

## **Kansas Tort Claims Act**

**HB 2029** adds ultrasound technologists working under the supervision of a person licensed to practice medicine and surgery to the list of persons included in the definition of “charitable health care providers” for the purposes of the Kansas Tort Claims Act. The bill requires ultrasound technologists to be registered in any area of sonography credentialed through the American Registry of Radiology Technologists, the American Registry for Diagnostic Medical Sonography, or Cardiovascular Credentialing International.

## **Kansas Open Records Act Exceptions**

**HB 2030** extends for five years exceptions to the Kansas Open Records Act that are set to expire July 1, 2011. The bill also amends KSA 12-2819, concerning the Metropolitan Transit Authority Act, and KSA 12-5611, 12-5711, and 12-5811, concerning county riverfront authorities, to clarify that the only documents and records exempt from open records requests are those kept or prepared by each authority for contract negotiations or civil proceedings to which the individual authorities are a party.

## **Departure Sentence Hearings in Felony Cases**

**HB 2038** amends 2010 Session Laws Ch. 136, Sec. 298, concerning hearings to consider a departure sentence in felony cases. (2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code, and will go into effect July 1, 2011.) The bill makes clear that when a court determines it is in the interest of justice to impose a departure sentence, which requires a separate departure sentence proceeding, the proceeding must take place in front of a jury, unless the jury is waived.

## Crimes, Requirements After a Vehicle Collision

**HB 2044** amends KSA 8-1602, 8-1604, 8-1605, and 2010 Session Laws Ch. 136, Sec. 292 concerning required action and notification in a motor vehicle accident. (2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code and will go into effect July 1, 2011.)

First, the bill adds accidents resulting in damage to an attended vehicle or property to the list of vehicle accidents requiring a person to immediately stop and remain at the scene of the accident until all the requirements imposed by these statutes are fulfilled. Further, the bill amends the penalties for leaving the scene of an accident as follows:

- For property damages of less than \$1,000, a first conviction is a class C misdemeanor, a second committed within one year of the first is a class B misdemeanor, and a third or subsequent committed within one year of the second is a class A misdemeanor;
- Injury to a person or property damage of \$1,000 or more is a class A misdemeanor;
- Great bodily harm to a person is a severity level 8 misdemeanor (from level 10); and
- Death of a person is a severity level 6 felony (from level 9), except when a person involved in an accident knew or should have known that the accident resulted in injury or death, which is a severity level 5 felony.

The bill also requires that, as provided for in KSA 8-15,107, a driver in an accident involving no death, apparent injury, or hazardous materials make every reasonable effort to remove the vehicle from the road when the vehicle obstructs the regular flow of traffic if it can be done safely, without towing, and without causing further damage to the vehicle or roadway.

Next, the bill clarifies that “insofar as possible,” a driver in an accident resulting in injury, death, or damage to an attended vehicle must make efforts immediately to determine whether any person involved in the accident was injured or killed and render reasonable assistance to an injured person.

Further, when a police officer is not present, the driver of a vehicle involved in the accident or an occupant 18 years or older must report the accident by the quickest available means of communication to the nearest police officer if there is property damage of \$1,000 or more or any person involved in the accident is injured or killed. Pursuant to

the bill, the driver or an occupant 18 years or older also must report the accident to the police if an injured person, the driver or occupant of the other car, or a person attending a vehicle or other property damaged in the accident is not present or in a condition to receive the required information.

Additionally, in an accident with an unattended vehicle, the bill requires the driver to stop immediately if there is damage to any vehicle or property and locate the owner to provide the owner with the required information, or leave a securely attached and conspicuously located writing with the required information. A first conviction for failure to do so is a class C misdemeanor, a second committed within one year of the first is a class B misdemeanor, and a third or subsequent committed within one year of the second is a class A misdemeanor.

The bill also provides that if a person is convicted for leaving the scene of an accident on or after July 1, 2011, each prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication for DUI will be counted as one person felony for criminal history purposes. Similarly, if a person is convicted of leaving the scene of an accident resulting in injury, great bodily harm, or death, the bill provides that a prior conviction for the following statutory crimes convicted after July 1, 2011, will be counted as a person felony for criminal history purposes:

- KSA 8-235, driving a vehicle without a license;
- KSA 8-262, driving while license is canceled, suspended, or revoked;
- KSA 8-287, driving while one's privileges are revoked for being a "habitual violator";
- KSA 8-291, violating restrictions on driver's license or permit;
- KSA 8-1566, reckless driving;
- KSA 8-1567, driving under the influence of alcohol or drugs;
- KSA 8-1568, fleeing or attempting to elude a police officer;
- KSA 8-1602, leaving the scene of an accident resulting in injury, great bodily harm, or death;
- KSA 8-1605, failing to contact the owner of a vehicle following an accident causing damage to unattended property;
- KSA 40-3104, failing to obtain motor vehicle liability insurance coverage;

- 2010 Session Laws Ch. 136, Sec. 40(a)(3), involuntary manslaughter committed while DUI; and
- 2010 Session Laws Ch. 136, Sec. 41, vehicular homicide.

