes for which the death penalty may be invoked include the following:

- Intentional and premeditated killing of any person in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with the intent to hold the person for ransom;
- Intentional and premeditated killing of any person under a contract or agreement to kill that person or being a party to the contract killing;
- Intentional and premeditated killing of any person by an inmate or prisoner confined to a state correctional institution, community correctional institution, or jail, or while in the custody of an officer or employee of a state correctional institution, community correctional institution, or jail;
- Intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, the crime of rape, criminal sodomy, or aggravated criminal sodomy, or any attempt thereof;
- Intentional and premeditated killing of a law enforcement officer;
- Intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or
- Intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, or aggravated kidnapping, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with the intent that the child commit or submit to a sex offense.

According to Kansas law, upon conviction of a defendant of capital murder, there will be a separate proceeding to determine whether the defendant shall be sentenced to death. This proceeding will be conducted before the trial jury as soon as practicable. If the jury finds beyond a reasonable doubt that one or more aggravating circumstances exist and that such aggravating circumstances are not outweighed by any mitigating circumstances which are found to exist, then by unanimous vote the defendant will be sentenced to death. The Kansas Supreme Court will automatically review the conviction and sentence of a defendant sentenced to death.

If mitigating circumstances outweigh the aggravating circumstances, a defendant convicted of capital murder will not be given a death sentence but will be sentenced to life without the possibility of parole. A defendant sentenced to life without the possibility of parole is not eligible for parole, probation, assignment to a community correctional services program; conditional release; postrelease supervision; or suspension, modification, or reduction of sentence.

Costs

Costs in Kansas death penalty cases have been examined in a 2003 Performance Audit by the Legislative Division of Post Audit and in 2004 and 2014 reports by the Kansas Judicial Council Death Penalty Advisory Committee. Each of these studies indicates costs for death penalty cases tend to be higher than non-death penalty cases at the trial and appellate stages. For instance, the 2014 Judicial Council report indicated that Kansas Board of Indigents' Defense Services costs in death penalty trial cases filed between 2004 and 2011 averaged $395,762 per case, as compared to $98,963 per trial case where the death penalty could have been sought but was not. More detail

regarding the costs in death penalty cases may be found in the 2003 Performance Audit report and in the 2004 and 2014 Judicial Council reports, which are available on the Post Audit and Judicial Council websites, respectively.

The Board of Indigents' Defense Services has three units that participate in the defense of capital cases. The approved budget for these units in FY 2018 is $2,997,713. Actual expenditures for the unit in FY 2017 were $1,943,275. The agency estimates FY 2018 expenditures of $2,743,810 for capital defenses.

Death Penalty and Intellectual Disability

At the national level, the U.S. Supreme Court in *Atkins v. Virginia*, 536 U.S. 304 (2002), stated capital punishment of those with "mental retardation" is cruel and unusual punishment under the Eighth Amendment to the *U.S. Constitution.* Various states subsequently attempted to draft legislation that would comply with the *Atkins* decision. In the *Atkins* decision, there is no definition of "mentally retarded," but the Court referred to a national consensus regarding mental retardation.

In 2012, the Legislature passed Sub. for SB 397, which replaced statutory references to "mental retardation" and similar terms with "intellectual disability" and directed state agencies to update their terminology accordingly. Thus, the concept of "mental retardation" as addressed by the U.S. Supreme Court in *Atkins* will be discussed here as "intellectual disability."

Kansas law defines "intellectual disability" in the death penalty context to mean a person having significantly subaverage general intellectual functioning to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law. See KSA 21-6622(h).

In 2016 Senate Sub. for 2049, the Legislature amended the definition of "significantly subaverage general intellectual functioning." This legislation was introduced in response to the U.S. Supreme Court's decision in *Hall v. Florida*, 134 S. Ct. 1986 (2014).

Under Kansas law, counsel for a defendant convicted of capital murder, or the warden or sheriff having custody of the defendant, may request the court to determine if the defendant has an intellectual disability. The court shall then conduct proceedings to determine if the defendant has an intellectual disability. If the court determines the defendant has an intellectual disability, no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed. See KSA 21-6622.

Death Penalty and Minors

In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court invalidated the death penalty for all juvenile offenders. The majority opinion pointed to teenagers' lack of maturity and responsibility, greater vulnerability to negative influences, and incomplete character development, concluding juvenile offenders assume diminished culpability for their crimes.

KSA 21-6618 mandates that, if a defendant in a capital murder case was less than 18 years of age at the time of the commission of the crime, the court shall sentence the defendant as otherwise provided by law, and no sentence of death shall be imposed. Thus, the death penalty or capital punishment cannot be imposed on a minor in Kansas.

Method of Carrying Out Death Penalty

The method of carrying out a sentence of death in Kansas must be by intravenous injection of a substance or substances in sufficient quantity to cause death in a swift and humane manner, pursuant to KSA 22-4001. No death penalty sentence has been carried out in Kansas since the death penalty was reenacted in 1994.

Inmates in Kansas Under Sentence of Death					
Defendant's Name	**Race**	**Date of Birth**	**Date Capital Penalty Imposed**	**County**	**Case Status**
Kyle Trevor Flack	White	06/18/85	05/18/16	Franklin	Appeal Pending
Frazier Glen Cross, Jr.	White	11/23/40	11/10/15	Johnson	Appeal Pending
James Kraig Kahler	White	01/15/63	10/11/11	Osage	Appeal Pending
Justin Eugene Thurber	White	03/14/83	03/02/09	Cowley	Appeal Pending
Scott Dever Cheever	White	08/19/81	01/23/08	Greenwood	Sentence upheld; See below
Sidney John Gleason	Black	04/22/79	08/28/06	Barton	Sentence upheld; See below
John Edward Robinson, Sr.	White	12/27/43	01/21/03	Johnson	Sentence upheld; See below
Jonathan Daniel Carr	Black	03/30/80	11/15/02	Sedgwick	See below
Reginald Dexter Carr, Jr.	Black	11/14/77	11/15/02	Sedgwick	See below
Gary Wayne Kleypas	White	10/08/55	03/11/98	Crawford	Sentence upheld; See below

On November 17, 2004, the death sentence of Stanley Elms of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to the Hard 40 term, which is life in prison with no possibility of parole for 40 years.

On April 3, 2009, the death sentence of Michael Marsh of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences, with parole eligibility after 55 years, but with 85 months to serve for additional convictions if paroled.

On March 24, 2010, the death sentence of Gavin Scott of Sedgwick County was vacated pursuant to a plea agreement. He was removed from administrative segregation and sentenced to two life sentences.

In 2010, a Shawnee County district judge granted Phillip D. Cheatham, Jr., who was under sentence of death, a new sentencing hearing. In January 2013, before this hearing was held, the Kansas Supreme Court found Cheatham's trial counsel was ineffective, reversed Cheatham's convictions, and remanded the case for a new trial.

In January 2015, Cheatham legally changed his name to King Phillip Amman Reu-El. During jury selection for his retrial in February 2015, Amman Reu-El pleaded no-contest to capital murder and attempted murder charges. At a sentencing hearing in March 2015, the district court denied Amman Reu-El's request to withdraw his pleas and sentenced Amman Reu-El to the Hard 25 term (life in prison with no possibility of parole for 25 years) for the capital counts and 13 years, 9 months for the attempted murder count, to be served consecutively. In May 2015, Amman Reu-El filed an appeal of the district court's denial of his motion to withdraw his pleas. The Supreme Court affirmed the district court's denial in May 2017. In September 2015, Amman Reu-El filed a pleading in district court claiming he received

ineffective assistance of counsel in making his pleas.

In August 2012, the Kansas Supreme Court reversed the capital murder convictions of Scott Dever Cheever and ordered the case remanded for a new trial. Cheever was under sentence of death for the convictions. The State appealed the case to the U.S. Supreme Court, which issued an opinion December 11, 2013, vacating the judgment of the Kansas Supreme Court and remanding the case for further consideration by Kansas courts of possible error under the Fifth Amendment or Kansas evidentiary rules. The Kansas Supreme Court heard further oral argument in September 2014 but stayed release of a decision pending the U.S. Supreme Court's review of the *Gleason* and *Carr* cases (see below). Following the U.S. Supreme Court's release of the decisions in those cases, the Kansas Supreme Court released, in July 2016, a decision upholding Cheever's convictions and death sentence. As in the *Robinson* decision (see below), Justice Johnson was the lone dissenting justice. As of October 2017, Cheever's petition for *writ of certiorari* was pending with the U.S. Supreme Court and Cheever was being held in special management at Lansing Correctional Facility.

In July 2014, the Kansas Supreme Court vacated death sentences in three cases. The Court vacated Sidney John Gleason's death sentence and remanded for resentencing. In the appeals of Jonathan Daniel Carr and Reginald Dexter Carr, Jr., the Court reversed all but one of each defendant's capital murder convictions, vacated each defendant's death sentence for the remaining capital murder conviction, and remanded to the district court for further proceedings. In October 2014, Kansas Attorney General Derek Schmidt petitioned the U.S. Supreme Court for a *writ of certiorari* in all three cases. However, the U.S. Supreme Court granted Kansas Attorney General Derek Schmidt's petition for *writ of certiorari* in all three cases and heard oral argument in the cases in October 2015. In January 2016, the U.S. Supreme Court released decisions in all three cases reversing the Kansas Supreme Court's judgments (thereby reinstating the death sentences) and remanding to the Kansas Supreme Court for further proceedings. In February 2017, the Kansas Supreme Court affirmed Gleason's death sentence. Gleason's direct appeals are now exhausted, but there may be further state or federal court proceedings on collateral issues. As of October 2017, further proceedings are pending before the Kansas Supreme Court on additional issues in the Carr brothers' cases.

In November 2015, the Kansas Supreme Court upheld a capital murder conviction and death sentence of John Edward Robinson, Sr., for one of the counts of capital murder charged against him. This marked the first death sentence upheld by the Court since the reenactment of the death penalty in Kansas. The Court reversed two other murder convictions as multiplicitous and affirmed remaining convictions. The lone dissent from the Court's decision was by Justice Lee Johnson, who disagreed that the State had properly charged and proven the count of capital murder upheld by the Court. The dissent also stated that the death penalty is both "cruel" and "unusual" and therefore violates § 9 of the *Kansas Constitution* Bill of Rights.

The Court subsequently denied Robinson's motion for rehearing and modification of judgment, and Robinson's petition for *writ of certiorari* was denied by the U.S. Supreme Court in October 2016. Robinson's direct appeals are now exhausted, but there may be further state or federal court proceedings on collateral issues.

In October 2016, the Kansas Supreme Court upheld Gary Kleypas' capital murder conviction and death sentence. It reversed a conviction for attempted rape and remanded the case for resentencing on a conviction of aggravated burglary. Justice Johnson dissented, citing his dissenting opinions in Robinson and Cheever.

As of October 2017, ten inmates under a death penalty sentence are being held in administrative segregation because Kansas does not technically have a death row. Inmates under sentence of death (other than Cheever) are held in administrative segregation at the El Dorado Correctional Facility (EDCF).

State-to-State Comparison

Kansas is one of 31 states that has a death penalty. The following tables show the states with a death penalty and the 19 states without such penalty. According to the Death Penalty Information Center, as of November 2016, four states with a death penalty (Colorado, Oregon, Pennsylvania, and Washington) also had an existing gubernatorial moratorium on the death penalty.

Jurisdictions with the Death Penalty				
Alabama	Idaho	Montana	Oregon	Virginia
Arizona	Indiana	Nebraska	Pennsylvania	Washington
Arkansas	Kansas*	Nevada	South Carolina	Wyoming
California	Kentucky	New Hampshire*	South Dakota	U.S. Government
Colorado	Louisiana	North Carolina	Tennessee	U.S. Military*
Florida	Mississippi	Ohio	Texas	
Georgia	Missouri	Oklahoma	Utah	
* Indicates jurisdiction with no executions since 1976.				

Jurisdictions without the Death Penalty (year abolished in parentheses)		
Alaska (1957)	Maryland (2013)	New York (2007)
Connecticut (2012)	Massachusetts (1984)	North Dakota (1973)
Delaware[1] (2016)	Michigan (1846)	Rhode Island (1984)
Hawaii (1948)	Minnesota (1911)	Vermont (1964)
Illinois (2011)	New Jersey (2007)	West Virginia (1965)
Iowa (1965)	New Mexico[2] (2009)	Wisconsin (1853)
Maine (1887)	District of Columbia (1981)	

1 In August 2016, the Delaware Supreme Court held the state's capital sentencing procedures were unconstitutional and struck down the state's death penalty statute. It is currently unknown whether the decision will apply to the 13 people with active death sentences.

2 In March 2009, New Mexico repealed the death penalty. The repeal was not retroactive, which left two people on the state's death row.

Source: Death Penalty Information Center

Recent Developments

In March 2009, the Senate Judiciary Committee held a hearing on SB 208 to repeal the death penalty in Kansas. The bill was amended and passed out of the Committee. The Senate Committee of the Whole re-referred the bill to the Senate Judiciary Committee for study by the Judicial Council during the Interim. The Judicial Council formed the Death Penalty Advisory Committee to study SB 208 and concluded the bill presented a number of technical problems which could not be resolved by amending the bill. Instead, the Committee drafted a new bill which was introduced in the 2010 Session as SB 375. SB 375 was passed, as amended, out of the Senate Committee on Judiciary. However, the bill was killed on final action in the Senate Committee of the Whole.

Bills that would abolish the death penalty were introduced in both chambers in 2011. (See 2011 HB 2323 and SB 239.) No action was taken on either bill. The 2012 House Committee on Corrections and Juvenile Justice held an "informational" hearing on the death penalty.

In 2013, bills abolishing the death penalty were again introduced in both chambers. (See 2013 HB 2397; 2013 SB 126.) No action was taken on either bill during the 2013 or 2014 sessions.

Also in 2013, HB 2388 was introduced and heard in the House Committee on Corrections and Juvenile Justice. This bill would have amended KSA 21-6619 to limit Kansas Supreme Court review in death penalty cases to properly preserved and asserted errors and allowing the Court to review unpreserved and unassigned errors only to correct manifest injustice (as defined in the bill). Proponents of the bill indicated it was introduced in response to the Kansas Supreme Court's decision in *State v. Cheever*, 295 Kan. 229 (2012). A motion in the Committee to recommend the bill favorably as amended failed, and no further action was taken on the bill.

The 2013 Legislature passed Senate Sub. for HB 2043, which allows the Attorney General to file notice of intent to seek the death penalty in those cases where the county or district attorney or a court determines a conflict exists.

In 2014, the Senate Judiciary Committee introduced SB 257, which would have amended the procedure for direct appeals in death penalty cases by establishing statutory time limits and appellate brief page limits and limiting the scope of review. The bill would also have imposed additional requirements and limitations on both KSA 60-1507 motions generally, as well as KSA 60-1507 motions specifically filed by prisoners under sentence of death. The Senate Judiciary Committee slightly modified the language of SB 257 and recommended a substitute bill for HB 2389 containing this language. Senate Sub. for HB 2389 passed the Senate with these provisions, but they were removed by the conference committee and the bill was passed without any specific death penalty-related provisions.

During the 2015-2016 biennium, three bills that would abolish the death penalty were introduced, but no action was taken on the bills. (See 2015 HB 2129; 2016 HB 2515; 2016 SB 478.)

In 2016, the Legislature passed Senate Sub. for 2049, amending the definition of "significantly subaverage general intellectual functioning." This legislation was introduced in response to the U.S. Supreme Court's decision in *Hall v. Florida,* 134 S. Ct. 1986 (2014), holding that Florida's threshold requirement for submission of intellectual disability evidence in the context of capital sentencing was unconstitutional.

In 2017, bills that would abolish the death penalty were introduced in both chambers. (See 2017 HB 2167 and SB 244.) HB 2167 received a hearing in the House Committee on Corrections and Juvenile Justice, but no further action was taken on either bill.

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Judiciary, Corrections, and Juvenile Justice

G-4 Juvenile Services

The Division of Juvenile Services within the Kansas Department of Corrections (KDOC) oversees juvenile offenders in Kansas. Individuals as young as 10 years of age and as old as 17 years of age may be adjudicated as juvenile offenders. KDOC may retain custody of a juvenile offender in a juvenile correctional facility (JCF) until the age of 22.5 and in the community until the age of 23.

Juvenile Services leads broadly-based state and local, public and private partnerships to provide the State's comprehensive juvenile justice system, including prevention and intervention programs, community-based graduated sanctions, and JCFs.

Juvenile Services' operations consist of two major components:

- **Community-based prevention, immediate interventions, and graduated sanctions programs for nonviolent juvenile offenders.** Juvenile Services also administers grants to local communities for juvenile crime prevention and intervention initiatives. In addition to providing technical assistance and training to local communities, the division is responsible for grant oversight and auditing all juvenile justice programs and services.
- **Juvenile correctional facilities for violent juvenile offenders.** On March 3, 2017, Larned Juvenile Correctional Facility (LJCF) closed. The facility was able to house up to 128 juveniles. LJCF was one of two Kansas JCFs. At present, the only JCF in Kansas is the Kansas Juvenile Correctional Complex (KJCC) located in Topeka. A third facility, Atchison Juvenile Correctional Facility, suspended operations on December 8, 2008, and a fourth facility, Beloit Juvenile Correctional Facility, suspended operations on August 28, 2009.

The 2016 Legislature enacted SB 367, which made substantial reforms to the Kansas juvenile justice system in both the community-based services and the JCF operations for which Juvenile Services is responsible. KDOC's Juvenile Services program is tasked with implementing many of the provisions of SB 367, either alone or in conjunction with other partners in the juvenile justice system. The 2017 Legislature enacted House Sub. for SB 42, which made further amendments to the system as a follow-up to SB 367.

Further detail regarding SB 367 and House Sub. for SB 42 is provided on the following pages.

Kansas Juvenile Justice Authority's (JJA) History and Community Focus

The juvenile justice reform process implemented in Kansas from 1997 to 2000 focused on prevention, intervention, and community-based services, with the premise that a youth should be placed in a JCF for rehabilitation and reform only as a last resort and that youth are more effectively rehabilitated and served within their own community. Prior to the transition, juvenile justice functions were the responsibility of several state agencies, including: the Office of Judicial Administration (OJA); the Department of Social and Rehabilitation Services (SRS), which is now the Department for Children and Families (DCF); and KDOC. Other objectives included separating juvenile offenders from children in need of care in the delivery of services.

Due to the focus on serving youth in their own community, each county or group of cooperating counties is required by statute to make themselves eligible to receive state funding for the development, implementation, operation, and improvement of juvenile community correctional services. Each county, or the designee of a group of counties, is referred to as an administrative county and directly receives funding from the agency for operation of community juvenile justice services.

SB 367 will adjust the focus and funding mechanisms for some of this funding over the next several years.

Pivotal roles of the Community Programs Division include: ensuring the community service continuum is efficient and effective in addressing the needs of the youth; building upon established collaborations with local units of government and other key stakeholders; and monitoring programs along the continuum of services from prevention and intervention to rehabilitative service delivery.

Juvenile Justice Reform Time Line

1993 and 1994. Research began on the proposed transition with a legislative review of juvenile crime and the creation of the Criminal Justice Coordinating Council, which was charged to study and develop policies and recommendations regarding juvenile justice reform.

1995. The Kansas Youth Authority (KYA) and JJA were created with the enactment of 1995 SB 312.

The mission of KYA was to develop policies related to the scope and function of the JJA. Specific areas studied included confinement, diversion, fines, restitution, community service, standard probation, intensive supervision, house arrest programs, electronic monitoring, structured school, day reporting centers, community residential care, treatment centers, and sanctions.

JJA was assigned to:

- Control and manage the operation of the state youth centers (now referred to as JCFs);
- Evaluate the rehabilitation of juveniles committed to JJA and prepare and submit periodic reports to the committing court;
- Consult with the state schools and courts on the development of programs for the reduction and prevention of delinquency and the treatment of juvenile offenders;
- Cooperate with other agencies that deal with the care and treatment of juvenile offenders;
- Advise local, state, and federal officials, public and private agencies, and lay groups on the need for and possible methods of reduction and prevention of delinquency and the treatment of juvenile offenders;
- Assemble and distribute information relating to delinquency and report on studies relating to community conditions that affect the problem of delinquency;
- Assist any community within the state by conducting a comprehensive survey of the community's available public and

private resources, and recommend methods of establishing a community program for combating juvenile delinquency and crime; and

- Direct state money to providers of alternative placements in local communities such as supervised release into the community, out-of-home placement, community services work, or other community-based service; provide assistance to such providers; and evaluate and monitor the performance of such providers relating to the provision of services.

1996. HB 2900, known as the Juvenile Justice Reform Act of 1996, outlined the powers and duties of the Commissioner of Juvenile Justice.

The bill also addressed the areas of security measures, intake and assessment, dual sentencing, construction of maximum security facility or facilities, child support and expense reimbursement, criminal expansion, disclosure of information, immediate intervention programs, adult presumption, parental involvement in dispositional options, parental responsibility, school attendance, parental rights, and immunization.

Further, the bill changed the date for the transfer of powers, duties, and functions regarding juvenile offenders from SRS and other state agencies to July 1, 1996. The bill stated KYA must develop a transition plan that included a juvenile placement matrix, aftercare services upon release from a JCF, coordination with SRS to consolidate the functions of juvenile offender and children in need of care intake and assessment services on a 24-hour basis, recommendations on how all juveniles in police custody should be processed, and the transfer from a state-based juvenile justice system to a community-based system according to judicial districts.

1997. The Legislature amended the Juvenile Justice Reform Act of 1996 with House Sub. for SB 69, including changes in the administration of the law. In addition, the amendments dealt with juvenile offender placements in an effort to maximize community-based placements and reserve state institutional placements for the most serious, chronic, and violent juvenile offenders.

Also included in this bill was the creation of the Joint Committee on Corrections and Juvenile Justice and the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention, which took the place of KYA. On July 1, JJA began operations and assumed all the powers, duties, and functions concerning juvenile offenders from SRS.

Recent Reform Efforts

2013. Executive Reorganization Order (ERO) No. 42 abolished the Juvenile Justice Authority (JJA) and transferred the jurisdiction, powers, functions, and duties of the JJA and the Commissioner of Juvenile Justice to KDOC and the Secretary of Corrections, effective July 1, 2013. All officers and employees of the JJA engaged in the exercise of the powers, duties, and functions transferred by the ERO were transferred to the KDOC, unless they were not performing necessary services.

2014. Following an informational hearing on juvenile justice reform initiatives, the House Committee on Corrections and Juvenile Justice charged a subcommittee with evaluating reform proposals and recommending legislation on the topic. Various proposals were consolidated and passed by the Legislature in Senate Sub. for HB 2588. The provisions included:

- Requiring a standardized risk assessment tool or instrument be included as part of the pre-sentence investigation and report following an adjudication;
- Prohibiting the prosecution of any juvenile less than 12 years of age as an adult;
- Restructuring the placement matrix to make commitment to a JCF a departure sentence requiring a hearing and substantial and compelling reasons to impose such sentence for certain lower level offense categories;
- Allowing juvenile offenders serving minimum-term placement sentences

under the matrix to receive "good time" credit;
- Requiring the Secretary of Corrections to take certain measures to evaluate youth residential centers (YRCs) and develop fee schedules and plans for related services;
- Prohibiting a child alleged or found to be a child in need of care from being placed in a juvenile detention facility unless certain conditions are met; and
- Creating a new alternative adjudication procedure for misdemeanor-level juvenile offenses to be utilized at the discretion of the county or district attorney with jurisdiction over the offense.

2015. Additional reform efforts continued with passage of HB 2336, which required the court to administer a risk assessment tool or review a risk assessment tool administered within the past six months before a juvenile offender can be placed in a juvenile detention center, under house arrest, or in the custody of the KDOC or can be committed to a sanctions house or to a JCF.

Further, to examine Kansas' juvenile justice system, leaders of the executive, judicial, and legislative branches of government established a bipartisan, inter-branch Juvenile Justice Workgroup. In cooperation with the Pew Charitable Trusts' Public Safety Performance Project, the Workgroup was charged with a comprehensive examination of the system to develop data-driven policies based upon research and built upon consensus among key stakeholders from across the state. The Workgroup recommendations were presented at its November 17th meeting. A complete list of the Workgroup's recommendations can be found at *http://www.doc.ks.gov/juvenile-services/Workgroup*.

2016. The recommendations from the 2016 Workgroup were drafted into legislation and introduced as SB 367 in the 2016 Session. While substantial changes were made to the bill during committee action and the conference committee process, the enacted bill nevertheless represented a comprehensive reform of the Kansas juvenile justice system.

Major provisions of the bill included:

Juveniles in custody. The bill narrows the persons authorized to take a juvenile into custody and makes delivery of a juvenile to the juvenile's parent the default in most instances. The bill also requires both release and referral determinations once a juvenile is taken into custody to be made by juvenile intake and assessment workers, who must be trained in evidence-based practices.

Immediate interventions and community-based programs. The bill requires KDOC and OJA to develop standards and procedures for an immediate intervention process and programs and alternative means of adjudication. The bill requires KDOC to plan and fund incentives for the development of immediate intervention programs, removes limitations on eligibility for such programs, requires immediate intervention be offered to certain juveniles, and requires juveniles making a first appearance without an attorney to be informed of the right to an immediate intervention.

Further, courts must appoint a multidisciplinary team to review cases when a juvenile does not substantially comply with the development of an immediate intervention plan.

Eligibility for alternative means of adjudication is changed from a juvenile committing a misdemeanor to a juvenile with fewer than two adjudications. The bill establishes overall case length and probation length limits for all juvenile offenders except those adjudicated of the most serious felonies.

The bill also requires KDOC to consult with the Supreme Court in adopting rules and regulations for a statewide system of structured, community based, graduated responses for technical probation violations, conditional release violations, and sentence condition violations, which community supervision officers will use based on the results of a risk and needs assessment. The community supervision officer must develop a case plan with the juvenile and

the juvenile's family. Probation revocation may be considered only for a third or subsequent technical violation, subject to additional limitations. KDOC is required to develop an earned-time calculation system for the calculation of sentences. Similarly, the Supreme Court and KDOC must establish a system of earned discharge for juvenile probationers.

Criteria for detention and alternatives. KDOC and OJA are required to develop, implement, and validate a statewide detention risk assessment tool for each youth under consideration for detention.

The criteria for detention are amended to require certain detention risk assessment results or grounds to override such results. Courts must establish a specific term of detention when placing a juvenile in detention, which may not exceed the overall case length limit.

The bill prohibits placement in a juvenile detention center in certain circumstances and removes juvenile detention facilities as a placement option under the Revised Kansas Code for Care of Children, unless the child also is alleged to be a juvenile offender and the placement is authorized under the Juvenile Code. The permissible justifications for extended detention are narrowed, and a detention review hearing is required every 14 days a juvenile is in detention, except for juveniles charged with the most serious offenses.

The bill requires OJA and KDOC to adopt a single, uniform risk and needs assessment to be administered and used statewide in the post adjudication and predisposition process.

The bill narrows and eliminates some alternatives and amends the alternative allowing commitment to a JCF to allow placement in a JCF or YRC. Effective January 1, 2018, the Secretary may contract for up to 50 nonfoster home beds in YRCs for placement of juvenile offenders. The bill limits commitment to detention and adds certain short term placement options if a juvenile has been adjudicated of certain sexual or human trafficking-related offenses. Further, KDOC must develop community integration programs for juveniles ready to transition to independent living.

The bill amends the placement matrix for commitment to a JCF to require a written finding before such placement, remove a departure sentence provision, create a serious offender category, remove two chronic offender categories, and create a rebuttable presumption certain offenders will be placed in a YRC instead of a JCF. The bill also requires a case plan be developed for every juvenile sentenced to a JCF, with input from the juvenile and the juvenile's family.

Adult prosecution. The bill limits extended jurisdiction juvenile prosecution to cases involving the most serious offenses and raises the age for adult prosecution from 12 to 14.

Implementation. The bill establishes a 19-member Kansas Juvenile Justice Oversight Committee to oversee implementation of reforms in the juvenile justice system and requires annual reports. [*Note*: This Oversight Committee is separate from the Joint Committee on Corrections and Juvenile Justice Oversight, established by KSA 46-2801 and charged in that statute with certain ongoing oversight duties related to the juvenile justice system. Additional members and duties were added to this Oversight Committee by 2017 House Sub. for SB 42, discussed below.] The bill adds a juvenile defense representative member to the previously existing juvenile corrections advisory boards and requires the boards to adhere to the goals of the Juvenile Code and coordinate with the Oversight Committee. The boards must annually consider the availability of treatment programs, alternative incarceration programs, mental health treatment, and development of risk assessment tools, and report annually to KDOC and the Oversight Committee the costs of programs needed in its judicial district to reduce out-of-home placement and recidivism.

The bill requires KDOC and OJA to provide at least semiannual training on evidence-based programs and practices to individuals who work with juveniles. OJA is required to designate or develop a training protocol for judges, county and district attorneys, and defense attorneys who work in juvenile court. Further, the bill requires the Attorney General to collaborate with the Kansas Law Enforcement Training Center and State Board

of Education (KSBE) to create skill development training for responding effectively to misconduct in school, while minimizing student exposure to the juvenile justice system, and directs KSBE to require school districts to develop and approve memorandums of understanding with guidelines for referral of school-based behaviors to law enforcement or the juvenile justice system.

2017. The Legislature passed House Sub. for SB 42 during the 2017 Session, which adjusted changes made by 2016 SB 367 and made further modifications to the juvenile justice system. Major provisions of this bill include:

Absconding from Supervision

Among other changes regarding absconding from supervision, the bill allows a court to issue a warrant after reasonable efforts to locate a juvenile who has absconded are unsuccessful and to toll the probation term limits and overall case length limits (established by SB 367) while a juvenile has absconded.

Immediate Intervention Programs

The bill requires KDOC to establish and maintain a statewide searchable database containing information regarding juveniles who participate in an immediate intervention program.

The bill establishes that immediate intervention does not have to be offered to a juvenile charged with a misdemeanor sex offense, to a juvenile who has previously participated in immediate intervention, or to a juvenile who was originally charged with a felony but had the charge amended to a misdemeanor as a result of a plea agreement.

Sentencing and Placement

The bill amends the sentencing alternatives and placement matrix to allow a court to commit a juvenile directly to a JCF or YRC placement for a term of 6-18 months, regardless of the risk level of the juvenile, upon a finding that a firearm was used in the commission of a felony offense by the juvenile.

The bill removes a three-month limit on short-term alternative placement allowed when a juvenile is adjudicated of certain sex offenses and certain other conditions are met.

Juvenile Justice Oversight Committee

The bill adds two members to the Oversight Committee—a youth member of the Kansas Advisory Group on Juvenile Justice and Delinquency Prevention (appointed by the chairperson of the Group) and a director of a juvenile detention facility (appointed by the Attorney General)—bringing its total membership to 21. The bill also provides two additional duties for the Oversight Committee: 1) study and create a plan to address the disparate treatment of and availability of resources for juveniles with mental health needs in the juvenile justice system; and 2) review portions of juvenile justice reform that require KDOC and OJA to cooperate and make recommendations when there is no consensus between the two agencies.

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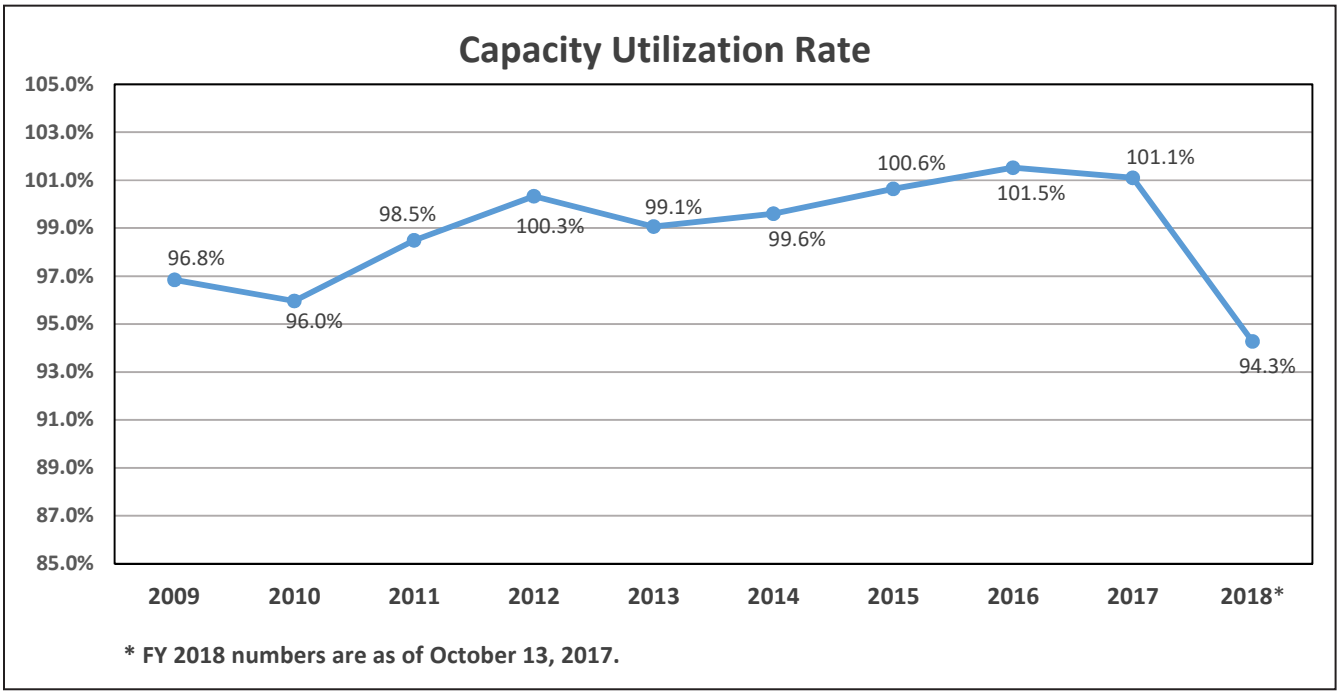
Judiciary, Corrections, and Juvenile Justice

G-5 Kansas Prison Population, Capacity, and Related Facility Issues

Historically, the Kansas Department of Corrections (KDOC) and state policymakers have had to address the issue of providing adequate correctional capacity for steady and prolonged growth in the inmate population. In the late 1980s, capacity did not keep pace with the population, which, along with related issues, resulted in a federal court order in 1989. The order dealt in part with mentally-ill inmates and developing a long-term plan to address the capacity issue, but did not mandate any new construction. Nonetheless, the immediate direct result was construction of a new facility that became El Dorado Correctional Facility (EDCF). The court order was terminated in 1996 following numerous changes to the correctional system, including the construction of Larned Correctional Mental Health Facility (LCMHF). During the last half of the 1990s, increases in the inmate population were matched by capacity increases, but capacity utilization rates, which divide average daily population (ADP) by total capacity, remained consistently high.

The population and capacity concerns continued into the early part of the 2000s. The utilization rate reached a peak of 99.0 percent in FY 2006. Between FY 2006 and FY 2008, the ADP decreased by 314 inmates to 8,773, while the total capacity increased by 72 to 9,317 beds, and utilization reached a recent low at 94.1 percent. The ADP has increased from FY 2009 to present. The utilization rate reached a high of approximately 101.5 percent in FY 2016 and has dropped to 94.2 percent based on information contained in recent KDOC population reports.



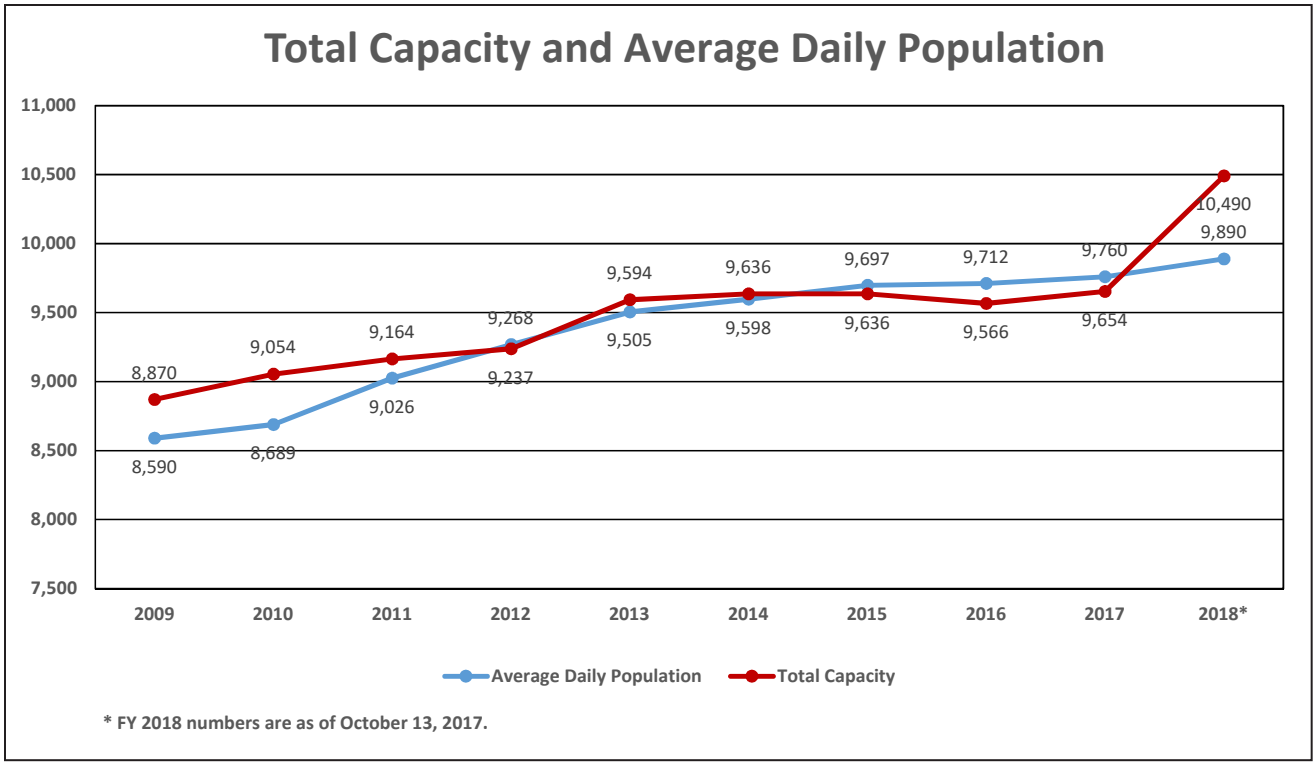
Budget reductions in FY 2009 prompted the KDOC to suspend operations at three smaller minimum-custody facilities (Stockton, Osawatomie, and Toronto) and close the men's and women's conservation camps in Labette County. Additionally, the Department for Aging and Disability Services has since taken over the Osawatomie facility. These suspensions and closings resulted in a decrease in total capacity by 447 beds.

Due to the increasing inmate population, the 2010 Legislature included a State General Fund (SGF) appropriation for FY 2011 to reopen the Stockton Correctional Facility, which reopened September 1, 2010. In addition, prison beds at LCMHF and Lansing Correctional Facility (LCF) that had been unavailable due to renovation work were opened again. During the 2012 Legislative Session, the Governor recommended the Labette facilities be re-purposed as a 262-bed geriatric facility set to house inmates beginning in January 2013, and KDOC purchased a property to serve as a 95-bed minimum-security unit in Ellsworth that began housing inmates in September 2012. Current capacity of KDOC facilities is 10,435.

Larned Correctional Mental Health Facility (LCMHF) has traditionally provided mental health services to inmates in need. In May 2017, KDOC announced its intention to convert LCMHF into a prison for 18 to 25-year-old inmates. KDOC intends to move the inmates receiving mental health services to EDCF in the coming years. On November 1, 2017, Secretary of Corrections Joe Norwood stated 62 high-acuity behavioral beds were open at EDCF and KDOC intends to open another 124 high-acuity behavioral health beds in EDCF's Individualized Reintegration Unit.

The ADP increased each fiscal year from FY 2009 through FY 2016, although in FY 2017 and in FY 2018, the ADP has decreased from the FY 2016 peak. This is due to the expansion of double-bunked cells at EDCF, LCMHF and Norton Correctional Facility. On October 13, 2017, the ADP in FY 2018 was 9,890, and the utilization rate was 94.2 percent, down from 101.1 percent in FY 2016. The October 13, 2017 inmate ADP included 119 inmates held in non-KDOC facilities during FY 2017, primarily at county jails and Larned State Hospital. The KDOC has a limited number of prison beds that are not counted in the official capacity, such as infirmary beds, that allow the population to exceed the official capacity.

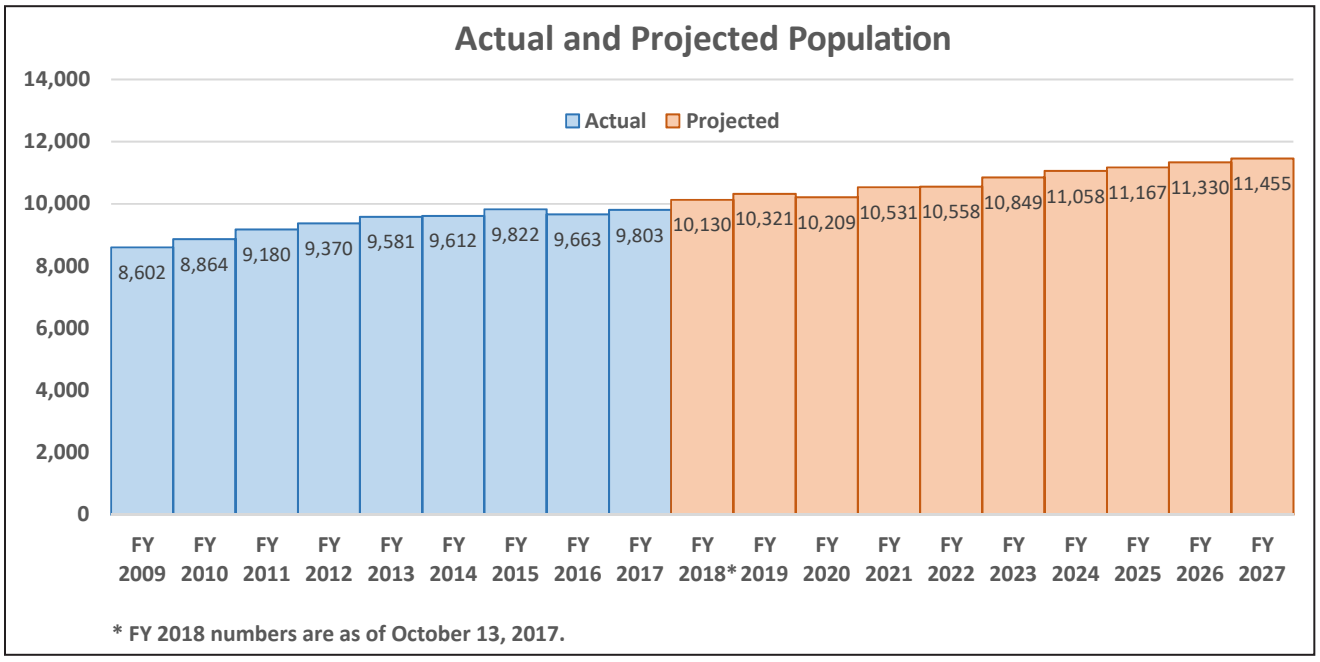
Budget reductions have prompted the KDOC to reduce parole and postrelease services and offender program services systemwide. The KDOC continues to be concerned these



reductions will create an increase in the ADP even after the addition of $2.0 million in FY 2014 and $3.0 million in FY 2015 for these programs. The FY 2018 prison population projections released by the Kansas Sentencing Commission (KSC) anticipate the inmate population will be 360 below full capacity by the end of FY 2018 but will exceed capacity by FY 2021 and will exceed capacity by 965 inmates by the end of FY 2027. Actual and projected populations are detailed in the following chart.

