

**Attorney General; Crime Victims Compensation Division; Youth Suicide Prevention, VINE Coordinators; KOMA; KORA; Background Checks; Criminal Justice Reform Commission; Closed Case Task Force; HB 2290**

**HB 2290** creates and amends law related to various public agencies, as follows.

***Office of the Attorney General***

***Crime Victims Compensation Division***

The bill creates in the Office of the Attorney General a Crime Victims Compensation Division (Division) to administer and support the operations of the Crime Victims Compensation Board (CVCB). The Division will receive compensation applications and supporting papers and will, if requested by the CVCB, investigate the claim, appear in related proceedings, and present evidence opposing or in support of an award.

The bill directs the Attorney General to establish and maintain a principal office for the Division and other necessary offices, appoint employees and agents, and prescribe the duties and compensation for such employees and agents, subject to appropriations. The Division will be headed by a director appointed by the Attorney General in consultation with the CVCB.

The bill directs the Division to prescribe application forms for compensation, request investigations and data from various sources to enable the CVCB to determine qualification for compensation, make available specified documents of the CVCB pursuant to the Kansas Open Records Act (KORA), publicize the availability of compensation and information regarding the filing of claims, and perform any other duties assigned by the Attorney General to carry out the above provisions.

The bill amends the statute setting forth powers and duties of the CVCB to remove duties related to offices, employees, forms, KORA, and publicity, and the power to request investigations and data. [*Note:* These duties and powers are essentially transferred to the Division, as outlined above.] A confidentiality provision regarding a claimant's or victim's juvenile court records is moved to the new section. The term "duties" as it relates to the CVCB regarding rules and regulations is changed to "powers."

The statute governing applications for compensation is amended to change references to the CVCB in provisions regarding form and filing of applications to refer to the Division instead.

A provision regarding confidentiality of records and information given to the CVCB is amended to include records and information given to the Division.

The statute establishing the Crime Victims Compensation Fund is amended to add operations of the Division to the acceptable uses of moneys from that fund.

### *Kansas Youth Suicide Prevention Coordinator*

The bill requires the Attorney General to appoint a Kansas Youth Suicide Prevention Coordinator and additional support staff (as appropriations allow) to identify, create, and coordinate and support youth suicide awareness and prevention efforts throughout the state. The coordinator has the discretion to:

- Lead the development, implementation, and marketing of a website, online application, and mobile phone application to facilitate communication with youth for the purpose of preventing youth safety and well-being;
- Develop and promote multidisciplinary and interagency strategies to help communities, schools, mental health professionals, medical professionals, law enforcement, and others work together and coordinate efforts to prevent and address youth suicide;
- Organize events that bring together youth, educators, and community members from across the state to share information and receive training to prevent and address youth suicide in their communities;
- Gather, disseminate, and promote information focused on suicide reduction; and
- Perform any other duty assigned by the Attorney General to carry out the provisions of the bill.

### *Kansas VINE Coordinator*

The bill requires the Attorney General to appoint a Kansas Victim and Notification Everyday (VINE) Coordinator and additional support staff (as appropriations allow), to work with interested parties including, but not limited to, sheriffs throughout the state to oversee the statewide implementation of the VINE system. The Attorney General is authorized to appoint an advisory board, consisting of up to five members, including one who must be a victim advocate and one who must be a representative of the Kansas Sheriffs' Association, to make recommendations for the implementation and operation of the VINE program. The bill prohibits any member from receiving any compensation, subsistence, mileage, or other allowance for serving on the advisory board, and the Attorney General is required to promulgate rules and regulations as necessary to implement the provisions of the bill.

### ***Payment for Defense of KORA and KOMA Violations***

The bill provides that when payment is made from the Tort Claims Fund on behalf of a state agency or employee for defense or indemnification in an action, proceeding, or investigation involving an alleged violation of KORA or the Kansas Open Meetings Act (KOMA), the agency that requests such defense or indemnification (or employs the employee making the request) is required to transfer to the Tort Claims Fund an amount equal to the payment made by the Tort Claims Fund on behalf of the agency for such defense or indemnification.