## Controlled Substances

Senate Sub. for HB 2049 repeals HB 2023, as signed by the Governor on March 28, 2011. Senate Sub. for HB 2049 includes appropriate provisions and corrected provisions of HB 2023, adds new provisions and amends existing provisions pertaining to the scheduling of controlled substances.

Senate Sub. for HB 2049 includes provisions found in HB 2023 which add to the list of controlled substances as follows:

- Schedule I: 4-Bromo-2,5-dimethoxyphenethylamine; 2,5-dimethoxy-4-(n)-propylthiopenenthylamine (2C-7); Alpha-methyltryptamine, aka AMT; and 5-methoxy-N, N-diisopropyltryptamine (5-MeO-DIPT).
- Schedule II: Dihydroetorphine; Oripavine; Remifentanil; Tapentadol; and Lisdexamfetamine.
- Schedule III: Embutramide, and any material, compound, mixture, or preparation containing Buprenorphine, which was previously a schedule V controlled substance.
- Schedule IV: Dichloralphenazone; Fospropofol; and Zopiclone.
- Schedule V: Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxypropionamide], and Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

The bill modifies provisions of the Controlled Substances Act (as amended by Section 1 of 2011 **HB 2023**) by creating a new subsection to address cannabinoids, inserting additional substances in that subsection, and adding the class of substituted cathinones (commonly known as bath salts) to subsection (f). A type of synthetic marijuana commonly referred to as K-3 is included in the new subsection on cannabinoids. The bill uses a general chemical class approach intended to prevent manufacturers from simply transitioning from scheduled compounds to uncontrolled compounds. Technical errors in enrolled 2011 **HB 2023** also are corrected.

The bill also amends part of the Controlled Substances Act found in KSA 2010 Supp. 65-4105 as amended by Section 1 of 2011 **HB 2023** (as approved by the Governor on March 28, 2011), by moving Tetrahydrocannabinols (commonly known as THC) and 9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c]chromen-1-ol, aka HU-210, from subsection (d) to a new subsection (h) addressing cannabinoids. In addition to K-3, the following substances are added to that subsection: Naphthoylindoles, Naphthylmethylindoles, Naphthoylpyrroles, Naphthylmethylindenes,

Phenylacetylindoles, Cyclohexylphenols, Benzoylindoles, 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl) pyrrolo [1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone, and HU-211.

Further, the bill amends KSA 21-36a05 and 21-36a06, crimes involving controlled substances, by adding the substances in new subsection (h) to the list of substances that are illegal to cultivate, distribute, possess, or possess with the intent to distribute. Cultivation, distribution, and possession with the intent to distribute is a severity level 3 drug felony for a first offense; a level 2 for a second conviction or if the offender is over 18 and distribution or possession with intent to distribute occurs on or within 1,000 feet of school property; and a level 1 for a third conviction. Possession is a class A nonperson misdemeanor for a first conviction and a severity level 4 felony for a subsequent conviction.



## **Forensic Laboratory Reports Admissible in Evidence**

**HB 2057** adds the Johnson County Sheriff's Laboratory and the Sedgwick County Regional Forensic Science Center to the list of institutions whose reports and certificates concerning forensic examination are considered admissible in evidence in any hearing or trial. Opposing parties already are able to challenge the admissibility of such reports and certificates.

## **Sexually Violent Predators, Cost of *Habeas Corpus* Petitions, Expert Testimony**

**Senate Sub. for HB 2071** amends KSA 59-29a01 to provide that when a person is committed as a sexually violent predator and files a *habeas corpus* petition, the costs incurred as part of the prosecution and defense of the petition are assessed to the “county responsible for the costs.” “County responsible for the costs” is defined in the bill as the county where the person was determined to be a sexually violent predator. A county can refuse to approve payment of the costs assessed by the court if it is not the “county responsible for the costs” and may file a claim against the debtor county, which has to pay within 120 days.

The “county responsible for the costs” is reimbursed for the costs by the Attorney General from the Sexually Violent Predator Expense Fund. The statute governing this fund, KSA 59-29a04a, is amended to allow for such expenditures. If the Fund’s balance is insufficient to cover the costs, the county may file a claim against the state for reimbursement.

The bill also adds a subsection to KSA 59-29a06, providing that in commitment proceedings for sexually violent predators, the parties are permitted to call expert witnesses. Consistent with KSA 60-456, which governs testimony in the form of an opinion, the facts or data upon which an expert witness bases an opinion or inference can be perceived or made known to the expert at or before the hearing. Further, the bill provides that when the facts or data are of a type reasonably relied on by experts in the particular field in forming inferences or opinions on the subject, they do not have to be admissible in evidence for the inference or opinion to be admissible.