Population and Capacity by Gender and Custody Classification

In addition to total capacity, consideration also must be given to gender and custody

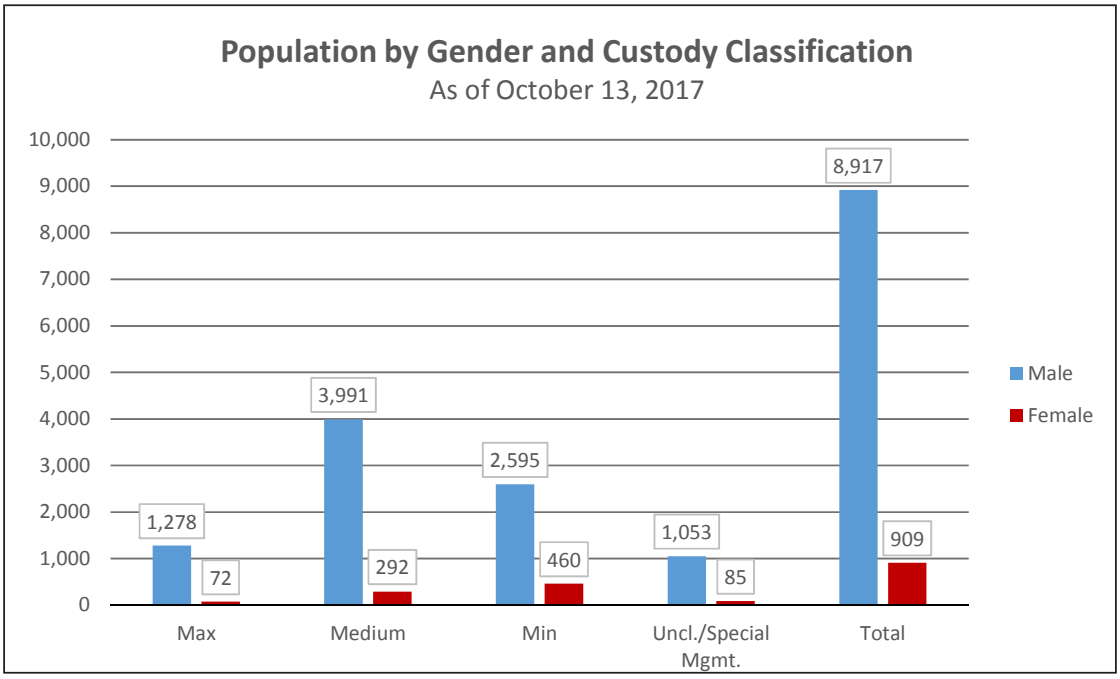


classification. The Population by Gender and Custody Classification chart displays capacity and ADP by gender and custody classification for FY 2017, as of October 13, 2017.

Issues with inadequate capacity are more common among the higher custody levels of inmates. This is due to the fact that higher custody level inmates cannot be placed in a lower custody level cell (*e.g.*, maximum inmates cannot be placed in medium or minimum cells). That is not the case for the lower custody level inmates, who can be placed in higher custody level cells. In addition, capacity in all-male or all-female facilities are not available for housing inmates of the opposite gender.

The FY 2018 prison population projections released by the KSC anticipate the male inmate population will meet capacity in FY 2021, dip slightly during FY 2022, before exceeding capacity during FY 2023 and climbing to 10,407, exceeding projected capacity by 832 inmates, in FY 2027.

The FY 2018 prison population projections released by the KSC show the female inmate population exceeding capacity by three inmates in FY 2018. Recent KDOC population reports show that KDOC is under capacity for its female inmates. The KSC projects the female population will rise to 1,048 in FY 2027, exceeding capacity by 133 inmates.



Consequences of Operating Close to Capacity

According to the KDOC, the following list illustrates some of the consequences of operating close to capacity:

- Excessive inmate movement;
- More difficult to manage emergencies;
- More difficult to separate inmates with conflicts (*e.g.*, gangs, grudges);
- Greater reliance on segregation;
- Greater reliance on contract jail beds; and
- Inability to keep inmates near to their families, which creates more problematic releases.

Options for Increasing Capacity

If the need to increase inmate capacity arises, several options are available. Two of the minimum custody facilities "moth-balled" in FY 2009 to achieve budget savings remain closed under KDOC ownership. The facility at Toronto has a capacity of 70 male inmates with an approximate annual operation cost of $966,500, and the north

unit at EDCF has a capacity of 102 male inmates with an approximate annual operation cost of $1.2 million.

New construction is also an option to expand inmate capacity. During the 2007 Legislative Session, KDOC received bonding authority totaling $40.5 million for new construction including adding cell houses at El Dorado, Stockton, and Ellsworth Correctional Facilities and a new facility in Yates Center. The KDOC issued $1.7 million in bonds for architectural planning at the four proposed sites, but the balance of the bonding authority was rescinded during the 2008 and 2009 Legislative Sessions. KDOC completed planning for expansion of the EDCF and beginning in FY 2017, included plans for construction on two new cell houses at EDCF in its five-year capital improvement plan at a total cost of $24.9 million. Each cell house would contain up to 256 beds depending on the combination of single and double-occupancy cells.

During the October 4, 2016, meeting of the Joint Committee on State Building Construction, KDOC asked the Committee to recommend that its requests to finance the construction of two facilities at EDCF, then totaling $27.2 million, all from the SGF, for FY 2019 be deleted from its five-year capital improvement plan. KDOC anticipates, based on population projections, the construction of the facilities may be needed by FY 2020.

Construction on Medium and Maximum Unit at Lansing Correctional Facility

During the 2017 Legislative Session, KDOC brought plans before the Legislature to demolish an existing medium-security unit at LCF and construct a new facility in its place. KDOC asserts the new facility will reduce the need for staff, generating savings over time.

Senate Sub. for HB 2002 (2017) allows KDOC to enter into a lease-purchase agreement for the demolition, design, and construction of a new facility at LCF or, if more cost-effective, allows the agency to bond with the Kansas Development Finance Authority to demolish, design, and construct a correctional institution at LCF, capping expenditures related to the project at $155.0 million. The bill also requires the Secretary of Corrections to advise and consult the State Building Advisory Commission for the use of an alternative project delivery procurement process and requires KDOC to appear before the State Finance Council for approval of the decision for FY 2018. The construction will not expand capacity by more than 100 beds.

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Judiciary, Corrections, and Juvenile Justice

G-6 Mental Health and the Criminal Justice System

(including crisis intervention, mental health courts, and KDOC mental health services)

Considerations for incarcerated and detained persons with mental health issues have become increasingly common in the criminal justice system in Kansas. An overview of available services follows.

Crisis Intervention Act—2017 Senate Sub. for HB 2053

The 2017 Legislature created law and made several changes to law related to the care and treatment of persons with mental illness and problems with substance abuse through Senate Sub. for HB 2053, also known as the Crisis Intervention Act (Act). The Act outlines requirements for the use of emergency observation and treatment (EOT) in a "crisis intervention center" (center), defined as an entity licensed by the Kansas Department for Aging and Disability Services that is open 24 hours a day, 365 days a year; equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse, or a co-occurring condition; and uses certified peer specialists. EOT under the Act does not mean the person loses any civil right, property right, or legal capacity, except as ordered by a court. Admission alone does not create a presumption that a person is in need of a guardian or conservator, or both.

An individual may be admitted voluntarily or involuntarily based on the belief and factual circumstances supporting the belief that the person needs EOT due to mental illness or substance abuse and he or she is likely to cause harm to self or others if not immediately detained. Law enforcement can transport a person needing EOT to a center, and the center cannot refuse to accept a person for evaluation if the center is within the officer's jurisdiction.

The person's need for EOT must be evaluated within 4 hours after admission by the head of the center and no later than 23 hours after admission by a different behavioral health professional. If the head of the center determines the need for EOT exists after 48 hours, the head of the center must file an affidavit to that effect for review in the district court in the county where the center is located. If the head of the center determines the need for EOT exists after 72

hours, the head of the center must immediately file a petition to find appropriate placement for the person.

The Act outlines the rights of every patient being treated in a center and requires the head of the center to advise any person in custody of his or her rights under the Act.

Background of Senate Sub. for HB 2053

Senate Sub. for HB 2053 was supported by law enforcement agencies around the state after the agencies encountered frequent issues with the detention and custody of mentally-ill persons. Several mental health advocacy groups were also in support of the bill. The bill was the product of a Judicial Council Advisory Committee created to study 2016 HB 2639, a bill which would have enacted the Emergency Observation and Treatment Act.

Kansas Department of Corrections Mental Health and Behavioral Health Services

Kansas Department of Corrections (KDOC) facilities provide comprehensive health care through private companies under contract with KDOC. Each facility provides 24-hour mental health care for inmates, including on-site crisis intervention, use of designated hospital rooms or appropriate health facilities, and emergency on-call mental health professional services when the emergency health facility is not located nearby. Mental health services are provided to inmates based upon psychiatric assessments. Specific programs and services are outlined below.

Larned Correctional Mental Health Facility

Until summer 2017, Larned Correctional Mental Health Facility (LCMHF) housed the most severely mentally-ill adult male inmates within KDOC, along with a significant number of inmates with behavioral disorders that make them an unacceptable risk for housing in another facility. The Central Unit serves as a transitional unit for inmates who are not able to function in the general population of a traditional correctional institution for mental health reasons, but are not in need of psychiatric hospitalization. Inmates are assigned to this facility by mental health staff at other correctional institutions. In May 2017, KDOC announced plans to convert the 150-bed maximum-security Central Unit to a medium-security unit to house certain offenders aged 18-25 with high recidivism potential. The 150 mental health inmates previously housed in Central Unit were subsequently transferred to El Dorado Correctional Facility (EDCF) in the summer of 2017. Those inmates will be housed within the behavioral health unit at EDCF (*http://www.hutchnews.com/cedbf438-576e-5a94-afd9-64b04ebc0d9b.html*).

Larned State Hospital

At Larned State Hospital, 115 beds are reserved for KDOC offenders who need a higher level of psychiatric care. There, inmates are provided mental health care and treatment in either the acute care or the residential rehabilitation program (RRP). The purpose of RRP is to provide psychiatric rehabilitation and vocational services to adult males referred from KDOC with the intent of preparing these individuals for successful reintegration into the community or back into KDOC services as determined on an individual basis.

El Dorado Correctional Facility

Fundamental Lessons in Psychology (FLIP). Directed at segregation inmates, FLIP consists of various psychological topics including: anger management, anxiety, assertiveness, cognitive self-change, depression, general mental health, grief, loss and forgiveness, men's issues/ adjustment and self-esteem.

Behavior Modification Program (BMP). BMP is a program designed to deal with transitioning segregation inmates in a stratified behavior modification program based on increased steps of privileges for demonstrated appropriate behavior and program compliance. The nine-month, cognitive-based program integrates inmates in a three-step process that includes portions of

Thinking for a Change, Motivation for Change, PAD (Positive Attitude Development), and anger management programs. An additional three months of monitoring under intensive supervision is required under the program.

Ellsworth Correctional Facility

A variety of services are available, including mental health group counseling, intensive groups, individual counseling, psychiatric intervention, crisis intervention, psychological evaluations, activity therapy, discharge planning, and tele-psychiatry, to assist in the management of inmates on psychotropic drugs, and on-call services. In addition, mental health professionals provide staff instruction on the assessment and management of the inmate population.

Norton Correctional Facility

The Behavioral Health Department provides individual and group therapy for inmates, including therapy groups for anger management and dialectical behavior therapy, and covering topics such as lifestyle changes, relationships, and parenting.

Alternative Sentencing Courts

Alternative sentencing courts are established as an alternative to incarceration for persons with mental health issues, substance abuse issues, or both, who are convicted of misdemeanors. These courts offer treatment, support, and counseling. Many times, those who suffer from mental health disorders also suffer from addiction to drugs, such as opioids. For some mental health courts, diagnosis of a major mental health disorder is required for participation. However, if the participant is also addicted to drugs, treatment for that addiction will coincide with treatment for the underlying mental health disorder. Kansas has not established a statewide program for drug treatment courts. However, the cities of Kansas City, Lawrence, Topeka, and Wichita have developed their own municipal- or county-level programs.

Wyandotte County sets aside a "care and treatment" docket for those who would benefit from the program. Judges can decide to mandate outpatient treatment or order a trip to Osawatomie State Hospital. In Douglas County, the county commission developed a behavioral health program for its courts, which opened in January 2017. More than $440,000 was set aside to fund the mental health court in 2016. The mission of the behavioral health court is to connect defendants with community support services and reduce criminal involvement of defendants who suffer from serious mental illness and co-occurring disorders, thereby enhancing public health and safety.

Topeka developed its Alternative Sentencing Court in 2015 with a $91,000 grant from the U.S. Department of Justice and $25,000 from the Kansas Health Foundation. The court provides treatment, rather than jail time, for those charged with misdemeanor offenses and who are mentally ill or addicted to drugs or alcohol. The City of Wichita developed its mental health court in 2009 with a federal grant. The program is said to have improved the quality of life for its graduates, diminished recidivism, and saved taxpayers millions of dollars (*http://cjonline.com/news-local-state/2016-10-24/advocates-kansas-mental-health-courts-say-lives-improved-taxpayer*).

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Judiciary, Corrections, and Juvenile Justice

G-7 Sentencing

The Kansas Sentencing Guidelines Act (KSGA) became effective July 1, 1993. Two grids containing the sentencing range for drug crimes and nondrug crimes were developed for use as a tool in sentencing.

The sentencing guidelines grids provide practitioners with an overview of presumptive felony sentences.

The determination of a felony sentence is based on two factors: the current crime of conviction and the offender's prior criminal history. The sentence contained in the grid box at the juncture of the severity level of the crime of conviction and the offender's criminal history category is the presumed sentence. See KSA 21-6804(c).

Off-Grid Crimes

The crimes of capital murder (KSA 21-5401), murder in the first degree (KSA 21-5402), terrorism (KSA 21-5421), illegal use of weapons of mass destruction (KSA 21-5422), and treason (KSA 21-5901) are designated as off-grid person crimes.

Kansas law provides for the imposition of the death penalty, under certain circumstances, for a conviction of capital murder. (KSA 21-5401 and KSA 21-6617) Where the death penalty is not imposed, a conviction of capital murder carries a life sentence without possibility of parole. (KSA 21-6620(a))

The remaining off-grid person crimes require life sentences with varying parole eligibility periods. Persons convicted of premeditated first-degree murder committed prior to July 1, 2014, are eligible for parole after serving 25 years of the life sentence, unless the trier of fact finds there were aggravating circumstances justifying the imposition of the "Hard 50" sentence (requiring 50 years to be served before parole eligibility).

Persons convicted of premeditated first-degree murder committed on or after July 1, 2014, are eligible for parole after serving 50 years of the life sentence, unless the sentencing judge, after a review of mitigating circumstances, finds substantial and compelling reasons to impose the "Hard 25" sentence instead. (KSA 21-6620(c))

Persons convicted of felony murder committed prior to July 1, 2014, are parole eligible after serving 20 years of the life sentence. Persons convicted of felony murder convicted on or after July 1, 2014, are parole eligible after serving 25 years of the life sentence.

Persons convicted of terrorism, illegal use of weapons of mass destruction, or treason are parole eligible after serving 20 years of the life sentence. (KSA 22-3717(b)(2))

Also included in the off-grid group are certain sex offenses against victims under the age of 14: aggravated human trafficking (KSA 21-5426(b)), rape (KSA 21-5503), aggravated indecent liberties (KSA 21-5506(b)), aggravated criminal sodomy (KSA 21-5504(b)), commercial sexual exploitation of a child (KSA 21-6422), and sexual exploitation of a child (KSA 21-5510). Offenders sentenced for these off-grid crimes are parole eligible after 25 years in confinement for the first offense, parole eligible after 40 years in confinement for the second offense, or sentenced to life without parole if they have been convicted of two or more of these offenses in the past.

Drug Grid and Nondrug Grid

The drug grid is used for sentencing on drug crimes described in KSA Chapter 21, Article 57. The nondrug grid is used for sentencing on other felony crimes. In both grids, the criminal history categories make up the horizontal axis, and the crime severity levels make up the vertical axis.

Each grid contains nine criminal history categories (*2017 Drug Grid*; *2017 NonDrug Grid*).

The drug grid contains five severity levels; the nondrug grid contains ten severity levels. A thick, black dispositional line cuts across both grids. Above the dispositional line are unshaded grid boxes, which are designated as presumptive prison sentences. Below the dispositional line are shaded grid boxes, which are designated as presumptive probation sentences.

The grids also contain boxes that have a darkshaded color through them, which are referred to as "border boxes." A border box has a presumptive prison sentence, but the sentencing court may choose to impose an optional nonprison sentence, which will not constitute a departure. The nondrug grid contains three border boxes, in levels 5-H, 5-I, and 6-G. The drug grid contains seven dark shaded border boxes, in levels 4-E, 4-F, 4-G, 4-H, 4-I, 5-C, and 5-D. (See KSA 21-6804 and KSA 21-6805.)

Grid Boxes

Within each grid box are three numbers, representing months of imprisonment. The three numbers provide the sentencing court with a range for sentencing. The sentencing court has discretion to sentence within the range. The middle number in the grid box is the standard number and is intended to be the appropriate sentence for typical cases. The upper and lower numbers should be used for cases involving aggravating or mitigating factors sufficient to warrant a departure, as explained in the next paragraph. (KSA 21-6804 and 21-6805)

The sentencing court may depart upward to increase the length of a sentence up to double the duration within the grid box. The court also may depart downward to lower the duration of a presumptive sentence. See KSA 21-6815, 21-6816, and 21-6817. The court also may impose a dispositional departure, from prison to probation or from probation to prison. (KSA 21-6818)

In *State v. Gould*, 271 Kan. 394, 23 P.3d 801 (2001), the predecessor to KSA 21-6815 was found to be "unconstitutional on its face" for the imposition of upward durational departure sentences by a judge and not a jury. In the 2002 Legislative Session, the departure provisions were amended to correct the upward durational departure problem arising from *Gould*. This change became effective on June 6, 2002. The jury now determines all of the aggravating factors that might enhance the maximum sentence, based upon the reasonable doubt standard. The trial court determines if the presentation of evidence regarding the aggravating factors will be presented during the trial of the matter or in

a bifurcated jury proceeding following the trial. (KSA 21-6817)

Sentencing Considerations

The sentencing court should consider all available alternatives in determining the appropriate sentence for each offender. The sentencing guidelines seek to establish equity among like offenders in similar case scenarios. Rehabilitative measures are still an integral part of the corrections process, and criminal justice professionals continue efforts to reestablish offenders within communities. The guidelines do not prohibit sentencing courts from departing from the prescribed sentence in atypical cases. The sentencing court is free to choose an appropriate sentence, or combination of sentences, for each case. (KSA 21-6604)

Good Time and Program Credits

While incarcerated, offenders may earn (and forfeit) "good time" credits based upon factors such as program and work participation, conduct, and the inmate's willingness to examine and confront past behavioral patterns that resulted in the commission of crimes. Depending on the severity level of the offender's crime, the offender may earn up to 15 percent or 20 percent of the prison part of the sentence in good time credits.

Additionally, offenders serving only a sentence for a nondrug severity level 4 or lower crime or a drug severity level 3 or lower crime may earn up to 120 days of credit that may be earned by inmates "for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender's risk after release."

With a few exceptions for certain sex-related offenses, any good time or program credits earned and subtracted from an offender's prison sentence are not added to the postrelease supervision term. (KSA 21-6821)

Postrelease Supervision

Once offenders have served the prison portion of a sentence, most must serve a term of postrelease supervision. For certain sex-related offenses, the postrelease supervision term is increased by the amount of any good time or program credits earned and subtracted from the prison portion of the offender's sentence. For crimes committed on or after July 1, 2012, offenders sentenced for drug severity levels 1-3 or nondrug severity levels 1-4 must serve 36 months of postrelease supervision, those sentenced for drug severity level 4 or nondrug severity levels 5-6 must serve 24 months, and those sentenced for drug severity level 5 or nondrug severity levels 7-10 must serve 12 months. These periods may be reduced based on an offender's compliance and performance while on postrelease supervision. (KSA 22-3717(d)(1))

While on postrelease supervision, an offender must comply with the conditions of postrelease supervision, which include reporting requirements; compliance with laws; restrictions on possession and use of weapons, drugs, and alcohol; employment and education requirements; restrictions on contact with victims or persons involved in illegal activity; and other conditions. A "technical violation" of the conditions of postrelease supervision (such as failure to report) will result in imprisonment for six months, reduced by up to three months based upon the offender's conduct during the imprisonment. A violation based upon conviction of a new felony or a new misdemeanor will result in a period of confinement as determined by the Prisoner Review Board, up to the remaining balance of the postrelease supervision period. (KSA 75-5217)

Recent Notable Sentencing Guidelines Legislation

In 2006, the Kansas sentencing guidelines law dealing with upward departures was amended to add a new aggravating factor when the crime involved two or more participants and the defendant played a major role in the crime as an organizer, leader, recruiter, manager, or supervisor.

The law was amended further to add a new mitigating factor for defendants who have provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense. In considering this mitigating factor, the court may consider the following:

- The significance and usefulness of the defendant's assistance;
- The truthfulness, completeness, and reliability of any information;
- The nature and extent of the defendant's assistance;
- Any injury suffered, any danger of risk of injury to the defendant or the defendant's family; and
- The timeliness of the assistance.

In 2008, the Kansas sentencing guidelines were amended to provide the following:

- No downward dispositional departure can be imposed for any crime of extreme sexual violence. A downward durational departure can be allowed for any crime of extreme sexual violence to no less than 50 percent of the center of the grid range of the sentence for such crime; and
- A sentencing judge cannot consider social factors as mitigating factors in determining whether substantial and compelling reasons exist for a downward departure.

In 2010, the Kansas Criminal Code, including the sentencing guidelines, was recodified. The recodification took effect July 1, 2011. Citations in this article are to the recodified code.

In 2012, the Legislature passed Senate Sub. for Sub. for HB 2318, which changed the drug grid from a four-level grid to a five-level grid, adding a new level 2 with penalties falling between the existing first and second levels of the grid. The new grid also expanded the presumptive imprisonment boxes and the border boxes.

In June 2013, the U.S. Supreme Court's decision in *Alleyne v. U.S.*, 570 U.S. 2151, 133 S. Ct. 2151, 186 L. Ed. 2D 314 (2013), called the constitutionality of Kansas' "Hard 50" sentencing statute (KSA 21-6620) into doubt. Since 1994, in cases where a defendant was convicted of premeditated first degree murder, the statute had allowed the sentencing court to impose a life sentence without eligibility for parole for 50 years when the judge found one or more aggravating factors were present. The *Alleyne* decision indicated that such determinations must be made by the trier of fact (usually a jury) using a reasonable doubt standard, rather than by the sentencing judge.

In response to the *Alleyne* decision, Kansas Attorney General Derek Schmidt requested Governor Sam Brownback call the Kansas Legislature into Special Session "for the purpose of repairing" the Hard 50 sentence. The Governor subsequently called the Legislature into Special Session starting September 3, 2013, to respond to *Alleyne*.

Before the 2013 Special Session, the Special Committee on Judiciary met to review *Alleyne*, receive testimony, and report preliminary findings to the House and Senate Judiciary Committees at the commencement of the Special Session. The Special Committee recommended language for a bill that would institute a jury procedure for the Hard 50 determination.

At the Special Session, the Legislature considered and passed HB 2002, which was an amended version of the language proposed by the Special Committee. HB 2002 went into effect upon its publication in the *Kansas Register* (September 6, 2013).

In 2014, the Legislature passed HB 2490, which included amendments to the sentencing provisions for premeditated first-degree murder, attempted capital murder, and felony murder.

The bill increased the default sentence for premeditated first-degree murder committed on or after July 1, 2014, from the Hard 25 sentence to the Hard 50 sentence. The sentencing judge may impose the Hard 25 sentence if the judge reviews mitigating factors and finds substantial and compelling reasons to impose the lesser sentence.

The bill also imposed the Hard 25 sentence for attempted capital murder (previously a severity level 1 felony) and felony murder (previously a Hard 20 sentence).

If a defendant's criminal history when sentenced for any of these crimes would subject the defendant to imprisonment for a term exceeding the Hard 50 or Hard 25 sentence (as applicable), then the defendant will be required to serve the mandatory minimum term equal to the sentence established under the sentencing guidelines.

In 2015, the Legislature passed HB 2051, which increased the amount of good time inmates sentenced for post-July 1, 2012, drug severity level 3 crimes may earn, to try to restore the general good time eligibility criteria to a similar state as it existed before the 2012 changes to the drug grid. The bill also increased the amount of time that may be earned by any eligible inmate for program credits from 60 days to 90 days.

The source for the attached sentencing range grid for drug offenses and nondrug offenses is the *Kansas Sentencing Commission Guidelines, Desk Reference Manual, 2017*.

In 2016, the Legislature passed three bills related to sentencing: HB 2151, HB 2447, and HB 2463. HB 2151 authorized the Secretary of Corrections to transfer certain low- to moderate-risk offenders to house arrest pursuant to community parenting release if the conditions listed in the bill are met and the Secretary determines the offender's placement in the program is in the child's best interests. The Secretary can return an offender to a correctional facility to serve the remaining sentence if the offender fails to comply with release requirements.

HB 2447 increased the maximum number of days an inmate's sentence may be shortened for earning program credits from 90 days to 120 days.

The bill also permitted the dismissal of parole, conditional release, or postrelease supervision violation charges to be conditioned upon the released inmate agreeing to credit being withheld for the period of time from the date the Secretary of Corrections issued a warrant to the date the offender was arrested or returned to Kansas.

HB 2463 amended statutes governing the determination of criminal history to add non-grid felonies, nondrug severity level 5 felonies, and any drug severity level 1 through 4 felonies committed by an adult to the list of juvenile adjudications that will decay if the current crime of conviction is committed after the offender reaches age 25. The bill also allowed a court to continue or modify conditions of release for, or impose a 120- or 180-day prison sanction on an offender who absconds from supervision, without having to first impose a 2- or 3-day jail sanction. Finally, the bill made a violation or an aggravated violation of the Kansas Offender Registration Act a person offense if the underlying crime (for which registration is required) is a person crime. If the underlying crime is a nonperson crime, the registration offense is a nonperson crime. Previously, a violation or aggravated violation of the Kansas Offender Registration Act was a person crime regardless of the designation of the underlying crime.

Legislation passed by the 2017 Legislature involving sentencing included SB 112 and HB 2092. SB 112, among other changes, enacts the Law Enforcement Protection Act. This act creates a special sentencing rule with enhanced penalties if a trier of fact finds beyond a reasonable doubt that an offender committed a nondrug felony offense (or an attempt or conspiracy to commit such offense) against a law enforcement officer while the officer was performing the officer's duty or solely due to the officer's status as a law enforcement officer.

HB 2092, among other changes, amends law related to mandatory minimum sentences. The bill clarifies that mandatory minimum sentences will not apply if, due to criminal history, the offender would be subject to presumptive imprisonment for a severity level 1 crime for a term longer than the mandatory minimum. In such case, the offender would serve a sentence equal to the longer term and would not be eligible for parole until the entire sentence is completed. In addition, the sentence could not be reduced by good time credits.

SENTENCING RANGE- DRUG OFFENSES

Categories→	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felony	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	204 194 185	196 186 176	187 178 169	179 170 161	170 162 154	167 158 150	162 154 146	161 150 142	154 146 138
II	144 136 130	137 130 122	130 123 117	124 117 111	116 111 105	113 108 101	110 104 99	108 100 96	103 98 92
III	83 78 74	77 73 68	72 68 65	68 64 60	62 59 55	59 56 52	57 54 51	54 51 49	51 49 46
IV	51 49 46	47 44 41	42 40 37	36 34 32	32 30 28	26 24 23	23 22 20	19 18 17	16 15 14
V	42 40 37	36 34 32	32 30 28	26 24 23	22 20 18	18 17 16	16 15 14	14 13 12	12 11 10

Presumptive Probation

Border Box

Presumptive Imprisonment

- Fines not to exceed $500,000 (SL1-SL2), $300,000 (SL3-SL4), $100,000 (SL5)
- Severity level of offense increases one level if controlled substance or analog is distributed or possessed w/ intent to distribute on or w/in 1000 ft of any school property.

	Distribute or Possess w/ intent to Distribute								
Levels	Cocaine	Meth & Heroin	Marijuana	Manufacture (all)	Cultivate	Dosage Units	Postrelease	Probation	Good Time
I	≥ 1 kg	≥ 100 g	≥ 30 kg	2nd or Meth	>100 plants	>1000	36	36	15%
II	100 g - 1 kg	3.5 g - 100 g	450 g - 30 kg	1st	50-99 plants	100-999	36	36	15%
III	3.5 g - 100 g	1 g - 3.5 g	25 g - 450 g		5-49 plants	10-99	36	36	**20%
IV	< 3.5 g	< 1 g	< 25 g			<10	24	≤ 18	20%
V	Possession	Possession	Possession-3rd offense				12	*≤12	20%

* ≤ 18 months for 2003 SB123 offenders

*** Retroactive application for offense committed on or after July 1, 2012

SENTENCING RANGE – NONDRUG OFFENSES

Category →	A	B	C	D	E	F	G	H	I
Severity Level ↓	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanor	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 258	267 253 240	246 234 221	226 214 203	203 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 123	123 117 109
III	247 233 221	228 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 68	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	34 32 31
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	26 24 22	21 20 19	19 18 17
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	7 6 5

Probation Terms are:
36 months recommended for felonies classified in Severity Levels 1-5
24 months recommended for felonies classified in Severity Levels 6-7
18 months (up to) for felonies classified in Severity Level 8
12 months (up to) for felonies classified in Severity Levels 9-10

Postrelease Supervision Terms are:
36 months for felonies classified in Severity Levels 1-4
24 months for felonies classified in Severity Levels 5-6
12 months for felonies classified in Severity Levels 7-10

Postrelease for felonies committed before 4/20/95 are:
24 months for felonies classified in Severity Levels 1-6
12 months for felonies classified in Severity Level 7-10

LEGEND
Presumptive Probation
Border Box
Presumptive Imprisonment

KSG Desk Reference Manual 2017
Appendix E

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Judiciary, Corrections, and Juvenile Justice

G-8 Sex Offenders and Sexually Violent Predators

In recent years, the Kansas Legislature has made significant amendments to the Kansas Offender Registration Act (Act), KSA 22-4901 to KSA 22-4911 and KSA 22-4913, to comply with the federal Adam Walsh Sex Offender Registration and Notification Act (SORNA). The purpose of the federal law is to protect the public, particularly children, from violent sex offenders by using a more comprehensive, nationalized system for registration of sex offenders. It calls for state conformity to various aspects of sex offender registration, including the information that must be collected, duration of registration requirement for classifications of offenders, verification of registry information, access to and sharing of information, and penalties for failure to register as required. Failure of a jurisdiction to comply would result in a 10 percent reduction in Byrne law enforcement assistance grants. Eighteen states, Kansas included, substantially have implemented SORNA. The other states are Alabama, Colorado, Florida, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and Wyoming.

The Act outlines registration requirements for “offenders,” which is defined to include sex offenders, violent offenders, and drug offenders, in addition to persons required to register in other states or by a Kansas court for a crime that is not otherwise an offense requiring registration. The definitions of sex offenders, violent offenders, and drug offenders are based on the commission and conviction of designated crimes, KSA 22-4902. A first conviction of failure to comply with the provisions of the Act is a severity level 6 felony; a second conviction is a level 5 felony; and a third or subsequent conviction is a level 3 felony. Additionally, failure to comply with the Act for more than 180 consecutive days is considered an aggravated violation—a level 3 felony. Lower severity levels apply for violations that consist only of failure to pay the sheriff’s office the required registration fee. Designation of these offenses as person or nonperson crimes depends on the designation of the underlying offense requiring registration. (KSA 22-4903)

Several entities collaborate to enforce the provisions of the Act. KSA 22-4904 lists the duties of each entity in its own subsection as follows:

(a) Courts (at the time of conviction or adjudication);

(b) Staff of a correctional facility;

(c) Staff of a treatment facility;

(d) Registering law enforcement agencies;

(e) Kansas Bureau of Investigation (KBI);

(f) Attorney General;

(g) Kansas Department of Education;

(h) Secretary of Health and Environment; and

(i) The clerk of any court of record.

Registration Requirements

KSA 22-4905 describes registration requirements. An offender must register in person with the registering law enforcement agency within three business days of coming into any county or location of jurisdiction in which the offender resides or intends to reside, maintains employment or intends to maintain employment, or attends school or intends to attend school. Exceptions exist for anyone physically unable to register in person, at the discretion of the registering law enforcement agency. Additionally, sex offenders must report in person four times a year to the registering law enforcement agency in the county or location of jurisdiction in which the offender resides, maintains employment, or is attending school. Violent offenders and drug offenders, at the discretion of the registering law enforcement agency, are required to report in person three times each year and by certified letter one time each year. An offender must register during the month of the offender's birth, and every third, sixth, and ninth month occurring before and after the offender's birthday. With some exceptions, the offender must pay a $20 fee each time.

Recent law (2013 SB 20) amended this requirement to provide that registration is complete even when the offender does not remit the registration fee, and failure to remit full payment within 15 days of registration is a class A misdemeanor, or, if within 15 days of the most recent registration two or more full payments have not been remitted, a severity level 9, person felony.

Offenders also must register in person within three business days of commencement, change, or termination of residence, employment status, school attendance, or other information required on the registration form, with the registering law enforcement agency where last registered and provide written notice to the KBI. Similarly, an offender must register within three business days of any name change. Finally, the offender must submit to the taking of an updated photograph when registering or to document any changes in identifying characteristics; renew any driver's license or identification card annually; surrender any drivers' licenses or identification cards from other jurisdictions when Kansas is the offender's primary residence (an exception exists for active duty members of the military and their immediate family); and read and sign registration forms indicating whether these requirements have been explained.

Special conditions exist for registration in certain circumstances. If in the custody of a correctional facility, the law requires offenders to register with that facility within three business days of arrival, but does not require them to update their registration until discharged, paroled, furloughed, or released on work or school release from a correctional facility. If the offender is involuntarily committed under the Kansas Sexually Violent Predator Act, the committing court must notify the registering law enforcement agency of the county where the offender resides during the commitment. The offender must then register within three business days of arrival of the county of commitment, but then is not required to update such registration until placement in a reintegration facility, on transitional release, or on conditional release, at which point the regular responsibility for compliance resumes. If receiving inpatient treatment at any treatment facility, the offender must inform the registering law enforcement agency of the offender's presence at the facility and the expected duration of the treatment. If an offender is transient, the law requires the offender to report in person to the registering law enforcement agency of the county or location of jurisdiction within three business days of arrival, and every 30 days thereafter, or more often at the discretion of the registering law enforcement

agency. If traveling outside the United States, the offender must report in person to the registering law enforcement agency and the KBI 21 days prior to travel and provide an itinerary including destination, means of transport, and duration of travel. In an emergency, an offender must report within three business days of making arrangements for travel outside of the United States.

Duration of Registration

Pursuant to the Act, offenders are required to register for 15 or 25 years or for life, depending on the offense. Those crimes requiring registration for 15 years are: capital murder; murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; criminal restraint, when the victim is less than 18;promoting the sale of sexual relations; a sexually motivated crime; a person felony where a deadly weapon was used; sexual battery; manufacture or attempted manufacture of a controlled substance; possession of certain drug precursors; distribution of certain controlled substances; any of the following when one of the parties is less than 18—adultery, patronizing a prostitute, or lewd and lascivious behavior; attempt, conspiracy, or criminal solicitation of any of these crimes; and convictions of any person required by court order to register for an offense not otherwise required by the Act.

Those crimes requiring registration for 25 years are: criminal sodomy, when one of the parties is less than 18; indecent solicitation of a child; electronic solicitation; aggravated incest; indecent liberties with a child; unlawful sexual relations; sexual exploitation of a child; aggravated sexual battery; promoting prostitution, if the person selling sexual relations is 14 through 17 years of age; or any attempt, conspiracy, or criminal solicitation of any of these crimes.

Those crimes requiring registration for life are: second or subsequent convictions of an offense requiring registration; rape; aggravated indecent solicitation of a child; aggravated indecent liberties with a child; criminal sodomy; aggravated criminal sodomy; aggravated human trafficking; sexual exploitation of a child; promoting prostitution, if the person selling sexual relations is under 14 years of age; kidnapping; aggravated kidnapping; or any attempt, conspiracy, or criminal solicitation of any of these crimes. Additionally, any person declared a sexually violent predator is required to register for life.

Offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is a severity level 1 nondrug felony or an offgrid felony, also must register for life.

For offenders 14 years of age or older who are adjudicated as a juvenile offender for an act that would be considered a sexually violent crime when committed by an adult, and which is not a severity level 1 nondrug felony or an off-grid felony, a court may:

- Require registration until the offender reaches the age of 18, five years after adjudication or, if confined, five years after release from confinement, whichever occurs later;
- Not require registration if it finds on the record substantial and compelling reasons; or
- Require registration, but with the information not open to the public or posted on the Internet. (The offender would be required to provide a copy of such an order to the registering law enforcement agency at the time of registration, which in turn would forward the order to the KBI.)

An offender required to register pursuant to the Act cannot expunge any conviction or part of the offender's criminal record while the offender is required to register.

Public Access to Offender Registration Information and the KBI Registered Offender Website

KSA 22-4909 provides that information provided by offenders pursuant to the Act is open to inspection by the public and can be accessed

at a registering law enforcement agency, as well as KBI headquarters. Additionally, the KBI maintains a website with this information (http://www.accesskansas.org/kbi/ro.shtml), as do some registering law enforcement agencies. One of the provisions of this statute, added by 2012 HB 2568, prohibits disclosure of the address of any place where the offender is an employee or any other information about where the offender works on a website sponsored or created by a registering law enforcement agency or the KBI. While that information is not available online, it remains publicly available and may be obtained by contacting the appropriate registering law enforcement agency or by signing up for community notification through the KBI website.

Additionally, when a court orders expungement of a conviction or adjudication that requires registration, the offender must continue registering, although the registration is not open to inspection by the public or posted on the Internet. If the offender has an additional conviction or adjudication that requires registration that is not expunged, registration for that conviction or adjudication remains open to the public and may be posted on the Internet, unless the registration is ordered restricted.

Court Decisions Regarding Offender Registration

In *State v. Myers,* 260 Kan. 669 (1996), the Kansas Supreme Court rejected an *ex post facto* challenge to the registration requirements, holding they did not unconstitutionally increase the punishment for the applicable crimes. However, the *Myers* court did hold that the public disclosure of registrant information would be punitive and an *ex post facto* violation when imposed retroactively.

Subsequent Kansas appellate court decisions noted that the *Myers* holding that public disclosure applied retroactively is unconstitutional was cast into doubt by the U.S. Supreme Court's decision in *Smith v. Doe*, 538 U.S. 84, 123 S. Ct. 1140, 155 L. Ed. 2D 164 (2003). The *Smith* court held that Alaska's offender registration scheme, including public disclosure of registrant information *via* a website, was nonpunitive and its retroactive application not an *ex post facto* violation. (See, *e.g., State v. Brown*, No. 107,512, unpublished opinion filed May 24, 2013.) A petition for review in *Brown* was filed June 24, 2013, but was placed on hold in January 2014.

In April 2016, the Kansas Supreme Court held in three cases challenging the retroactive application of increased registration periods on *ex post facto* grounds that the 2011 version of the Act was punitive in effect and therefore could not be applied retroactively. (See *Doe v. Thompson,* 304 Kan. 291 (2016); *State v. Buser,* 304 Kan. 181 (2016); and *State v. Redmond*, 304 Kan. 283 (2016).)

However, the same day the Court subsequently released an opinion in a case challenging lifetime postrelease registration for sex offenders under the Act as an unconstitutional cruel or unusual punishment. (See *State. v. Petersen-Beard,* 304 Kan. 192 (2016).) Using *Smith* and its progeny as a template for analysis, the *Petersen-Beard* court held that registration did not constitute punishment, that the analysis of whether the requirements constitute punishment is identical for all constitutional provisions, and that therefore the contrary holdings of *Thompson*, *Buser,* and *Redmond* are overruled. (For a procedural description of how these cases came to be issued and overruled the same day, see Justice Johnson's dissent in *Petersen-Beard*.)

In August 2017, the Kansas Supreme Court explicitly extended the holding of *Petersen-Beard* in a case challenging retroactive application of tolling requirements for sex offender registration under KORA, stating that such retroactive application does not violate the *ex post facto* clause. (See *State v. Reed*, ___ Kan___, 399 P.3d 865 (August 4, 2017).)