## ***KBI—Background Checks***

The bill authorizes qualified entities, as defined by the bill, to require state and national criminal history record checks of providers, both employees and volunteers, who have supervised and unsupervised access to children, the elderly, or individuals with disabilities to determine whether that individual has the qualifications and fitness to be permitted to serve as a provider. The bill allows qualified entities to request the Kansas Bureau of Investigation (KBI) conduct the state and national criminal history record checks. The bill outlines the information required to be provided with a request for a state and national criminal history check. The bill requires local and state law enforcement officers and agencies to assist a qualified entity in taking and processing a person's fingerprints for such criminal history record checks.

The bill requires the KBI to release all records of a person's adult convictions and diversions to the qualified entity that submitted the request for the criminal history record checks. The bill also requires a qualified entity to be solely responsible for making any determination that a person's criminal history record shows the person has been convicted of a crime that bears upon the person's fitness to serve as a provider. The bill clarifies the KBI is not required to make such a determination of fitness on behalf of any qualified entity.

### *Definitions*

The bill defines the following terms:

- “Provider” to mean a person who:
  - Is employed by any qualified entity and has, seeks to have, or may have supervised or unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care;
  - Is a volunteer of a qualified entity and has, seeks to have, or may have supervised or unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care; or
  - Owns, operates, or seeks to own or operate a qualified entity; and
- “Qualified entity” to mean a business or organization that provides care to children, the elderly, or individuals with disabilities that is private, for profit, not-for-profit, or voluntary, except such businesses or organizations that are subject to the provisions of KSA 2018 Supp. 39-970 [adult care homes, which includes any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disabilities, assisted living facilities, residential health care facilities, home plus, boarding care homes, or adult day care facilities], 39-2009 [center, facility, hospital, or provider of services] or 75-53,105 [employment or participation in any program administered by the Secretary for Children and Families or the Secretary for Aging and Disability Services for the placement, safety, protection, or treatment of vulnerable children or adults], or KSA 65-516 [child care facilities] or 65-5117 [home health agencies].

### *Documentation Required for Submission with Request for Criminal History Record Check*

The bill requires a qualified entity to submit the following when requesting a state and national criminal history record check:

- The person's fingerprints; and
- A copy of a completed and signed statement furnished by the qualified entity that includes:
  - A waiver allowing the qualified entity to request and receive a criminal history record check to be used in determining the person's qualification and fitness to serve as a provider;
  - The name, address, and date of birth of the person as it appears on a valid identification document;
  - A disclosure of whether the person has ever been convicted of or is the subject of pending charges for a criminal offense and, if convicted, a description of the crime and the result of the conviction; and
  - A notice to the person that he or she is entitled to obtain a copy of the criminal history record check to challenge the accuracy and completeness of any information contained in such report before any final determination is made by the qualified entity.

### ***Kansas Open Records Act Exceptions***

The bill continues in existence the following exceptions to KORA:

- KSA 9-513c, concerning information or reports obtained and prepared by the State Bank Commissioner in the course of licensing or examining a person engaged in money transmission business (the bill also removes an expiration provision in KSA 9-513c);
- KSA 40-3407, concerning Health Care Stabilization Fund payments for certain fees and costs related to claims (the bill also removes an expiration provision in KSA 40-3407);
- KSA 21-2511(h)(2), concerning biological sample profile records maintained by the KBI;
- KSA 21-5905(a)(7), concerning interference with the judicial process by making available personal information about a judge or a judge's immediate family member;
- KSA 22-2302(b) and (c), concerning affidavits or sworn testimony supporting an arrest warrant;

- KSA 22-2502(d) and (e), concerning affidavits or sworn testimony supporting a search warrant;
- KSA 40-222(k)(7), concerning materials related to the Commissioner of Insurance's financial examination of insurance companies;
- KSA 44-714(e), concerning employment security appeals records and decisions and information;
- KSA 45-221(a)(55), concerning information or reports obtained and prepared by the Office of the State Bank Commissioner in the course of licensing or examining a person engaged in money transmission business;
- KSA 46-1106(g) regarding 46-1106(i), concerning confidentiality related to audits of the Kansas Lottery and the Kansas Public Employees Retirement System conducted by the Legislative Post Auditor or firm under the Legislative Post Audit Act;
- KSA 65-2836(i), concerning impairment of a licensee under the Kansas Healing Arts Act;
- KSA 65-2839a(c), concerning criminal and background investigation information received by the State Board of Healing Arts;
- KSA 65-2842(d), concerning records of the State Board of Healing Arts in investigation or disciplinary proceedings related to impairment;
- KSA 65-28a05(n), concerning information related to impairment of physician assistants;
- Article 6(d) of KSA 65-6230, concerning information and data collected under the Health Care Compact related to the health information of any individual;
- KSA 72-6314(a), concerning student data submitted to and maintained by a statewide longitudinal data system; and
- KSA 74-7047(b), concerning various records submitted to or generated by peer review related to technical professions.