## **Privilege for Patients of Mental Health Treatment Facilities, Law Enforcement Exception**

**HB 2104** amends KSA 65-5603, concerning exceptions to the privilege of patients of mental health treatment facilities that prevents treatment personnel from disclosing the patient's receipt of services or any confidential communications made for the purposes of diagnosis or treatment of the patient's mental, alcoholic, drug dependency, or emotional condition. The bill adds an additional exemption to this privilege for information on whether a person is or has been a patient of any treatment facility within the last six months, allowing disclosure to law enforcement when an officer has reasonable suspicion that a person arrested suffers from mental illness and may benefit from treatment, rather than being placed in a correctional institution, jail, juvenile correctional facility, or juvenile detention facility. The bill also defines some of the key terms used in the exception.

## **Payment of Costs Associated with Conditions of Release and Sentencing**

**HB 2118** amends KSA 22-2802 by allowing magistrates to impose costs up to \$15 per week for court services supervision of a person's compliance with conditions of release and any costs in addition to the \$15 per week associated with supervision and conditions for compliance. The bill also authorizes magistrates to require that a person charged with a felony submit to an alcohol abuse examination and evaluation and to undergo treatment, if necessary, as a condition of release. Magistrates already have this authority with respect to drug abuse. As a condition of sentencing, courts could impose the full amount of costs in addition to the \$15 per week already allowed, including costs for evaluation and treatment.

The bill also amends 2010 Session Laws Ch. 136, Sec. 244, by giving courts the authority to impose the full amount of unpaid costs associated with the conditions of release of an appearance bond when a person has been found guilty of a crime. (2010 Session Laws Ch. 136 recodifies the Kansas Criminal Code, and will go into effect July 1, 2011.)

## Crimes, Breach of Privacy, and Blackmail

**HB 2151** modifies the definition of the crime of “breach of privacy” to include:

- Entering with the intent to listen surreptitiously to private conversations in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;
- Installing or using a device inside a private place to hear, record, amplify, or broadcast sounds originating from such place that would not ordinarily be audible or comprehensible without the use of such device;
- Installing or using a device or equipment for the interception of wireless communication;
- Using means other than electronic means to secretly videotape, film, photograph, or record an identifiable person who is nude or in a state of undress;
- Looking into any hole or opening or otherwise viewing by means of instrumentality any person with the intent to invade the privacy of the person being viewed (“instrumentality” is defined in the bill); and
- Disseminating or permitting the dissemination of any videotape, photograph, film, or image obtained in violation of the restriction explained above on installing or using a concealed device.

Further, the bill increases the penalties for some of the acts constituting “breach of privacy.”

The bill also amends the definition for the crime of blackmail, by adding threats to disseminate materials obtained using electronic or other means to secretly videotape, film, photograph, or record an identifiable person who is nude or in a state of undress, which is a severity level 4, person felony.

## **Warrants Based on the Defendant's DNA**

**HB 2227** allows the issuance of warrants identifying a defendant by a description of the defendant's DNA, rather than by name as provided in prior law, when the defendant's name is unknown.

## Scrap Metal Dealer Registration

**HB 2312** requires registration of scrap metal dealers. On or after January 1, 2012, in order to purchase regulated scrap metal, a business must be registered for each place of business. The bill requires a business to submit its application for registration to the city in which the business is located, or if it is not located within the corporate limits of a city, to the board of county commissioners in the county in which it is located. Pursuant to the bill, the initial registration fee would be not less than \$100 nor more than \$400. Registration would be valid for ten years. The fee for renewing registration is not less than \$25 nor more than \$50. Purchasing scrap metal without being registered is a class A, nonperson misdemeanor.

Prior to granting registration to a scrap metal dealer, a board of county commissioners is required to give written notice of the filing of an application for registration to the clerk of the township where the applicant's business is located within ten days of registration or renewal. The governing body of a city and the board of county commissioners also must provide written notice of a filing to the sheriff, chief of police, or director of all law enforcement agencies in the county within ten days of registration or renewal.

The bill outlines the requirements for filing an application for registration, the factors prohibiting registration, and circumstances allowing or requiring the board of county commissioners or the city's governing board to suspend for up to thirty days or revoke registration.

"Value" is defined under the bill as the value of the property or the cost to restore the site of the theft of regulated scrap metal to its condition at the time immediately prior to the theft, whichever is greater. Further, scrap metal dealers are required to pay by check or use a system that photographs or videotapes the payment recipient. Finally, the bill modifies the list of scrap metal property for which the seller must provide proof of authority to sell.