In a decision issued the same day as Reed, the court declined to hold that retroactive application of increased registration requirements for drug offenders under KORA violates the ex post facto clause. (See *State v. Meredith*, ___ Kan. ___, 399 P.3d 859 (August 4, 2017).) However, the *Meredith* court stated that its decision, due to an insufficient record on appeal, would not "fully

foreclose future *ex post facto* challenges to KORA registration for non-sex offenders," but that future challenges would have to distinguish the effects of KORA on such offenders from its effect on sex offenders.

Development of Sex Offender Policy

Consistent with Kansas' early compliance with SORNA, the Kansas Legislature has been at the forefront of state and federal efforts to deal with the problem of sex offenders and sex predators. In addition to the SORNA amendments, since 1993, the Kansas Legislature has passed the Kansas Offender Registration Act (Act); passed the Civil Commitment of Sexually Violent Predators Act; reinstated the death penalty for various acts of intentional and premeditated murder following the rape or sodomy of the victim or following the kidnapping of the victim; made life without parole the sentence for those persons convicted of a capital murder crime who are not given the sentence of death; nearly quadrupled the length of time more serious offenders, including sex offenders, serve in prison; lengthened the statute of limitations for sex crimes; and required DNA testing.

Legislation enacted in 2006 (SB 506) authorized the creation of the Sex Offender Policy Board (SOPB) under the auspices of the Kansas Criminal Justice Coordinating Council (KCJCC). The bill established the SOPB to consult with and advise the KCJCC on issues and policies relating to the treatment, sentencing, rehabilitation, reintegration, and supervision of sex offenders and to report its findings to the KCJCC, Governor, Attorney General, Chief Justice of the Supreme Court, the Chief Clerk of the House of Representatives, and the Secretary of the Senate. The SOPB's first report examined four topics: utilization of electronic monitoring, public notification pertaining to sex offenders, management of juvenile sex offenders, and restrictions on the residence of released sex offenders. The second report addressed the topics of treatment and supervision standards for sexual offenders, suitability of lifetime release supervision, and safety education and prevention strategies for the public.

Sex Offender Residency Restrictions

Legislation enacted in 2006 (SB 506) also prohibited cities and counties from adopting or enforcing any ordinance, resolution, or regulation establishing residential restrictions for offenders required to register under the Act. This provision was scheduled to expire on June 30, 2008. During the 2006 Interim, the Special Committee on Judiciary was charged by the Legislative Coordinating Council with studying actions by other states and local jurisdictions regarding residency and proximity restrictions for sex offenders to discover any serious unintended consequences of such restriction and identifying actions Kansas might take that actually achieve the intended outcome of increasing public safety. The Committee held a joint hearing with the SOPB to take testimony from experts in the field. The Committee recommended the Legislature wait to receive the report from the SOPB on the topic before any legislative action was taken.

On January 8, 2007, the SOPB issued a report on its findings regarding sex offender residency restrictions, with the following conclusions:

- Although residency restrictions appear to have strong public support, the Board found no evidence to support their efficacy. It is imperative that policy makers enact laws that actually will make the public safe and not laws giving the public a false sense of security;
- It is recommended the Legislature make permanent the moratorium on residency restrictions. However, the moratorium should not be intended to interfere with a locality's ability to regulate through zoning the location of congregate dwellings for offenders such as group homes;
- Residency restrictions should be determined based on individually identified risk factors;
- The most effective alternative for protecting children is a comprehensive education program. It is recommended the necessary resources be provided to an agency determined appropriate by the Legislature to educate Kansas parents,

children, and communities regarding effective ways to prevent and respond to sexual abuse. Such an education program should include all victims and potential victims of child sexual abuse; and

- In order for an effective model policy to be developed, the issue of sex offender residency restrictions should be referred to the Council of State Governments, the National Governors Association, and similar organizations to prevent states and localities from shifting the population and potential problems of managing sex offenders back and forth among states.

During the 2008 Legislative Session, SB 536 was enacted to:

- Eliminate the sunset provision on the prohibition on cities and counties from adopting or enforcing any ordinance, resolution, or regulation establishing residential restrictions for offenders;
- Add a provision to exempt any city or county residential licensing or zoning program for correctional placement residences that regulates housing for such offenders from the prohibition from adopting or enforcing offender residency restrictions;
- Add a provision which defines "correctional placement residence" to mean a facility that provides residential services for offenders who reside or have been placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse; and
- Clarify that a correctional placement residence does not include a single or multifamily dwelling or commercial residential building that provides residence to persons other than those placed in the facility as part of a criminal sentence or for voluntary treatment services for alcohol or drug abuse.

During the 2010 Interim, the Joint Committee on Corrections and Juvenile Justice Oversight studied the issue of residency restrictions and concluded that sex offender residency restrictions have no demonstrated efficacy as a means of protecting public safety.

Commitment of Sexually Violent Predators in Kansas

In Kansas, a sexually violent predator is a person who has been convicted of or charged with a "sexually violent offense" and who suffers from a mental abnormality or personality disorder, which makes the person likely to engage in repeat acts of sexual violence. Sexually violent predators are distinct from other sex offenders due to a higher risk to re-offend if their mental abnormality or personality disorder is left untreated. Those crimes considered "sexually violent offenses"are: rape, KSA 21-5503; indecent liberties with a child and aggravated indecent liberties, KSA 21-5506; criminal sodomy and aggravated criminal sodomy, KSA 21-5504; indecent solicitation of a child and aggravated indecent solicitation, KSA 21-5508; sexual exploitation of a child, KSA 21-5510; aggravated sexual battery, KSA 21-5505; and aggravated incest, KSA 21-5604. "Mental abnormality" is defined as a congenital or acquired condition affecting the emotional or volitional capacity, which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others. "Likely to engage in repeat acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others. Pursuant to the Kansas Sexually Violent Predator Act (KSA 59-29a01 *et seq*.), originally enacted in 1994, a sexually violent predator can be involuntarily committed to the Sexual Predator Treatment Program (SPTP) at Larned State Hospital. Civil commitment is different from a criminal conviction. Instead of having a definitive time frame, civil commitment continues until the offender's mental abnormality or personality disorder has changed to the extent that he or she is safe to be released. Commitment can be accomplished only following a civil trial in which the court or a jury finds that a person is a sexually violent predator. A sexually violent predator would be required to complete the three phases of the treatment program, which include two inpatient phases at Larned State

Hospital and one outpatient phase at one of the reintegration facilities. There is no time limit for completion of each phase. The offender must meet the predetermined requirements of the phase to progress.

Upon release from the secure facility, a person would then go to a transitional release or conditional release facility. These facilities cannot be located within 2,000 feet of a licensed child care facility, an established place of worship, any residence in which a child under 18 years of age resides, or a school or facility used for extracurricular activities of pupils enrolled in Kindergarten through grade 12 (KSA 59-29a11(b)). Additionally, no more than 16 sexually violent predators may be placed in any one county on transitional release or conditional release.

The Secretary for Aging and Disability Services is required to issue an annual report to the Governor and Legislature detailing activities regarding transitional and conditional release of sexually violent predators. Such details include their number and location; the number of those who have been returned to treatment at Larned State Hospital and the reasons for the return; and any plans for the development of additional transitional or conditional release facilities.

Recent Legislation and Related Activity

In 2013 and 2015, the Legislative Division of Post Audit (LPA) completed a two-part performance audit of the SPTP that looked at the questions of how the Kansas SPTP compared to similar programs in other states and best practice, what actions could be taken to reduce the number of offenders committed to the SPTP, and whether the SPTP is appropriately managed to ensure the safety and well being of program staff and offenders. Further information regarding this performance audit, including the reports, may be found on the LPA website: *www.kslpa.org*.

During the 2015 Session, House Sub. for SB 12 was enacted. This bill created and amended law governing the civil commitment of sexually violent predators and the SPTP. The bill's extensive provisions included the following:

- Named the continuing and new law governing such civil commitment the "Kansas Sexually Violent Predator Act";
- Adjusted the processes for identifying and evaluating persons who may meet the criteria of a sexually violent predator;
- Adjusted the processes for filing the petition alleging a person is a sexually violent predator and conducting the probable cause hearing and trial on such petition;
- Adjusted processes for post-commitment hearings and annual examinations;
- Adjusted standards and processes for transitional release, conditional release, and final discharge;
- Increased the limit on sexually violent predators that may be placed in any one county on transitional or conditional release from 8 to 16;
- Amended the statute setting forth rights and rules of conduct for sexually violent predators;
- Incorporated the Kansas Administrative Procedure Act, Kansas Judicial Review Act, and Office of Administrative Hearings into the procedures for addressing actions taken by the Kansas Department for Aging and Disability Services regarding SPTP residents; and
- Adjusted *habeas corpus* provisions for persons committed under the Act.

During the 2016 Session, SB 407 was enacted, which modified registration requirements for committed offenders and revived a statute in the Sexually Violent Predator Act related to transitional release that was inadvertently repealed by 2015 House Sub. for SB 12.

During the 2017 Session, HB 2128 was enacted, which amended the procedures for annual review, transitional release, and conditional release for committed offenders.

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State and Local Government

H-1 Administrative Rule and Regulation Legislative Oversight

Since 1939, Kansas statutes have provided for legislative oversight of rules and regulations filed by state officers, boards, departments, and commissions. The 1939 law declared that all rules and regulations of a general or statewide character were to be filed with the Revisor of Statutes and would remain in force until and unless the Legislature disapproved or rejected the regulations. It was not until 1974 that the Legislature took steps to formalize an oversight process. In that year, all filed rules and regulations were submitted to each chamber. Within 60 days of submission, the Legislature could act to modify and approve or reject any of the regulations submitted. In 1984, the Kansas Supreme Court held that a procedure adopted in 1979, which authorized the use of concurrent resolutions to modify or revoke administrative rules and regulations, violated the doctrine of separation of powers under the *Kansas Constitution*.

The 1975 interim Legislative Budget Committee, under Proposal No. 33, found it "important to maintain and even enhance legislative oversight of all regulations in order to make sure that they conform with legislative intent." The 1976 Legislature agreed with that finding and enacted several amendments to the Rules and Regulations Filing Act. In that same year, the Legislative Coordinating Council created the Special Committee on Administrative Rules and Regulations to review proposed administrative rules and regulations filed with the Revisor of Statutes. The law was later changed to require proposed agency rules and regulations to be reviewed as outlined below. A 1977 law created the Joint Committee on Administrative Rules and Regulations.

Administrative rules and regulations are developed using the *Policy and Procedure Manual for the Filing of Kansas Administrative Regulations* developed by the Kansas Department of Administration.

Rule and Regulation Authority—Examples

Regulations serve to implement or interpret legislation administered by a state agency. The statutory authority for the agency to adopt these rules and regulations is found in enabling legislation, as illustrated in the language found in legislation:

Kansas Amusement Ride Act (2017 Session)

The Secretary of Labor shall adopt rules and regulations necessary to implement provisions of the Kansas Amusement Ride Act (2017 House Sub. for SB 86, amending KSA 44-1613).

Acupuncture Practice Act (2016 Session)

The Board [of Healing Arts] shall promulgate all necessary rules and regulations which may be necessary to administer the provisions of this act and to supplement the provisions herein (2016 HB 2615, KSA 2016 Supp. 65-7615).

The Rules and Regulations Filing Act (Act) (KSA 77-415 through 77-438, and amendments thereto) outlines the statutory requirements for the filing of regulations by most executive branch agencies and for the Legislature's review of the agency regulations.

The Regulation Adoption Process

There are two types of administrative rules and regulations: temporary and permanent. A temporary rule and regulation, as defined in KSA 2016 Supp. 77-422, may be utilized by an agency if preservation of the health, safety, welfare, or public peace makes it necessary or desirable to put the regulation into effect before a permanent regulation would take effect. Temporary rules and regulations take effect and remain effective for 120 days, beginning with the date of approval by the State Rules and Regulations Board and filing with the Secretary of State. A state agency, for good cause, may request a temporary rule and regulation be renewed one time for an additional period not to exceed 120 days. A permanent rule and regulation takes effect 15 days after publication in the *Kansas Register*.

KSA 2016 Supp. 77-420 and 77-421 outline the process for the adoption of permanent Kansas Administrative Regulations (KAR) in the following steps (to be followed in consecutive order):

- Obtain approval of the proposed rules and regulations from the Secretary of Administration;
- Obtain approval of the proposed rules and regulations from the Attorney General including whether the rule and regulation is within the authority of the state agency;
- Submit the notice of hearing, copies of the proposed rules and regulations as approved, and the economic impact statement to the Secretary of State; and submit a copy of the notice of hearing to the chairperson, vice-chairperson, and ranking minority member of the Joint Committee on Administrative Rules and Regulations (Joint Committee), and to the Kansas Legislative Research Department and Citizen Regulatory Review Board (CURB) (required by Executive Order 11-02; however, 2017 Senate Sub. for HB 2002, Sec. 62, prohibits CURB from using state funding for this purpose in FY 2018);
- Review the proposed rules and regulations with the Joint Committee;
- Hold the public hearing and prepare a statement of the principal reason for adopting the rule and regulation;
- Revise the rules and regulations and economic impact statement, as needed, and again obtain approval of the Secretary of Administration and the Attorney General;
- Adopt the rules and regulations; and
- File the rules and regulations and associated documents with the Secretary of State.

The Secretary of State, as authorized by KSA 2016 Supp. 77-417, endorses each rule and regulation filed, including the time and date of filing; maintains a file of rules and regulations for public inspection; keeps a complete record of all amendments and revocations; indexes the filed rules and regulations; and publishes the rules and regulations. The Secretary of State's Office publishes the adopted regulations in the KAR

Volumes and Supplements and on the Office's website.

In addition, new, amended, or revoked regulations are published in the *Kansas Register* as they are received. The Secretary of State has the authority to return to the state agency or otherwise dispose of any document which had been adopted previously by reference and filed with the Secretary of State.

Legislative Review

The law dictates that the 12-member Joint Committee on Administrative Rules and Regulations review all proposed rules and regulations during the 60-day public comment period prior to the required public hearing on the proposed regulations. Upon completion of its review, the Joint Committee may introduce legislation it deems necessary in the performance of its review functions. Following the review of each proposed rule and regulation, the Joint Committee procedure is to forward comments it deems appropriate to the agency for consideration at the time of its public hearing on the proposed rules and regulations. The letter expressing comments by the Joint Committee may include a request that the agency reply to the Joint Committee in writing to respond directly to the comments made and to detail any amendments in the proposed rules and regulations made after the Joint Committee hearing and any delays in the adoption of or the withdrawal of the rules and regulations. Staff maintains a database of responses to Joint Committee comments and reports on those responses to the Joint Committee. A limited number of rules and regulations are exempt from the review process of the Joint Committee. In addition, certain permanent regulations have a defined statutory review period of 30 days, rather than the 60-day review period.

Each year, the Legislative Research Department prepares a report on the oversight activities of the Joint Committee; this electronic report is available from the Department.

As part of its review process, the Joint Committee examines economic impact statements, as required by law, that are prepared by agencies and accompany the proposed rules and regulations.

The Joint Committee may instruct the Director of the Budget to review the agency's economic impact statement and prepare a supplemental or revised statement.

The Legislature is also permitted to adopt a concurrent resolution expressing its concern regarding any permanent or temporary rule and regulation. The resolution may request revocation of the rule and regulation or amendment as specified in the resolution. If the agency does not respond positively in its regulation to the recommendations of the Legislature, the Legislature may take other action through a bill. Recent legislative changes to the Act have not changed this review process.

2008 Legislative Action

During the 2008 Legislative Session, SB 579 was enacted. This legislation requires state agencies to consider the impact of proposed rules and regulations on small businesses. The bill defines "small businesses" as any person, firm, corporation, partnership, or association with 50 or fewer employees, the majority of whom are employed in the State of Kansas.

2010 Legislative Action

During the 2010 Legislative Session, House Sub. for SB 213 revised the Rules and Regulations Filing Act by removing obsolete language and allowed for future publication of the KAR in paper or electronic form by the Secretary of State. In addition, the bill made changes in the definitions used in the Act and in the exclusion of certain rules and regulations from the Act. Certain procedures to be followed in the rule-making process and procedures were also revised. One provision requires state agencies to begin new rule-making procedures when the adopted rules and regulations differ in subject matter or effect in a material respect. Under these conditions, the public comment period may be shortened to not less than 30 days.

2011 Legislative Action

During the 2011 Legislative Session, HB 2027 amended the Rules and Regulations Filing Act by deleting definitions of "rule and regulation," "rule," and "regulation," including several provisions exempting specific rules and regulations from formal rule-making under the Act, and replacing them with a simplified definition.

It also expanded the definition of "person" to include individuals and companies or other legal or commercial entities.

The bill gave precedential value to orders issued in an adjudication against a person who was not a party to the original adjudication when the order is:

- Designated by the agency as precedent;
- Not overruled by a court or other adjudication; and
- Disseminated to the public through the agency website or made available to the public in any other manner required by the Secretary of State.

The bill also allowed statements of policy to be treated as binding within the agency when directed to agency personnel concerning their duties or the internal management or organization of the agency.

The bill provided that agency-issued forms, the contents of which are governed by rule and regulation or statute, and guidance and information the agency provides to the public do not give rise to a legal right or duty and are not treated as authority for any standard, requirement, or policy reflected in the forms, guidance, or information. Further, the bill provided for the following to be exempt from the Act:

- Policies relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution;
- Parking and traffic regulations of any state educational institution under the control and supervision of the State Board of Regents; and
- Rules and regulations relating to the emergency or security procedures of a correctional institution and orders issued by the Secretary of Corrections or any warden of a correctional institution.

Similarly, statutes that specify the procedures for issuing rules and regulations will apply rather than the procedures outlined in the Act.

Finally, the bill created a new section giving state agencies the authority to issue guidance documents without following the procedures set forth in the Act. Under the terms of this section, guidance documents may contain binding instructions to state agency staff members, except presiding officers. Presiding officers and agency heads may consider the guidance documents in an agency adjudication, but are not bound by them.

To act in variance with a guidance document, an agency must provide a reasonable explanation for the variance and, if a person claims to have reasonably relied on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests. The bill required each state agency to maintain an index of the guidance documents; publish the index on the agency's website; make all guidance documents available to the public; file the index in any other manner required by the Secretary of State; and provide a copy of each guidance document to the Joint Committee (may be provided electronically).

2012 Legislative Action

During the 2012 Legislative Session, SB 252 made several changes to the Rules and Regulations Filing Act.

The bill changed notice requirements from 30 days to 60 days for new rule-making proceedings when an agency proposes to adopt a final rule and regulation that:

- Differs in subject matter or effect in any material respect from the rule and regulation as originally proposed; and

- Is not a logical outgrowth of the rule and regulation as originally proposed.

In addition, the bill changed the Act by striking language that stated the period for public comment may be shortened to no less than 30 days, as the Act already stated the notice provided by state agencies constitutes a public comment period of 60 days.

2013-2014 Legislative Action

The only legislative action during the 2013 Legislative Session was the passage of HB 2006, which amended the Kansas Rules and Regulations Filing Act to remove "Kansas" from the name of the Act. There were no amendments made to the Rules and Regulations Filing Act during the 2014 Legislative Session.

2015-2016 Legislative Action

The Act was not amended.

2017 Legislative Action

The Act was not amended.

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State and Local Government

H-2 Board of Indigents' Defense Services

The *U.S. Constitution* grants certain rights and protections to criminal defendants, including the right to be represented by an attorney. This right has been interpreted by the U.S. Supreme Court and the Kansas Supreme Court to require the state to pay for attorneys to represent indigent defendants at most key stages in the criminal justice process.

In Kansas, this requirement is met by the Board of Indigents' Defense Services (BIDS). BIDS provides criminal defense services through:

- Public defender offices in certain parts of the state;
- Contract attorneys (attorneys in private practice contracted by BIDS); and
- Assigned counsel (court-appointed attorneys compensated by BIDS).

In addition to providing trial-level public defenders and assigned counsel, BIDS operates offices tasked with handling defense of capital cases, cases in which conflicts of interest prevent local public defenders from representing a particular defendant and post-conviction appeals. BIDS is also responsible for paying the other costs associated with criminal defense, such as expert witness and transcription fees. Finally, Legal Services for Prisoners, Inc., a non-profit corporation, is statutorily authorized to submit its annual operating budget to BIDS. Legal Services for Prisoners provides legal assistance to indigent inmates in Kansas correctional institutions.

Public Defender Offices

BIDS operates nine trial-level public defender offices throughout the state:

- 3rd Judicial District Public Defender (Topeka);
- Junction City Public Defender;
- Sedgwick County Regional Public Defender;
- Reno County Regional Public Defender;
- Salina Public Defender;
- 10th Judicial District Public Defender (Olathe);
- Western Kansas Regional Public Defender (Garden City)[1];
- Southeast Kansas Public Defender (Chanute); and

- Southeast Kansas Public Defender Satellite Office (Independence).

The Western Regional Public Defender Office closed a satellite branch in Liberal on September 1, 2009, after determining it was no longer cost-effective. That caseload is now handled by assigned counsel.

BIDS also operates the following offices in Topeka:

- Appellate Defender;
- Death Penalty Defense Unit;
- Capital Appeals;
- Capital Appeals and Conflicts;
- Northeast Kansas Conflict Office; and
- State *Habeas* Office.

Finally, BIDS operates two other special offices outside of Topeka:

- Wichita Conflicts Office; and
- Death Penalty Defense Unit—Sedgwick County Satellite Office.

BIDS' officials report that it monitors cost per case for each of its offices quarterly to determine the most cost-effective system to deliver constitutionally required defense services and makes changes as needed to maintain its cost-effectiveness.

Assigned and Contract Counsel

It is not possible for State public defender offices to represent all criminal defendants who need services. For example, if two individuals are co-defendants in a particular matter, it would present a conflict of interest for a single public defender's office to represent both individuals. Additionally, BIDS has determined it is not cost-effective to operate public defender offices in all parts of the state, based on factors such as cost-per-case and caseload in these particular areas. Instead, BIDS contracts with private attorneys in those areas to provide these services and compensates willing attorneys appointed as assigned counsel by local judges.

BIDS has been directed to monitor assigned counsel expenditures and to open additional public defender offices where it would be cost-effective to do so.

Effective January 18, 2010, assigned counsel were compensated at a rate of $62 per hour as the result of a BIDS effort to reduce costs and respond to budget cuts. For FY 2016, the rate was increased to $65 per hour, and for FY 2017 the rate was increased to $70 per hour. The rate for FY 2018 is maintained at $70 per hour.

Total fees for defense in felony cases are capped at various levels depending on the classification of the felony and the disposition of the case. However, if there is a judicial finding that a case is "exceptional" and requires the assigned attorney to work more hours than the cap allows, BIDS is required to exceed these caps. These exceptional fees are included in BIDS' overall budget for assigned counsel payments.

The 2007 Legislature changed the language of the assigned counsel compensation statute to allow BIDS to negotiate rates below the mandated (at that time) $80 per hour rate as an alternative cost savings strategy. BIDS conducted public hearings in 11 counties where it was determined that it was not cost-effective to utilize assigned counsel at $80 per hour. BIDS responded to local requests to maintain the assigned counsel system in these counties by negotiating reduced compensation rates. The negotiation was successful, and rates of $62 and $69 per hour were implemented. BIDS has determined these rates are more cost-effective than opening additional public defender offices.

The 2006 Legislature approved an increase in compensation rates from $50 to $80 per hour for assigned counsel beginning in FY 2007. This rate had previously been raised from $30 to $50 by 1988 legislation in response to a Kansas Supreme Court ruling.

Prior to FY 2006, BIDS paid assigned counsel expenditures from the operating expenditures account in its State General Fund appropriation. All professional services were treated as assigned counsel costs, including attorney fees, transcription fees, and expert witness fees. The FY 2006 budget added a separate line item for

these other expenditures to more accurately account for assigned counsel costs.

Other Costs Affecting the Agency

Expert Witness and Transcription Fees

BIDS is required to pay the fees for expert witnesses and transcription. Most experts utilized by the agency have agreements to work at a reduced rate. However, the agency reported these costs have risen steadily since FY 2008 due to higher transcription costs mandated by the Kansas Supreme Court, new legal requirements for expert testimony, and the expansion of what is effective assistance of defense counsel and defense services.

Death Penalty Cases

Kansas reinstated the death penalty in 1994, following the end of a national moratorium imposed by the U.S. Supreme Court. More information about the death penalty in Kansas is available in *G-3 Death Penalty in Kansas* in this Briefing Book.

The Death Penalty Defense Unit was established to handle the defense of cases in which the death penalty could be sought. As with all cases handled by public defenders, however, conflicts of interest and other circumstances raise the possibility that outside counsel will have to be contracted to represent defendants.

Capital cases are more costly than other matters handled by BIDS. Not only do these cases take more time for trial, but also they require defense counsel to be qualified to handle the complexities and special rules of death penalty litigation. A report issued by the Judicial Council in 2004 found: "The capital case requires more lawyers (on both prosecution and defense sides), more experts on both sides, more pre-trial motions, longer jury selection time, and a longer trial."

The Legislative Division of Post Audit (LPA) issued a Performance Audit in December 2003, "Costs Incurred for Death Penalty Cases: A K-GOAL Audit of the Department of Corrections." This report noted several findings and recommendations related to the cost of death penalty cases in Kansas:

- BIDS usually bore the cost of defending capital murder cases;
- Contracted attorneys for such cases were paid $100 per hour, with no fee cap; and
- It recommended BIDS ensure it had qualified attorneys in its Death Penalty Defense Unit and consider establishing a conflicts office (which it later did).

A follow-up study, also conducted by the Kansas Judicial Council Death Penalty Advisory Committee, was released on February 13, 2014, and updated cost data for the costs first reported in LPA's 2003 report. The Advisory Committee found BIDS spent an average of $395,762 on capital cases that went to trial and where prosecutors sought the death penalty, compared to an average of $98,963 on other death penalty eligible cases that went to trial without the prosecutor seeking the death penalty.

Other Offices Operated by the Agency

Appellate Defender Office

The Appellate Defender Office is located in Topeka and provides representation to indigent felony defendants with cases on appeal.

Northeast Kansas Conflict Office

The Northeast Kansas Conflict Office was established to deal with a large number of conflict cases in Shawnee County. The office also handles off-grid homicide cases in Lyon County. This office is located in Topeka.

Sedgwick County Conflict Office

This office was established to defend conflict cases that cannot be handled by the Sedgwick County Public Defender Office and is located in Wichita.

Death Penalty Defense Unit

The Death Penalty Defense Unit was established after the reinstatement of the death penalty. BIDS determined it was more cost-effective to establish an office with attorneys specially qualified to handle defense in capital cases rather than relying on contract or assigned counsel.

Capital Appeals and Conflicts Office

The primary function of this office is to handle representation throughout the long and complex appellate process that follows the imposition of a death sentence. The office also handles some cases from the Appellate Defenders Office as time allows.

Capital Appeals Office

This office was established in 2003 to handle additional capital appeals. Specifically, the office was created to handle the appeals of Reginald and Jonathan Carr, who were both convicted of murder in Sedgwick County and sentenced to death. Due to conflict of interest rules, the existing Capital Appeals and Conflicts Office could only represent one of the two men. The establishment of the Capital Appeals Office resolved that conflict and doubled BIDS' capacity for handling death penalty appeals.

State Habeas Office

This office was established in FY 2015 to handle death penalty defense after a death sentence is upheld by the Kansas Supreme Court and petition for a *writ of certiorari* has been unsuccessful for the defense.

Legal Services for Prisoners

Legal Services for Prisoners, Inc., provides legal services to inmates in Kansas correctional facilities. The goal of the program is to ensure that prisoners' right to access the courts and pursue non-frivolous claims is met. Legal Services for Prisoners submits its annual budget to BIDS.

Although Legal Services for Prisoners is not a state agency, its funding is administered through BIDS.

1 The Western Regional Public Defender Office closed a satellite branch in Liberal on September 1, 2009, after determining it was no longer cost-effective. That caseload is now handled by assigned counsel.

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State and Local Government

H-3 Election Security

In September 2017, the federal government informed election officials in 21* states that hackers had targeted their voting systems before the 2016 election.[1] Hackers also sent over 100 phishing+ e-mails to local election officials just before the election. In the summer of 2017, CNN reported hackers at a Las Vegas convention were able to breach all 25 pieces of election voting equipment present.[2] While it does not appear that information was tampered with in any state during the 2016 elections, the widespread nature of the attempts and the ease with which voting equipment was compromised during the Las Vegas convention has raised concerns.

Involving 542Δ federal elected officials and more than 18,000 state elected officials and 500,000 local elected officials, there are thousands of elections across the United States every year. This article will examine the major election vulnerabilities and how to address these issues. It also summarizes election security activities in Kansas and other selected states.

Tools Used in Elections

The many tools used in elections include voter registration data, electronic poll books, poll workers, storage and tallying of ballots, and voting devices. Due to a majority of election tools being electronic, cybersecurity and tampering are major issues concerning election security.

Voter registration data. There are two main ways in which to register to vote: filling out a form either at an authorized location or by mail, and online. Currently, 36 states, including **Kansas**, and the District of Columbia offer online registration.[3] During the 2016 presidential election, Arizona's voter registration system was breached by hackers *via* an election official's stolen username and password.[4] Illinois faced a similar situation where hackers were able to access voter registration records.[5] In both cases, there is no evidence any information was altered or deleted. The National Conference of State Legislatures (NCSL) cited several approaches used to ensure security, including registrants providing their driver's license number or last four digits of their Social Security number; automatic "time outs" after a certain period of inactivity; "captcha" boxes, where registrants must decode images that a computer

cannot decode; data encryption; highlighting unusual activity; and multi-screen systems, which offer one question on a screen.

Electronic poll books. In January 2014, the Presidential Commission on Election Administration recommended jurisdictions transition to electronic poll books (EPBs).[6] As of March 2017, NCSL noted that 30 states, including **Kansas**, permit the use of EPBs in some form.[7] EPBs replace paper poll books and allow poll workers to access the list of eligible voters, check in voters more efficiently, and prevent voters from checking in more than once. They are electronically connected to a central registration database. However, the Congressional Research Service notes there are no accepted technical standards and there are concerns about security and fraud prevention, especially for those connected to remote computers *via* the Internet. Some ways in which EPBs can be secured include use of secure sockets layer security or use of a virtual private network.

Poll workers. An Election Assistance Commission (EAC) 50-state survey of requirements for poll workers states that in all states and territories, poll workers must be at least 18 years old (with some exceptions); be registered to vote in that state; and be a resident of the county or district in which they will work, though some states have broader restrictions.[8] A majority of states, including **Kansas**, require poll workers to be trained, but the type, frequency, intensity, and requirements for who is trained varies greatly. In **Kansas** and many other places, there are no requirements for poll workers to submit to and pass ground checks or participate in other extensive vetting procedures. According to the Institute for Critical Infrastructure Technology (ICIT), many voting devices are stored in locations with minimal security, allowing relatively easy and unregulated access to alter or manipulate devices. Other potential security issues for poll workers are phishing e-mails, malware disguised as system patches, or the creation of unintentional gaps in cyber security, physical security, or both.

Storage and tallying of ballots. While paper ballots are stored in physical ballot boxes, electronic ballots are stored on device smart cards, a device's random-access memory, or other tools. Security measures limit access to the stored ballots, such as passwords, specific access cards, encryption, and tamper-resistant tape. However, there are ways to circumvent these measures, such as malware introduced into the device.

Manipulation can also occur after the ballot storage has been removed from the device to be tallied. Ballots may be tallied at the polling place or at a central location. If ballots need to be transferred to a central location to be tallied, they are transmitted *via* a network connection or the printed record or memory card is transported to the central location. Paper ballots are tallied by hand or by a scanner that produces a print-out of the votes. Voting devices that do not utilize paper ballots tally votes internally and produce either a printed or digital tally. It is estimated only 5.0 percent of ballots in the United States were tallied by hand; the other 95.0 percent are tallied either by the voting device or scanners.[9] Voting devices and scanners can create issues such as not calculating the votes correctly, or not reading or multiple readings of the same ballot. Tallying by hand carries the lowest risk for manipulation as it would be difficult to alter, switch, or destroy ballots without being caught. However, there is still the possibility of human error.

Voting devices. Voluntary technical standards for computer-based voting devices were first developed in the 1980s, but the 2002 federal Help America Vote Act (HAVA) (Pub. L. No. 107-252, 116 Stat. 1666 (2002), 42 USC 15301 et seq.) codified the development and required regular updating of standards by the EAC. Most states, including **Kansas**, require their devices conform to EAC guidelines. Under HAVA, states were granted almost $3.3 billion to upgrade voting devices.

Optical scan device. While paper ballots may still be counted by hand in a small percentage of voting jurisdictions, the most widely used device is the optical scan device, which is used in 80.0 percent of states' polling places and by all states for absentee or mail-in voting. Voters mark choices on paper ballots by hand or using an electronic ballot marking device (BMD) and the ballots are

read by an electronic counting device. Optical scan devices are regarded as more secure due to the fact that voters' paper ballots can be verified and cannot be altered electronically. If the voter does not mark a paper ballot directly, the process where an individual can verify the information printed on the paper ballot is the same as what was entered into the computer is also known as a voter verifiable paper audit trail (VVPAT). Since these devices typically use electronic devices to count ballots, vote counts are still vulnerable to cyberattacks, though an audit of the paper ballots is likely to catch any irregularities.

Direct recording electronic device. The second most utilized option is the direct recording electronic device (DRE), where voters mark choices *via* a computer interface and the voting device records them directly to an electronic memory. Delaware, Georgia, Louisiana, New Jersey, and South Carolina all exclusively used DREs with no paper trail in the 2016 election.[10] DRE devices pose a unique issue in that there is no way to verify the choice a voter intended to make is the same as the choice recorded in the device's memory. To solve this problem, many states configured the DRE devices to produce a verifiable paper record of the voter's ballot. However, a voter must review this ballot before casting it.

Limited life cycles. The average life span of electronic voting devices is less than ten years and many of the current devices in use are close to or have recently surpassed this point. Out-of-date devices and systems are not only more susceptible to technical issues, but also to cyberattacks or other means of tampering. The ICIT noted many voting devices have not been patched for almost a decade and use antiquated software that is unsupported by the manufacturer.[11] The Brennan Center estimates that the initial cost of replacing voting equipment throughout the United States could exceed $1.0 billion.[12] However, many jurisdictions do not have the funds to replace outdated technology. **Kansas** statutes place responsibility for voting devices with the counties.

Uniform voting systems. As of 2016, 18 states had statewide uniform voting devices, according to NCSL.[13] Using the same equipment in every jurisdiction in a state can be cost-effective and efficient, but it does pose some risks. The main disadvantage is all jurisdictions would be subject to the same vulnerabilities. This uniformity also creates a lack of flexibility if a problem does arise. A state would need to replace or repair all voting devices instead of just a few, creating a potential funding issue. Kansas does not have this issue, as the state uses a mixture of voting devices. Using a variety of voting devices, while typically more expensive, can lower the risk and impact of an attack. It would also mean replacing only a few devices at a time should a problem be discovered.

National Election Security

Background. Election security began to be a concern as early as the late 1800s in the United States, due in large part to widespread voting irregularities±.[14] Tools such as early voting devices, voter registration, and secret ballots provided by local election officials were all introduced during this period.

The 1970s saw increased national attention on election administration and security. Under the Federal Election Campaign Act of 1971 (FECA, Pub. L. 92–225, 86 Stat. 3 (1972) 52 USC § 30101 et seq.), Congress created a national Clearinghouse for Information on the Administration of Elections in an effort to facilitate exchange of information on election practices and procedures. In 1975, this function was transferred from the General Accounting Office to the Federal Election Commission (FEC) by the FECA Amendments of 1974 (FECA Pub. L. 93-443, 88 Stat. 1263 (1974) 2 USC 431).

HAVA, enacted in 2002, addressed improvements to voting systems and voter access that were identified following the 2000 election. Section 803 of HAVA transferred the functions of the FEC's Clearinghouse to an Election Assistance Commission (EAC). HAVA states the EAC shall serve as a national clearinghouse and resource for the compilation of information and review of procedures with respect to the administration of federal elections.

Current activities. The Department of Homeland Security's (DHS) National Cybersecurity and Communications Integration Center (NCCIC) helps stakeholders in federal departments and agencies, state and local governments, and the private sector manage their cybersecurity risks. The NCCIC works with the Multi-State Information Sharing and Analysis Center (MS-ISAC) to provide threat and vulnerability information to state and local officials; all states are members. The MS-ISAC composition is restricted to state and local government entities. It has representatives co-located with the NCCIC to enable collaboration and access to information and services for state chief information officers. During the 2016 election cycle, the National Protection and Programs Directorate (NPPD) within DHS offered voluntary assistance from the NCCIC to state and local election officials and authorities interested in securing their infrastructure. The then-Homeland Security Secretary told a Senate hearing that 18 states accepted DHS' offer to help improve cybersecurity of their election systems prior to the 2016 election.[15] Eleven states, including **Kansas,** chose not to accept DHS' offer, citing concerns with federal intrusion on state elections.[16]

The Secretary of Homeland Security determined on January 6, 2017, that election infrastructure should be designated as a critical infrastructure sub-sector.[17] Participation in the sub-sector would be voluntary and would not grant federal regulatory authority. Elections would continue to be governed by state and local officials, but with additional effort by the federal government to provide voluntary security assistance. DHS is also attempting to obtain security clearances for the top election official in each state so they will have access to classified intelligence about cybersecurity threats.

The EAC adopted the Voluntary Voting Systems Guidelines (VVSG) Version 2.0 in September 2017. The VVSG Version 2.0 states a voting device must produce a VVPAT and the software or hardware cannot produce errors that could lead to undetectable changes in tallies.[18]

Kansas Election Security Activities

With many elections on the horizon, it is important to understand the state of election security in **Kansas.**

Voter registration. According to the Kansas Director of Elections with the Kansas Secretary of State's Office, **Kansas** utilizes the same software vendor as Arizona for the state's voter registration database. However, **Kansas** has at least one significant layer of security above that of Arizona's system.[19]

Electronic poll books. Currently, 16 counties use EPBs, though neither state statutes nor regulations provide guidance on their use.[20]

Poll workers. Poll workers must be residents of the area in which they will serve; 18 years of age, though they may be as young as 16 years old, if they meet certain other requirements; and a registered voter. **Kansas** does not require poll workers to submit to a ground examination.

Voting devices. In the 2016 election, data from Verified Voting showed that 70 Kansas counties used paper ballots; 15 used both paper ballot and DREs without VVPAT; 15 used DREs without VVPAT; and 5 used DREs with VVPAT.[21]

Statutes concerning electronic voting devices can be found in KSA 25-4401 through KSA 25-4416, also known as The Electronic and Electromechanical Voting Systems Act. **Kansas** requires voting devices to be compliant with HAVA voting system standards (KSA 25-4406(k)). County commissioners and the county election officer may select the type of voting device utilized in their voting locations, as long as it has been approved by the Secretary of State.

The Secretary of State and the Kansas County Clerks and Election Officials Association have implemented a voting system security policy:

- The voting system should not be connected to any network or the Internet;
- Strict requirements exist concerning who has access to what components;

- Election results cannot be transmitted *via* modem, network, or any other electronic form, except *via* secure electronic means;
- Before any election, voting devices must undergo system diagnostics; and
- Election equipment should be stored in a locked room when not in use.[22]

In January 2016, the Kansas Secretary of State proposed a plan to require precincts or districts to have their voting equipment manually audited by bipartisan election boards after election day and before the vote is certified by county officials, beginning in 2017.[23] He also encouraged the use of voting devices that produce a paper trail. The Kansas House of Representatives passed a similar bill, HB 2333, during the 2017 Legislative Session. The bill would require manual audits of elections and amend law related to the timing of the election canvasses and electronic voting machines. However, the Senate did not pass the bill, choosing to re-refer it to the Committee on Ethics, Elections and Local Government.

Notable State Election Security Activity

Georgia

In June 2017, a judge dismissed a lawsuit to require use of paper ballots in the June 20 congressional special election.[24] (Curling v. State of Georgia, No. 2017CV290630 (Georgia Superior Court, filed Jun. 9, 2017)). Plaintiffs stated voting devices were uncertified, unsafe, and inaccurate and that the Center for Election Systems at Kennesaw State University, which runs the equipment for the entire State of Georgia, is risking malfunction and intrusion. On June 30, 2017, a bipartisan group of voters filed a separate suit against the State over the same special election, citing similar reasons.[25] Plaintiffs in both cases want the state to switch to the paper ballot system, which can be audited.

New Jersey

New Jersey was one of two states that held a statewide election in November 2017, the first statewide elections since the hacking attempts during the 2016 presidential election. A bill (2017 A-4619) was introduced in the New Jersey Assembly to require voting devices purchased or leased following the bill's effective date to produce a permanent paper record.[26] Under current law, the requirement for the purchase of new voting machines or retrofitting of existing voting devices to produce a paper record has been suspended until funding is made available. The bill also would delete a provision that allows the New Jersey Secretary of State to grant a waiver from the requirement to purchase new voting devices or retrofit all existing voting devices. The bill was referred to the Assembly Judiciary Committee, with no further action taken as of November 2017.

Ohio

Legislators in Ohio have proposed a bill (2017 SB 135) to help fund the purchase of new voting devices.[27] The bill would have the State pay 80.0 percent of the costs and the counties would pay the remaining 20.0 percent. The funding request would total $89.0 million for voting devices, including $7.0 million to reimburse counties that have already done full or partial replacements.[28] The bill, as of November 2017, is in the Senate Finance Committee.

Virginia

Virginia also held a statewide election in November 2017. In September 2017, the Virginia Board of Elections (Board) ordered 22 counties and towns to adopt all new paper-ed voting devices before November.[29] Local election authorities were responsible for the associated costs. The Board de-certified DREs currently in use as well.[30] The State also provided local registrars with cybersecurity training, such as detecting phishing attacks and how to protect passwords. Election officials worked closely with NPPD as well. Virginia has plans to begin conducting post-election audits; however, the audits will not begin until after the 2018 elections.

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* Those states were Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Iowa, Maryland, Minnesota, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, and Wisconsin.

\+ Phishing is the attempt to obtain sensitive information such as usernames, passwords, or credit card details, often for malicious reasons, by disguising as a trustworthy entity in an electronic communication. Phishing is often carried out *via* email or instant messaging.