### ***Kansas Criminal Justice Reform Commission***

The bill creates the Kansas Criminal Justice Reform Commission (Commission).

## *Commission Members*

The Commission will be composed of the following voting members:

- One member of the Kansas Senate, appointed by the President of the Senate;
- One member of the Kansas Senate, appointed by the Minority Leader of the Senate;
- One member of the Kansas House of Representatives, appointed by the Speaker of the House of Representatives;
- One member of the Kansas House of Representatives, appointed by the Minority Leader of the Kansas House of Representatives;
- One member of the Judicial Branch Court Services, appointed by the Chief Justice of the Supreme Court;
- One criminal defense attorney or public defender, appointed by the Governor;
- One county or district attorney from an urban area and one county attorney from a rural area, appointed by the Kansas County and District Attorneys Association;
- One sheriff and one chief of police, appointed by the Attorney General;
- One professor of law from the University of Kansas School of Law and one professor of law from Washburn University School of Law, appointed by the deans of such schools;
- One drug and alcohol addiction treatment provider who provides services pursuant to the certified drug abuse treatment program, appointed by the Kansas Sentencing Commission;
- One district judge, appointed by the Kansas District Judges Association;
- One district magistrate judge, appointed by the Kansas District Magistrate Judges Association;
- One member representative of the faith-based community, appointed by the Governor;
- One member of a criminal justice reform advocacy organization, appointed by the Legislative Coordinating Council (LCC);

- One mental health professional, appointed by the Kansas Community Mental Health Association; and
- One member representative of community corrections, appointed by the Secretary of Corrections.

The Commission will also include the following non-voting members:

- The Attorney General, or the Attorney General's designee;
- The Secretary of Corrections, or the Secretary's designee; and
- The Executive Director of the Kansas Sentencing Commission, or the Director's designee.

The bill requires appointment of members of the Commission to be completed by August 1, 2019. The appointing authorities are required to provide notice of such appointments to the Office of Revisor of Statutes and the Kansas Legislative Research Department. The members of the Commission are required to elect officers from among its members as necessary to discharge its duties.

#### *Commission Duties*

The bill requires the Commission to:

- Analyze the sentencing guideline grids for drug and nondrug crimes and make recommendations for legislation that will ensure sentences are appropriate;
- Review the sentences imposed for criminal conduct to determine whether the sentences are proportionate to other sentences imposed for criminal offenses;
- Analyze diversion programs utilized throughout the state and make recommendations with respect to expanding diversion options and implementation of statewide diversion standards;
- Review the supervision levels and programming available for offenders who serve sentences for felony offenses on community supervision;
- Study specialty courts and make recommendations for the use of specialty courts throughout the state;
- Survey the availability of evidence-based programming for offenders provided both in correctional facilities and in the community, and make recommendations for changes in available programming;

- Study the policies of the Department of Corrections for placement of offenders within the correctional facility system and make recommendations with respect to specialty facilities, including, but not limited to, geriatric, healthcare, and substance abuse facilities;
- Evaluate existing information management data systems and make recommendations for improvements to data systems that will enhance the ability of criminal justice agencies to evaluate and monitor the efficacy of the criminal justice system at all points in the criminal justice process; and
- Study other matters as the Commission determines are appropriate and necessary to complete a thorough review of the criminal justice system.

The bill authorizes the Commission to organize and appoint task forces or subcommittees as necessary to discharge its duties, and the Commission may appoint ex officio, nonvoting members to such task forces or subcommittees.

### *Sentencing Proportionality*

The bill directs the Commission to work with the Kansas Judicial Council, the Department of Corrections, and the Kansas Sentencing Commission to review studies and findings of the Sentencing Commission concerning proportionality of sentencing.

