

## **Omnibus Crimes, Punishment, and Criminal Procedure Bill; SB 18**

**SB 18** amends statutes regarding the crime of counterfeiting currency, access to presentence investigation reports, authority to enter into diversion agreements, out-of-state criminal history, appeals related to criminal cases, correction of illegal sentences, drug abuse treatment programs, probation violation sanctions, the penalties for the crimes of involuntary manslaughter and abuse of a child, a mitigating factor for sentencing when a victim is an aggressor or participant in the criminal conduct associated with a crime of conviction, and law enforcement notifications to domestic violence victims, as follows.

### ***Counterfeiting Currency***

The bill amends the crime of counterfeiting currency to:

- Add the term “currency” to the first (making, forging, or altering) and second (distributing or possessing with the intent to distribute) means of committing the crime;
- Add the term “note” to the second means;
- Add the term “computer” and replace the phrase “produce any counterfeit” with “make, forge, or alter any” in the third means (possessing certain items with the intent to counterfeit);
- Remove the “intent to defraud” element currently applicable to all three means of committing the crime, add this intent to the first means, and add knowledge of this intent to the second means; and
- Remove the term “seized” and add the terms “notes” and “currency” to the penalty provisions.

### ***Access to Presentence Investigation Reports***

The bill amends the statute governing the presentence investigation report prepared in criminal cases to allow access to the report by community correctional services and any entity required to receive the information under the Interstate Compact for Adult Offender Supervision.

### ***Attorney General’s Authority to Enter into Diversion Agreements***

The bill amends statutes relating to diversion in criminal cases to include the Attorney General within the definition of “district attorney,” thereby specifically authorizing the Attorney General to enter into diversion agreements pursuant to these statutes; adds a provision specifying any diversion costs or fees collected under a diversion agreement entered into by the Attorney General will be deposited in the Fraud and Abuse Criminal Prosecution Fund; and adds a provision allowing the Attorney General to enter into agreements with the appropriate

county or district attorney, or other appropriate parties, regarding the supervision of conditions of the diversion agreement.

### ***Out-of-State Criminal History***

The bill amends a statute in the Kansas Criminal Code governing criminal history classification to make continuing provisions for classification of an out-of-state crime as person or nonperson applicable only to misdemeanors. The bill adds the following provisions applicable to out-of-state felony crimes.

#### *Out-of-State Felony Crimes*

The bill requires an out-of-state conviction or adjudication for the commission of a felony offense or an attempt, conspiracy, or criminal solicitation to commit a felony offense (out-of-state felony) to be classified as a person felony if one or more of the following circumstances is present, as defined by the convicting jurisdiction in the elements of the out-of-state offense:

- Death or killing of any human being;
- Threatening or causing fear of bodily or physical harm or violence; causing terror; physically intimidating; or harassing any person;
- Bodily harm or injury, physical neglect or abuse, restraint, confinement, or touching of any person, without regard to degree;
- The presence of a person, other than the defendant, a charged accomplice, or another person with whom the defendant is engaged in the sale, distribution, or transfer of a controlled substance or non-controlled substance;
- Possessing, viewing, depicting, distributing, recording, or transmitting an image of any person;
- Lewd fondling or touching, sexual intercourse, or sodomy with or by any person, or an unlawful sexual act involving a child under the age of consent;
- Being armed with, using, displaying, or brandishing a firearm or other weapon, excluding crimes of mere unlawful possession; or
- Entering or remaining within any residence, dwelling, or habitation.

Additionally, the bill requires an out-of-state felony be classified as a person felony if the elements of the out-of-state felony necessarily prove a person was present during the commission of the offense, if the person present was someone other than the defendant, a charged accomplice, or another person with whom the defendant is engaged in the sale, distribution, or transfer of a controlled substance or non-controlled substance. "Presence of a person" includes physical presence and presence by electronic or telephonic communication.

An out-of-state felony will be classified as nonperson if the elements of the offense do not require proof of any of the above circumstances.

### ***Claims in Appeals Related to Criminal Cases***

The bill amends a provision listing certain claims arising from criminal cases that may be reviewed in “any appeal” to specify these claims may be reviewed in “any appeal from a judgment of conviction.” The claims, which are not amended by the bill, are:

- A departure sentence resulted from partiality, prejudice, oppression, or corrupt motive;
- The sentencing court erred in including or excluding recognition of a prior conviction or juvenile adjudication for criminal history scoring purposes; or
- The sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

The bill states these amendments are procedural and are to be construed and applied retroactively.