Δ This includes the four delegates to the House of Representatives from United States territories and the District of Colombia, and one Resident Commissioner from the Commonwealth of Puerto Rico.

± A form of electoral fraud in the United States during the 19th century by which unwilling participants were forced to vote, often several times over, for a particular candidate in an election.

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State and Local Government

H-4 Home Rule

The Kansas Supreme Court in *State ex rel. Kline v. Unified Government of Wyandotte County/Kansas City*, 85 P. 3d 1237 (Kan. 2004) reaffirmed that cities have broad home rule powers granted directly by the people of the State of Kansas, and the constitutional home rule powers of cities shall be liberally construed to give cities the largest possible measure of self-government.

This article briefly examines the history of home rule in Kansas, and explains the different variations of Kansas local government home rule.

Most states confer some degree of home rule powers on some or all of their cities and counties. According to information complied from summaries of constitutional and statutory provisions by the Urban Law Center, cities in 38 states and counties in 27 states have some degree of constitutional home rule powers. Another 9 states provide home rule for cities by statute and 9 additional states provide statutory home rule for counties. In Kansas, cities' home rule authority is authorized constitutionally, while counties are granted home rule powers by statute.

What Is Home Rule?

"Home rule" is defined as limited autonomy or self-government granted by a central or regional government to its dependent political units. It has been a feature of state and municipal government in the United States, where state constitutions since 1875 frequently have been amended to confer general or specifically enumerated self-governing powers on cities and towns, and sometimes counties and townships. See *https://www.britannica.com/topic/home-rule-government*.

In the United States, local governments are considered creatures of the state as well as subdivisions of the state and, as such, are dependent upon the state for their existence, structure, and scope of powers. State legislatures have plenary power over the local units of government they create, limited only by such restrictions they have imposed upon themselves by state law or by provisions of their state constitutions, most notably home rule provisions. The courts in the late 19th century developed a rule of statutory construction to reflect this rule of dependency known as "Dillon's Rule."

Dillon's Rule states a local government has only those powers granted in express words, those powers necessarily or fairly implied in the statutory grant, and those powers essential to the accomplishment of the declared objects and purposes of the local unit. Any fair, reasonable, or substantial doubt concerning the existence of power is resolved by the courts against the local government. Local governments without home rule powers are limited to those powers specifically granted to them by the Legislature.

While local governments are considered dependent on the state, and therefore are not autonomous, the political landscape changed significantly in Kansas beginning in the early 1960s. The following section describes the development of home rule powers for cities, counties, and to a lesser extent, school districts.

City, County, and School District Home Rule—Brief History of Kansas Home Rule Provisions

Constitutional Home Rule Grant for Cities

After July 1, 1961, cities were no longer dependent upon specific enabling acts of the Legislature. The key constitutional language contained in Article 12, Section 5, of the *Kansas Constitution*, reflecting the broad scope of the grant of home rule power for Kansas cities is as follows:

- "Cities are hereby empowered to determine their local affairs and government including the levying of taxes, excises, fees, charges, and other exactions…"
- "Cities shall exercise such determination by ordinance passed by the governing body with referendum only in such cases as prescribed by the legislature, subject only to enactments of the legislature of statewide concern applicable uniformly to all cities, to other enactments applicable uniformly to all cities… and to enactments of the legislature prescribing limitations of indebtedness."
- "Any city may by charter ordinance elect in the manner prescribed in this section that the whole or any part of any enactment of the legislature applying to such city, other than enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities, and enactments prescribing limits of indebtedness, shall not apply to such city."
- "Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government."

The Home Rule Amendment applies to all cities regardless of their size. Further, the Home Rule Amendment is self-executing in that there is no requirement that the Legislature enact any law implementing it, nor are cities required to hold an election or adopt a charter, constitution, or some type of ordinance declaring their intent to exercise home rule powers.

Though the Home Rule Amendment grants cities the power to levy taxes, excises, fees, charges, and other exactions, the Legislature may restrict this power by establishing not more than four classes of cities—cities of the first, second, and third class having been defined in law. These classes exist for purposes of imposing revenue limitations or prohibitions. The 2006 Legislature reduced the number of classes of cities to one for the purpose of restoring uniformity of local retailers' sales taxes.

Cities can be bound only by state laws uniformly applicable to all cities, regardless of whether the subject matter of the state law is one of statewide or local concern. If there is a nonuniform law that covers a city, the city may pass a charter ordinance and exempt itself from all or part of the state law and provide substitute or additional provisions. If there is no state law on a subject, a city may enact its own local law. Further, if there is a uniform law that does not expressly preempt local supplemental action, cities may enact additional non-conflicting local regulations compatible with the uniform state law.

Statutory Home Rule Grant for Counties

Home rule for counties was enacted by statute in 1974. The county statutory grant is patterned after the Home Rule Amendment. The County Home Rule Act provides that "the board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate…" subject only to the limits, restrictions, and prohibitions listed in the Act (KSA 2016 Supp. 19-101a). The statutory grant, likewise, contains a statement of legislative intent that the home rule powers granted to counties shall be liberally construed to give counties the largest measure of self-government (KSA 19-101c).

County home rule is self-executing in the same manner as city home rule. The power is there for all 105 counties to use. No charter or local constitution need be adopted nor any election held to achieve the power, except in the case of Johnson County, which is covered by a special law authorizing the adoption of a charter by county voters. Voters in Johnson County approved the charter in November 2002.

Counties can be bound by state laws uniformly applicable to all counties. Further, nonuniform laws can be made binding on counties by amending the County Home Rule Act, which now contains 38 limitations on county home rule. Counties may act under home rule power if there is no state law on the subject. Counties also may supplement uniform state laws that do not clearly preempt county action by passing non-conflicting local legislation.

Statutory Expansion of School District Powers

In 2003, schools were granted expanded administrative powers referred to by some as limited home rule powers. KSA 72-8205 was amended to expand the powers of school boards as follows:

- The board may transact all school district business and adopt policies the board deems appropriate to perform its constitutional duty to maintain, develop, and operate local public schools.
- The power granted by this subsection shall not be construed to relieve a board from compliance with state law or to relieve any other unit of government of its duties and responsibilities prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities are required of another unit of government.
- The board shall exercise the power granted by this subsection by resolution of the board of education.

The expanded administrative powers of school districts have not been reviewed by an appellate court to date.

City and County Home Rule Differences

The major distinction between county home rule and city home rule is that county home rule is granted by statute, whereas the city home rule is granted directly by the people. Because of its constitutional origins, only the voters of Kansas can ultimately repeal city home rule after two-thirds of both houses of the Kansas Legislature have adopted a concurrent resolution calling for amendment or repeal, or a constitutional convention has recommended a change. The Legislature can restrict city home rule powers only by enacting uniform laws that apply in the same way to all cities unless the subject matter is one of the few specific areas listed in the Home Rule Amendment, such as taxing powers and debt limitations. By contrast, the Legislature has more authority to restrict or repeal statutory county home rule. Finally, the other factor distinguishing city and county home rule is the existence of numerous exceptions to county home rule powers found in the County Home Rule Act.

"Ordinary" versus "Charter" Ordinances or Resolutions

Ordinary Home Rule Ordinances

City home rule must be exercised by ordinance. The term "ordinary" home rule ordinance was coined after the passage of the Home Rule Amendment, but is not specifically used in the Kansas Constitution. The intent of using the term is to distinguish ordinances passed under home rule authority that are not charter ordinances from all other ordinances enacted by cities under specific enabling acts of the Legislature. Similar terminology is used to refer to "ordinary" county home rule resolutions.

There are several instances where cities and counties may use ordinary home rule ordinances or resolutions. The first occurs when a city or county desires to act and there is no state law on the subject sought to be addressed by the local legislation. A second instance allows cities or counties to enact ordinary home rule ordinances or resolutions when there is a uniform state law on the subject, but the law does not explicitly preempt local action. The city or county may supplement the state law as long as there is no conflict between the state law and the local addition or supplement.

A third instance involves situations where either uniform or nonuniform enabling or permissive legislation exists, but a city or county chooses not to utilize the available state legislation and instead acts under home rule.

City Charter Ordinances and County Charter Resolutions

A city charter ordinance is an ordinance that exempts a city from the whole or any part of any enactment of the Legislature that is nonuniform in its application to cities and that provides substitute or additional provisions on the same subject. A county charter resolution may be used in essentially the same manner.

Procedures for passage of city charter ordinances require a two-thirds vote of the members of the governing body of the city. Publication of the charter ordinance is required once each week for two consecutive weeks in the official city newspaper. The charter ordinance is subject to a 10.0 percent protest petition and election procedure.

County charter resolutions must be passed by a unanimous vote in counties where a three-member commission exists, unless the board determines ahead of time to submit the charter resolution to a referendum, in which case a two-thirds vote is required. In counties with a five- or seven-member commission, a two-thirds vote is required to pass a charter resolution unless the charter resolution will be submitted to a vote, in which case a majority is required.

County charter resolutions must be published once each week for two consecutive weeks in the official county newspaper and are subject to a 2.0 percent or 100 electors (whichever is greater) protest petition and election procedure.

Judicial Interpretation of Home Rule

Kansas appellate courts, for the most part, have construed the home rule powers of both cities and counties in broad fashion, upholding the exercise of the powers. However, some appellate decisions have negated home rule actions and, in the process, have established restrictive rules of interpretation that cannot be reconciled with other home rule decisions. Whether the court has developed two conflicting lines of rationale for deciding home rule cases has not been resolved.

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State and Local Government

H-5 Joint Committee on Special Claims Against the State

Since near the turn of the 20th century, legislative committees have furnished a venue for persons who thought they were injured in some manner by the activity of a state agency.

The purpose of the present-day Joint Committee on Special Claims Against the State (Joint Committee) is to hear claims for which there is no other recourse to receive payment. The Joint Committee is the place of last resort when there is no other way of appropriating money to pay a claim against the State.

The Joint Committee was the only venue available for this purpose until passage in the early 1970s of the Tort Claims Act, which allowed state agencies to accept a limited amount of liability. The Tort Claims Fund, established in the Office of the Attorney General, offers recourse for other actions brought against the State. The State does assume certain responsibility for its actions under the tort claims statutes; however, there are certain areas under those statutes where the State has no liability.

The fact that state agencies are immune under statute does not mean that a citizen cannot be injured by some action of the State. A potential claimant may have no remedy other than coming to the Joint Committee because state agencies are immune. Thus, the claims which come to the Joint Committee involve an issue of equity and do not always involve the issue of negligence on the part of the State or a state employee.

Joint Committee Membership

The Joint Committee has seven members, consisting of three members of the Senate and four members of the House of Representatives. At least one representative must be a member of the House Committee on Appropriations and at least one senator must be a member of the Senate Committee on Ways and Means. The chairperson of the Joint Committee alternates between the House and Senate members at the start of each biennium. The members appointed from each chamber must include minority party representation. Any four members of the Joint Committee constitutes a quorum. Action of the Joint Committee may be taken by an affirmative vote of a majority of the members present, if a

quorum is present. In 2017, enactment of SB 50 removed the requirement that at least one House of Representatives member and one Senate member must be an attorney licensed to practice law in Kansas (KSA 2016 Supp. 46-912, as amended by L. 2017, ch. 53).

Claims Process

The claimant starts the claims process by completing and submitting a claim form pursuant to KSA 2016 Supp. 46-913. The claim form is available on the internet through both the Legislature's website and the Legislative Research Department's website, or it may be requested in hard copy by contacting the Legislative Research Department.

The claimant indicates on the claim form whether he or she wishes to appear in person for the hearing. In-person hearings for claimants who currently are incarcerated are conducted *via* telephone conference.

Claimants who request to appear in person for their hearing are notified 15 days in advance of the hearing *via* certified mail as prescribed in KSA 46-914. Additionally, the claim form must be notarized prior to consideration of the claim.

KSA 46-914 also requires notification to the state agency involved within 15 days in advance of the hearing *via* certified mail. State agencies and employees are charged with providing the Joint Committee with information and assistance as the Joint Committee deems necessary.

The rules of evidence do not apply to the Joint Committee; it is considered a court of equity. However, the Joint Committee is authorized by KSA 46-917 to adopt procedural guidelines as may be necessary for orderly procedure in the filing, investigation, hearing, and disposition of claims before it. The Joint Committee has adopted 12 guidelines (Joint Committee rules) to assist in the process. These guidelines are available on the internet through both the Legislature's website and the Legislative Research Department's website, or can be requested in hard copy by contacting the Legislative Research Department.

The Joint Committee traditionally holds hearings during an interim session. The Joint Committee is mandated by statute (KSA 46-918) to hear all claims filed by November 1st during that interim session.

The Committee can meet during the legislative session only if both the President of the Senate and the Speaker of the House of Representatives authorize the meetings, pursuant to KSA 46-918.

Joint Committee Recommendations

The Joint Committee makes recommendations regarding the resolution of the claims. The Joint Committee is required by KSA 46-915 to notify the claimants of its recommendation regarding the claim within 20 days after the hearing.

The Joint Committee submits its recommendations for payment of claims it has heard in the form of a bill presented to the Legislature at the start of each legislative session.

Claims Payments

Payment for claims that are appropriated by the Legislature and signed into law by the Governor are paid by the Division of Accounts and Reports.

Prior to receiving payment, claimants are required to sign a release. A claimant's acceptance of any payment is final and conclusive and constitutes a complete release of any claim against the State (KSA 2016 Supp. 46-924).

When an inmate owes an outstanding unpaid amount of restitution ordered by a court, money received by the inmate from a claim settlement is withdrawn from the inmate's trust account as a set-off, per KSA 2016 Supp. 46-920.

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State and Local Government

H-6 Kansas Open Meetings Act

Purpose

The Kansas Open Meetings Act (KOMA), KSA 2016 Supp. 75-4317, *et seq.*, is one of two main laws that guarantee the business of government is conducted in a transparent manner. The second act ensuring transparency in state government is the Kansas Open Records Act (KORA). See *H-7 Briefing Book – Kansas Open Records Act.*

KOMA recognizes "that a representative government is dependent upon an informed electorate" and declares that the policy of the State of Kansas is one where "meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public." KSA 2016 Supp. 75-4317.

The Kansas Supreme Court has recognized KOMA is to be "interpreted liberally and exceptions narrowly construed" to carry out the purpose of the law. *Mem'l Hosp. Ass'n v. Knutson*, 239 Kan. 663, 669 (Kan. 1986).

State and Local Public Bodies Covered by KOMA

- State agencies;
- Political and taxing subdivisions of the state;
- Legislative bodies of the state or its subdivisions;
- Administrative bodies of the state or its subdivisions;
- Boards, commissions, authorities, councils, committees, and subcommittees of the state or its subdivisions, or of legislative or administrative bodies thereof; and
- Other subordinate groups of any of the above entities that receive or expend and are supported in whole or in part by public funds. KSA 2016 Supp. 75-4318.

State Bodies Covered by KOMA

- The Legislature, its legislative committees, and subcommittees unless rules provide otherwise;
- State administrative bodies, boards, and commissions;
- State Board of Regents;
- State Board of Education;
- Kansas Turnpike Authority;

- Supreme Court Nominating Commission (added by 2016 SB 128); and
- Other State bodies.

Local Governments Covered by KOMA

- Cities;
- Drainage districts;
- Counties;
- Conservation districts;
- School districts;
- Irrigation districts;
- Townships;
- Groundwater management districts;
- Water districts;
- Watershed districts;
- Fire districts;
- Municipal energy agencies;
- Sewer districts;
- District judicial nominating commissions (Added by 2016 SB 128); and
- Other special district governments.

Public Bodies Excluded from KOMA

Certain state and local bodies or entities are excluded from the requirements of KOMA, including the following:

- The Judicial Branch (except for judicial nominating commissions); and
- State or local bodies when exercising quasi-judicial powers (examples include teacher due process hearings, civil service board hearings for a specific employee, or zoning amendment hearings for a specific property).

Meetings: What are They?

KOMA covers meetings, defined in KSA 2016 Supp. 75-4317a, as a gathering or assembly with the following characteristics:

- Occurs in person or through the use of a telephone or any other medium for "interactive" communication (See "Serial Meetings" below);
- Involves a majority of the membership of an agency or body (prior to a change in 2009, a meeting was defined as involving the majority of a quorum of a body); and
- Is for the purpose of discussing the business or affairs of the body.

The Kansas Court of Appeals has held that informal discussions before, after, or during recesses of a public meeting are subject to the requirements of the open meetings law. *Coggins v. Pub. Emp. Relations Bd*, 2 Kan. App. 2d 416 (Kan. Ct. App. 1978). Calling a gathering a "work session" does not exempt the event from the law if the three requirements of a meeting are met.

Serial meetings. The Attorney General has said serial communications among a majority of a quorum of a public body constitute a meeting if the purpose is to discuss a common topic of business or affairs of that body by the members. [*Note*: The opinions were issued prior to the change in requirements from "majority of a quorum" to "majority."] Such a meeting may occur through calling trees, e-mail, or the use of an agent (staff member) of the body. Att'y. Gen. Op. 98-26 and 98-49. The use of instant messaging also would qualify as a meeting. In 2009, the law was changed to address such communication some have called "serial meetings," or communications held in a series that, when taken together, involve a majority of members. Pursuant to this change, KSA 2016 Supp. 75-4318(f) now deems interactive communications in a series to be subject to open meetings requirements if the communications:

- Collectively involve a majority of the membership of the body or agency;
- Share a common topic of discussion concerning the business or affairs of the body or agency; and
- Are intended by any or all of the participants to reach agreement on a matter that would require binding action to be taken by the body or agency.

Is Binding Action the Trigger?

In regard to discussing "the business or affairs of the body," binding action or voting is not necessary. It is the discussion itself that triggers the requirements of KOMA (KSA 2016 Supp. 75-4317a).

What About Social Gatherings?

Social gatherings are not subject to KOMA as long as there is not a majority of the membership present or there is no discussion of the business of the public body between a majority of the membership.

Notice of Meetings, Agendas, Minutes, Conduct of Meeting, and Cameras

Notice required only when requested. Contrary to popular belief, KOMA does not require notice of meetings to be published in a newspaper or otherwise widely distributed. According to KSA 2016 Supp. 75-4318(b), notice must be given to any person or organization requesting it. Notice requests may expire at the end of a fiscal year, but the public body has a duty to notify the person of the pending expiration before terminating notice. The presiding officer has the duty to provide notice, but that duty may be delegated. No time limit is imposed for receipt of notice prior to the meeting.

Notice may be given in writing or orally, but it must be made individually to the person requesting it. Posting or publication in a newspaper is insufficient. A single notice can suffice for regularly scheduled meetings. There is also a duty to notify of any special meetings. No fee for notice may be charged.

Petitions for notice may be submitted by groups of people, but notice need be provided only to one person on the list, that person being designated as required by law. All members of an employee organization or trade association are deemed to have received a notice if one is furnished to the executive officer of the organization.

Agenda not required. KSA 2016 Supp. 75-4318(d) states: "Prior to any meeting …, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting the agenda." In *Stevens v. City of Hutchinson,* 11 Kan. App. 2d 290 (Kan. Ct. App. 1986), the court concluded that while the law does not require an agenda be created, if a body chooses to create an agenda, the agenda should include topics planned for discussion.

Minimal requirements for minutes. The only KOMA requirement regarding minutes exists in regard to closed or executive sessions. KSA 2016 Supp. 75-4319(a) requires that any motion to recess for a closed or executive meeting be recorded in the meeting minutes. (See "Executive Sessions: Procedure and Subjects Allowed" on the following page for additional information on executive sessions.)

Conduct of meetings. Any person may attend open meetings, but the law does not require that the public be allowed to speak or have an item placed on the agenda. KOMA does not dictate the location of a meeting, the size of the room used (or even that a room must be used) or other accommodation-type considerations. The court has determined a meeting is "open" if it is accessible to the public. *Stevens,* 11 Kan. App. 2d 292.

KSA 2016 Supp. 75-4318(a) prohibits the use of secret ballots for any binding action. The public must be able to ascertain how each member voted.

Use of cameras. Subject to reasonable rules, cameras and recording devices must be allowed at open meetings (KSA 2016 Supp. 75-4318(e)).

Subject Matter Justifying Executive Session

Pursuant to KSA 2016 Supp. 75-4319, only a limited number of subjects may be discussed in executive session. Some of these are listed below.

Personnel matters of non-elected personnel. The purpose of this exception is to protect the privacy interests of individuals. Discussions of consolidation of departments or overall salary structure are not proper topics for executive session. This personnel exemption applies only to employees of the public agency. The Attorney General has opined the personnel exemption does not apply to appointments to boards or committees, or nomination of public officers, nor does it apply to independent contractors. Att'y. Gen. Op. 2016-03.

Consultation with an attorney. For the body or agency to be deemed privileged in the attorney-client relationship, all elements of privilege must be present:

- The body's attorney must be present;
- The communication must be privileged; and
- No other third parties may be present.

Additional justification for executive session are as follows:

- Employer-employee negotiations to discuss conduct or status of negotiations, with or without the authorized representative who actually is doing the bargaining;
- Confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships;
- Sensitive financial information contained within personal financial records of a judicial nomination candidate[1];
- Official background check of a judicial nomination candidate[1];
- Case reviews conducted by the Governor's Domestic Violence Fatality Review Board[2];
- Matters affecting an individual student, patient, or resident of a public institution;
- Preliminary discussions relating to acquisition (not sale) of real property;
- Security of a public body or agency, public building or facility, or the information system of a public body or agency, if open discussion would jeopardize security;
- Matters relating to information acquired and records of the Child Death Review Board[2];
- Matters relating to parimutuel racing[2];
- Matters relating to the care of children[2];
- Matters relating to patients and providers[2];
- Matters relating to maternity centers and child care facilities[2]; and
- Matters relating to the Office of Inspector General[2].

[1] Added by 2016 SB 128.
[2] Added by 2017 HB 2301.

Executive Session:
Procedure and Subjects Allowed

Requirements and restrictions on closed or executive sessions are contained in KSA 2016 Supp. 75-4319. Executive sessions are permitted only for the purposes specified. First, the public body must convene an open meeting and then recess into an executive session. Binding action may not be taken in executive session. Reaching a consensus in executive session is not in itself a violation of KOMA. *O'Hair v. United Sch. Dist. No. 300*, 15 Kan. App. 2d 52 (Kan. Ct. App. 1991). A "consensus," however, may constitute binding action and violate the law if a body fails to follow up with a formal open vote on a decision that normally would require a vote. The law does not require an executive session; the decision to hold an executive session is discretionary.

Generally, only the members of a public body may attend an executive session. The Attorney General indicates a public body may designate certain persons with essential information to assist in executive session deliberations. Inclusion of general observers means the meeting should be open to all members of the public.

Procedures for going into executive session include the following:

- Formal motion, seconded, and carried;
- Motion must contain a statement providing:
  - A statement describing the subjects to be discussed;
  - Justification for closure; and
  - Time and place open meeting will resume; and
- Executive session motions must be recorded in minutes. The law does not require other information to be recorded. Other minutes for open or executive sessions are discretionary, unless some other law requires them.

Enforcement of KOMA

The 2015 Legislative Session enacted significant changes to KOMA and KORA *via* HB 2256. The law requires the Attorney General to provide and coordinate KORA and KOMA training throughout the state, including coordination with appropriate organizations. Further, the law gives the Attorney General or county or district attorney various subpoena and examination powers in KORA and KOMA investigations.

Among other enforcement provisions, the legislation allows the Attorney General or a county or district attorney to accept a consent judgment with respect to a KORA or KOMA violation, in *lieu* of filing an action in district court, and allows the Attorney General to enter into a consent order with a public agency or issue a finding of violation to the public agency upon discovery of a KORA or KOMA violation.

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State and Local Government

H-7 Kansas Open Records Act

Purpose

The Kansas Open Records Act (KORA)—KSA 45-215 *et seq.*—is one of two main laws that ensure the business of government is conducted in the "sunshine." The other "sunshine" law is the Kansas Open Meetings Act (KOMA), which is the subject of a separate Briefing Book article. KORA was enacted in 1984, replacing a 1957 act on the topic.

The open records law declares it is the public policy of Kansas that "public records shall be open for inspection by any person unless otherwise provided" (KSA 45-216). The burden of proving an exemption from disclosure is on the agency not disclosing the information (*SRS v. Public Employee Relations Board*, 249 Kan. 163 (1991)).

Who Is Covered by the Act?

Coverage under KORA is keyed to the definition of "public agency" (KSA 2016 Supp. 45-217).

Included in this definition are:

- The state;
- Any political or taxing subdivision of the state or any office, agency, or instrumentality thereof; and
- Any other entity receiving or expending and supported in whole or in part by public funds that are appropriated by the state or its political and taxing subdivisions.

The definition covers all state agencies, cities, counties, townships, school districts, and other special district governments, as well as any agencies or instrumentalities of these entities, and officers of the above public entities in connection with their official duties.

In addition, although not included in KORA itself, KSA 2016 Supp. 45-240 requires nonprofit entities, except health care providers, that receive public funds of at least $350 per year to adhere to certain open records requirements. The 2005 Legislature added this provision to require such nonprofit entities to document the receipt and expenditure of public funds and make this information available

to the public. Nonprofit entities may charge a reasonable fee to provide this information.

Exclusions from Open Records Requirement

Certain entities and individuals are excluded from the definition of "public agency" (KSA 2016 Supp. 45-217(f)(2)):

- Any entity solely by reason of payment from public funds for property, goods, or services of the entity. This exemption is designed to exempt vendors who merely sell goods or services to the government, but the records of the public agencies making the purchases must be open to the public[1]; and
- Any municipal, district, or appellate judge or justice.

The 2016 Legislature removed an additional exclusion from this definition: officers or employees of the state or localities who have their offices open to the public fewer than 35-hours a week. (2016 Sub. for SB 22; L. 2016, ch. 82)

What Is a Public Record?

"Public record" is defined broadly under KORA, to mean "any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of any public agency; or . . . any officer or employee of a public agency pursuant to the officer's or employee's official duties and which is related to the functions, activities, programs or operations of any public agency." (KSA 2016 Supp. 45-217(g)(1).)

Excluded from the definition of "public record" are:

- Records owned by a private person or entity that are not related to functions, activities, programs, or operations funded by public funds, but "private person" shall not include an officer or employee of a public agency who is acting pursuant to the officer's or employee's official duties;
- Records kept by individual legislators or members of governing bodies of political and taxing subdivisions; or
- Employers' records related to certain individually identifiable employee records (KSA 2016 Supp. 45-217(g)(2) and (3)).

The Attorney General opined in 2015 (Op. Atty. Gen. 2015-010) that under certain specific conditions and the law in effect at the time, an e-mail sent by a state employee from his or her private e-mail account related to work funded by public funds is not within the meaning of "public record." However, in 2016 the definition of and exclusions from "public record" were amended to broaden the definition of "public record" and apply it more specifically to state officers and employees, regardless of location of the record (2016 Sub. for SB 22; L. 2016, ch. 82). The bill also specifically added audio and video recordings made and retained by law enforcement using a body camera or vehicle camera to the definition of a criminal investigation record (open only under specific circumstances) (KSA 2016 Supp. 45-254).

Right of Public to Inspect and Make or Obtain Copies of Records

All public records are open for inspection unless closed pursuant to specific legal authority (KSA 45-218 (a) and (b)). Members of the public have the right to inspect public records during regular office hours and any established additional hours; the agency may require a written request but shall not require a request to be made in a particular form (KSA 2016 Supp. 45-220(a) and (b)). If the agency has business days on which it does not have regular office hours, it must establish reasonable hours when persons may inspect records and may not require a notice of desire to inspect more than 24 hours in advance of the hours established for inspection and obtaining copies; the agency also may not require the request to be in writing (KSA 2016 Supp. 45-220(d)).

Any person may make abstracts or obtain copies of a public record. If copies cannot be made

in the place where the records are kept, the records custodian must allow the use of other copying facilities (KSA 45-219(b)). Members of the public cannot remove a record without written permission of the custodian (KSA 45-218(a)).

Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. The agency is not required to acquire or design a special program to produce information in a desired form, but it has discretion to allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form. (Op. Atty. Gen. 1988-152 [voter registration lists]; Op. Atty. Gen. 1989-106; and Op. Atty. Gen. 1987-137).

However, KORA explicitly states a public agency is not required to make electronic copies of public records by allowing a person to obtain the copies by attaching a personal device to the agency's computer equipment (KSA 2016 Supp. 45-219 (g)).

A public agency is not required to provide copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, or illustrations unless the items were shown or played at a public meeting. Regardless, the agency is not required to provide items copyrighted by someone other than the public agency (KSA 2016 Supp. 45-219(a)).

Duties of Public Agencies

Public agencies are required to:

- Appoint a freedom of information officer to assist the public with open records requests and disputes. That officer is to provide information on the open records law, including a brochure stating the public's basic rights under the law (KSA 45-226 and KSA 45-227);
- Adopt procedures to be followed (KSA 2016 Supp. 45-220(a));
- Respond to a request for which it is possible to determine the records to which the requester desires access (KSA 2016 Supp. 45-220(b)); and
- Provide, upon request, office hours, name of custodian of record, fees, and procedures for obtaining records (KSA 2016 Supp. 45-220(f)).

Rights of Public Agencies

The public agency may:

- Require written certification that the requester will not use names or addresses obtained from the records to solicit sales to those persons whose names or addresses are contained in the list (KSA 2016 Supp. 45-220(c));
- Deny access if the request places an unreasonable burden in producing the record or is intended to disrupt essential functions of the agency (KSA 45-218(e)); and
- Require payment of allowed fees in advance. Fees may include costs of any computer services and staff time but may not exceed costs (KSA 45-218(f) and KSA 2016 Supp. 45-219(c)).

Prohibited Uses of Lists of Names and Addresses

A list of names and addresses cannot be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed (KSA 2016 Supp. 45-220(c)(2) and 2016 Supp. KSA 45-230). This provision does not prohibit commercial use generally; it just applies to use of the names to sell or offer to sell property or a service. This provision does not prohibit the agency from using names and addresses in its public records for a purpose related to that agency's services or programs (Op. Atty. Gen. 2006-026).

Any person, including the records custodian, who knowingly violates this provision of the law and gives or receives records for this purpose can be penalized with a civil fine not to exceed $500 in an action brought by the Attorney General or a county or district attorney (KSA 2016 Supp. 45-230).

Records That Must Be Closed

Some public records are required to be closed by federal law, state statute, or Supreme Court rule. These types of public records must be closed and generally are referenced in KSA 2016 Supp. 45-221(a)(1). Approximately 280 different statutes require closure of certain public records. A few examples include:

- Child in need of care records and reports, including certain juvenile intake and assessment reports (KSA 2016 Supp. 38-2209);
- Unexecuted search or arrest warrants (KSA 2016 Supp. 21-5906);
- Grand jury proceedings records (KSA 2016 Supp. 22-3012); and
- Health care provider peer review records (KSA 2016 Supp. 65-4915(b)).

Records That May Be Closed

KSA 2016 Supp. 45-221(a)(1) to (55) lists other types of public records that are not required to be disclosed. The public agency has discretion and may decide whether to make these types of records available. However, the burden of showing that a record fits within an exception rests with the party intending to prevent disclosure. The types of records that may be closed discretionarily include these:

- Records of a public agency with legislative powers, when the records pertain to proposed legislation or amendments. This exemption does not apply when such records are:
  - Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
  - Distributed to a majority of a quorum of any body with the authority to take action or make recommendations to the public agency with regard to the matters to which these records pertain (KSA 2016 Supp. 45-221(a)(21));
- Records of a public legislative agency, when the records pertain to research prepared for one or more members of the agency. Again, this exemption does not apply (*i.e.*, the records would be open) when such records are:
  - Publicly cited or identified in an open meeting or in an agenda of an open meeting; or
  - Distributed to a majority of a quorum of any body that has authority to take action or make recommendations to the public agency with regard to the matters to which such records pertain (KSA 2016 Supp. 45-221(a)(22));
- Records that are privileged under the rules of evidence, unless the holder of the privilege consents to the disclosure (KSA 3026 Supp. 45-221(a)(2));
- Medical, psychiatric, psychological, and alcohol or drug treatment records that pertain to identifiable individuals (KSA 2016 Supp. 45-221(a)(3));
- Personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment in public agencies (KSA 2016 Supp. 45-221(a)(4));
- Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual and not related to the appointment of persons to fill a vacancy in an elected office (KSA 2016 Supp. 45-221(a)(6));
- Information that would reveal the identity of any undercover agent or any informant reporting a specific violation of law (KSA 2016 Supp. 45-221(a)(5));
- Criminal investigation records (KSA 2016 Supp. 45-221(a)(10));
- Records of emergency or security information or procedures of a public agency; or plans, drawings, specifications, or related information for any building or facility used for purposes requiring security measures in or around the building or facility; or for the generation or transmission of power, water, fuels, or communications, if disclosure would jeopardize security of the public agency, building, or facility (KSA 2016 Supp. 45-221(a)(12));

- Attorney work product (KSA 2016 Supp. 45-221(a) (25));
- Records of public agencies that identify home addresses of certain public officials such as judges, certain officers of the courts, and county and city attorneys (KSA 2016 Supp. 45-221(a)(51) and (52)); and
- Public records containing information of a personal nature when public disclosure would constitute a clearly unwarranted invasion of personal privacy (KSA 2016 Supp. 45-221(a)(30)).

Body-worn and Vehicle Camera Recordings: Limited Disclosure

Every audio or video recording made and retained by law enforcement using a body camera or vehicle camera must be considered a "criminal investigation record," as defined in KORA, thereby bringing such recordings within the exception to disclosure provision of the Act for criminal investigation records. This provision will expire July 21, 2021, unless reviewed and reenacted prior to that date. (KSA 2016 Supp. 45-254)

In addition to the disclosures under KORA applicable to such recordings as criminal investigation records, the law allows certain persons to request to listen to an audio recording or to view a video recording to allow these specific persons to listen to or view the recording, and the law enforcement agency must allow access subject to a reasonable fee. The persons who may make such a request are the subject of the recording; a parent or legal guardian of a person under the age of 18 years who is a subject of the recording; an attorney for any of the previous persons listed; and an heir-at-law, executor, or administrator of a decedent who is a subject of the recording. (KSA 2016 Supp. 45-254(c))

Sunset of Exceptions

A sunset provision for all exceptions added in 2000 required review of any exception within five years, or the exception would expire. It also required any exceptions continued after legislative review to be reviewed again five years later (KSA 2016 Supp. 45-229). The Legislature began its review during the 2003 Interim and continued during the 2004 Session and the 2004 Interim.

The review was completed during the 2005 Session and extended the life of more than 240 exceptions that had been scheduled to expire on July 1, 2005. The extension, based on the legislation that resulted from this review, would have expired on July 1, 2010 (2005 SB 78; L. 2005, ch. 126). The exceptions again were reviewed during the 2009 Interim.

Recommendations from that review resulted in the extension of approximately the same number of exceptions by the 2010 Legislature (2010 SB 369; L. 2010, ch. 112). During the 2010 Interim, 28 exceptions were reviewed and subsequently were approved in the 2011 Session (2011 HB 2030; L. 2011, ch. 11). During the 2012 Session, exceptions reviewed and extended involved six subject areas and eight statutes (2012 HB 2569; L. 2012, ch. 50).

In 2013, the Legislature reviewed and extended exceptions in 29 statutes. Additionally, the Legislature modified the review requirement so that exceptions will no longer be subject to review and expiration if the Legislature has twice reviewed and continued the exemption or reviews and continues the exemption during the 2013 Session or thereafter (2013 HB 2012; L. 2013, ch. 50). In 2014, the Legislature conducted a final review of 32 exceptions. Two were stricken because the statutes creating those exceptions had been repealed (2014 S. Sub. for HB 2182; L. 2014, ch. 72). Twelve were reviewed and continued in 2015 HB 2023 (L. 2015, ch. 6).

Pursuant to 2016 Sub. for SB 22 (L. 2016, ch. 82), exemptions to disclosure were continued in 29 statutes until 2021 (the 2016 Legislature choosing to set a date for another review of these statutes despite 2013 HB 2012). The bill removed an exemption concerning audits of voice over internet protocol (VoIP) providers, as the underlying statute, KSA 2010 Supp. 12-5358, was repealed during the 2011 Session. Legislation repealing the Kansas Electric Transmission Authority (2016 SB 318; L. 2016,

ch. 48) also repealed a KORA exception for that entity's records.

In 2017, enacted HB 2301 (L. 2017, ch. 73) continued exceptions present in 17 statutes and removed the sunset date of July 1, 2021, on exceptions in 18 statutes. Topics include certain motor vehicle records, criminal history record checks, child care facilities, child sexual abuse reports, environmental audit reports, and emergency medical services reports.

Enforcement of the Open Records Law

2015 HB 2256 (L. 2015, ch. 68) significantly changed enforcement of both KORA and KOMA. The law requires the Attorney General to provide and coordinate KORA and KOMA training throughout the state, including through coordination with appropriate organizations (KSA 2016 Supp. 75-761). Further, the bill gives the Attorney General or a county or district attorney various subpoena and examination powers in KORA and KOMA investigations. (KSA 2016 Supp. 45-228; KSA 2016 Supp. 75-4320b)

Among other enforcement provisions, the bill allows the Attorney General or a county or district attorney to accept a consent judgment with respect to a KORA or KOMA violation, in *lieu* of filing an action in district court, and allows the Attorney General to enter into a consent order with a public agency or issue a finding of violation to the public agency upon discovery of a KORA or KOMA violation (KSA 2016 Supp. 75-4320d; KSA 2016 Supp. 45-4320f).

Criminal Penalty for Altering Public Record

Altering, destroying, defacing, removing, or concealing any public record is a class A nonperson misdemeanor (KSA 2016 Supp. 21-5920).

1 See Ted Frederickson, *Letting the Sunshine In: An Analysis of the 1984 Kansas Open Records Act*, 33 Kan. L. Rev. 216-7. This analysis was utilized as recently as the 2017 Kansas Court of Appeals decision in *State v. Great Plains of Kiowa County, Inc.* (53 Kan. App. 2D 609, 389 P3d 984).

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State and Local Government

H-8 Kansas Public Employees Retirement System's Retirement Plans and History

KPERS Overview—Brief History of State Retirement and Other Employee Benefit Plans

The Kansas Public Employees Retirement System (known generally as KPERS and referenced in this article as the Retirement System) administers three statewide plans. The largest plan, usually referred to as the regular KPERS plan, or simply as KPERS, has within it three tiers that include state, school, and local groups composed of regular state and local public employees; school district, vocational school, and community college employees; Regents' classified employees and certain Regents unclassified staff with pre-1962 service; and state correctional officers. A second plan is known as the Kansas Police and Firemen's (KP&F) Retirement System for certain designated state and local public safety employees. A third plan is known as the Kansas Retirement System for Judges that includes the state judicial system's judges and justices.

All coverage groups are defined benefit, contributory retirement plans and have as members most public employees in Kansas. Tier 1 of the KPERS plan is closed to new membership and Tier 2 closed to most new membership on December 31, 2014; certain state correctional personnel are eligible for membership. Tier 3 of the KPERS plan became effective for new employees hired after January 1, 2015. The cash balance plan is a defined benefit, contributory plan according to the Internal Revenue Service (IRS).

The primary purpose of the Retirement System is to accumulate sufficient resources to pay benefits. Retirement and death benefits paid by the Retirement System are considered off-budget expenses.

Starting in FY 2000, retirement benefit payments, as proposed by the Governor and approved by the Legislature, were classified as off-budget, non-reportable expenditures. As the retirement benefit payments represent a substantial amount of money distributed annually to retirees and their beneficiaries, the historical growth in payments is tracked for informational purposes. KPERS estimates that $1.834 billion will be paid in annual retirement and death benefits in calendar year 2018 for all three plans.

The Retirement System also administers several other employee benefit and retirement plans: a public employee death and long-term disability benefits plan; an optional term life insurance plan; a voluntary deferred compensation plan; and a legislative session-only employee's retirement plan. The Legislature has assigned other duties to the agency in managing investments of moneys from three state funds: the Kansas Endowment for Youth Fund, the Senior Services Trust Fund, and the Treasurer's Unclaimed Property Fund.

The Retirement System is governed by a nine member Board of Trustees. Four members are appointed by the Governor and confirmed by the Senate; one member is appointed by the President of the Senate; one is appointed by the Speaker of the House; two are elected by System members; and one member is the State Treasurer. The Board appoints the Executive Director who administers the agency operations for the Board.

The Retirement System manages assets in excess of $18.3 billion in actuarial value. Annually, the Retirement System pays out more in retirement benefits than it collects in employer and employee contributions. The gap between current expenditures and current revenues is made up with funding from investments and earnings. The financial health of the Retirement System may be measured by its funded ratio, which is the relationship between the promised benefits and the resources available to pay those promised benefits. In the most recent actuarial valuation on December 31, 2016, the funded ratio for the Retirement System was 66.8 percent, and the unfunded liability was $9.061 billion. This is the amount of financing shortfall when comparing the Retirement System assets with promised retirement benefits.

The Legislature enacted KSA 2016 Supp. 74-49,131a (2015 SB 228) authorizing the issuance of $1.0 billion in taxable bonds. In August 2015, the Kansas Development Finance Authority issued the bonds with an effective interest rate of 4.69 percent. The bonds, with interest paid semi-annually over a 30-year period, will be paid off in 2045. The bonds' proceeds became part of the Retirement System's valuation on December 31, 2015, which will be used to determine the participating employer contribution rates for FY 2019. Debt service for the bonds is subject to appropriation and not an obligation of KPERS.

Brief History of KPERS

KPERS was created under law enacted by the 1961 Legislature, with an effective date of January 1, 1962. Membership in the original KPERS retirement plan (now referred to as KPERS Tier 1) was offered to state and local public employees qualified under the new law and whose participating employers chose to affiliate with KPERS. Another KPERS tier was created in 2007 for state, school, and local public employees becoming members on and after July 1, 2009. KPERS Tier 2 has many characteristics of the original plan, but with certain modifications to ensure that employees and employers will share in the total cost of providing benefits. A third tier was implemented January 1, 2015, for all new employees. The second and third KPERS tiers are described in the last section of this article.

School districts generally were not authorized to affiliate with KPERS until the 1970s, but there were three affiliating in 1963 as the first exceptions to the general rule. Two more school districts affiliated in 1966. Later in 1966, four of the five school districts that had affiliated with KPERS were dissolved by the Legislature effective July 1, 1966. No other school districts became affiliated with KPERS until 1971, when a general law brought the old State School Retirement System (SSRS) and its individual members into KPERS.