### *Testimony and Meetings*

The bill directs the Commission to receive testimony from interested parties at public hearings to be held in various geographic areas of the state.

### *Reports to the Legislature*

The bill requires the Commission to prepare and submit its interim report to the Legislature on or before December 1, 2019. The bill requires a final report and recommendations to be submitted to the Legislature on or before December 1, 2020.

### *Support Services and Compensation*

The bill requires the Governor to appoint a facilitator to provide administrative assistance to develop a project plan and to assist the Commission in carrying out the duties of the Commission. The facilitator will work in collaboration with the Commission chairperson and staff of the Office of Revisor of Statutes and the Kansas Legislative Research Department. The facilitator shall not be a member of the Commission.

Staff of the Office of Revisor of Statutes and the Kansas Legislative Research Department are required to provide assistance as requested by the Commission, subject to approval by the LCC.

The facilitator, in coordination with the Office of Revisor of Statutes and the Kansas Legislative Research Department, is required to call the first meeting of the Commission to take place during August 2019.

If approved by the LCC, legislative members of the Commission attending meetings authorized by the Commission will be paid amounts for expenses, mileage, and subsistence pursuant to KSA 75-3223(e).

### ***Kansas Closed Case Task Force***

The bill creates the Kansas Closed Case Task Force (Task Force).

#### ***Task Force Members***

The Task Force will be composed of the following 15 voting members:

- The chairpersons of the Senate and House Committees on Judiciary, who will serve as co-chairpersons of the Task Force;
- The ranking minority members of the Senate and House Committees on Judiciary;
- The Governor, or the Governor's designee;
- The Attorney General, or the Attorney General's designee;
- The Director of the KBI, or the Director's designee;
- The state combined DNA index system (CODIS) administrator, as designated by the Director of the KBI Forensic Science Laboratory;
- One sheriff designated by the Kansas Sheriffs' Association;
- One chief of police designated by the Kansas Association of Chiefs of Police;
- One prosecutor designated by the Kansas County and District Attorneys Association;
- The Executive Director of the State Board of Indigents' Defense Services, or the Executive Director's designee;
- The President of the Kansas Bar Association, or the President's designee;
- The Director of Victims Services of the Kansas Department of Corrections, or the Director's designee; and

- One representative of an organization that litigates claims of innocence, designated by the Governor.

The bill requires the above appointments to be made on or before September 1, 2019.

### *Task Force Meetings*

The bill requires the Task Force to hold its initial meeting on or before October 1, 2019. The Task Force may meet in an open meeting at any time and place within Kansas upon the call of either co-chairperson. A majority of voting members will constitute a quorum, and any action shall be by motion adopted by a majority of the voting members present when there is a quorum.

### *Task Force Duties*

The bill requires the Task Force, in consultation with practitioners and experts, to develop a plan to ensure uniform statewide policies and procedures that address, at a minimum:

- Timely receipt of data relating to hits to CODIS from the forensic laboratory;
- Directly connecting the data relating to hits to CODIS to the relevant case file;
- Proper policies and procedures to ensure all hits are accounted for and followed up;
- Procedures addressing how the key parties can conduct a reasonable and timely investigation into the significance of the hit; and
- Sharing the hits in data from solved and unsolved cases with other key parties, including the relevant prosecutors' offices, the original defense attorney and the last known attorney of record, crime victims and surviving relatives, and a local organization that litigates claims of innocence.

### *Plan, Report, and Expiration*

The bill requires the Task Force to complete a plan for implementation of a protocol relating to hits to closed cases by October 1, 2020, including a mechanism to ensure uniform compliance at the local law enforcement agency level. The bill requires a report containing a plan for uniform statewide implementation of the protocol, including articulated benchmarks to facilitate and measure adoption, to be submitted to the Governor, Speaker of the House of Representatives, and President of the Senate, as well as posted on a public KBI website, on or before December 1, 2020.

The provisions of the bill related to the Task Force will expire on December 30, 2020.

### *Support Services and Compensation*

Legislative members attending meetings authorized by the Task Force will be paid as specified in KSA 75-3223(e). Non-legislative members may be reimbursed by their appointing authority.

### ***Effective Date***

The bill takes effect upon publication in the *Kansas Register*.