### ***Correction of Illegal Sentence***

The bill amends the statute governing correction of an illegal sentence to specify an illegal sentence may be corrected only while the defendant is serving such sentence and to define “change in the law” as a statutory change or an opinion by a Kansas appellate court, unless the opinion is issued while the sentence is pending an appeal from the judgment of conviction.

The bill states these amendments are procedural and are to be construed and applied retroactively.

### ***Drug Abuse Treatment Programs***

The bill expands eligibility for the nonprison sanction of placement in a certified drug abuse treatment program to include offenders convicted of a controlled substance cultivation or distribution offense that falls within continuing severity level and criminal history categories eligible for such treatment for controlled substance possession offenses. These categories include drug severity level 5 offenses without certain previous convictions and drug severity level 4 offenses with a criminal history score of E or lower without certain previous convictions.

### ***Probation Violation Sanctions***

The bill amends the authorized dispositions statute in the Kansas Criminal Code to remove the ability of the sentencing court to specifically withhold authority from supervising

court services or community corrections officers to impose certain probation violation sanctions of confinement in a county jail for a two-day or three-day period. The bill also requires the sentencing court to authorize an additional 18 days of confinement in a county jail for the purpose of these and similar sanctions.

The bill amends the statute governing probation violations to remove violation sanctions allowing the court to remand the defendant to the custody of the Secretary of Corrections for periods of 120 days or 180 days. The bill removes procedural provisions related to or dependent on these sanctions, removes statutory references to the sanctions (including those in the statute governing postrelease supervision), and moves provisions allowing revocation without first imposing remaining sanctions in certain situations. The bill requires a court that continues or modifies the probation, assignment to a community correctional services program, suspension of sentence, or nonprison sanction to authorize an additional 18 days of sanction time in a county jail for use in imposing the two-day and three-day sanctions.

### ***Penalties for Involuntary Manslaughter and Abuse of a Child***

The bill amends the penalty for the crime of involuntary manslaughter to raise it from a severity level 5 to a severity level 3 person felony if the victim is under six years of age.

The bill amends the penalty for the crime of abuse of a child to raise it from a severity level 5 to a severity level 4 person felony if the victim is under six years of age.

The bill states these provisions shall be known as “Mireya’s Law.”

### ***Mitigating Factor when Victim is an Aggressor or Participant in Criminal Conduct***

The bill amends the statute setting forth a nonexclusive list of mitigating factors that may be considered by a sentencing court in determining whether substantial and compelling reasons for a departure sentence exist. Specifically, the bill amends a mitigating factor that may be applied when the victim was an aggressor or participant in the criminal conduct associated with the crime of conviction, to prohibit the application of this factor to a sexually violent crime or to electronic solicitation, when:

- The victim is less than 14 years of age and the offender is at least 18 years of age; or
- The offender hires any person by giving, or offering to or agreeing to give, anything of value to the person to engage in an unlawful sex act.

Continuing law defines “sexually violent crime” to include the following offenses:

- Rape;
- Indecent liberties with a child and aggravated indecent liberties with a child;
- Criminal sodomy and aggravated criminal sodomy;

- Indecent solicitation of a child and aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Aggravated sexual battery;
- Aggravated incest;
- Aggravated human trafficking, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- Internet trading in child pornography or aggravated internet trading in child pornography;
- Commercial sexual exploitation of a child; or
- An attempt, conspiracy, or criminal solicitation of the above offenses.

***Domestic Violence Calls; Law Enforcement Agency Notification Policies***

Continuing law requires law enforcement agencies in the state to adopt written policies regarding domestic violence calls and make such policies available to all officers of the agency. The bill requires all law enforcement agencies in the state to provide training to law enforcement officers regarding the agency’s adopted policy.

The bill adds requirements that such written policies provide, when an arrest is made for a domestic violence offense, including an arrest for violation of a protection order, the officer shall provide the victim information regarding:

- The fact that in some cases the person arrested can be released from custody in a short amount of time;
- The fact that in some cases a bond condition may be imposed on the person arrested that prohibits contact with the victim for 72 hours, and if the person arrested contacts the victim during that time, the victim should notify law enforcement immediately; and
- Any available services within the jurisdiction to monitor custody changes of the person being arrested, including, but not limited to, the Kansas Victim Information and Notification Everyday (VINE) service, if available in the jurisdiction.

***Technical Amendments***

The bill adds statutory references to reconcile conflicting versions of the statute. The bill accordingly also repeals a conflicting version of a criminal history statute.