The 1970 Legislature authorized affiliation with KPERS on January 1, 1971, for any public school district, area vocational-technical school, community college, and state agency that employed teachers. Other public officials and officers not addressed in the original 1961 legislation had been authorized, beginning in 1963, to participate in KPERS as the result of a series of statutory amendments to KSA 2016 Supp. 74-4910, *et seq.*, that broadened participation to include groups defined as public rather than governmental exclusively. Amendments to KSA 74-4901 also broadened the definition of which

governmental officials and officers were eligible for KPERS membership.

Calculation of Retirement Benefits and Eligibility for KPERS

KPERS Tier 1 and Tier 2 retirement benefits are calculated by a formula based on years of credited service multiplied by a statutory percentage for the type of service credit multiplied by final average salary.

For credited service, two categories were defined in the 1961 KPERS legislation: participating service, which was equal to 1.0 percent of defined salary for each year, and prior service equal to 0.5 percent of defined salary for each year. In 1965, the Legislature raised the prior service multiplier to 0.75 percent. In 1968, the prior service multiplier was raised to 1.0 percent, and the participating service multiplier was increased to 1.25 percent for all years of service.

In 1970, legislation set the participating service for school employees to be the same as other regular KPERS members, which was 1.25 percent at that time. The prior service multiplier for education employees was set at 1.0 percent for years under the SSRS and 0.75 percent for years of school service not credited under the SSRS. In 1982, legislation increased the participating service credit for state, school, and local KPERS members from 1.25 percent to 1.4 percent of final average salary for all participating service credited after July 1, 1982.

In 1993, legislation raised the multiplier to 1.75 percent for all years participating service for members who retired on or after July 1, 1993.

Three different qualifications for normal retirement were established: age 65, age 62 with 10 years of service; and 85 points (any combination of age plus years of service).

Legislation enacted in 2012, as subsequently clarified during the 2013 Legislative Session, applied a multiplier of 1.85 percent to Tier 2 members retiring under early retirement provisions, as well as to those retiring at the normal retirement dates.

Contribution Rates for KPERS

KPERS Tiers 1, 2, and 3 are participatory plans in which both the employee and employer make contributions. In 1961, employee contributions were statutorily set at 4.0 percent for the first $10,000 of total annual compensation. The $10,000 cap was eliminated by 1967 legislation. Tier 2 employee contribution rates were set at 6.0 percent by statute beginning July 1, 2009. Tier 1 employee contribution rates increased from 4.0 to 5.0 percent in 2014, and to 6.0 percent on January 1, 2015.

In 1961, initial employer contributions were set at 4.35 percent (3.75 percent for retirement benefits and 0.6 percent for death and disability benefits) of total compensation of employees for the first year, with future employer contribution rates to be set by the KPERS Board of Trustees, assisted by an actuary and following statutory guidelines.

In 1970, the employer contribution rate for public education employers was set at 5.05 percent from January 1, 1971 to June 30, 1972, with subsequent employer contribution rates to be set by the KPERS Board of Trustees. In 1981, the Legislature reset the 40-year amortization period for KPERS until December 31, 2022, and accelerated a reduction in the employer contribution rates in FY 1982 to 4.30 percent for state and local units of government (KPERS non-school) and to 3.30 percent for education units of government (KPERS school).

Actuarially recommended employer contribution amounts for the state and school group are determined by assessing the unfunded actuarial liability (UAL) of both groups and combining the separate amounts to determine one.

During the 1980s, the Legislature capped the actuarial contribution rates for employers on numerous occasions in statutory provisions. In 1988, the Legislature established two employer contribution rates, one for the state and schools and one for the local units of government.

Previously, the state and local employer rate had been combined as the KPERS non-school group.

The amortization period for the combined state and school group was extended from 15 to 24 years, with employer contribution rates set at 3.1 percent for the state and 2.0 percent for the local employers in FY 1990.

In 1993, legislation introduced the statutory budget caps that would limit the amount of annual increase for employer contributions and provided a 25.0 percent increase in retirement benefits for those who retired on and after July 1, 1993, and an average 15.0 percent increase in retirement benefits for those who retired before July 1, 1993.

In order to finance the increased benefits, the Legislature anticipated phasing in higher employer contributions by originally setting a 0.1 percent annual cap on budget increases. The gap between the statutory rates and the actuarial rates that began in the FY 1995 budget year has never been closed.

The Legislature reduced the statutory rate for participating employer contributions for FY 2016 and FY 2017 to 10.91 percent and 10.81 percent, respectively. In FY 2018 and subsequent fiscal years, the contribution rate may increase by no more than 1.20 percent above the previous year's contribution rate. According to the most recent actuarial analysis provided to KPERS, with the inclusion of the 2015 bond proceeds, the statutory rate is projected to equal the actuarial contribution rate in FY 2019 at 13.21 percent. In calendar year 2028, the funded ratio is estimated to reach 80.0 percent, which is the minimum ratio for which pension plans are considered by retirement experts to be adequately funded. The UAL is projected to be eliminated in calendar year 2035.

The failure of KPERS participating employers to contribute at the actuarial rate since 1993 has contributed to the long-term funding problem.

Other problems, such as investment losses, also have contributed to the shortfall in funding.

Retirement Benefits and Adjustments

The original 1961 KPERS legislation provided for the non-alienation of benefits. The KPERS Act stated: "No alteration, amendment, or repeal of this act shall affect the then existing rights of members and beneficiaries, but shall be effective only as to rights which would otherwise accrue hereunder as a result of services rendered by an employee after such alteration, amendment, or repeal." This provision is found in KSA 2016 Supp. 74-4923.

The 1961 legislation exempted the KPERS retirement benefits from all state and local taxation. In other words, no taxes shall be assessed, and no retroactive reduction of promised benefits may be enacted. Any change in benefits must be prospective, unless it involves a benefit increase, which may be retroactive in application, as in the case of increasing the multiplier for all years of service credit.

An automatic cost-of-living adjustment (COLA) was not included in the original 1961 legislation.

Over the years, the Legislature provided additional *ad hoc* post-retirement benefit adjustments for retirees and their beneficiaries.

KPERS Tier 2 and Tier 3 for Certain New Members

Legislation in 2007 established a Tier 2 for KPERS state, school, and local employees effective July 1, 2009, and made the existing KPERS members a "frozen" group in Tier 1 that no new members could join. The employee contribution rate for the "frozen" KPERS Tier 1 remained 4.0 percent, until 2014 when it increased from 4.0 to 5.0 percent, and in 2015 when it increased from 5.0 percent to 6.0 percent. The contribution rate remains at 6.0 percent today.

The Tier 2 for employees hired on or after July 1, 2009, continued the 1.75 percent multiplier; allowed normal retirement at age 65 with 5 years of service, or at age 60 with at least 30 years of service; provided for early retirement at age 55 with at least 10 years of service and an actuarial

reduction in benefits; included an automatic, annual 2.0 percent COLA at age 65 and older and required an employee contribution rate of 6.0 percent.

Legislation in 2012 established a Tier 3 for KPERS state, school, and local employees effective January 1, 2015, and made the existing KPERS members, hired between July 1, 2009 and December 31, 2014, a "frozen" group in Tier 2 that no new members could join, except for certain state correctional personnel. The employee contribution rate for the "frozen" KPERS Tier 2 remained set at 6.0 percent, but the COLA was eliminated and a new, higher multiplier of 1.85 percent was authorized to be applied retroactively for all years of credited service and for future years of service.

Effective January 1, 2015, the KPERS Tier 3 has the following plan design components:

- Normal retirement age—age 65 and 5 years of service, or age 60 and 30 years of service;
- Minimum interest crediting rate during active years—4.0 percent;
- Discretionary Tier 3 dividends—modified formula based on KPERS funded ratio for awarding discretionary credits, and capped for early years;
- Employee contribution—6.0 percent;
- Employer service credit—3.0 percent for less than 5 years of service; 4.0 percent for at least 5, but less than 12 years of service; 5.0 percent for at least 12 but less than 24 years of service; and 6.0 percent for 24 or more years of service;
- Vesting—5 years;
- Termination before vesting—interest would be paid for the first 2 years if employee contributions are not withdrawn;
- Termination after vesting—option to leave contributions and draw retirement benefits when eligible, or withdraw employee contributions and interest but forfeit all employer credits and service;
- Death prior to retirement—5-year service requirement and if spouse had been named primary beneficiary, provide retirement benefit for spouse when eligible;
- Tier 3 early retirement—age 55 with 10 years of service;
- Default form of retirement distribution — single life with 10-year certain;
- Annuity conversion factor—2.0 percent less than the actuarial assumed investment rate of return;
- Benefits option—partial lump sum paid in any percentage or dollar amount up to 30.0 percent maximum;
- Post-retirement benefit—COLA may be self-funded for cost-of-living adjustments;
- Electronic and written statements—KPERS Board shall provide information specified. Certain quarterly reporting would be required;
- Powers reserved to adjust plan design—the Legislature may prospectively change interest credits, employer credits, and annuity interest rates. The Board may prospectively change mortality rates;
- Actuarial cost of any legislation—fiscal impact assessment by KPERS actuary required before and after any legislative enactments;
- Divorce after retirement—allows a retirant, if divorced after retirement, and if the retirant had named the retirant's exspouse as a joint annuitant, to cancel the joint annuitant's benefit option in accordance with a court order;
- If a member becomes disabled while actively working, the member will be given participating service credit for the entire period of the member's disability. The member's account will be credited with both the employee contribution and the employer credit until the earliest of (i) death; (ii) attainment of normal retirement age; or (iii) the date the member is no longer entitled to receive disability benefits;
- A benefit of $4,000 is payable upon a retired member's death; and
- Employer credits and the guaranteed interest crediting are to be reported quarterly.

The 2012 legislation also further modified the KPERS Tier 1 plan design components and the participating employer funding requirements for contributions. Several other provisions enhanced supplemental funding for KPERS, first, by providing that 80.0 percent from sales of state property would be transferred to the KPERS Trust fund and, second, by providing for annual transfers of up to 50.0 percent of the balance from the Expanded Lottery Act Revenue Fund to the KPERS Trust fund after other statutory expenses have been met.

Other Recent Revisions

With regard to substantive policy, the Legislature enacted a new working-after-retirement provision, which takes effect on January 1, 2018. For retirees under the age of 62, there is a 180-day waiting period before returning to work. If the retiree is 62 or older, the current 60-day waiting period applies. The current prohibition placed upon prearrangement for employment continues to apply. For covered positions, the employer pays the statutory contribution rate on the first $25,000 of compensation and for that portion of compensation greater than $25,000, the contribution rate is equal to 30.0 percent. Covered positions for non-school employees are those that are not seasonal or temporary and whose employment requires at least 1,000 hours of work per year; covered positions for school employees are those that are not seasonal or temporary and whose employment requires at least 630 hours of work per year or at least 3.5 hours a day for at least 180 days. For non-covered positions, the employer makes no contributions. None of the above provisions sunset.

Starting on January 1, 2018, all retirees who had retired prior to that date in state, local, and licensed or unlicensed school positions are not subject to an earnings limitation. Employers will pay the statutory contribution rate on the first $25,000 of compensation and for that portion of compensation greater than $25,000, the contribution rate will be equal to 30.0 percent for retirees employed in covered positions.

With regard to fiscal policy, the previously-discussed 2012 legislation also modified the rate of increase in the annual caps on participating employer contributions. The 0.6 percent cap would increase to 0.9 percent in FY 2014, 1.0 percent in FY 2015, 1.1 percent in FY 2016, and 1.2 percent in subsequent fiscal years until the UAL of the state and school group reaches an 80.0 percent funded ratio.

Legislation in 2016 (House Sub. for SB 161) provided the Governor with enhanced allotment authority and specifically allowed for the reduction of FY 2016 employer contributions to KPERS. In total, $97.4 million in previously-approved FY 2016 employer contributions to the State-School group were delayed.

Legislation in 2017 froze FY 2017 employer contributions at FY 2016 levels, reducing approximately $64.4 million in approved contributions. FY 2018 employer contributions remain at their statutory level and FY 2019 employer contributions were reduced by approximately $194.0 million from their statutory amount. Repayment of the FY 2017 and FY 2019 reductions were approved *via* layered amortization of a level dollar amount for 20 years.

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State and Local Government

H-9 Senate Confirmation Process

State law in Kansas requires that certain appointments by the Governor or other state officials be confirmed by the Senate prior to the appointee exercising any power, duty, or function of the office. If a majority of the Senate votes on the question of confirmation of an appointment to an office and the appointment is not confirmed, the office shall become vacant at that time (KSA 75-4315b).

When the Senate is not in session, a standing committee of the Senate—the Confirmation Oversight Committee—reviews appointments and makes recommendations related to the appointments to the full Senate.

The Confirmation Oversight Committee has six members with proportional representation from the two major political parties (KSA 2016 Supp. 46-2601). One of the members of the Committee is the Majority Leader of the Senate, or the Majority Leader's designee, who serves as chairperson. The Minority Leader of the Senate, or the Minority Leader's designee, serves as Vice-chairperson.

If a vacancy occurs in an office or in the membership of a board, commission, council, committee, authority, or other governmental body and the appointment to fill the vacancy is subject to confirmation by the Senate, the Confirmation Oversight Committee may authorize, by a majority vote, the person appointed to fill the vacancy to exercise the powers, duties, and functions of the office until the appointment is confirmed by the Senate.

A list of those positions subject to Senate confirmation is included below along with flow charts outlining the confirmation process for gubernatorial appointees and non-gubernatorial appointees.

Alphabetical List of Appointments Subject to Senate Confirmation

Adjutant General
Administration, Secretary
Aging and Disability Services, Secretary
Agriculture, Secretary
Alcoholic Beverage Control, Director
Bank Commissioner
Banking Board
Bioscience Authority

Board of Tax Appeals, Members and Chief Hearing Officer
Central Interstate Low-Level Radioactive Waste Commission
Children and Families, Secretary
Civil Service Board
Commerce, Secretary
Corporation Commission
Corrections, Secretary
Court of Appeals, Judge
Credit Union Administrator
Crime Victims Compensation Board
Employment Security, Board of Review
Export Loan Guarantee Committee
Fire Marshal
Gaming Agency, Executive Director
Healing Arts, Executive Director of State Board
Health and Environment, Office of Inspector General
Health and Environment, Secretary
Highway Patrol, Superintendent
Historical Society, Executive Director
Hospital Authority, University of Kansas
Human Rights Commission
Indigents' Defense Services, State Board
Kansas Bureau of Investigation, Director
Kansas City Area Transportation District
Kansas Development Finance Authority, Board of Directors
Kansas National Guard, General Officers
Labor, Secretary
Librarian, State
Long-Term Care Ombudsman
Lottery Commission
Lottery Commission, Executive Director
Mo-Kan Metropolitan Development District and Agency Compact
Pooled Money Investment Board
Property Valuation, Director
Public Employee Relations Board
Public Employees Retirement Board of Trustees
Racing and Gaming Commission
Racing and Gaming Commission, Executive Director
Regents, State Board
Revenue, Secretary
Securities Commissioner
Transportation, Secretary
Veterans' Affairs Office, Commission on, Director
Water Authority, Chairperson
Water Office, Director
Wildlife, Parks and Tourism, Secretary

Senate Confirmation Process: Gubernatorial Appointments	
Step 1	The Governor appoints an individual to a vacancy requiring Senate confirmation.
Step 2	The Governor's Office collects completed copies of the appointee's nomination form, statement of substantial interest, tax information, and background investigation, including fingerprints.
Step 3	The Governor's Office submits completed copies of the appointee's nomination form, statement of substantial interest, and acknowledgment of release of tax and criminal records information forms to the Kansas Legislative Research Department (KLRD) *via* the Chairperson of the Senate Committee on Confirmation Oversight.
Step 4	KLRD and Revisor of Statutes staff review the file for completeness.
Step 5	If the file is complete, KLRD staff informs the Chairperson of the Senate Committee that the file is available for review.
Step 6	The nominee's appointment is considered by the Senate Committee.

Senate Confirmation Process: Non-Gubernatorial Appointments	
Step 1	The Chairperson of the Senate Committee on Confirmation Oversight is notified by the appointing authority that an appointment has been made requiring Senate confirmation.
Step 2	The appointing authority submits completed copies of the appointee's nomination form, statement of substantial interest, tax information release form, and written request for a background investigation to the Kansas Legislative Research Department (KLRD) *via* the Committee Chairperson.
Step 3	The Director of KLRD submits a written request to the Kansas Bureau of Investigation (KBI) for a background check, including fingerprints. The Director also submits a request to the Department of Revenue to release the appointees tax information.
Step 4	KBI and Department of Revenue officials complete the background and tax investigations. The information is sent to KLRD.
Step 5	The Director of KLRD informs the appointing authority and nominee the file is complete and available for review.
Step 6	The appointing authority and nominee may exercise the option to review the information and decide whether to proceed with the nomination.
Step 7	If the appointing authority and nominee decide to proceed with the nomination, the Director of KLRD informs the Chairperson and Vice-chairperson of the Senate Committee the file is available for review.
Step 8	The nominee's appointment is considered by the Senate Committee.

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State and Local Government

H-10 State Employee Issues

Classified and Unclassified Employees

The state workforce is composed of classified and unclassified employees. Classified employees comprise nearly two-thirds of the state workforce, while unclassified employees comprise the remaining one-third. HB 2391 (2015) revised the Kansas Civil Service Act to direct all persons in newly hired positions, including any rehired employee and any current employee who voluntarily transfers, or is voluntarily promoted or demoted, into an unclassified position. If federal law requires a state agency to maintain personnel standards on a merit basis and that agency has converted classified positions to unclassified positions, the state agency must adopt a binding statement of agency policy to meet the federal requirements.

Classified employees are selected through a competitive process, while unclassified positions can be filled through direct appointment, with or without competition. While unclassified employees are essentially "at will" employees who serve at the discretion of their appointing authority, classified employees are covered by the "merit" or "civil service" system, which provides additional employment safeguards. These safeguards are as follows:

- All actions including recruitment, hiring, classification, compensation, training, retention, promotion, discipline, and dismissal of state employees shall be:
  - Based on merit principles and equal opportunity; and
  - Made without regard to race, national origin or ancestry, religion, political affiliation, or other non-merit factors and shall not be based on sex, age, or disability except where those factors constitute a bona fide occupational qualification or where a disability prevents an individual from performing the essential functions of a position.
- Employees are to be retained based on their ability to manage the duties of their position.

Characteristics of State Employees

In FY 2017, a profile of classified state employees reflected the following:

The "average" classified employee:	The "average" unclassified employee:
Is 47 years of age	Is 45 years of age
Has 13 years of service; and	Has 10 years of service; and
Earns $37,643 per year	Earns $48,391 per year

Source: SHARP (June 2017)—Includes classified and unclassified, benefit-eligible employees including full and part-time employees. Excludes Regents universities, legislators, student employees, classified temporary and unclassified non-benefit eligible temporary employees.

State Employee Benefits

Among the benefits available to most state employees are medical, dental, and vision plans; long-term disability insurance; deferred compensation; and a cafeteria benefits plan, which allows employees to pay dependent care expenses and non-reimbursable health care expenses with pre-tax dollars. In addition, state employees accrue vacation and sick leave. The vacation leave accrual rate increases after 5, 10, and 15 years. In general, the state also provides 9 to 10 days of holiday leave for state employees.

Effective December 1, 2016, most state employees who earn less than $913 per week ($47,476 annually) must receive overtime for hours worked in a week in excess of 40. The change was implemented by the U.S. Department of Labor and increased the amount from $455 a week ($23,660 annually).

Retirement Plans

Most state employees participate in the Kansas Public Employees Retirement System (KPERS). Employees contribute 6.0 percent bi-weekly based on salary. The State contribution is set by law each year. In addition to the regular KPERS program, there are plans for certain law enforcement groups, correctional officers, judges and justices, and certain Regents unclassified employees. Contributions from both the employee and the state differ from plan to plan.

Compensation of State Employees

Kansas statutes direct the Director of Personnel Services, after consultation with the Director of the Budget and the Secretary of Administration, to prepare a pay plan for classified employees, which "shall contain a schedule of salary and wage ranges and steps." The statutes also provide, however, that this pay plan can be modified by provisions in an appropriation bill or other act. When the Governor recommends step movement on the classified pay plan, a general salary increase, or both, funding equivalent to the percentage increase for classified employees generally is included in agency budgets to be distributed to unclassified employees on a merit basis.

The previous Kansas Civil Service Basic Pay Plan consisted of 34 pay grades, each with 13 steps. The difference between each step was approximately 2.5 percent, and the difference between each salary grade was approximately 5.0 percent. Employees typically are hired into a job at the minimum of the salary grade. Until recently, assuming satisfactory work performance, the classified employees would receive an annual 2.5 percent step increase, along with any other general adjustment in salary approved by the Legislature. No classified step movement was recommended or approved from FY 2001 to FY 2006. In FY 2007, the Legislature approved a 2.5 percent step movement, effective September 10, 2006. There has been no further step movement since FY 2009.

New Classified Employee Pay Plans

The 2008 Legislature established five new pay plans for Executive Branch classified state employees and authorized multi-year salary increases for classified employees, beginning in FY 2009, who are identified in positions that are below market in salary.

The legislation authorized a four-year appropriation totaling $68.0 million from all funds, including $34.0 million from the State General Fund (SGF), for below-market pay adjustments (excluding the FY 2009 appropriation of $16.0 million). Due to budgetary considerations, the appropriation for FY 2012 was eliminated, bringing the total appropriation to $58.7 million. The State Finance Council approved an appropriation of $11.4 million, including $8.1 million from the SGF for FY 2013.

Finally, the legislation codified a compensation philosophy for state employees. The philosophy was crafted by the State Employee Pay Philosophy Task Force and endorsed by the State Employee Compensation Oversight Commission during the 2007 Interim. The pay philosophy includes:

- The goal of attracting and retaining quality employees with competitive compensation based on relevant labor markets;
- A base of principles of fairness and equity to be administered with sound fiscal discipline; and
- An understanding that longevity bonus payments shall not be considered as part of the base pay for classified employees.

The following table reflects classified step movement and base salary increases since FY 1997:

Fiscal Year	Salary Adjustment
1997	Step Movement: 2.5 percent Base Adjustment: None
1998	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
1999	Step Movement: 2.5 percent Base Adjustment: 1.5 percent
2000	Step Movement: 2.5 percent Base Adjustment: 1.0 percent
2001	Step Movement: 2.5 percent Base Adjustment: None
2002	Step Movement: None Base Adjustment: 3.0 percent, with 1.5 percent effective for full year and 1.5 percent effective for half a year
2003	Step Movement: None Base Adjustment: None
2004	Step Movement: None Base Adjustment: 1.5 percent effective for last 23 pay periods
2005	Step Movement: None Base Adjustment: 3.0 percent
2006	Step Movement: None Base Adjustment: 2.5 percent, with 1.25 percent effective for full year and 1.25 percent effective for half a year
2007	Step Movement: 2.5 percent, effective September 10, 2006 Base Adjustment: 1.5 percent
2008	Step Movement: None Base Adjustment: 2.0 percent
2009	Step Movement: None Base Adjustment: 2.5 percent Below Market Salary Adjustments
2010	Step Movement: None Base Adjustment: None Below Market Salary Adjustments
2011	Step Movement: None Base Adjustment: None Below Market Salary Adjustments
2012	Step Movement: None Base Adjustment: None
2013	Step Movement: None Base Adjustment: None
2014	Step Movement: None Base Adjustment: None Employee Bonus: $250 Bonus
2015	Step Movement: None Base Adjustment: None
2016	Step Movement: None Base Adjustment: None
2017	Step Movement: None Base Adjustment: None
2018	Step Movement: None Base Adjustment: 2.5 percent < 5 years; 5.0 percent > 5 years with no adjustment; 2.5 percent Judicial

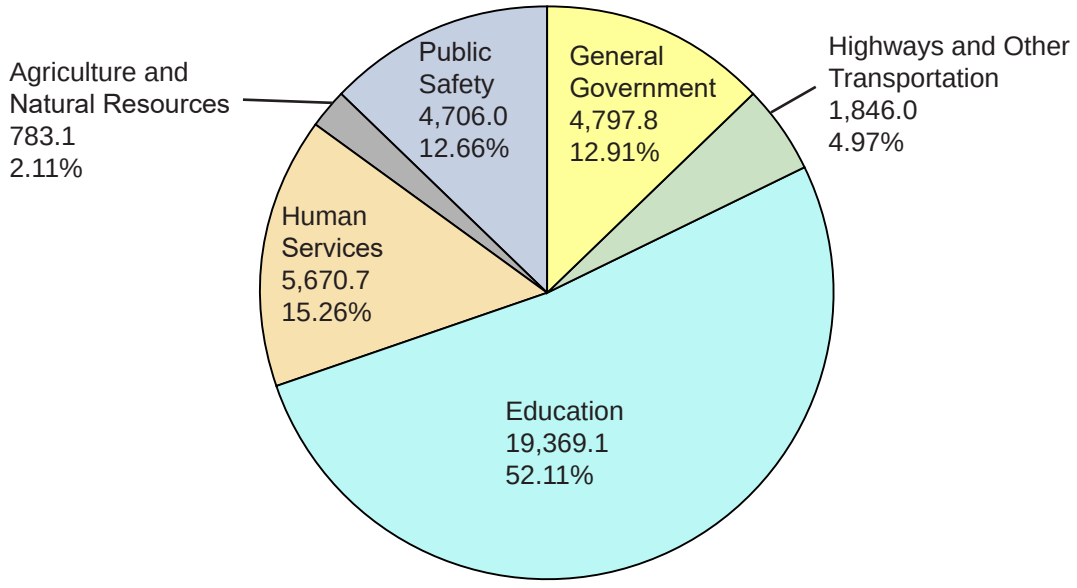
FY 2018. The FY 2018 approved budget includes 37,172.7 full-time equivalent (FTE) positions and represents a increase of 39.0 positions,

or 0.1 percent, above the FY 2017 number. The increase is largely attributable to adding 17.0 FTE positions in the Office of Information Technology Services for implementation of the Governor's Cybersecurity Initiative; adding 13.0 FTE positions in the Department of Agriculture with small adjustments in most programs; adding 7.5 FTE positions in the Department for Children and Families for Child Welfare Compliance and Foster Home Licensing; adding 10.0 FTE positions to maintain agency staffing in the Kansas Lottery; adding 4.0 FTE positions in the Office of the Attorney General for the transfer of the Office of the Inspector General from the Kansas Department of Health and Environment to the Office of the Attorney General; and adding 3.0 FTE positions for Master Settlement Agreement (MSA) diligent enforcement and compliance with tribal nations in the Department of Revenue. The increases were partially offset by a reduction of a net of 14.0 FTE positions due to the merger of the Larned and Kansas Juvenile Correctional Facilities.

- FTE positions are permanent positions, either full-time or part-time, but mathematically equated to full-time. For example, two half-time positions equal one full-time position.
- Non-FTE unclassified permanent positions are essentially unclassified temporary positions that are considered "permanent" because they are authorized to participate in the state retirement system.

The following chart reflects approved FY 2018 FTE positions by function of government:

FTE Positions by Function of Government
FY 2018



Note: Numbers may not add due to rounding.

Largest Employers. The following table lists the ten largest state employers and their numbers of FTE positions:

Agency	FTE Positions
University of Kansas	5,342.1
Kansas State University	3,877.5
University of Kansas Medical Center	3,239.5
Children and Families, Department for	2,119.2
Wichita State University	2,087.3
Judicial Branch	1,865.3
Transportation, Department of	1,846.0
KSU-ESARP	1,097.0
Pittsburg State University	1,000.9
Fort Hays State University	932.3
Source: 2017 IBARS Approved	

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State Budget

I-1 District Court Docket Fees

Kansas has had a uniform system of district court docket fees since 1974. The original docket fees were $35 for civil cases and varying amounts for criminal cases, depending upon the nature of the crime.

From 1984 to 1995, local law libraries could charge differing library fees in addition to statutorily set docket fees, which caused docket fees to be non-uniform.

In 1996, the Legislature passed legislation that returned docket fees to a uniform level and also added docket fees for filing post-divorce motions for changes in child custody, modifications of child support orders, or changes in visitation. The 2006 Legislature passed legislation specifying that only the Legislature can establish fees or moneys for court procedures including docket fees, filing fees, or other fees related to access to court procedures.

The 2006 Legislature raised docket fees for four purposes: to provide additional funding for the State General Fund associated with an approved judicial salary increase, to provide an increase in funding for the Kansas Law Enforcement Training Center Fund, to provide funding for the Kansas Judicial Council's judicial performance evaluation process, and for the Child Exchange and Visitation Centers Fund.

The 2009 Legislature raised docket fees to provide funding for the first phase of a statewide non-judicial personnel salary adjustment and raised the docket fee in criminal cases by $1 to fund a $186,239 increase to the Prosecuting Attorneys' Training Fund.

The 2014 Legislature redirected docket fees from state agencies to the Judicial Branch starting in FY 2014. Starting in FY 2015, docket fees are deposited in three places: the Judicial Council, the Electronic Filing Management Fund, and the Judicial Branch Docket Fee Fund. Through FY 2019, the Electronic Filing Management Fund will receive the first $3.1 million in clerk's fees. From FY 2020 forward, that amount will be reduced to $1.0 million for annual maintenance and upkeep.

The Office of Judicial Administration collected $29.0 million in district court docket fees for the State Treasury in FY 2017.

Fines, penalties, and forfeitures. In FY 2017, the Judicial Branch collected $16.9 million in fines, penalties, and forfeitures. A portion

of funds collected, 33.6 percent, is earmarked for assisting victims of crime, alcohol, and drug abuse programs, children's services, and other law enforcement-related activities. The remainder is transferred to the State General Fund for general operations.

Other fees. In addition to docket fees, the Judicial Branch also imposes other fees and assessments on individuals who use the judicial system. The Judicial Branch collected $7.5 million in other fees and assessments in FY 2017. These fees support law enforcement-related activities within the Kansas Bureau of Investigation, Office of the Attorney General, Board of Indigents' Defense Services, and the Department of Corrections.

The 2009 Legislature authorized the Supreme Court to enact a new surcharge in FY 2009. The surcharge is approved on an annual basis by the Legislature. In FY 2011, the Legislature extended the surcharge through FY 2012 and increased the surcharge by 25.0 percent. The 2014 Legislature abolished the Surcharge Fund and directed all docket fees generated by the surcharge be deposited in the Docket Fee Fund. The 2017 Legislature extended the surcharge through FY 2019.

		FY 2017 Actual		FY 2018 Estimate		FY 2019 Estimate	
Name of Fund	**Administering Authority**	**Percent of Fees**	**Revenue to Fund**	**Percent of Fees**	**Revenue to Fund**	**Percent of Fees**	**Revenue to Fund**
Judicial Branch Docket Fee Fund	Chief Justice, Kansas Supreme Court	99.01%	$25,717,037	99.01%	$25,717,037	99.01%	$25,717,037
Judicial Council Fund	Judicial Council	0.99	197,951	0.99	197,951	0.99	197,951
Electronic Filing Management Fund	Chief Justice, Kansas Supreme Court	N/A	3,100,000	N/A	3,100,000	N/A	3,100,000
Docket Fee Total		**100.00%**	**$29,014,988**	**100.00%**	**$29,014,988**	**100.00%**	**$29,014,988**
Fines, Penalties, and Forfeitures							
Crime Victim's Compensation Fund	Attorney General	10.94%	$1,848,143	10.94%	$1,848,143	10.94%	$1,848,143
Crime Victim's Assistance Fund	Attorney General	2.24	378,413	2.24	378,413	2.24	378,413
Comm. Alcoholism and Intoxication Programs Fund	Department for Aging and Disability Services	2.75	464,570	2.75	464,570	2.75	464,570
Dept of Corr. Alcohol and Drug Abuse Treatment Fund	Department of Corrections	7.65	1,292,348	7.65	1,292,348	7.65	1,292,348
Boating Fee Fund	Department of Wildlife, Parks and Tourism	0.16	27,030	0.16	27,030	0.16	27,030
Children's Advocacy Center Fund	Attorney General	0.11	18,583	0.11	18,583	0.11	18,583
EMS Revolving Fund	Emergency Medical Services Board	2.28	385,171	2.28	385,171	2.28	385,171
Trauma Fund	Secretary of Health and Environment	2.28	385,171	2.28	385,171	2.28	385,171
Traffic Records Enhancement Fund	Department of Transportation	2.28	385,171	2.28	385,171	2.28	385,171
Criminal Justice Information Systems Line Fund	Kansas Bureau of Investigations	2.91	491,599	2.91	491,599	2.91	491,599
State General Fund	Kansas Legislature	66.40	11,217,246	66.40	11,217,246	66.40	11,217,246
Fines, Penalties, and Forfeitures Total		**100.00%**	**$16,893,443**	**100.00%**	**$16,893,443**	**100.00%**	**$16,893,443**

		FY 2017 Actual		FY 2018 Estimate		FY 2019 Estimate	
Other Fees and Assessments							
State General Fund	Various	Fee	$165,978	Fee	$165,978	Fee	$165,978
Law Enforcement Training Center Fund	Various	Fee	2,176,908	Fee	2,176,908	Fee	2,176,908
Marriage License Fees	Various	Fee	1,090,984	Fee	1,090,984	Fee	1,090,984
Correctional Supervision Fund	Various	Fee	929,352	Fee	929,352	Fee	929,352
Drivers License Reinstatement Fees	Various	Fee	853,416	Fee	853,416	Fee	853,416
KBI-DNA Database Fees	Various	Fee	650,674	Fee	650,674	Fee	650,674
Community Corrections Supervision Fee Fund	Various	Fee	481,980	Fee	481,980	Fee	481,980
Indigent Defense Services Application Fee	Various	Fee	493,544	Fee	493,544	Fee	493,544
Indigent Defense Services Bond Forfeiture Fees	Various	Fee	523,509	Fee	523,509	Fee	523,509
Other (Law Library, Court Reporter, Interest, etc.)	Various	Fee	165,978	Fee	165,978	Fee	165,978
Other Fees and Assessments Total			*$7,532,323*		*$7,532,323*		*$7,532,323*
Grand Total of all Fees, Fines, Penalties, and Forfeitures Assessed			$53,440,754		$53,440,754		$53,440,754

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State Budget

I-2 Introduction to State Budget

Budget Overview

This report provides background information on the state budget process, including definitions of classifications of expenditures by function of government and by major purpose of expenditure. Information about the approved FY 2018 and FY 2019 budgets also are included, as well as general information on the status of the State General Fund (SGF).

The Budget Process

The Kansas budget is an executive budget in that the budgetary recommendations of the Governor are embodied in the appropriation bills, which are introduced and considered by the Legislature.

- Most state agencies are required by law to submit their budget requests no later than October 1 of each year (customarily, the deadline specified by the Director of the Budget is September 15). Agency budget requests are submitted to the Division of the Budget and the Legislative Research Department at the same time.
  - Twenty state agencies, most of them occupational and professional licensing boards and financial institution regulatory agencies, are “biennial budget agencies” and authorized to file budget adjustment requests every other year.

The **Director of the Budget**, an appointee of the Governor, is directed by law to review the detailed requests submitted by the various state agencies and to make initial recommendations that are transmitted to agencies in November. An agency is then authorized to appeal those initial recommendations to the Governor. By law, judicial branch agency budgets are exempt from review by the Director. By practice, legislative branch agency budgets are not reviewed.

- The Governor then makes budgetary recommendations, which are provided to the Legislature at the beginning of each legislative session. The Governor’s recommendations also are included in appropriations bills, which become the Legislature’s base for approving the budget each year.

- At the discretion of the Governor, a budget cycle may include two budget years. The first year of a two-year cycle, the agency requests and the Governor recommends a current year budget and two budget years. In the second year, the Governor's recommendation includes the current year and a budget year with the approved amount from the first year's legislation. In this case, the Governor's recommendation reflects only changes from the previously approved budget year amount. This distinction changes the comparison made in the Budget Analysis and the changes made to the appropriations bill(s).
- The **Legislative Research Department** prepares an analysis of both the budget request made by each agency and the Governor's recommendations, which is submitted to the Legislature approximately three weeks after the Director of the Budget submits the Governor's budget report.
- Agencies' budgets receive simultaneous consideration in the House Appropriations Committee and the Senate Ways and Means Committee. Identical appropriation bills reflecting the Governor's recommendation are introduced in both chambers.
    - *Consideration by the First Chamber.* The chairpersons of the House Committee on Appropriations and the Senate Committee on Ways and Means appoint budget committees (House) or subcommittees (Senate) to consider appropriations for various agencies. After reviewing the budget requests, the budget committees and subcommittees draft a report that details all budgetary adjustments to the Governor's recommendations the budget committee or subcommittee support. Once the report is prepared, it is presented to the corresponding full committee. The committee may adjust the recommendations or it may adopt the report as submitted. The recommendations of the committee are considered by the full chamber, which also may adjust or adopt the recommendations.
    - *Consideration by the Second Chamber.* The process for review of an appropriation bill in the second house repeats the steps followed in the house of origin.
    - *Conference Committee Action.* After consideration of an appropriation bill by the second house, the bill typically goes to a conference committee to reconcile differences between the House and Senate versions of the bill.
    - *Omnibus Appropriations Bill.* The Legislature usually adjourns its regular session sometime in early April and returns for a wrap up session that occurs roughly two and one-half weeks following the first adjournment. During the wrap up session, the Legislature takes action on a number of items of unfinished business, one of which is the Omnibus Appropriations Bill. It is designed to make technical adjustments to the appropriation bills passed earlier in the session and to address the fiscal impact of legislation passed during the session. The Omnibus Appropriations Bill is usually one of the last bills passed each session.
- *Classifications of State Spending.* The State of Kansas classifies state spending by major purpose of expenditure and by function of government.

FY 2018 and FY 2019 Approved Budget

The 2017 Legislature approved:

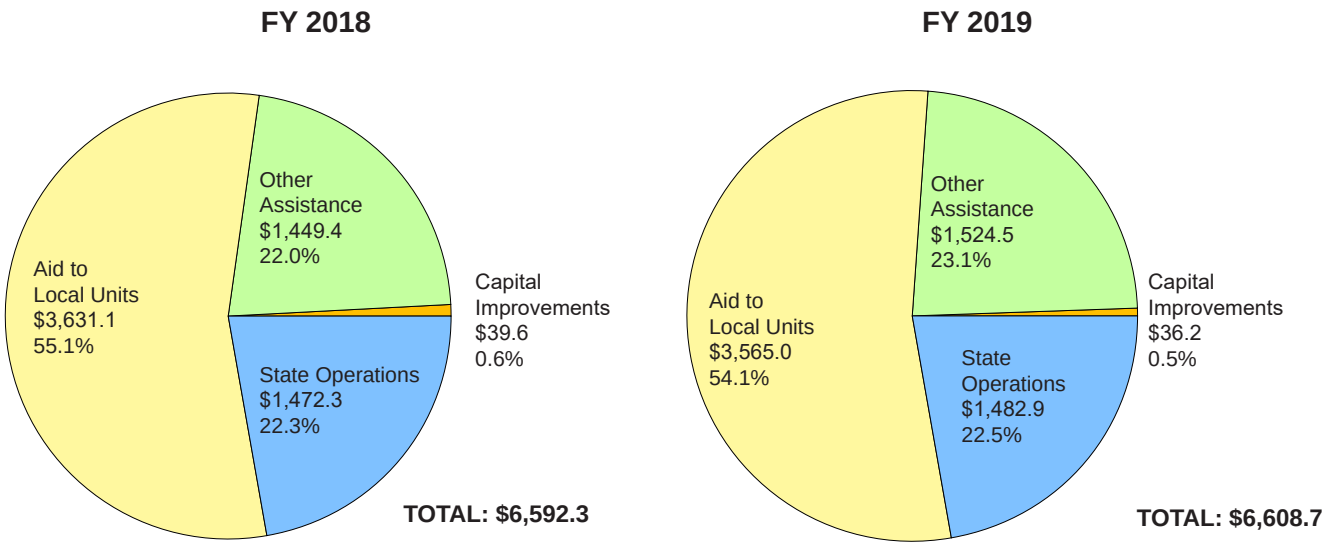
- An FY 2018 budget totaling $15.9 billion from all funding sources, which is a decrease of $29.0 million (0.2 percent) below the approved FY 2017 amount.
- An FY 2018 SGF budget totaling $6.6 billion, which is an increase of $290.6 million (4.6 percent) above the approved FY 2017 amount.
- An FY 2019 budget totaling $16.2 billion from all funding sources, which is an increase of $228.0 million (1.4 percent) above the approved FY 2018 amount.
- An FY 2019 SGF budget totaling $6.6 billion, which is an increase of $16.3 million (0.2 percent) above the approved FY 2018 amount.

Major purposes of expenditure include the following:

- **State Operations.** Actual agency operating costs for salaries and wages, contractual services, commodities, and capital outlay.
- **Aid to Local Units.** Aid payments to counties, cities, school districts, and other local government entities.
- **Other Assistance, Grants, and Benefits.** Payments made to or on behalf of individuals as aid, including public assistance benefits, unemployment benefits, and tuition grants.
- **Capital Improvements.** Cash or debt service payments for projects involving new construction, remodeling and additions, rehabilitation and repair, razing, and the principal portion of debt service for a capital expense.

The following illustrations reflect approved FY 2018 and FY 2019 SGF expenditures by major purpose of expenditure:

State General Fund Approved Expenditures by Major Purpose of Expenditure (Dollars in Millions)



Note: Total may not add due to rounding.

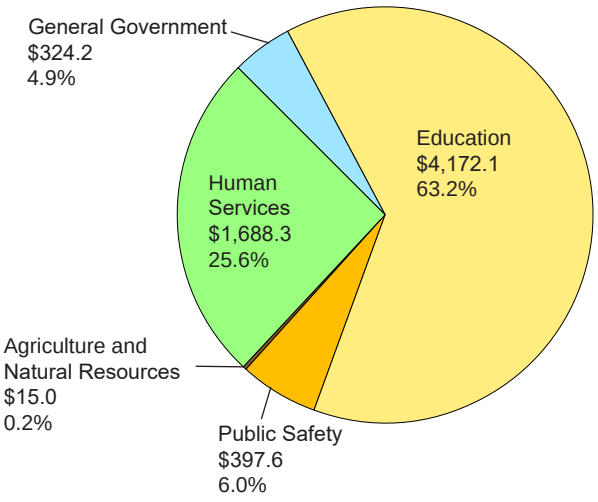
Expenditures by function of government are grouped by agencies which make expenditures for similar programs and purposes. There are six functions of government:

- **General Government.** State agencies with both administrative and regulatory functions, including statewide elected officials, the legislative and judicial branches, and fee-funded professional and regulatory licensing agencies.
- **Human Services.** Agencies that provide services to individuals, including the Department for Aging and Disability Services and state hospitals, the Department for Children and Families, the Department of Labor, the health portions of the Department of Health and Environment, and the Commission on Veterans' Affairs.
- **Education.** Agencies that provide various educational services to Kansans, including the Department of Education, the Board of Regents and the Regents Institutions, the State Library, the Arts Commission, the State Historical Society, and the Schools for the Blind and the Deaf.
- **Public Safety.** Agencies that ensure the safety and security of citizens, including the Department of Corrections and its facilities, the Highway Patrol, and the Kansas Bureau of Investigation.
- **Agriculture and Natural Resources.** Agencies that protect the natural and physical resources of the state, including the Department of Agriculture, the environment portion of the Department of Health and Environment, and the Department of Wildlife, Parks and Tourism.
- **Transportation.** This function includes only the Department of Transportation.

The following illustrations reflect approved FY 2018 and FY 2019 SGF expenditures by function of government (the graphs do not reflect reductions of $5.0 million in both FY 2018 and FY 2019 for non-agency specific savings).

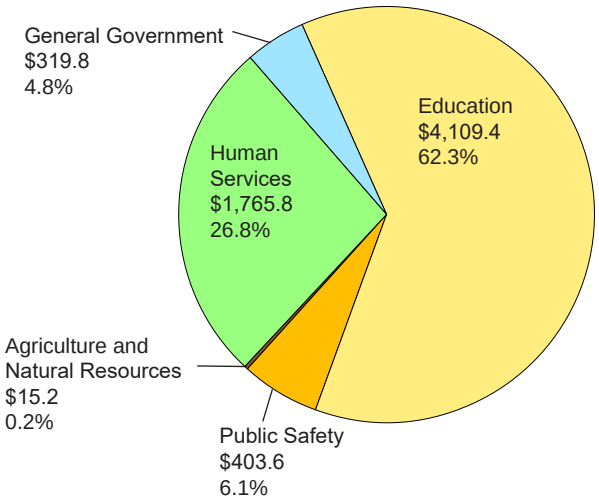
State General Fund Approved Expenditures by Function of Government (Dollars in Millions)

FY 2018



TOTAL: $6,592.3

FY 2019



TOTAL: $6,608.7

Note: Total may not add due to rounding. Graphs do not include $5.0 million in non-agency specific savings.

Consensus Revenue Estimating Process

Since 1974, a consensus approach involving the Legislative and Executive branches (Division of the Budget, Legislative Research Department, the Department of Revenue, and one consulting economist each from the University of Kansas, Kansas State University, and Wichita State University) has been utilized for estimating revenues to the SGF. These consensus estimates are used by both the Governor and the Legislature to formulate and approve budget requests. The law requires that on or before December 4 and April 20, the Director of the Budget and the Director of the Legislative Research Department prepare a joint estimate of revenue to the SGF for the current and ensuing fiscal year.

The following table reflects actual SGF receipts (in millions) for FY 2017 and the April 2017 estimate, as adjusted for legislation, of the Consensus Revenue Estimating Group for FY 2018 and FY 2019.

(Dollars in Millions)			
	Actual FY 2017	Estimated FY 2018	Estimated FY 2019
Income Taxes	$ 2,670.1	$ 3,243.0	$ 3,339.7
Excise Taxes	2,942.2	2,950.9	2,973.2
Other Taxes	204.7	191.1	198.0
Other Revenue	522.1	320.5	151.3
Total	**$ 6,339.1**	**$ 6,705.5**	**$ 6,662.2**

SGF revenue sources include:

- **Income taxes** include individual and corporate income and financial institutions taxes.
- **Excise taxes** include sales and compensating use taxes, alcohol and cigarette taxes, and severance taxes.
- **Other taxes** include motor carrier property taxes, estate and succession taxes, and insurance premium taxes.
- **Other revenue** includes interest earnings, agency earnings, and net transfers to and from the SGF.

The following tables reflect where a SGF dollar is projected to come from in FY 2018 and how it will be spent.

Where Each FY 2018 SGF Dollar Will Come From (Dollars in Millions)		
44¢	Individual Income Tax	$2,927
40¢	Sales and Compensating Use Tax	2,667
4¢	Corporation and Financial Income Tax	275
3¢	Insurance Premium Tax	178
2¢	Tobacco Taxes	136
2¢	Alcohol Taxes	105
1¢	Severance Tax	36
6¢	Other Taxes and Revenue	382
$1.00	**Total Receipts**	**$6,706**

Note: Totals may not add due to rounding.

Where Each FY 2018 SGF Dollar Will Be Spent (Dollars in Thousands)		
51¢	Department of Education	$3,394,152
11¢	Board of Regents/ Postsecondary Education	755,612
0¢	Other Education	22,354
63¢	*Subtotal Education*	*$4,172,118*
13¢	Department for Aging and Disability Services and State Hospitals	828,930
9¢	Department of Health and Environment	597,571
5¢	Department of Corrections and Facilities	358,294
4¢	Department for Children and Families	253,500
2¢	Department of Administration	130,168
2¢	Judicial Branch, Board of Indigents' Defense	102,747
2¢	All Other	148,984
$1.00	**Total Expenditures**	**$6,592,312**

Note: Totals may not add due to rounding.

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State Budget

I-3 Kansas Laws to Eliminate Deficit Spending

Various laws or statutory sections are designed to provide certain safeguards with respect to state budgeting and managing of expenditures and to prevent deficit financing. These laws and statutes are summarized below.

Constitutional Provisions

Sometimes certain provisions of the *Kansas Constitution* are cited with regard to financial limitations. For instance, Section 24 of Article 2 says, "No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law." Section 4 of Article 11 states, "The Legislature shall provide, at each regular session, for raising sufficient revenue to defray the current expenses of the state for two years."

Sections 6 and 7 of Article 11 relate to incurring public debt for the purpose of defraying extraordinary expenses and making public improvements. Such debt shall not, in the aggregate, exceed $1.0 million without voter approval of a law passed by the Legislature. The Kansas Supreme Court, in several cases over the years, has said these sections apply only to debts payable from the levy of general property taxes and thus do not prohibit issuance of revenue bonds to be amortized from non-property tax sources.

Unencumbered Balance Required

KSA 75-3730, enacted in 1953, states that all commitments and claims shall be pre-audited by the Division of Accounts and Reports as provided in KSA 75-3731: "No payment shall be made and no obligation shall be incurred against any fund, allotment, or appropriation, except liabilities representing the expenses of the legislature, unless the Director of Accounts and Reports shall first certify that his or her records disclose there is a sufficient unencumbered balance available in such fund, allotment, or appropriation to meet the same."

State General Fund Ending Balance Law

A portion of 1990 HB 2867 (then KSA 75-6704) provided that the Governor and Legislature must target year-end State General Fund

(SGF) balances expressed as a percentage of fiscal year expenditures and demand transfers, as follows: at least 5.0 percent for FY 1992, 6.0 percent for FY 1993, 7.0 percent for FY 1994, and 7.5 percent for FY 1995 and thereafter (now KSA 75-6702).

Beginning in the 1992 Legislative Session, an "Omnibus Reconciliation Spending Limit Bill" is to be relied upon to reconcile total SGF expenditures and demand transfers to the applicable ending balance target. The law does not require any future action by the Governor or Legislature if the target is missed when actual data on receipts, expenditures, and the year-end balance become known.

Allotment System

The allotment system statutes (KSA 75-3722 through 3725) were enacted in 1953 as part of the law that created the Department of Administration. In response to a request from Governor Carlin, the Attorney General issued an opinion (No. 82-160) on July 26, 1982, which sets forth some of the things that can and cannot be done under the allotment system statutes. Some of the key points in that opinion are:

- With certain exceptions, noted below, the Governor (through the Secretary of Administration and Director of the Budget) has broad discretion in the application of allotments in order to avoid a situation where expenditures in a fiscal year would exceed the resources of the SGF or a special revenue fund. Allotments need not be applied equally or on a *pro rata* basis to all appropriations from, for example, the SGF. Thus, the Governor may pick and choose "as long as such discretion is not abused."
- Demand transfers from the SGF to another fund are not subject to the allotment system because technically, appropriations are made from the other fund and not the SGF. Such transfers include those to the Local *Ad Valorem* Tax Reduction Fund, County and City Revenue Sharing Fund, City-County Highway Fund, State Highway Fund, State Water Plan Fund, and School District Capital Improvements Fund.
- The allotment system cannot be used in any fiscal year for the purpose of increasing the year-ending balance of a fund nor for controlling cash shortages that might occur at any time within a fiscal year. Thus, if a "deficit" were to be projected at the end of the fiscal year, the allotment system could be used to restore the SGF balance to zero.

The Legislature and the Courts and their officers and employees are exempt from the allotment system under KSA 75-3722.

The $100.0 Million Balance Provision

A provision in 1990 HB 2867 (KSA 75-6704) authorizes the Governor to issue an executive order or orders, with approval of the State Finance Council, to reduce SGF expenditures and demand transfers if the estimated year-end balance in the SGF is less than $100.0 million. The Director of the Budget must continuously monitor receipts and expenditures and certify to the Governor the amount of reduction in expenditures and demand transfers that would be required to keep the year-end balance from falling below $100.0 million. Debt service costs, the SGF contribution to school employees retirement (KPERS-School), and the demand transfer to the School District Capital Improvements Fund created in 1992 are not subject to reduction.

If the Governor decides to make reductions, they must be on a percentage basis applied equally to all items of appropriations and demand transfers (*i.e.*, across-the-board with no exceptions other than the three mentioned above). In contrast to the allotment system law, all demand transfers but one are subject to reduction.

In August 1991 (FY 1992), the Governor issued an executive directive, with the approval of the State Finance Council, to reduce SGF expenditures (except debt service and the KPERS-School employer contributions) by 1.0 percent. At the time of the State Finance Council action, the

projected SGF ending balance was projected at approximately $76.0 million.

Certificates of Indebtedness

KSA 75-3725a, first enacted in 1970, authorizes the State Finance Council to order the Pooled Money Investment Board (PMIB) to issue a certificate of indebtedness when the estimated resources of the SGF will be sufficient to meet in full the authorized expenditures and obligations of the SGF for an entire fiscal year, but insufficient to meet such expenditures and obligations fully as they become due during certain months of a fiscal year. The certificate must be redeemed from the SGF no later than June 30 of the same fiscal year in which it was issued. If necessary, more than one certificate may be issued in a fiscal year. No interest is charged to the SGF. However, to whatever extent the amount of a certificate results in greater spending from the SGF than would occur if expenditures had to be delayed, there may be some reductions in interest earnings that otherwise would accrue to the SGF.

To cover cash flow issues, the State Finance Council authorized issuance of certificates of indebtedness as follows:

- $65.0 million in December FY 1983;
- $30.0 million in October FY 1984;
- $75.0 million in April FY 1986;
- $75.0 million in July FY 1987;
- $140.0 million in December FY 1987 (replaced the July certificate);
- $75.0 million in November FY 1992;
- $150.0 million in January FY 2000;
- $150.0 million in January FY 2001;
- $150.0 million in September FY 2002;
- $200.0 million in December FY 2002;
- $450.0 million in July FY 2003;
- $450.0 million in July FY 2004;
- $450.0 million in July FY 2005;
- $450.0 million in July FY 2006 ;
- $200.0 million in December FY 2007;
- $350.0 million in December FY 2008;
- $300.0 million in June FY 2009;
- $250.0 million in December FY 2009;
- $225.0 million in February FY 2009;
- $700.0 million in July FY 2010;
- $700.0 million in July FY 2011;
- $600.0 million in July FY 2012;
- $400.0 million in July FY 2013;
- $300.0 million in July FY 2014;
- $675.0 million in July FY 2015;
- $840.0 million in July FY 2016;
- $900.0 million in July FY 2017; and
- $900.0 million in July FY 2018.

The amount of a certificate is not “borrowed” from any particular fund or group of funds. Rather, it is a paper transaction by which the SGF is temporarily credited with the amount of the certificate and state moneys available for investment and managed by the PMIB.

The PMIB is responsible for investing available moneys of all agencies and funds, as well as for maintaining an operating account to pay daily bills of the state. Kansas Public Employee Retirement System invested money is not part of “state moneys available for investment” nor is certain money required to be separately invested by the PMIB under statutes other than the state moneys law.

Certificates of indebtedness could be used if allotments were imposed or if expenditures were reduced under the $100.0 million balance provision or if neither such action was taken.

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State Budget

I-4 Local Demand Transfers

This article provides an explanation of the five local State General Fund (SGF) demand transfers, including the statutory authorization for the transfers, the specific revenue sources for the transfers (where applicable), recent treatment of the demand transfers as revenue transfers, and funding provided for the transfers in recent years. In addition, other demand transfers, which do not flow to local units of government, are discussed briefly.

Distinction between Demand Transfers and Revenue Transfers

Demand transfers are expenditures specified by statute rather than appropriation acts. An important characteristic of a demand transfer is that the amount of the transfer in any given fiscal year is based on a formula or authorization in substantive law. The actual appropriation of the funds traditionally was made through that statutory authority rather than through an appropriation. In recent years, however, adjustments to the statutory amounts of the demand transfers have been included in appropriation bills. SGF demand transfers are considered to be SGF expenditures.

A SGF revenue transfer is specified in an appropriation bill and involves transferring money from the SGF to a special revenue fund. Any subsequent expenditure of the funds is considered an expenditure from the special revenue fund.

Five statutory demand transfers flow to local units of government:

- Two of the local transfers are funded from sales tax revenues: the Local *Ad Valorem* Tax Reduction Fund (LAVTRF) and the County and City Revenue Sharing Fund (CCRSF). Both are to be distributed to local governments for property tax relief. The LAVTRF should receive 3.6 percent of sales and use tax receipts, and the CCRSF should receive 2.8 percent. While the percentages are established in statute, in recent years, the transfers often have been capped at some level less than the full statutory amount or not funded at all;
- The other local transfer based on a specific revenue source is the Special City-County Highway Fund (SCCHF), which was established in 1979 to prevent the deterioration of city streets and county roads. Each year this fund is to receive

an amount equal to the state property tax levied on motor carriers;

- The fourth transfer to local units of government is not based on a specific tax resource. The School District Capital Improvements Fund (SDCIF) is used to support school construction projects. By statute, the State Board of Education is to certify school districts' entitlements determined under statutory provisions and funding is then transferred from the SGF to the SDCIF; and
- The fifth transfer to local units of government is the School District Capital Outlay Fund (SDCOF). The 2005 Legislature created the capital outlay state aid program as part of its response to the Kansas Supreme Court's opinion in school finance litigation. The program is designed to provide state equalization aid to school districts for capital outlay mill levies, up to eight mills.

Treatment of Demand Transfers as Revenue Transfers. In recent years, the local demand transfers, with the exception of the SDCOF, have been changed to revenue transfers. By converting demand transfers to revenue transfers, these funds cease to be SGF expenditures and are no longer subject to the ending balance law. The LAVTRF, CCRSF, and SCCHF were last treated as demand transfers in FY 2001, and the SDCIF transfer was changed to a revenue transfer in FY 2003.

Recent Funding for the Local Demand/ Revenue Transfers. The SDCIF was the only local SGF transfer recommended.

- Full-year funding (at a level below the statutory amount) was last recommended for the LAVTRF and the CCRSF in FY 2002;
- In FY 2003, as part of approved SGF allotments, the second half of the scheduled transfers to the LAVTRF, CCRSF, and SCCHF were suspended, and no transfers have been made since FY 2004; and
- Because of balances in the SCCHF, local governments received the full amounts of the SCCHF transfer in both FY 2003 and FY 2004, although only one of two scheduled transfers was made in FY 2003 and no SGF transfer was made in FY 2004. The FY 2005, FY 2006, FY 2007, and FY 2009 transfers to the SCCHF were approved at the FY 2003 pre-allotment amount. The FY 2009 transfer was approved at $6.7 million. No funding has been approved since FY 2009.

The following table reflects actual and approved local demand or revenue transfers (in millions of dollars) for FY 2017-FY 2019.

Demand/Revenue Transfers from SGF for Local Units of Government FY 2017-FY 2019 (Dollars in Millions)

	FY 2017 Actual	FY 2018 Approved	FY 2019 Approved	Change from FY 2018 $	Change from FY 2018 %
SDCIF	$ 179.7	$ 195.5	$ 203.5	$ 8.0	4.1 %
SDCOF	58.7	58.7	-	-	-
LAVTRF	-	-	-	-	-
CCRSF	-	-	-	-	-
SCCHF	-	-	-	-	-
TOTAL	**$ 237.7**	**$ 254.2**	**$ 262.2**	**$ 8.0**	**3.1 %**

Other Demand Transfers. In addition to the local demand/revenue transfers, three other transfers do not flow to local units of government.

One transfer provides matching funds for capital improvement projects at the Kansas State Fair. The amounts to be transferred are intended to match amounts transferred by the State Fair to its Capital Improvements Fund, up to $300,000. *A transfer of $100,000 was made for FY 2017, and the same amount is approved for FY 2018 and FY 2019.*

Another provides for a statutory $6.0 million transfer from the SGF to the State Water Plan Fund. *No transfer was made for FY 2017 and FY 2018, and no transfer is approved for FY 2019; however, $1.2 million is approved to be transferred in FY 2018.*

The third provides for a transfer to the Regents' Faculty of Distinction Fund. This provides for a transfer to supplement endowed professorships at eligible educational institutions. *A transfer of $688,776 was made for FY 2017, and the same amount is approved for FY 2018 and FY 2019.*

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Taxation

J-1 E-cigarettes or "E-cigs"

Kansas provides for the taxation of the privilege of selling or dealing electronic cigarettes (e-cigs) at a rate of $0.05 per milliliter of consumable material. The tax was originally created by the 2015 Legislature as part of Senate Sub. for HB 2109. The effective date of the new tax was later delayed from July 1, 2016, to January 1, 2017, by 2016 House Sub. for SB 149 and later delayed to July 1, 2017, by 2017 Sub. for HB 2230.

E-cigs, unlike traditional cigarettes, produce no flame and instead use an atomizer, or heated coil, to vaporize the contents of a cartridge containing nicotine fluid. It is the liquid within the cartridge that is subject to taxation on a per milliliter basis.

Revenue Generated from Taxation of Electronic Cigarettes

Original projections, which included a full year of assessed taxes, estimated the new tax on e-cigs would generate $2.0 million in fiscal year (FY) 2017, if enacted on July 1, 2016, and consumable material was taxed at $0.20 per milliliter (as set forth in 2015 Senate Sub. for HB 2109).

Sub. for HB 2230 (2017) both delayed the effective date of the new tax and reduced the rate of the tax on e-cigs. House Sub. for SB 149 (2016) delayed the previous effective date for the tax from January 1, 2017, to July 1, 2017. The bill also reduced the rate of the tax from $0.20 per milliliter of consumable material to $0.05 per milliliter of consumable material. The tax is now estimated to generate roughly $750,000 in FY 2018 and approximately $550,000 each year thereafter.

Taxation of Electronic Cigarettes in Other States

Currently, 48 states regulate e-cigs in some capacity. Most commonly, the sale of e-cigs to persons under the age of 18 is prohibited as e-cigs are included in the definition of a tobacco product. Kansas is one of seven states, in addition to the District of Columbia, to assess a tax on e-cigs. California, Louisiana, Minnesota, Pennsylvania, North Carolina, West Virginia, and the District of Columbia, like Kansas, assess an excise tax on the consumable product located within the e-cig.

In each of these states, the tax is assessed per milliliter. Minnesota, meanwhile, imposes a tax on the total cost of the consumable material, under which e-cigs are considered a tobacco product and subject to the state's Tobacco Tax, which is 95.0 percent of the wholesale cost of any product containing the consumable material. Pennsylvania requires retailers to pay an inventory tax of 40.0 percent beginning in state FY 2017.

Additionally, numerous counties across the country have enacted taxes, in various forms, on the sale or distribution of e-cigs. Most commonly, the sale and distribution of e-cigs and the consumable material is taxed under general sales tax provisions.

Additionally, 19 states require a retail license for the sale of e-cig products.

Federal Regulation

In 2014, the Food and Drug Administration (FDA) publicly announced its intention to extend regulation authority to vapor products, specifically e-cigs. Still unknown is whether new electronic cigarette products will be subject to a review process by the FDA prior to being released in the open market. Additionally, there are questions as to whether products currently in the market will be subject to a grandfather clause.

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Taxation

J-2 Homestead Program

When Kansas enacted the Homestead Property Tax Refund Act in 1970, it became the sixth state to enact a "circuit-breaker" style of property tax relief.

A "circuit-breaker" is a form of property tax relief in which the benefit is dependent on income or other criteria and the amount of property taxes paid. This moniker developed as an analogy to the device that breaks an electrical circuit during an overload, just as the property tax relief benefit begins to accrue once a person's property taxes have become overloaded relative to his or her income.

- 34 states, including Kansas, currently have some form of circuit-breaker program.
- 27 states allow renters to participate in the programs.

Eligibility Requirements:

- Household income of $34,100 or less; and
- Someone in the household is:
  - Age 55 or above;
  - A dependent under age 18;
  - Blind; or
  - Otherwise disabled.

Renters were eligible (15 percent of rent is equivalent to property tax paid) until tax year 2013.

Program Structure

The current Kansas Homestead Refund Program is an entitlement for eligible taxpayers based upon their household income and their property tax liability. The maximum available refund is $700 and the minimum refund is $30.

Recent Legislative History

A 2006 change to the Homestead Refund Program expanded it by approximately $4.5 million. The 2007 Legislature passed an even more significant expansion of the program, which increased the size of the program by an additional $9.9 million.

PROGRAM CLAIMS AND REFUNDS			
	Eligible Claims Filed	Amount	Average Refund
FY 2010	132,136	$42.872 million	$324
FY 2011	120,029	$42.860 million	$357
FY 2012	126,762	$43.049 million	$340
FY 2013	115,719	$37.586 million	$325
FY 2014	86,082	$29.415 million	$342
FY 2015	70,343	$23.032 million	$327
FY 2016	76,202	$25.968 million	$341
FY 2017	79,737	$24.649 million	$309

Among the key features of the 2007 expansion law:

- The maximum refund available under the program was increased from $600 to $700;
- 50 percent of Social Security benefits were excluded from the definition of income for purposes of qualifying for the program; and
- A residential valuation ceiling prohibits any homeowner with a residence valued at $350,000 or more from participating in the program.

Hypothetical Taxpayers

The impact of the 2006 and 2007 program expansion legislation is demonstrated on the following hypothetical taxpayers (below).

HOMESTEAD REFUND			
	Pre-2006 Law	2006 Law	2007 Law
Elderly couple with $1,000 in property tax liability and $23,000 in household income, $11,000 of which comes from Social Security benefits.	$72	$150	$385
Single mother with two young children, $750 in property tax liability and $16,000 in household income.	$240	$360	$420
Disabled renter paying $450 per month in rent, with $9,000 of household income from sources other than disability income.	$480	$528	$616

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Taxation

J-3 Kansas Income Tax Reform

Beginning in 2012, the Kansas Legislature passed legislation enacting major changes to the Kansas individual income tax. Virtually all areas of the determination of income tax liability were affected by the reforms, including additions and subtractions to adjusted gross income, standard and itemized deductions, tax rates and brackets, tax credits, and tax liability exclusion. Major legislation was passed in 2012, 2013, 2015, and 2017 with additional legislation being passed related to individual income tax reform in 2014.

Addition and Subtraction Modifications

In 2012, legislation specifically exempted certain non-wage business income by providing a modification to federal adjusted gross income that subtracted the taxpayer's income reported on lines 12, 17, and 18 of federal form 1040. This included business income; income from rents, royalties, partnerships, S corporations, and trusts; and farm income. In addition to this subtraction modification, the legislation included a modification requiring taxpayers to add their losses attributable to those categories back to their federal adjusted gross income in determining their adjusted gross income for Kansas income tax purposes. In 2015, legislation modified the subtraction modification by requiring taxpayers to include "guaranteed payments" in their determination of income. "Guaranteed payments" is a federally defined term for a specific type of business income. The 2017 Legislature eliminated the addition and subtraction modifications in their entirety, largely returning this area of the Kansas individual income tax to its condition prior to 2012.

Standard Deduction and Itemized Deductions

In 2012, legislation increased the standard deduction for single head-of-household filers from $4,500 to $9,000 and for married taxpayers filing jointly from $6,000 to $9,000. These amounts were then reduced to $7,500 for married taxpayers filing jointly and $6,000 for single head-of-household filers by 2013 legislation.

Itemized deductions were unaffected by 2012 legislation, but 2013 legislation eliminated the itemized deduction for certain gambling losses and provided for a series of "haircuts" to all other itemized

deductions—excluding charitable contributions—that reduced those deductions by 30 percent beginning in tax year 2013 and increasing to 50 percent by tax year 2017. In 2015, legislation further reduced itemized deductions by eliminating all itemized deductions other than charitable contributions, mortgage interest, and property taxes beginning in tax year 2015. Mortgage interest and property taxes were reduced to 50 percent of their federal amount effective for tax year 2015, and charitable contributions remained at the full federal amount.

In 2017, legislation reinstates the itemized deduction for medical expenses at 50 percent of the federal amount beginning in tax year 2018 and then increases the amount for medical expenses, property taxes, and mortgage interest to 75 percent of the federal level in 2019 and 100 percent of the federal level in 2020.

Tax Rates and Brackets

In 2012, legislation collapsed the three-bracket structure for individual income tax that Kansas had used since 1992 into a two-bracket system and applied rates of 3.0 and 4.9 percent. Previous rates had been 3.5, 6.25, and 6.45 percent. In 2013, legislation provided a schedule of future rate reductions to lower the rates to 2.3 and 3.9 percent in tax year 2018 and then provided a formula that could—under certain circumstances—provide additional rate reductions in the future based upon year over year growth of specified State General Fund tax receipts. In 2015, legislation altered the rate reduction schedule to provide that the rates would be reduced to 2.6 and 4.6 percent before a modified version of the rate reduction formula would go into effect in tax year 2021.

In 2017, legislation reinstituted a three-bracket individual income tax structure with tax rates set at 2.9, 4.9, and 5.2 percent for tax year 2017 and at 3.1, 5.25, and 5.7 percent for tax year 2018 and all tax years thereafter. The statutory future rate reduction formula was repealed by 2017 legislation.

Income Tax Credits

In 2012, legislation repealed or limited numerous tax credits previously allowed to individuals. In 2013, legislation partially reinstituted the food sales tax rebate credit. In 2014, legislation reinstituted tax credits for adoption expenses and disability access expenses. In 2017, legislation reinstituted the child and dependent care tax credit through a three-year phase in beginning in tax year 2018.

Low Income Tax Exclusion

In 2015, legislation created a provision that eliminates any positive income tax liability for single filers with $5,000 or less of taxable income and for married taxpayers filing jointly with $12,500 or less of taxable income beginning in tax year 2016. In 2017, legislation changed the thresholds for this exclusion to $2,500 for single filers and $5,000 for married filers, effective tax year 2018.

Fiscal Information

When fully implemented, tax legislation passed in 2012 and 2013 had the effect of reducing individual income tax receipts, while tax legislation passed in 2015 and 2017 had the effect of increasing individual income tax receipts. The combined fiscal effect of major tax legislation enacted during those four sessions on individual income tax was a reduction in receipts of $358.1 million for fiscal year 2018.

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Taxation

J-4 Liquor Taxes

Kansas has three levels of liquor taxation, each of which imposes different rates and provides for a different disposition of revenue.

Liquor Gallonage Tax. The first level of taxation is the gallonage tax, which is imposed upon the person who first manufactures, sells, purchases, or receives the liquor or cereal malt beverage (CMB).

Liquor Enforcement or Sales Tax. The second level of taxation is the enforcement or sales tax, which is imposed on the gross receipts from the sale of liquor or CMB to consumers by retail liquor dealers and grocery and convenience stores, and to clubs, drinking establishments, and caterers by distributors.

Liquor Drink Tax. The third level of taxation is levied on the gross receipts from the sale of liquor by clubs, caterers, and drinking establishments.

Gallonage

Since the gallonage tax is imposed upon the person who first manufactures, uses, sells, stores, purchases, or receives the alcoholic liquor or CMB, the tax has already been paid by the time the product has reached the retail liquor store—or in the case of CMB, the grocery or convenience store. (Examples of taxation rates are detailed throughout this article.)

When the liquor store owner purchases a case of light wine from a distributor, the 30 cents per gallon tax has already been built in as part of that store owner's acquisition cost.

Rates	
	Per Gallon
Beer and CMB	$0.18
Light Wine	$0.30
Fortified Wine	$0.75
Alcohol and Spirits	$2.50

Gallonage tax receipts in fiscal year (FY) 2017 were approximately $22.1 million. Of this amount, nearly $9.5 million was attributed to the beer and CMB tax.

Gallonage Tax Disposition of Revenue		
	State General Fund (SGF)	Alcoholism and Intoxication Programs Fund (CAIPF)
Alcohol and Spirits	90%	10%
All Other Gallonage Taxes	100%	--

Liquor gallonage tax rates have not been increased since 1977.

Enforcement and Sales

Enforcement. Enforcement tax is an in-lieu-of sales tax imposed at the rate of 8 percent on the gross receipts of the sale of liquor to consumers and on the gross receipts from the sale of liquor and CMB to clubs, drinking establishments, and caterers by distributors.

- A consumer purchasing a $10 bottle of wine at a liquor store is going to pay 80 cents in enforcement tax.

The club owner buying the case of light wine (who already had paid the 30 cents per gallon gallonage tax as part of his acquisition cost) also now would pay the 8 percent enforcement tax.

Sales. CMB purchases in grocery or convenience stores are not subject to the enforcement tax, but rather are subject to state and local sales taxes. The state sales tax rate is 6.5 percent, and combined local sales tax rates range as high as 5 percent.

CMB sales, therefore, are taxed at rates ranging from 6.5 to 11.5 percent.

Besides the rate differential between sales of strong beer (and other alcohol) by liquor stores and CMB by grocery and convenience stores, there is a major difference in the disposition of revenue.

Enforcement and Sales Tax Disposition of Revenue			
	SGF	State Highway Fund	Local Units
Enforcement (8%)	100.00%	--	--
State Sales (6.50%)	83.846%	16.154%	--
Local Sales (up to 5%)	--	--	100.00%

Enforcement tax receipts in FY 2017 were approximately $71.5 million. Grocery and convenience store sales tax collections from CMB are unknown.

The liquor enforcement tax rate has not been increased since 1983.

Drink

The liquor drink tax is imposed at the rate of 10 percent on the gross receipts from the sale of alcoholic liquor by clubs, caterers, and drinking establishments.

The club owner (who had previously paid the gallonage tax and then the enforcement tax when acquiring the case of light wine) next is required to charge the drink tax on sales to its customers. Assuming the club charged $4.00 for a glass of light wine, the drink tax on such a transaction would be 40 cents.

Drink Tax – Disposition of Revenue			
	SGF	CAIPF	Local Alcoholic Liquor Fund
Drink Tax (10%)	25%	5%	70%

Liquor drink tax revenues in FY 2017 were about $44.0 million, of which $11.0 million was deposited in the SGF. The liquor drink tax rate has remained unchanged since imposition in 1979.

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Taxation

J-5 Selected Tax Rate Comparisons

The following tables compare selected tax rates and tax bases with those of nearby states.

SALES TAX			
	Rate	Food	Non-prescription Drugs
Kansas	6.50%	6.50%	Non-exempt
Missouri	4.23%	1.23%	Non-exempt
Nebraska	5.50%	Exempt	Non-exempt
Colorado	2.90%	Exempt	Non-exempt
Iowa	6.00%	Exempt	Non-exempt
Arkansas	6.50%	1.50%	Non-exempt
Texas	6.25%	Exempt	Exempt
Source: Federation of Tax Administrators, as of January 1, 2017.			

MOTOR FUEL TAX[1] (cents per gallon)		
	Gasoline	Diesel Fuel
Kansas	25.03	27.03
Missouri	17.30	17.30
Nebraska	28.20	27.60
Colorado	22.00	20.50
Iowa	30.70	32.50
Arkansas	21.80	22.80
Texas	20.00	20.00
1 Includes fees, such as environmental and inspection fees. Source: Federation of Tax Administrators, as of January 1, 2017.		

CIGARETTE TAX	
	Excise Tax (cents per pack)
Kansas	129
Missouri	17
Nebraska	64
Oklahoma	103
Colorado	84
Iowa	136
Arkansas	115
Texas	141
Source: Federation of Tax Administrators, as of January 1, 2017.	

CORPORATE INCOME TAX				
	Tax Rate	**Number of Brackets**	**Bracket Range**	**Apportionment Method**
Kansas[1]	4.00%	1	Flat Rate	Three factor
Missouri	6.25%	1	Flat Rate	Three factor
Nebraska	5.58%-7.81%	2	$100,000	Sales
Oklahoma	6.00%	1	Flat Rate	Three factor
Colorado	4.63%	1	Flat Rate	Sales
Iowa	6.00%-12.00%	4	$25,000-$250,001	Sales
Arkansas	1.00%-6.50%	6	$3,000-$100,001	Double Weighted Sales
Texas[2]	N/A	N/A	N/A	Sales

Source: Federation of Tax Administrators, as of January 1, 2017.
1 Kansas levies a 3.0 percent surtax on taxable income over $50,000.
2 Texas imposes a franchise tax on entities with more than $1,030,000 total revenues at a rate of 1.0 percent, or 0.5 percent, for entities primarily engaged in retail or wholesale trade, on lesser of 70.0 percent of total revenues or 100.0 percent of gross receipts after deductions for either compensation or cost of goods sold.

INDIVIDUAL INCOME TAX							
	Federal IRC Starting Point	**Tax Rate Range**	**Number of Brackets**	**Bracket Range**	**Personal Exemption Single**	**Personal Exemption Married**	**Personal Exemption Dependent**
Kansas[1]	Adjusted Gross Income	2.90%-5.20%*	3	$15,000-$30,001	$2,250	$4,500	$2,250
Missouri	Adjusted Gross Income	1.50%-6.00%	10	$1,000-$9,001	$2,100	$4,200	$1,2
Nebraska	Adjusted Gross Income	2.46%-6.84%	4	$3,090-$29,830	$132 (credit)	$264 (credit)	$132 (credit)
Oklahoma	Adjusted Gross Income	0.50%-5.00%	6	$1,000-$7,200	$1,000.00	$2,000	$1,000
Colorado	Taxable Income	4.63%	1	Flat Rate	$4,050.00	$8,100	$4,050
Iowa	Adjusted Gross Income (as defined in IRC effective 1/1/15)	0.36%-8.98%	9	$1,573-$70,785	$40 (credit)	$80 (credit)	$40 (credit)
Arkansas	No Relation to Federal IRC	0.90%-6.90%	6	$4,299-$35,100	$26 (credit)	$52 (credit)	$26 (credit)
Texas	N/A	N/A	N/A	N/A	N/A	N/A	N/A

1 2017 enacted legislation provides for rate increases to 3.1 percent through 5.7 percent in tax year 2018.
IRC = Internal Revenue Code
Source: Federation of Tax Administrators, as of January 1, 2017.

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Transportation

K-1 Distracted Driving: State Laws

In 2015, 3,477 people were killed and an estimated 391,000 injured in motor vehicle crashes involving distracted drivers in the United States. Of the police-reported motor vehicle traffic crashes in 2015, 10 percent of fatal crashes, 15 percent of injury crashes, and 14 percent of all crashes were reported as distraction-affected crashes.[1]

Kansas data for 2016 show distracted driving was recorded as a factor in 2,351 crashes that led to injuries or property damage; 15 people died and 974 were injured in those crashes. The total costs of crashes in 2016 involving distracted drivers were estimated at $820.9 million.[2]

Distractions caused by cell phones and other electronic devices account for large percentages of deaths, injuries, and crashes in which distraction is recorded as a factor. Researchers say that is because such devices often cause all of the three types of distraction described by the National Highway Traffic Safety Administration:

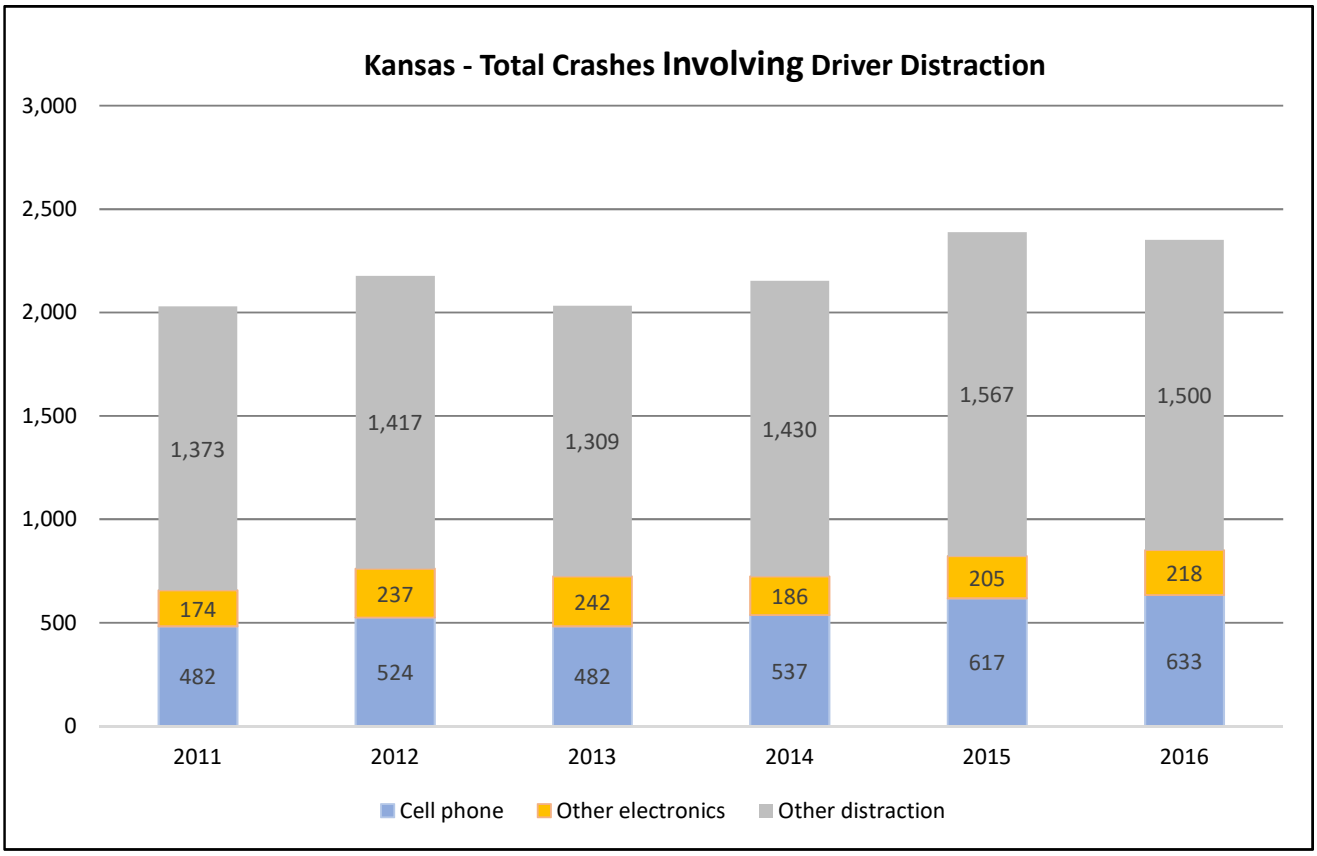
- Visual: taking your eyes off the road;
- Manual: taking your hands off the wheel; and
- Cognitive: taking your mind off of driving.[3]

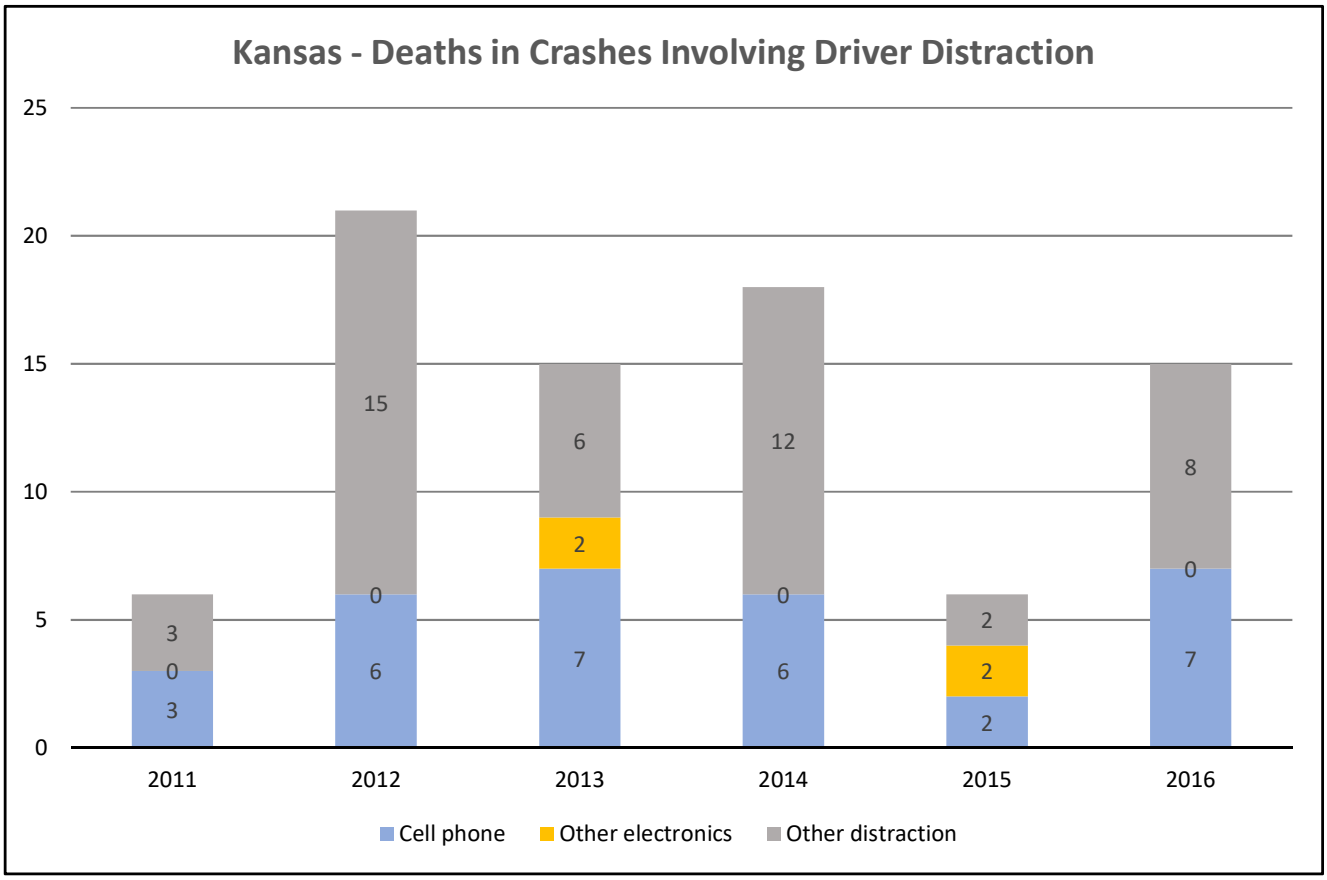
State Responses to Distracted Driving

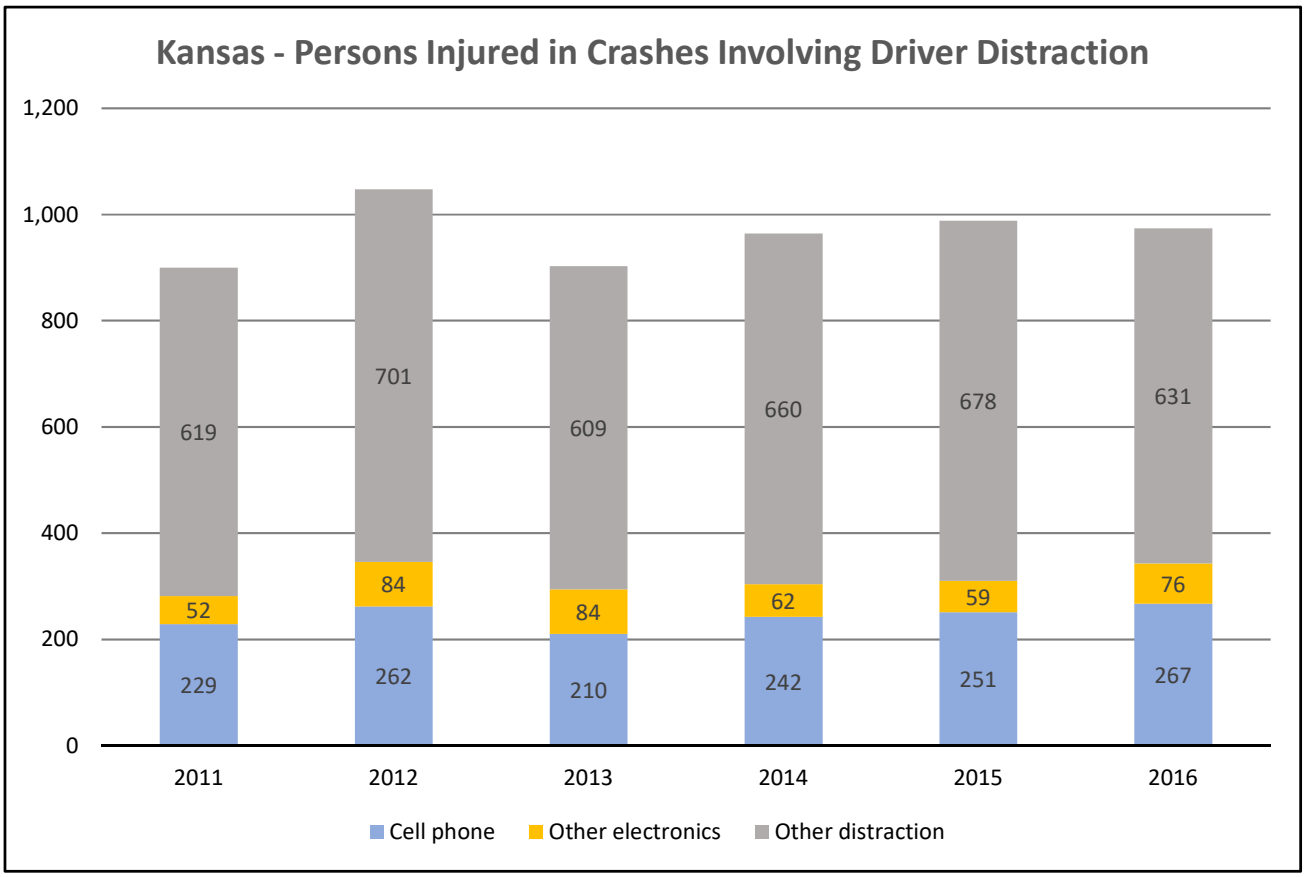
According to the Insurance Institute for Highway Safety:

- Text messaging is banned for all drivers in 47 states (including Kansas; KSA 2016 Supp. 8-15,111) and the District of Columbia. In addition, novice drivers are banned from texting in Missouri;
- The use of all cellphones by novice drivers is restricted in 38 states (including Kansas; KSA 2016 Supp. 8-296 and 8-2,101) and the District of Columbia; and
- Talking on a hand-held cellphone while driving is banned in 15 states and the District of Columbia.[4]

The states' full or partial bans on hand-held device use vary in many ways, including the exceptions to the bans. All of these states allow use for emergency purposes, and most allow use of two-way or federally-licensed amateur radios. Most require a vehicle to be off a roadway, *i.e.*, not just stopped in traffic, for use of hand-held devices to be permitted.


Kansas - Total Crashes Involving Driver Distraction
3,000
2,500
2,000
1,500
1,000
500
0
1,373
1,417
1,309
1,430
1,567
1,500
174
237
242
186
205
218
482
524
482
537
617
633
2011
2012
2013
2014
2015
2016
Cell phone
Other electronics
Other distraction


Kansas - Deaths in Crashes Involving Driver Distraction
25
20
15
10
5
0
3
0
3
15
0
6
6
2
7
12
0
6
2
2
2
8
0
7
2011
2012
2013
2014
2015
2016
Cell phone
Other electronics
Other distraction



have laws generally prohibiting distracted driving, defined as engaging in any activity that interferes with the safe operation of the vehicle.

Effectiveness of Bans on Device Usage

Reviews of peer-reviewed studies suggest state laws intended to reduce distracted driving, particularly distraction caused by use of electronic devices, do affect driver behavior. For example, a 2014 review of studies published since 2009 found "all-driver bans on hand-held phone conversations have resulted in long-term reductions in hand-held phone use, and drivers in ban states reported higher rates of hands-free phone use and lower overall phone use compared with drivers in non-ban states."[5] A study of rear-end crashes in California found such crashes were less frequent after a ban on hand-held device use was implemented.[6]

Studies also find driver distractions impair driver performance. A review of 350 analyses reported in 206 articles published between 1968 and 2012 found 80 percent of the analyses identified tasks and driving performance."[7] Studies directly observing driver behavior found novice drivers made more driving errors than experienced drivers when distractions were involved, but the rates of errors were similar when the distraction took the driver's eyes away from the road,[8] and even law enforcement officer driving performance was impaired when the officers were using a device while simulating driving.[9] Another study found "cell-phone participants' assessments of the safeness of their driving and confidence in their driving abilities were uncorrelated with their actual errors. Thus, talking on a cell phone not only diminished the safeness of participants' driving, it diminished their awareness of the safeness of their driving."[10]

Additional information. Specific information about state laws regarding use of hand-held devices and more information about effectiveness of bans on device usage can be found in the memorandum "Hands-free and Distracted Driving Laws in Other States," available at *http://www.kslegresearch.org/KLRD-web/Transportation.html*.

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2 Data used for the graphics were downloaded from "Driver-Related Data" at *http://www.ksdot.org/bureaus/burTransPlan/prodinfo/accista.asp*, specifically "2016 Kansas Traffic Crash Facts" and "Driver Distraction," accessed September 2017.

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10 Sanbonmatsu, David M., David L. Strayer, Francenso Biondi, Arwen A. Behrends, and Shannon M. Moore (2016). "Cell-phone Use Diminishes Self-awareness of Impaired Driving." Psychonomic Bulletin & Review, 23(2), 617-623. *https://www.researchgate.net/publication/281114569_Cell-phone_use_diminishes_self-awareness_of_impaired_driving*

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Transportation

K-2 Kansas Turnpike: The Relationship Between KTA and KDOT

KTA and KDOT

The Kansas Turnpike Authority (KTA) is a separate entity from the Kansas Department of Transportation (KDOT), but the two entities work together to serve the transportation needs of Kansas. This article discusses the statutory relationship between KTA and KDOT.

The Relationship Between KTA and KDOT

In 1953, the Kansas Legislature created the KTA as a separate, quasi-public organization. The KTA was tasked with constructing, operating, and maintaining Turnpike projects. The KTA has a statutory relationship with KDOT in terms of governance, contracts, and potentially adding Turnpike projects to the state highway system.

The KTA Board

A five-member board oversees KTA operations. Two of these members are appointed by the Governor for four-year terms. The Governor's appointees must be residents of Kansas and be owners of revenue bonds issued by the KTA. One member must be the Secretary of Transportation (Secretary) and another must be the chairperson of the Senate Committee on Transportation. The fifth member must be a member of the House Committee on Transportation and appointed by the Speaker of the House of Representatives. The KTA elects one member as chairperson and another as vice-chairperson. The KTA also must elect a secretary-treasurer who does not need to be a member of the KTA (KSA 2016 Supp. 68-2003). Thus, KDOT has always had a relationship with KTA by virtue of the Secretary serving on the KTA board.

The Secretary's role as a member of the KTA significantly expanded with enactment of 2013 HB 2234. Beginning on July 1, 2013, the Secretary became the director of operations of the KTA. The provision was set to sunset on July 1, 2016, but enactment of 2015 HB 2085 removed the sunset and changed the title to "director." As director of the KTA, the Secretary is responsible for the daily administration of the toll roads, bridges, structures, and

facilities constructed, maintained, or operated by the KTA. The director or the director's designee has such powers as necessary to carry out these responsibilities.

Contracts Between Secretary and KTA

The KTA and KDOT may solidify their partnership by forming contracts with each other. The Secretary and KTA are authorized and empowered to contract with one another to provide personnel and equipment for preliminary project studies and investigations (KSA 2016 Supp. 68-2021). Generally, KSA 68-2021 allows the KTA to contract with KDOT for use of KDOT resources for certain types of work related to KTA projects. These provisions have remained essentially unchanged since 1955.

Another statute authorizes the Secretary and KTA to contract with each other to provide personnel and equipment and other resources for record-keeping, reporting, administrative, planning, engineering, legal, and clerical functions and for construction, operation, and maintenance of Turnpike projects and state highways (KSA 2016 Supp. 68-2021a). Additionally, KSA 68-2021a requires the two parties to minimize duplication of effort, facilities, and equipment in operation and maintenance of turnpikes and highways of the state.

KTA and KDOT contract with one another frequently to minimize duplication of efforts and provide cost savings to the state. According to the Secretary's testimony on 2015 HB 2085, KDOT and KTA have worked together more since the partnership was formalized in 2013. The entities put together six innovation teams for project delivery and construction contracting, legislative and organizational development, revenues and expenditures, technology capabilities, maintenance, and communications and performance measures.

According to testimony provided by a KDOT representative to the Senate Committee on Transportation on March 21, 2017, KTA and KDOT have partnered on bridge surveys, bridge inspections, and construction projects. KDOT provides bridge inspection services to the KTA and is completing design work for KTA bridge re-decks, bridge replacements, and raising bridge heights. KTA in return reimburses KDOT for salaries and incidental expenses related to such work. The representative estimated the cost savings for bridge inspections in 2016 was $52,670, while the cost savings for bridge design survey work was $71,210. Additionally, KDOT and KTA have partnered with the City of Wichita on the East Kellogg construction project, at an estimated savings of $17.0 million.

Potential for KTA Projects to Become Part of the State Highway System

Although KTA and KDOT have a formalized partnership, the KTA retains its separate identity, powers, and duties (KSA 2016 Supp. 68-2021a). KTA maintains the integrity of bonded indebtedness, but when bonds issued under the provisions of KSA 68-2001 to KSA 68-2020 are paid or a sufficient amount for the payment of all bonds and the interest have been set aside for the benefit of bondholders, the project can become a part of the state highway system and therefore be maintained by KDOT (KSA 68-2017).

When a project becomes a part of the state highway system, the Secretary would have the power currently granted to the KTA under KSA 2016 Supp. 68-2009 to fix, revise, charge, and collect tolls for the use of such Turnpike project. The tolls, rents, and rates of the charges must be sufficient to maintain, repair, operate, regulate, and police that Turnpike (KSA 68-2017). However, subsequent bonds issued for maintenance and rebuilding have meant no Turnpike project has thus far become a part of the state highway system.

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Transportation

K-3 Safety Belt Requirements and Fines

Kansas is one of 34 states that allows law enforcement officers to ticket a vehicle occupant for not wearing a seat belt without alleging any other traffic offense. In Kansas, since 2010, primary enforcement is allowed if anyone younger than age 18 or anyone riding in the front seat is not properly restrained. Kansas law includes exceptions for mail and newspaper carriers and for anyone who has a written statement from a licensed physician that such person is unable for medical reasons to wear a seat belt. A violation by an adult in the back seat remains a secondary violation, meaning a citation can be issued only if another law has been violated, but others are primary violations, for which an officer may stop a vehicle.

Kansas law has required the wearing of seat belts since 1986 and has required restraint of children in passenger vehicles since 1981. In both cases, a "passenger vehicle" carries ten or fewer passengers and is manufactured or assembled with safety belts. A summary of Kansas safety belt requirements can be found in the table below.

PASSENGER CAR SAFETY BELT REQUIREMENTS IN KANSAS LAW

General Requirement	Which person(s) in the vehicle	State Fine
The driver is responsible to protect each child by properly using a child safety restraining system meeting Federal Motor Vehicle Safety Standard No. 213.	Age 7 or younger and who weighs less than 80 pounds or is less than 4 feet 9 inches in height	$60.00 (fine does not include court costs)[1]
The driver is responsible to protect each child by properly using a safety belt manufactured in compliance with Federal Motor Vehicle Safety Standard No. 208.	Age 8-13 or a younger child who weighs more than 80 pounds or is more than 4 feet 9 inches in height	$60.00 (fine does not include court costs)[1]
A properly fastened safety belt required at all times when the vehicle is in motion if the car has been manufactured with safety belts meeting Federal Motor Vehicle Safety Standard No. 208.	Age 14-17	$60.00 (fine includes court costs)[2]
	Age 18 and older	$30.00 (fine includes court costs)[2]

[1] KSA 2016 Supp. 8-1344(a) and 8-1345; the fine may be waived upon proving to the court that an approved restraining system has been acquired. Any conviction is not a moving violation.

[2] KSA 2016 Supp. 8-2503(a) and 8-2504 as amended by L. 2017, ch. 74. A conviction is not reported to the Department of Revenue.

Enacted 2017 SB 89 (L. 2017, ch. 74) increased the fine for a seat belt violation by an adult from $10 to $30. The bill directs 2.20 percent of all fines, penalties, and forfeitures received from clerks of the district court to the Seat Belt Safety Fund (Fund) established by the bill. The bill also directs $20 from each $30 fine for violation of a city ordinance requiring seat belt use by those 18 and older to the Fund, which is to be used for the promotion of and education on occupant protection among children including, but not limited to, programs in schools in Kansas.

KSA 2016 Supp. 8-2504 as amended by L. 2017, ch. 74 prohibits any city, county, subdivision, or local authority from enacting or enforcing any law in conflict with or in addition to the fines for violations by those 14 and older.

Nearby states' statutes vary regarding safety belt violations of those not covered by mandatory child restraint laws:

- Colorado: 16 and older; secondary offense, class B traffic infraction (Colo. Rev. Stat. Ann. §§ 42-4-236, 42-4-237); $65 penalty plus $16 surcharge (Colo. Rev. Stat. Ann. § 42-4-1701);
- Missouri: 16 and older; secondary violation if 16 or older; maximum $10 fine and no court costs (Mo. Ann. Stat. § 307.178);
- Nebraska: 18 and older, driver and front seat occupants; secondary violation unless 17 or younger and in a portion of the vehicle not intended for passengers; $25 fine and no court costs (Neb. Rev. Stat. Ann. §§ 60-6,267, 60-6,268, 60-6,270, 60-6,271, 60-6,272); and
- Oklahoma: primary violation; maximum $20 for fine and court costs; driver or front-seat passenger age 8 or older or meeting height requirements (Okla. Stat. Ann. tit. 47, §§ 11-1112, 12-417).

Sources:
Listed statutes;
Governors Highway Safety Association, "Seat Belt Laws," updated February 2017, *http://www.ghsa.org/html/stateinfo/laws/seatbelt_laws.html*, accessed September 2017; and
Insurance Institute for Highway Safety, "Safety Belts and Child Safety Seats," September 2017, *http://www.iihs.org/iihs/topics/laws/safetybeltuse/mapbeltenforcement*, accessed September 2017.

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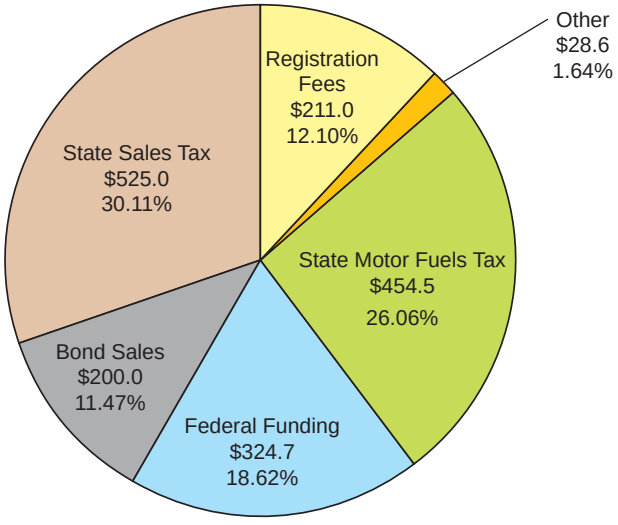
Transportation

K-4 State Highway Fund Receipts and Transfers

Article 11, Section 10 of the *Kansas Constitution* says, "The State shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels." Projected revenues to the State Highway Fund (SHF) for use by the Kansas Department of Transportation (KDOT) can be described in five categories: state sales tax, state motor fuels tax, federal funding, vehicle registration fees, and "other." This article discusses the components of those categories and transfers from the SHF.

KDOT estimates detailed in the pie chart below—updated through November 2017 (including November consensus estimates)—include the amounts for revenues in fiscal year (FY) 2018 (dollars in millions).

Projected KDOT FY 2018 Revenues as of November 2017
(Dollars in Millions)



TOTAL: $1,743.9

Other Funds include: Drivers License Fees, Special Vehicle Permits, Interest on Funds, and Misc. Revenues.

Note: Federal Funding estimates and Other Funding Sources amounts are based upon the agency's budget submission to the 2018 Legislature.

Components of State Highway Fund Revenues

The following information summarizes statutes related to major categories of state funding collected in the SHF.

State motor fuels tax. Kansas imposes a tax of 24¢ a gallon on gasoline and 26¢ a gallon on diesel fuel, unchanged since 2003. A separate article on state motor fuel taxes and fuel use is provided as *K-5 State Motor Fuels Taxes and Fuel Use*. KSA 2016 Supp. 79-34,142 directs 66.37 percent of fuels tax revenues to the SHF and 33.63 percent to the Special City and County Highway Fund.

State sales tax. KSA 2016 Supp. 79-3620 directs 16.226 percent of the revenues from the state sales tax to the SHF. The sales tax rate on which this is imposed is 6.5 percent. KSA 2016 Supp. 79-3710 similarly directs 16.226 percent of compensating use tax to the SHF. Those statutes direct 16.154 percent of sales and use taxes to the SHF as of July 1, 2016.

Registration fees. Statutes also direct moneys from vehicle registration and title fees (KSA 2016 Supp. 8-145, and others), fees from permits for oversize or overweight vehicles (KSA 2016 Supp. 8-1911), and other registration-related fees to the SHF. For most vehicles, property taxes paid at registration and retained by the counties are the majority of the total amount paid. Examples are provided in the general memorandum "Taxes and Fees Paid at Vehicle Registration," available at *http://www.kslegresearch.org/KLRD-web/Transportation.html*.

Other fees. Driver's license exam and reinstatement fees (KSA 2016 Supp. 8-267 and others) are included in this category, as are smaller items such as junkyard certificate of compliance fees (KSA 68-2205) and sign permit and license fees (KSA 2016 Supp. 68-2236).

Anticipated Revenues the State Highway Fund Has Not Realized

Since 1999, actual State General Fund (SGF) revenues to the SHF have been reduced by approximately $4.4 billion when compared with the amounts anticipated. The following table summarizes the categories of those reductions. A detailed spreadsheet, "State Highway Fund Revenue Adjustments," shows year-by-year revenue adjustments, by category. It is available at *http://www.kslegresearch.org/KLRD-web/Transportation.html*. This table reflects KDOT's budget estimates through November 2019.

Net Changes to SHF Revenues from SGF, Authorized to Anticipated, 1999-2019 (in millions)	
Sales Tax Demand Transfer. Sales taxes were transferred from the SGF to the SHF under highway program bills starting in 1983. The Comprehensive Transportation Program as enacted in 1999 included provisions to transfer certain percentages of sales tax (9.5 percent in 2001 – 14.0 percent in 2006 and later) from the SGF to the SHF. Appropriations reduced those amounts and the transfers were removed from the law in 2004.	($1,456.73)
Sales and Compensating Use Tax. When sales tax transfers were eliminated, the sales tax was increased and the percentage going directly into the SHF was increased. The amount reflects the changes enacted in 2010 Senate Sub. for HB 2360, and as amended by 2013 House Sub. for SB 83 and 2015 House Sub. for SB 270.	$420.75
Loans to the SGF. A total of $125.2 million was "borrowed" from the SHF with arrangements to replace that money from FY 2007 through FY 2010. Only the first two payments were made.	($61.79)
Bond payments. The 2004 Legislature authorized the issuance of $210.0 million in bonds backed by the SGF. SGF payments were made on those bonds only in 2007 and 2008. (Subsequent payments have been made from the SHF.)	$26.58
Transfers from the SHF. Transfers include amounts for the Fair Fares program at the Department of Commerce, Highway Patrol operations, payments on SGF-backed bonds, budget reductions and allotments, and education and health-related transfers. *Note*: The amount includes transfers authorized by 2017 Senate Sub. for Sub. for HB 2052, and Senate Sub. for HB 2002.	$3,350.71
Total	**$4,421.90**

Highway-related Transfers to Local Governments

KSA 2016 Supp. 79-3425i states the Special City and County Highway Fund (SCCHF) will receive certain moneys related to commercial vehicles in addition to moneys from fuel taxes. Transfers to the SCCHF of commercial motor vehicle *ad valorem* taxes and the commercial vehicle fees that replaced the *ad valorem* taxes as of January 1, 2014 (see KSA 2016 Supp. 8-143m), have been suspended since FY 2010. Appropriations bills, most recently Section 246 of 2015 House Sub. for SB 112, have amended KSA 79-3425i so that no commercial vehicle taxes or fees are transferred from the SGF to the SCCHF. The transfers had been limited to approximately $5.1 million a year beginning in FY 2001.

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Transportation

K-5 State Motor Fuels Taxes and Fuel Use

For many years, the state sources that provide the most funding for transportation programs have been motor fuels taxes, sales tax, and registration fees. This article provides information regarding Kansas motor fuels taxes and fuel use.

Per gallon amounts of motor fuels taxes. Kansas' motor fuels taxes are 24¢ per gallon on gasoline and 26¢ per gallon on diesel fuel, unchanged since 2003. The table below lists the effective dates of tax increases for motor fuels. The increases in 1989 through 1992 were part of the Comprehensive Highway Plan as it was enacted in 1989, and those in 1999 and 2001 were part of the original ten-year Comprehensive Transportation Program enacted in 1999. No increases in fuels taxes are associated with the Transportation Works for Kansas (T-Works) bill enacted in 2010.

Motor Fuels Tax Rates Changes 1925-2017

Effective Date	Gasoline	Diesel
1925	2¢	--
1929	3¢	--
1941	--	3¢
1945	4¢	4¢
1949	5¢	5¢
1956	--	7¢
1969	7¢	8¢
1976	8¢	10¢
1983	10¢	12¢
1984	11¢	13¢
1989	15¢	17¢
1990	16¢	18¢
1991	17¢	19¢
1992	18¢	20¢
1999	20¢	22¢
2001	21¢	23¢
2002	23¢	25¢
2003	24¢	26¢

A tax of 17¢ per gallon was imposed on E-85 gasohol beginning in 2006. Certain fuel purchases, including aviation fuel and fuel used for non-highway purposes, are exempt from taxation.

A federal fuels tax of 18.4¢ per gallon for gasoline, gasohol, and special fuels and 24.4¢ per gallon for diesel fuel also is included in fuel prices. The amount of federal tax per gallon has not increased since 1993, although increases have been proposed in Congress.

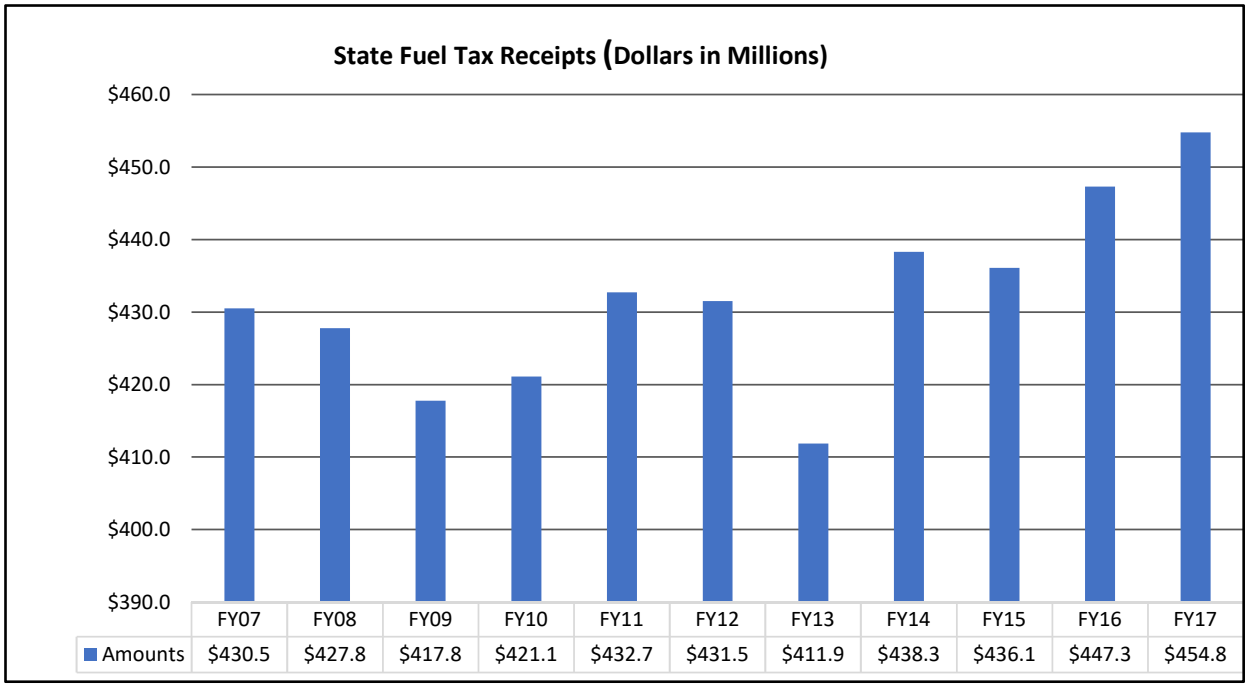
Combined state, local, and federal gasoline taxes across the country as of October 1, 2017, averaged 50.43¢ per gallon and ranged from a low of 30.61¢ per gallon in Alaska to 77.70¢ per gallon in New York and 67.80¢ per gallon in Washington state. The equivalent rate for Kansas was 42.43¢ per gallon; for Colorado, 40.40¢; for Missouri, 35.75¢; and for Oklahoma, 35.40¢.[1]

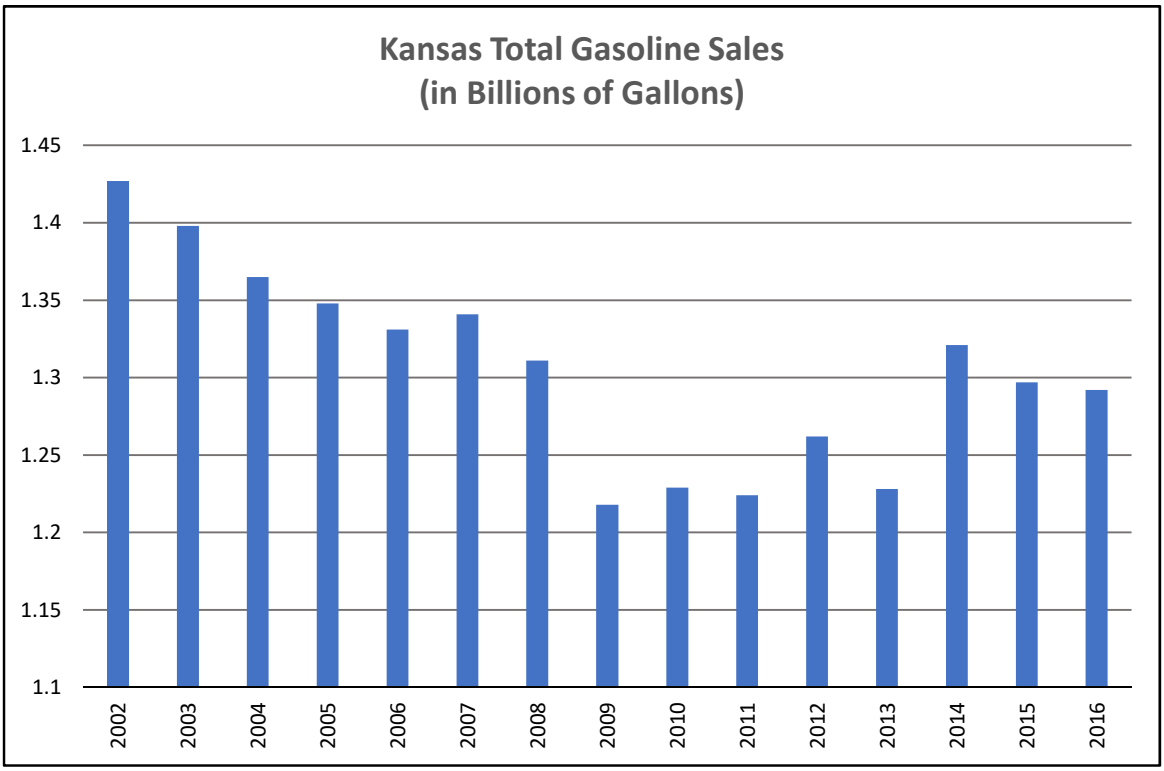
According to the National Conference of State Legislatures, California, Indiana, Montana, Oregon, South Carolina, Tennessee, and West Virginia increased gasoline taxes in 2017, and Utah accelerated indexing provisions enacted in 2015. In October 2016, New Jersey enacted a tax bill that, among other tax changes, increased the state's fuel tax by 23¢ per gallon starting November 1, 2016, its first fuel tax increase since 1988. In 2015, eight states passed legislation to increase fuel taxes. In 2013, six states and the District of Columbia enacted legislation to increase or allow an increase (generally, by indexing the rate) in gas taxes, followed by three more states in 2014.[2]

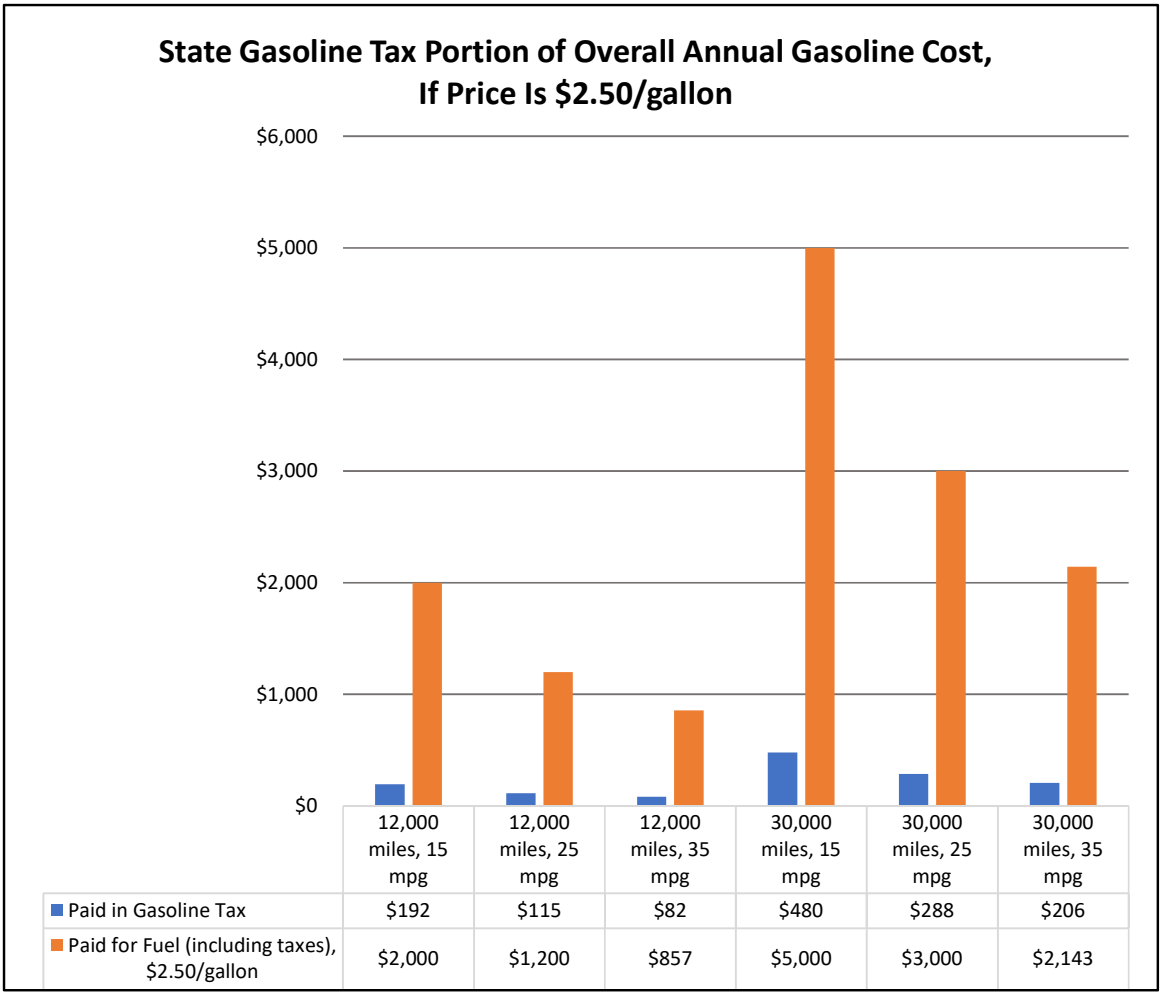
Revenue projections if tax increased. In 2017, three bills were introduced to increase motor fuel taxes in Kansas: SB 224 and HB 2412 proposed 5¢ increases, and HB 2382 proposed an 11¢ increase. The fiscal notes prepared by the Division of the Budget on those bills project revenue increases for FY 2019 of approximately $92 million for a 5¢ increase and approximately $203 million for an 11¢ increase.[3]

Fuels usage and tax revenues. Kansas fuel tax revenues and gasoline usage fluctuate, as illustrated in the graphics below.[4]

Amounts households spend. According to the Bureau of Labor Statistics in the U.S. Department of Labor, U.S. households spent an average of $9,049 on transportation in 2016, an increase from $8,293 in 2011. In 2016, $1,909 (21.0 percent) of the transportation total was spent on gasoline.[5] If fuel prices average $2.50 per gallon, Kansas state fuel taxes account for 9.6 percent of the amount motorists spend on fuel.




Kansas Total Gasoline Sales
(in Billions of Gallons)
1.45
1.4
1.35
1.3
1.25
1.2
1.15
1.1
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016


State Gasoline Tax Portion of Overall Annual Gasoline Cost,
If Price Is $2.50/gallon
$6,000
$5,000
$4,000
$3,000
$2,000
$1,000
$0
12,000 miles, 15 mpg
12,000 miles, 25 mpg
12,000 miles, 35 mpg
30,000 miles, 15 mpg
30,000 miles, 25 mpg
30,000 miles, 35 mpg
Paid in Gasoline Tax
$192
$115
$82
$480
$288
$206
Paid for Fuel (including taxes), $2.50/gallon
$2,000
$1,200
$857
$5,000
$3,000
$2,143

1 American Petroleum Institute, "Combined Local, State and Federal (Cents per Gallon) Rates Effective 10/1/2017," *http://www.api.org/oil-and-natural-gas/consumer-information/motor-fuel-taxes*, accessed October 11, 2017.
2 National Conference of State Legislatures, "Recent Legislative Actions Likely To Change Gas Taxes," July 19, 2017, *http://www.ncsl.org/research/transportation/2013-and-2014-legislative-actions-likely-to-change-gas-taxes.aspx#Map*, accessed September 18, 2017.
3 A very small percentage of the overall revenue increases projected would come from commercial vehicle fuel permit increases included in the bills.
4 Reports, Monthly Motor Fuel Reported by States, U.S. Department of Transportation, Federal Highway Administration, Office of Highway Policy Information, Motor Fuel, and the Highway Trust Fund. *http://www.fhwa.dot.gov/policyinformation/motorfuelhwy_trustfund.cfm* and reports for previous years, accessed October 11, 2017.
5 U.S. Department of Labor Bureau of Labor Statistics, news release dated August 29, 2017, "Consumer Expenditures – 2016," *https://www.bls.gov/news.release/cesan.nr0.htm* accessed September 18, 2017.

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Transportation

K-6 Toll or Tax?

The 236-mile Kansas Turnpike is operated by the Kansas Turnpike Authority (KTA). State and federal tax dollars do not flow to or from the KTA.

Additionally, the KTA cannot use toll or other revenue in ways other than maintaining, repairing, and operating Turnpike projects; paying principal and interest on bonds and creating reserves for the same; fixing and collecting tolls; and entering into certain types of contracts (KSA 2016 Supp. 68-2009). If a toll were to be used outside of the aforementioned purposes, the toll likely would be considered a tax. This article includes information on the KTA, statutes governing its operations, and court decisions related to turnpike tolls in other states.

Overview and Background of the Turnpike

Toll roads have a long history in the United States: the first turnpike in the United States was chartered in 1792. In a 1939 report to Congress titled *Toll Roads and Free Roads*, the U.S. Bureau of Public Roads, now the Federal Highway Administration, rejected a toll-financed interstate system. The report found that most interstate corridors would not generate enough toll revenue to retire the bonds that would be issued to finance them.

However, the financial success of the Pennsylvania Turnpike that opened in 1940 prompted several states to follow Pennsylvania's lead and construct their own toll roads in the late 1940s and early 1950s. The Interstate Highway System had not yet been created, so highway supporters in Kansas saw advantages in connecting the state's largest cities. Opponents argued that residents in the western half of the state should not have to pay for an expensive highway they would rarely use. Thus, a user-fee system was the only viable option to pay for the roadway.

In 1953, the Kansas Legislature created the KTA as a separate, quasi-public organization (KSA 2016 Supp. 68-2003). The KTA was tasked with constructing, operating, and maintaining a toll road connecting the three largest cities in Kansas. A mere 22 months after the creation of the KTA, the 236-mile Kansas Turnpike, stretching from Kansas City to the Oklahoma state line south of Wichita, was

opened to traffic on October 25, 1956. The price tag for its construction was about $147.0 million.

Financing the Turnpike

Financing the construction of the Kansas Turnpike was a major concern for legislators and citizens. When the Kansas Legislature created the KTA, legislators wanted to make it clear that any Turnpike debt would not be considered a debt of the State or any political division of the State (KSA 68-2008). Legislation was enacted to outline the terms of Turnpike projects, including the issuance of revenue bonds and the use and disposition of tolls.

Creating a Turnpike Project

Under KSA 68-2002, a toll road project cannot be undertaken unless the project and the proposed location have been thoroughly studied with respect to traffic, engineering, cost, and financing. The study must show public funds for construction of a free expressway are not available, the construction of the toll expressway can be financed wholly through the investment of private funds in toll road revenue bonds, and the project and indebtedness incurred will be entirely self-liquidating through tolls and other income from operation of the project. Various projects have been authorized for study over the years, but none have been added to the Turnpike system.

Issuing Revenue Bonds

KSA 68-2007 outlines the issuance of Turnpike revenue bonds. At any time, the KTA is authorized to provide by resolution for the issuance of Turnpike revenue bonds to pay for all or part of the cost of any one or more Turnpike projects. The proceeds of the bonds of each issue are used solely for the payment of the cost of the Turnpike project or projects for which the bonds were issued. The KTA sold $160.0 million of revenue bonds on October 14, 1954. According to the KTA, the original 1954 bond issue has been paid off and new bonds have been issued for financing safety improvements and major reconstruction projects. All current KTA bonds will mature by September 1, 2039.

Use and Disposition of Turnpike Tolls

The KTA has the authority to fix, revise, charge, and collect tolls for the use of each Turnpike project (KSA 2016 Supp. 68-2009). The tolls are fixed and adjusted with respect to the aggregate of tolls from the Turnpike projects or projects in connection with issued bonds to provide a fund that is sufficient with other revenues to pay the cost of maintaining, repairing, and operating the Turnpike project or projects, and the principal of and the interest on those bonds (KSA 2016 Supp. 68-2009(a)).

The KTA does not receive federal or state tax dollars, including the fuel tax collected at any of the six service stations along the Turnpike. Instead, those fuel tax revenues are deposited into the State Highway Fund and distributed to pay for other transportation needs throughout Kansas. Maintenance and operations of the Turnpike are funded from tolls, which also pay back bondholders who loaned private capital to finance, construct, and reconstruct the Turnpike. Some additional revenue is received by non-tolling sources, such as leases and other contractual agreements. The Kansas Turnpike is self-financed and does not rely on taxes, therefore the customer is not paying twice for use of the facility.

Tolls are strictly subject to the control of the KTA; they are not subject to supervision or regulation by any other commission, board, bureau, or agency of the State (KSA 2016 Supp. 68-2009(b)). As of September 2017, the passenger or passengers of two-axle vehicles who travel the entire length of the Turnpike will pay a total of $13.25 in cash, or $10.60 as a K-TAG customer. The KTA reported toll revenue of $108,455,471 for the fiscal year ending June 30, 2016.

The tolls and all other revenues derived from the Turnpike project or projects pay for the maintenance, repair, and operation of those projects. Excess funds are set aside in a sinking fund, which is charged with the payment of the

principal and interest of bonds as they become due and the redemption price or purchase price of bonds retired by call or purchase. The sinking fund is a fund for all bonds without distinction or priority of one bond over the other (KSA 2016 Supp. 68-2009(b)). The KTA is not allowed to use tolls or other revenues for any other purpose (KSA 2016 Supp. 68-2009(c)).

Charging tolls has several important practical implications. First, tolls assure out-of-state users pay their fair share for use of the Turnpike. Tolls also provide a mechanism to charge users in proportion to the actual cost of their use. For example, most turnpikes across the country charge higher tolls for trucks than automobiles, reflecting the greater wear and tear trucks have on roadways. Some turnpikes charge variable rates per mile by section so that users of sections that are more costly to maintain pay accordingly. Tolls are calculated based on the length of the route traveled.

Is a Toll a Tax? Other States' Views on Tolls

Drivers can choose to pay tolls or take alternate routes, whereas taxes are mandatory and charged to everyone. The issue of whether a toll is considered a tax has arisen in the U.S. Supreme Court and in several individual states. In the case of *Sands v. Manistee River Imp. Co*., 123 U.S. 288, 294, 8 S. Ct. 113, 115, 31 L. Ed. 149 (1887), the Supreme Court stated there is no analogy between the imposition of taxes and the levying of tolls for improvement of highways. Taxes are levied for the support of government and their amount is regulated by its necessities. Tolls, on the other hand, are the compensation for the use of another's property, or of improvements made. The cost of a toll is determined by the cost of the property, improvements of the property, and considerations of the return such values or expenditures should yield. The Supreme Court also has held tolls may not discriminate against interstate travelers (*e.g., Selevan v. New York Thruway Authority,* 584 F. 3d 82 (2d Cir. 2009)).

State courts in Florida, Illinois, Massachusetts, Montana, and Virginia all agree that tolls are not taxes. It is clear that toll revenue cannot be used to fund projects outside of a state's transportation system. However, there is no generally accepted principle that toll revenue from one facility can be used to fund another facility.

Florida

Florida citizens have challenged the validity of tolls, claiming that tolls are akin to taxes; however, the Florida Supreme Court has repeatedly held that tolls are user fees and not taxes. In *City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992), the Florida Supreme Court noted that a tax is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform. User fees are charges based upon proprietary right of the governing body permitting the use of the instrumentality involved. User fees share common traits that distinguish them from taxes: they are charged in exchange for a particular government service that benefits the party paying the fee in a manner not shared by other members of society, and they are paid by choice. They are paid by choice because the party paying the fee has the option of not utilizing the government service and thereby avoiding the charge. This concept of user fees was approved by the Florida Supreme Court in *City of Daytona Beach Shores v. State*, 483 So. 2d 405 (Fla. 1985).

In the case of *Gargano v. Lee Cnty. Bd. of Cnty. Comm'rs*, 921 So. 2d 661, 667 (Fla. Dist. Ct. App. 2006), the plaintiff argued a toll on a bridge was not a user fee because she did not pay the toll by choice. The court noted it is true that anyone who lives on the surrounding islands and does not own a boat or helicopter must pay a toll to reach that person's home from the mainland and does not have the choice to take other roadways. However, the court stated the concept of "choice" for defining user fees is designed to distinguish a tax whose payment can be compelled from charges for services that one can avoid. In this case, the plaintiff had the choice to stay on the island and not visit the mainland; the county did not compel her to use the bridge or pay the fee. The court noted, as a practical matter, the plaintiff

did not have many available options, but as a legal matter, the toll was not a tax.

The Florida Supreme Court has stated revenue from bridge tolls can be used to fund financial improvements of approaches and approach roads to the bridge. In *McGovern v. Lee Cnty.*, 346 So. 2d 58, 64 (Fla. 1977), the court stated inherent in the legislative scheme for funding self-liquidating projects is the principle that those who directly benefit from the project should bear a substantial portion of the cost and those who bear the substantial cost should benefit from the expenditure of money on the project. To allow bridge tolls to finance improvements of approaches and approach roads to the bridge does not violate this principle because those paying the tolls will benefit by having convenient access to the bridge.

However, the court stated there are limits to utilizing revenue from bridges to fund approaches and approach roads. The closer an access road is to a bridge or causeway, the more likely a significant portion of its traffic will use the bridge. Toll revenue can be used if the roads to be improved are within the immediate vicinity of the project. However, revenues from a toll bridge or causeway can fund improvements to roads distant from the facility only if the road functions as an approach or approach road. A road or segment of road is an approach or approach road if a significant portion of its traffic moves onto the bridge or causeway, or if a significant portion of the traffic moving across the bridge or causeway came from the road or road segment.

Consequently, the Florida Supreme Court has determined tolls are user fees and not taxes. Additionally, toll revenue from a bridge or causeway can fund improvements within the immediate vicinity. Toll revenue from a toll bridge or causeway can fund improvements to roads distant from the facility, as long as a functional test is used to determine whether a road or segment of a road is an approach or approach road.

Illinois

In 1945, the Supreme Court of Illinois decided on the constitutionality of the State Superhighway Act. The Act created the Illinois State Superhighway Commission and defined its powers and duties (*People ex rel. Curren v. Schommer*, 392 Ill.17, 20, 63 N.E.2d 744, 746 (1945)). The Act contemplated a system of toll roads to be known as superhighways and provided that such system of highways would be planned, built, operated, and maintained by the State Superhighway Commission. Plaintiffs argued the creation of the commission was unconstitutional and tolls were unconstitutional taxes.

The court found that the creation of the commission was not an unconstitutional delegation of legislative power. Additionally, the court found there is a clear-cut and definite distinction between tolls and taxes. The essential meaning of a tax is that it is a mode of raising revenue for the public needs of a public purpose, while tolls are the compensation for the use of another's property.

Illinois courts have found tolls are not taxes, but the courts have not stated whether toll revenue from one toll facility can be used to fund another toll facility.

Massachusetts

In the recent case of *Murphy v. Massachusetts Tpk. Auth.*, 462 Mass. 701, 971 N.E.2d 231 (2012), users of toll roads and tunnels in the Metropolitan Highway System (MHS) alleged tolls collected by the Massachusetts Turnpike Authority (MTA) were an unconstitutional tax, to the extent the tolls were used to pay for overhead, maintenance, and capital costs associated with MHS's non-tolled roads, bridges, and tunnels. According to the plaintiffs, the tolls are lawful user fees when applied to pay the expenses of tolled roads and tunnels, but an unconstitutional tax when applied to pay the expenses of non-tolled roads, tunnels, and bridges.

The Supreme Judicial Court of Massachusetts found the legislature authorized the MTA to collect tolls on only certain parts of the MHS and use those toll revenues to pay the expenses of the entire MHS. The MTA did not need to demonstrate the toll fee exactly equals the costs of maintenance or the benefits conferred. Instead, all that is required is the tolls reflect a fair approximation of the use of facilities for whose benefit they are imposed (the court here quoting *Cohen v. Rhode Island Turnpike & Bridge Auth.*, 775 F. Supp.2d 439, 449–450 (D.R.I. 2011)). Where the MHS tolls were required by statute to be used to pay the costs of the entire MHS integrated system of roads, tunnels, and bridges, and where there is no allegation they were put to a use prohibited by the statute or the toll revenues exceeded the total cost of the MHS, the tolls reflect a reasonable and non-excessive approximation of the value of use of the MHS (*Wallach v. Brezenoff,* 930 F.2d 1070, 1072 (3d Cir.1991)).

The court in *Murphy* found the MTA charged user fees and not unconstitutional taxes by expending portions of revenue charged to users of toll roads and tunnels to pay for overhead, maintenance, and capital costs associated with the MHS's non-tolled roads, bridges, and tunnels because the legislature specifically authorized the MTA to use tolls for expenses of non-toll roads. Users who paid the MHS tolls enjoyed a particularized benefit not enjoyed by those who traveled only on non-toll roads. Additionally, users had the option of not driving on tolled MHS roads and tunnels and thereby could avoid paying the tolls. Tolls were collected to compensate the MTA for expenses incurred in operating the MHS, not to raise revenues for the state.

Montana

The Supreme Court of Montana has stated there is a clear distinction between taxes and tolls. A tax is a demand of the sovereignty levied for support of the government and its amount is regulated by its necessities. Tolls are the demands of proprietorship, exacted as compensation for use of another's property (*Monarch Min. Co. v. State Highway Commn*, 128 Mont. 65, 70, 270 P.2d 738, 740 (1954)). Montana has not yet considered the issue of whether toll revenue from one toll facility can be used to fund another toll facility.

Virginia

The authority of the KTA to charge and collect tolls has not been a contentious issue like it has been in Virginia. The Metropolitan Washington Airports Authority (MWAA) was formed in 1986 as an entity independent from Virginia, the District of Columbia, and the federal government. However, it possessed the powers delegated to it by the District of Columbia and Virginia. Congress explicitly granted MWAA the power "to levy fees or other charges" (*Corr v. Metro. Washington Airports Auth*., 740 F.3d 295, 297 (4th Cir. 2014)). Although the MWAA assumed control over the two Washington airports, the Dulles Toll Road continued to be operated by the Virginia Commonwealth Transportation Board (CTB).

The Virginia General Assembly repeatedly authorized CTB to use toll revenue to fund mass transit projects within the Dulles Corridor. In December 2006, Virginia agreed to transfer control over to MWAA. MWAA then had the power to set tolls on the Dulles Toll Road, but the MWAA was required to use toll revenues exclusively for transportation improvements within the Dulles Corridor.

Many legal challenges arose from this arrangement. In April 2011, plaintiffs initiated an action seeking to enjoin MWAA from using toll road revenue to repay bonds issued to fund the Metrorail project and seeking refunds of all excess tolls collected. They argued the toll paid by users of the Dulles Toll Road is in fact a tax because instead of defraying the cost of a driver's use of the road, a portion of the toll is used for other purposes, namely the Metrorail expansion project.

The *Corr* court, citing *Elizabeth River Crossings*, 286 Va. 286, 749 S.E.2d 176, 183 (2013), found the tolls paid by drivers on the Dulles Toll Road are not taxes for these reasons: (1) the toll road users pay the tolls in exchange for a particularized benefit not shared by the general public, (2) drivers are not compelled by the government to

pay the tolls or accept the benefits of the project facilities, and (3) the tolls are collected solely to fund the project, not to raise general revenues.

The court agreed with Virginia's and MWAA's assessments that the Metrorail expansion and Dulles Toll Road are parts of a single interdependent transit project. Since they are parts of the same project, tolls charged on the Dulles Toll Road are not taxes just because they are used to fund the Metrorail expansion. The record did not indicate that surplus tolls are diverted outside those confines or are treated as general revenue. Therefore, tolls are user fees, not taxes, because they are nothing more than an authorized charge for the use of a special facility. In 2015, the U.S. Supreme Court denied review of the case.

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L-1
Clean Power Plan

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Utilities and Energy

L-1 Clean Power Plan

On August 3, 2015, President Obama and the U.S. Environmental Protection Agency (EPA) announced the Clean Power Plan (CPP), a federal rule that regulates reductions in carbon pollution from power plants in order to address climate change issues President Obama and the EPA believe are caused by carbon pollution. The ultimate goal of the CPP is to reduce U.S. carbon dioxide emissions by 32 percent from 2005 levels by 2030. On March 28, 2017, President Trump signed an Executive Order on Promoting Energy Independence and Economic Growth, which calls for the review of the CPP. On October 10, 2017, in response to the Executive Order, EPA Administrator Scott Pruitt, issued a notice of Proposed Rulemaking, proposing to repeal the CPP. Upon publication in the *Federal Register*, the public will have 60 days to submit comment.

The current iteration of the CPP consists of establishing state-specific emission goals for states to follow in developing plans to reduce greenhouse gas emissions from existing fossil fuel-fired electric generating units. The goals are expressed two ways, rate-based and mass-based, either of which a state can use in its plan. Depending on which way a state chooses to measure its goal, states can then develop and implement customized plans to ensure the power plants in the state meet the statewide goals.

The first interim compliance period for the CPP begins in 2022, by which time the states should have a plan in place. Each state's plan was required to be submitted in 2016, but the EPA can approve a two-year extension. The final goals for each state under the CPP should be met by 2030. The EPA has determined the "starting point" for each state, and included in the CPP are the rate or mass of carbon dioxide emissions for each state in 2012, as calculated by the EPA using its own mathematical formulas. However, the U.S. Supreme Court issued a stay on February 9, 2016, regarding the implementation of the CPP. On March 30, 2017, Administrator Pruitt sent a letter to governors stating, "It is the policy of the EPA that States have no obligation to spend resources to comply with a Rule that has been stayed by the Supreme Court of the United States."

Clean Power Plan—Kansas

For Kansas, the 2012 carbon dioxide rate is calculated to be 2,319 lbs/Net MWh. If Kansas chooses a rate-based goal, the goal for the interim period between the years of 2022 and 2029 would be 1,519 lbs/Net MWh, with a final goal in 2030 of 1,293 lbs/Net MWh. If Kansas chooses a mass-based goal, the 2012 amount is measured to be 34,353,105 short tons of carbon dioxide emissions. The State would need to meet a goal of either 24,859,333 or 25,120,015 short tons (depending on which mass-based goal measurement is chosen) during the interim period, with a final goal of 21,990,826 or 22,220,822 short tons in 2030. It is not yet clear if these goals will be utilized in a revised version of the rule.

The 2016 Legislature passed SB 318, which, among other things, suspended all state agency activities, studies, and investigations that are in furtherance of the preparation of an initial submittal or the evaluation of any options for the submission of a state plan pursuant to the CPP. The bill does not preclude agencies from communicating and providing information to each other in furtherance of any other statutory obligation.

Clean Power Plan—Litigation

Several petitions have been filed challenging the legality of the CPP, which sets new emission limits for existing power plants under section 111(d) of the Clean Air Act. West Virginia, in conjunction with 23 other states (Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, North Carolina, Ohio, South Carolina, South Dakota, Texas, Utah, Wisconsin, and Wyoming), filed a petition for review arguing the final rule: is in excess of the EPA's statutory authority; goes beyond the bounds set by the *U.S. Constitution*; and otherwise is arbitrary, capricious, and an abuse of discretion and not in accordance with the law.

The 24-state group also filed a motion for a stay, which was granted by the U.S. Supreme Court on February 9, 2016, halting the rule from going into effect until litigation in the D.C. Circuit Court of Appeals had concluded.

Challenges to the "new source rule" also have been made. The new source rule mandates new and modified sources of carbon emissions must be regulated before or at the same time as existing sources through the CPP. North Dakota was the first state to challenge this rule. As of September 30, 2016, West Virginia, along with 23 other states (Alabama, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, Wisconsin, and Wyoming), also filed a petition asking the D.C. Circuit Court of Appeals to strike down the "new source rule."

A number of utilities and members of the power industry also have filed challenges to the CPP under sections 111(d) and 111(b) of the Clean Air Act, including a coalition of 15 trade associations led by the U.S. Chamber of Commerce; a coalition of 3 coal industry groups; and a coalition of 38 power companies, utility industries, and labor groups.

On the other side of the litigation, 18 states (California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington), the District of Columbia, and 6 local governments (New York City, Philadelphia, Chicago, Boulder [Colorado], South Miami, and Broward County [Florida]) have filed as intervenors in support of the CPP. In addition, a group of 5 power companies have filed a motion to intervene, as well as a separate motion by NextEra Energy.

The D.C. Circuit Court has consolidated all of the various filings for challenges under 111(d) into one proceeding, *West Virginia v. EPA*, D.C. Cir., No. 15-1363. Oral arguments on the petition for review were presented to the D.C. Circuit Court of Appeals on September 27, 2016. On April 28,

2017, in response to the EPA's motion for an indefinite hold on CPP legal proceedings, the D.C. Circuit Court ordered a 60-day hold to allow the EPA time to review and revise the CPP. An additional 60-day hold was granted on August 8, 2017, to allow the EPA more time for review. The EPA's October 10, 2017, status report to the D.C. Circuit Court stated the EPA is proposing to repeal the CPP on the grounds the CPP exceeds the EPA's statutory authority under Section 111 of the Clean Air Act.

Additionally, the D.C. Circuit Court has consolidated all the various filings for challenges under section 111(b), the "new source rule," into one proceeding, *North Dakota v. EPA*, D.C. Cir., No 15-1381. First briefs were due to the D.C. Circuit Court on October 3, 2016, and final briefs were due on February 6, 2017. On March 30, 2017, the D.C. Circuit Court issued an order removing the oral arguments scheduled for April 17, 2017, pending a motion for abeyance. On August 10, the D.C. Circuit Court ordered the proceedings be held until further order is issued.

Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among nine northeastern and mid-Atlantic states to reduce carbon dioxide emissions through a coordinated cap-and-trade program. RGGI is administered and implemented by a non-profit corporation, RGGI, Inc. The nine states currently participating are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. RGGI officially organized in 2003, but the first compliance period did not begin until January 1, 2009. RGGI participants adopted a Model Rule to guide their actions, namely, to set limits on in-state emissions, issue carbon allowances, and establish state participation for regional carbon allowance auctions. The program uses three-year compliance periods and establishes overall emissions budgets for each period; the third compliance period began January 1, 2015, and extends through December 31, 2017. RGGI distributes state allowances through quarterly auctions where bidders may submit multiple confidential bids for a specific quantity of allowances at a specific price. Proceeds from the auctions are then distributed among the states by RGGI, Inc. As of September 2017, cumulative auction proceeds were more than $2.78 billion. While 25 percent of proceeds must be reinvested into consumer benefit programs such as energy efficiency, renewable energy, and direct bill assistance, in practice, states reinvest virtually all of their proceeds. Power sector carbon emissions in participating states have declined 45 percent since 2005. Emissions were capped at 84.3 million short tons in 2017. The cap will decline 2.5 percent annually until 2020. On August 23, 2017, RGGI announced a proposed program change implementing a 30 percent emissions cap reduction from 2020 levels. This goal is projected to be achieved by 2030.

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Veterans, Military, and Security

M-1 Cybersecurity

A number of provisions related to cybersecurity have been considered in the Executive Branch and the Legislature in recent years as several other states introduce and enact cybersecurity measures of their own. An overview of these activities follows.

Recent Legislation

2016 HB 2509

The House Committee on Vision 2020 passed HB 2509 during the 2016 Legislative Session, which would have given the Executive Branch chief information technology officer (CITO) authority to approve all information technology (IT) expenditures, established the Kansas Information Security Office (KISO), and designated a Chief Information Security Officer (CISO). The Senate Committee on Commerce struck the contents of the bill and inserted provisions related to economic development programs.

2017 Sub. for HB 2331

Sub. for HB 2331 would enact the Representative Jim Morrison Cybersecurity Act. The bill was based on the previous year's HB 2509 in that it would create the KISO and establish the position of CISO in statute. The bill would also establish the Kansas Information Technology Enterprise (KITE), which would consolidate functions of the Office of Information Technology Services (OITS) and transfer current OITS employees and officers to KITE. (*2017 Sub. for HB 2331*)

Background. HB 2331 was introduced in the House Committee on Government, Technology, and Security in the 2017 Legislative Session. The House Committee recommended a substitute bill be passed that would include various amendments to the original contents of 2017 HB 2331, as well as an amended version of *2017 HB 2359* (relating to the creation of KITE). After passing the House Committee of the Whole, the bill was referred to the Senate Committee on Ways and Means. The Senate Committee heard testimony on the bill but failed to take any further action in the 2017 Legislative Session.

Recent Executive Branch Action

Executive Order 11-46

Governor Brownback issued Executive Order (EO) No. 46 on November 7, 2011. The EO directed all non-Regents executive branch agency IT directors and all staff performing IT functions in all executive branch state agencies, departments, or other entities under the Governor's jurisdiction to report directly to the executive CITO. The CITO would be directed and charged, in addition to the duties set forth in KSA 2016 Supp. 75-7205, to manage and order executive branch IT systems in a uniform, efficient, service-oriented, and cost-effective manner.

Governor's Budget Amendment No. 1, Item 13

The Governor recommended funding for cybersecurity in FY 2018 and FY 2019, as follows:

	FY 2018	FY 2019
State General Fund	$1,877,493	$3,754,985
All Other Funds	$1,522,507	$3,045,015
All Funds	$3,400,000	$6,800,000
FTE Positions	17	26

In the 2017 budget bill, Senate Sub. for HB 2002, the Legislature approved cybersecurity funding at a lower level than the Governor's recommendation, and for FY 2018 only.

State General Fund	$938,747
All Other Funds	$1,522,507
All Funds	$2,461,254
FTE Positions	17

Federal Legislation

The three main federal cybersecurity regulations are the 1996 Health Insurance Portability and Accountability Act, the 1999 Gramm-Leach-Bliley Act, and the 2002 Homeland Security Act, which includes the Federal Information Security Management Act. These regulations respectively mandate the specific industries of health care, financial institutions, and federal agencies to protect their computer systems and electronically stored information (*https://fas.org/sgp/crs/natsec/R42114.pdf*). Currently, no federal regulations mandate the protection of such information within the numerous computer-related industries, such as Internet service providers and software companies.

State Legislation

In 2017, 41 states introduced cybersecurity legislation and 16 states enacted legislation. The breakdown of types of bills introduced is as follows:

- Improving government security practices: 42 bills in 20 states and Puerto Rico;
- Commissions, task forces, and studies: 29 bills in 16 states and Puerto Rico;
- Funding for cybersecurity programs and initiatives: 27 bills in 14 states;
- Targeting computer crimes: 20 bills in 11 states;
- Restricting public disclosure of sensitive security information: 19 bills in 11 states; and
- Promoting workforce, training, economic development: 13 bills in 10 states.

For more information, see *http://www.ncsl.org/research/telecommunications-and-information-technology/cybersecurity-legislation-2017.aspx*.

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Veterans, Military, and Security

M-2 Veterans and Military Personnel Benefits

Most benefits for military personnel and veterans are offered by the federal government. However, states can offer additional benefits and resources to veterans and military families. Kansas has established agencies to assist veterans and military family members in filing claims for federal benefits and offers other benefits for veterans and their families who reside in the state. This article summarizes recent Kansas legislation enacted to support veterans and military families, provides information on the state agency and programs established to help veterans and military families access their benefits, explains some of the benefits available to veterans and military families in Kansas, and provides information on resources where more detailed information can be found.

2017 Legislation

Kansas regularly passes legislation to address veterans' needs. Legislation passed in 2017 added current members of the military to the definition of "protected consumer" in the Kansas Consumer Protection Act. Additionally, legislation was passed that allows those with distinctive military-related license plates to purchase decals indicating certain military honors and to display a wheelchair emblem decal on their distinctive license plate. More information about the current benefits and protections available for Kansas veterans, service members, and military families is included under the below headings.

Benefits Assistance

Kansas Commission on Veterans' Affairs Office (KCVAO). The KCVAO provides Kansas veterans and their families with information and assistance by coordinating programs and services to help them improve their quality of life. The KCVAO's available services range from helping veterans file claims for medical, educational, or other benefits to helping veterans obtain earned medals and military awards. KCVAO Veterans Services Representatives are available, free of charge, to assist veterans and family members.

Veterans' Claims Assistance Program (VCAP). The purpose of the VCAP is to improve the coordination of veterans' benefits counseling in Kansas, ensure efficient use of taxpayer dollars, and serve veterans with the necessary counseling and assistance. The

VCAP, through its advisory board, also advises the Director of the KCVAO on all veterans' services, including the VCAP. The VCAP Advisory Board also makes recommendations to the Director of the KCVAO regarding match funding levels for veterans' service organizations.

State of Kansas Veterans' Benefits

Education

Residency. Veterans, their spouses, and their children are considered residents by community colleges and Board of Regents institutions. When such a person is using federal educational benefits to attend college, resides in or is assigned to a permanent duty station in Kansas, or previously had established residence in Kansas prior to service and lives in Kansas at the time of enrollment, the person will be charged in-state tuition and fees regardless of length of residency.

Scholarships. Kansas offers scholarships for veterans, active duty military personnel, and Kansas National Guard members. In some cases, spouses and dependents of veterans also are eligible for scholarship consideration.

The Kansas Military Service Scholarship covers tuition and fees for certain active duty service members and honorably discharged (or generally discharged under honorable conditions) veterans who deployed or received hostile fire pay for at least 90 days after September 11, 2001. The 90-day requirement may be waived if the servicemember was injured during such military service.

The Kansas National Guard Educational Assistance Program provides a percentage of tuition and fees for enlisted personnel in the Kansas Air/Army National Guard who have a high school diploma or GED, have less than 20 years of service, and have not already obtained a bachelor's degree.

Kansas also offers free tuition and fees to dependents and unmarried widows and widowers of service members killed in action while serving on or after September 11, 2001; dependents of those who are prisoners of war or missing in action; and dependents of those who died as a result of service-connected disabilities suffered during the Vietnam conflict.

Obligations to the State for taking certain types of state scholarships can be postponed for military service.

Kansas also offers ROTC scholarships at Board of Regents institutions, Washburn University, and community colleges for students interested in becoming commissioned officers in the Armed Forces.

More information about educational resources available to veterans and military families can be found at:

- http://myarmybenefits.us.army.mil/Home/Benefit_Library/State__Territory_Benefits/Kansas.html; and
- http://www.kansasregents.org/students/military.

Military Interstate Children's Compact Commission. Kansas has been a member of the Military Interstate Children's Compact Commission since 2008. The Compact addresses educational transition issues military families face when relocating to new duty stations. The Compact assists military families with enrollment, placement, attendance, eligibility, and graduation.

Active duty service members' children, National Guard and Reserve service members on active duty orders, and service members or veterans who are medically discharged or retired for one year are eligible for assistance under the Compact.

More information and points of contact are available at http://mic3.net/Kansas.html.

Emergency Financial Assistance

The Adjutant General may extend grants and interest-free loans to Kansas National Guard service members, members of the reserve forces, and their families to assist with financial

emergencies. Individuals may contribute to the Military Emergency Relief Fund by checking the designated block on their individual income tax return forms.

Employment

Veterans' preference. The veterans' preference applies to initial employment and first promotion with state government and with counties and cities in "civil service" positions. Veterans are to be preferred if "competent," which is defined to mean "likely to successfully meet the performance standards of the position based on what a reasonable person knowledgeable in the operation of the position would conclude from all information available at the time the decision is made."

Veterans' preference applies to veterans who have been honorably discharged from the Armed Forces. The veterans' preference will also extend to spouses of veterans who have 100 percent service-connected disability, surviving spouses (who have not remarried) of veterans killed in action or died as result of injuries while serving, or the spouses of prisoners of war. Veterans' preference does not apply to certain types of jobs such as elected positions, city or county at-will positions, positions that require licensure as a physician, and positions that require the employee to be admitted to practice law in Kansas.

The hiring authority is required to take certain actions, including noting in job notices that the hiring authority is subject to veterans' preference, explaining how the preference works, and explaining how veterans may take advantage of the preference.

For more information regarding veterans' preference, visit *https://admin.ks.gov/services/state-employment-center/veterans*.

Private veterans' preference. Private employers may establish a veterans' hiring preference in Kansas. The veterans' preference must be in writing and must be applied consistently. Veterans are required to provide the employer with proof of military service and discharge under honorable conditions.

Pensions and life insurance. State pension participants away from state jobs for military service may be granted up to five years of state service credit for their military service. An employee may buy up to six years of service credit that is not granted, and purchased service need not be preceded or followed by state employment.

Additionally, an absence for extended military service is not considered termination of employment unless the member withdraws accumulated contributions.

Basic life insurance, worth 150 percent of annual salary, continues while the employee is on active duty. An employee may continue to have optional life insurance by paying the premiums for 16 months; after such time, the policy may be converted to an individual policy.

Position reinstatement. An officer or employee of the state or any political subdivision does not forfeit that position when entering military service; instead, the job has a "temporary vacancy," and the original jobholder is to be reinstated upon return. Anyone called or ordered to active duty by this state, or any other states' reserve compartment, and who gives notice to his or her public or private employer and reports back to that employer within 72 hours of discharge is to be reinstated to the former position (unless it was a temporary position). A state employee who returns to classified service within 90 days after an honorable discharge is to be returned to the same job or another job comparable in status and pay in the same geographic location. A state employee's appointing authority may grant one or more pay step increases upon return.

Professional licenses–credit for military education and training. Statutes direct state agencies issuing professional licenses to accept from an applicant the education, training, or service completed in the military. The education, training, or service must be equal to the existing educational requirements established by the agency. The license may be granted even if the

service member was discharged under less than honorable conditions.

While this rule generally does not apply to the Board of Nursing, the Board of Emergency Medical Services, or the practice of law, there are special provisions for nurses and emergency medical technicians. Statutes authorize the Board of Nursing to waive the requirement that an applicant graduate from an approved school of practical or professional nursing if the applicant passed the National Council Licensure Examination for Practical Nurses, has evidence of practical nursing experience within the U.S. Military, and was separated from service with an honorable discharge or under honorable conditions.

Statute also mandates the granting of an Attendant's Certificate to an applicant who holds a current and active certification with the National Registry of Emergency Medical Technicians (NREMT) and who completed emergency medical technician training as a member of the U.S. Military. For these provisions to apply, the applicant must have received an honorable discharge or have been separated under honorable conditions. Additionally, the 2016 Legislature passed SB 225, also known as the Interstate Compact for Recognition of Emergency Medical Personnel Licensure (Compact). On May 8, 2017, the Compact was activated after Georgia was the tenth state to sign the Compact into law. Kansas now considers active and former service members, in addition to their spouses, who hold a current valid and unrestricted NREMT certification, as having the minimum training and examination requirements for EMT licensure.

Kansas also allows a person to receive a license to practice barbering if they have been certified in a related industry by any branch of the U.S. Military, and completed a course of study in a licensed Kansas barber college or school.

Professional licenses–maintaining license while serving. A state license issued to engage in or practice an occupation or profession is valid while the licensee is in military service and for up to six months following release without the licensee paying a renewal fee, submitting a renewal application, or meeting continuing education or other license conditions. (This provision does not apply to licensees who engage in the licensed activity outside of the line of duty while in military service.) No such license may be revoked, suspended, or canceled for failure to maintain professional liability insurance or failure to pay the surcharge to the Health Care Stabilization Fund.

Expedited professional licenses–military service members' non-resident military spouses. Kansas professional licensing bodies are required to grant professional licenses to nonresident military spouses and service members who hold professional licenses in other states, if the licensees meet certain requirements. These licenses must be issued within 60 days after a complete application is submitted.

Probationary licenses–service members and military spouses. A service member or military spouse may have a license on a probationary basis for up to six months when the licensing body does not have licensure, registration, or certification by endorsement, reinstatement, or reciprocity and the servicemember or military spouse meets certain criteria.

Temporary Bar admission for military spouses. On September 15, 2016, the Kansas Supreme Court adopted Rule 712A granting applicants temporary admission to the Kansas Bar without a written examination if they are currently married to a military service member stationed in Kansas and have been admitted to the practice of law upon a written examination by the highest court of another state or in the District of Columbia.

Military leave for state employees. Benefits-eligible state employees who are members of a reserve component of the military are granted 15 working days of military leave with pay for active duty per year. On June 29, 2017, the Department of Administration gave notice of public hearing on proposed changes to the regulation providing for military leave. The proposed changes would increase leave to a maximum of 30 days for any required military duty and would clarify that employees in either classified or unclassified

positions would be eligible for leave. The public hearing was conducted on August 30, 2017, and if approved, the regulation will be effective upon publication in the *Kansas Register*.

State employee direct payment benefits. Benefits-eligible state employees who are on military leave as activated reserve component uniformed military personnel may be eligible for one-time activation payments of $1,500. Additionally, benefits-eligible state employees who are called to full-time military duty and are mobilized and deployed may receive the difference between their military pay, plus most allowances, and their regular State of Kansas wages, up to $1,000 per pay period.

Highways and Bridges

The State of Kansas honors veterans by designating portions of highways in their name. The Department of Transportation provides a Memorial Highways and Bridges Map at *http://www.ksdot.org/maps.asp*.

Housing and Care

Certain veterans, primarily those with disabilities, are eligible for housing and care at the Kansas Soldiers' Home near Fort Dodge, and the Kansas Veterans' Home in Winfield. The KCVAO states priority for admission of veterans will be given on the basis of severity of medical care required. For more information, see:

- *https://kcva.ks.gov/veteran-homes/fort-dodge-home*; and
- *https://kcva.ks.gov/veteran-homes/winfield-home*.

Insurance

Personal insurance. No personal insurance shall be subject to cancellation, non-renewal, premium increase, or adverse tier placement for the term of a deployment, based solely on that deployment.

Private health insurance. A Kansas resident with individual health coverage, who is activated for military service and therefore becomes eligible for government-sponsored health insurance, cannot be denied reinstatement to the same individual coverage following honorable discharge.

Judicial Benefits

Diversion Considerations

A prosecutor may consider combat service-related injuries when considering whether to enter into a diversion agreement with a defendant. The injuries considered include major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury.

Sentencing Considerations

Sentencing judges may consider combat service-related injuries (including major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury) as mitigating factors when sentencing a defendant.

Court-ordered Treatment Considerations

A judge may consider combat service connected injuries (including major depressive disorder, polytrauma, post-traumatic stress disorder, and traumatic brain injury) when ordering a defendant to treatment. There is no requirement that a defendant have a discharge under honorable conditions to qualify for court-ordered treatment. Treatment in the 2003 SB 123 program is an alternative for a defendant who meets the criteria for court-ordered treatment and the 2003 SB 123 program, but cannot receive treatment through a military treatment facility or veterans' treatment facility.

Taxes

Income tax—check-off provisions. Taxpayers may contribute income tax refunds or additional money to the Kansas Military Emergency Relief Fund, to be used to help military families defray costs of necessities while a family member is on

active duty or for other services to support military families, and the Kansas Hometown Heroes Fund, to be used solely for veterans services programs of the KCVAO.

Property tax—deferral. An active duty service member who has orders to deploy, or is currently deployed, outside of the United States for at least six months may defer payment of taxes on real property for up to two years. A claim for the deferral must be filed with the county clerk.

Property tax—homestead. Certain disabled veterans and surviving spouses who do not remarry are eligible for the Homestead Property Tax Refund Program. Disabled veterans are those Kansas residents who have been honorably discharged from active duty in the armed forces or Kansas National Guard and who have been certified to have a 50 percent or more permanent service-connected disability.

Motor vehicle taxes. Active duty service members who are Kansas residents are not required to pay motor vehicle taxes for their first two vehicles if they maintain vehicles outside of the state and are absent from the state on military orders on the date that the registration payment is due.

Vehicle-Related Benefits

Driver's license requirements—waiver. The Director of Vehicles and Kansas Department of Revenue may waive the skills test for an applicant for a commercial driver's license, if that applicant provides evidence of certain military commercial vehicle driving experience. The applicant's military driving experience must meet the requirements of 49 CFR 383.77. The applicant must have military experience operating a vehicle similar to the commercial motor vehicle the applicant expects to operate. The applicant must not have been convicted of any offense (such as driving under the influence of alcohol or a controlled substance) that would disqualify a civilian commercial driver. An applicant still will be required to pass the Kansas knowledge test for driving a commercial motor vehicle. Also, some state requirements for written and driving testing may be waived for an applicant for a Class M (motorcycle) driver's license who has completed motorcycle safety training in accordance with U.S. Department of Defense requirements.

"Veteran" designation on driver's licenses and identification cards. A veteran may have "VETERAN" printed on the front of a State-issued driver's license or a non-driver identification card by showing proof of military service in the form of a DD214 or equivalent form. The veteran must have received an honorable discharge or general discharge under honorable conditions. The Secretary of Revenue may provide names and addresses from motor vehicle records to the KCVAO for the purpose of assisting the KCVAO in notifying veterans of the facilities, benefits,and services available to veterans in the State of Kansas.

License plates. Kansas has several distinctive license plates available for veterans and family members. In some cases, those license plates may be provided at no cost. More information on military-related license plates is available at *https://www.ksrevenue.org/dovplates.html*. Additionally, several decals depicting medals or combat ribbons are available to display on certain veterans license plates, and beginning January 1, 2018, a wheelchair emblem decal may be affixed to a distinctive license plate to indicate the vehicle transports a person with a permanent disability, providing an alternative to the Disabled Veteran distinctive tag.

Vietnam War Era Medallion Program

The Vietnam War Era Medallion Program provides eligible veterans with a medallion, a medal, and a certificate of appreciation. The Medallion Program is open to veterans who served within the United States or in a foreign country, regardless of whether the veteran was under 18 years of age at the time of enlistment. Eligible veterans are those that served on active duty in the U.S. Military between February 28, 1961, and May 7, 1975; are legal residents of Kansas or were legal residents at the time they entered military service, the time they were discharged from military service, or at the time of

their death; and were honorably discharged, are still on active duty in an honorable status, or were on active duty at the time of their death.

Voting Opportunities

Overseas military personnel and their family members may vote a full ballot for all elections. The ballots will be mailed 45 days before an election. The military servicemember or family member may submit a ballot to the county election office before polls close by mail, e-mail, or fax. For more information, see http://www.voteks.org/when-you-vote/how-will-i-vote.html.

Parking Privileges for Disabled Veterans

Veterans with disabled veterans license plates or wheelchair emblem decals may exercise free parking privileges in spaces reserved for disabled persons in public parking facilities and parking lots that employ parking attendants.

Other Benefits

Anti-discrimination towards military personnel. Kansas law prohibits discrimination on the basis of military status. Alleged violations are a civil matter.

Permits and licensing. Several types of hunting and fishing permits and licensing benefits are available to military personnel and veterans. More information about these benefits is available at:

- http://ksoutdoors.com/Hunting/Applications-and-Fees; and
- http://ksoutdoors.com/Fishing/Fishing-Application-and-Fees.

Concealed carry licenses. Active duty military personnel and their dependents residing in Kansas may apply for a concealed carry handgun license without a Kansas driver's license or a Kansas nondriver's license identification card. Upon presenting proof of active duty status and completing other requirements for a concealed carry permit, the service member or dependent would be granted a license under the Personal and Family Protection Act and issued a unique license number.

Active duty military personnel stationed outside of Kansas can also apply for a concealed carry license if they provide evidence of completion of a course offered in another jurisdiction determined by the Attorney General to have training requirements that are equal to or greater than those required in Kansas.

Military burials. Certain veterans and their eligible dependents may be buried in state veterans' cemeteries. Cemeteries are located in Fort Dodge, Fort Riley, WaKeeney, and Winfield. The final disposition of a military decedent's remains would supersede existing statutory listing of priorities for such remains. The provision applies to all active duty military personnel and gives priority to the U.S. Department of Defense Form 93 in controlling the disposition of the decedent's remains for periods when members of the U.S. Armed Forces, Reserve Forces, or National Guard are on active duty. A certified copy of an original discharge or other official record of military service may be filed with the Adjutant General, who will provide copies free of charge if they are needed to apply for U.S. Department of Veterans Affairs benefits.

Consumer protection. The Kansas Consumer Protection Act (Act) defines members of the military and their immediate family members as well as veterans and their surviving spouses as "protected consumers" under the Act (KSA 2016 Supp. 50-676, as amended by 2017 SB 201). The Act protects consumers from deceptive business practices.

Alternate death gratuity. Effective January 1, 2015, if federal funding is not available during a federal government shutdown, the Adjutant General will pay a death gratuity of $100,000 for any eligible Kansas military service member. The Adjutant General will secure federal reimbursements after the government reopens.

Additional Benefits Information

The U.S. Army's official benefits website provides a general overview of military and veterans' benefits in Kansas along with contact information for some state agencies: http://myarmybenefits.us.army.mil/Home/Benefit_Library/State__Territory_Benefits/Kansas.html.

The Kansas Board of Regents' website lists scholarships available for military personnel, veterans, and spouses along with the requirements for each scholarship: http://www.kansasregents.org/students/military.

The KCVAO's website includes several resources for veterans and military personnel. The following links cover federal and state benefits, employment resources, and educational resources:

- http://www.kcva.org;
- http://kcva.ks.gov/veteran-services/federal-benefits;
- http://kcva.ks.gov/veteran-services/state-benefits;
- http://kcva.ks.gov/kanvet;
- http://kcva.ks.gov/kanvet/employment-resources; and
- http://kcva.ks.gov/kanvet/education-resources.

The U.S. Department of Veterans Affairs' Kansas website includes links for veterans health administration offices, veterans benefits administrations offices, and national cemetery administration offices: https://www.va.gov/landing2_locations.htm.

The U.S. Department of Labor's website lists the contact information for the Kansas Director of Veterans' Employment and Training as well as Kansas employment resources for veterans and federal resources for veterans: https://www.dol.gov/vets/aboutvets/regionaloffices/chicago.htm#ks. The Kansas Adjutant General's Office's Kansas Military Bill of Rights website lists benefits and services that Kansas provides to veterans and military personnel: https://www.dol.gov/vets/.

Additional information, including statutory citations when appropriate, is available at http://www.kslegresearch.org/KLRD-web/VeteransMilitary&Security.html.

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