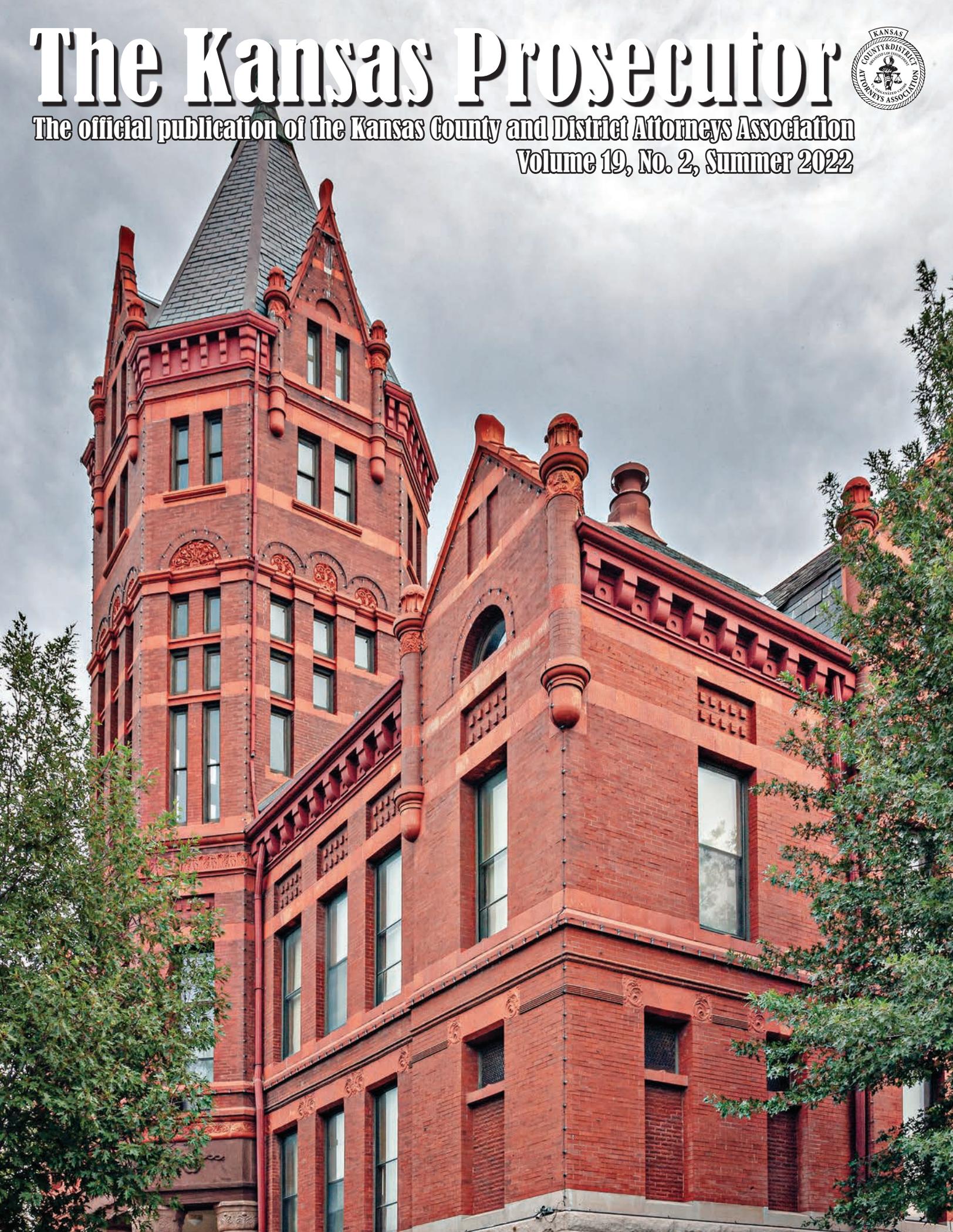


The Kansas Prosecutor



The official publication of the Kansas County and District Attorneys Association
Volume 19, No. 2, Summer 2022



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County and District Attorneys Association

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Our mission:

The purpose of the KCDAA is to promote,
improve and facilitate the administration
of justice in the state of Kansas.

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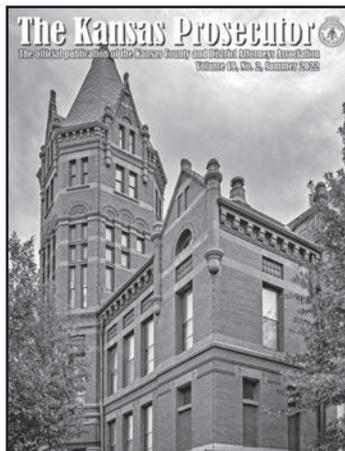
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About the Cover

This 1891 building served as Marshall County’s
courthouse for nearly 90 years. In the 1970s county
officials built a new courthouse next door and in
1979 deeded the old courthouse to The Marshall
County Historical Society. Since that time, more than
\$200,000 has been spent to preserve and maintain
it. Funds have come from grants, donations, and a
trust fund set up by Historical Society members. In
the first years of Historical Society ownership, the
building continued to house some county offices, as
well as business tenants. Over time, the rooms were
converted to display the growing collection of county
history artifacts.

*Photo by John D. Morrison, Prairie
Vistas Photography*



President's Column

By Darrin Devinney, KCDA President
Butler County Attorney

Moving Forward

Promoting, improving, and facilitating the administration of justice in the State of Kansas is the purpose of our organization. Pursuing this purpose is done in many ways, and KCDA relies on the experience and efforts of our membership to accomplish that goal every day. Our organization has a Board of Directors and several committees that avail our membership to serve in a variety of capacities. As President of KCDA, my interest has been to review and update our policies, procedures, and committees to assure that we are continuing toward our organizational goals.

Strengthening the network of professionals in KCDA is one way that we can achieve our goals as a professional organization. KCDA hosts two conferences a year to ensure that our membership can obtain not only their continuing legal education hours for the year, but also to address issues that affect prosecutors, explore new ideas in prosecution, provide vocational training in specific areas, and provide the opportunity to connect as individual members with our corporate organization.

One change that we have all made is the shift to a virtual conference. Born from necessity, we hosted an online conference that had great participation and allowed us all to get our CLE hours in a time where it was simply not possible for us to convene in-person. Lessons learned from a virtual conference included that our organization could spend far less to accomplish the provision of education while at the same time allowing our membership to participate without having to travel, which many saw as a convenience. I am so very appreciative of the efforts made by our CLE Committee in creating and organizing our virtual conferences.

However, how are we to make the network connections that make us a closer organization if they are limited to an online experience? The purpose of our organization can still be fulfilled through virtual CLE conferences, but camaraderie is not enhanced without the convention of our members. The KCDA

Board has reviewed the benefits to our virtual conferences and determined that many of our members clearly desire and profit from the ability to obtain their CLE hours while remaining in their resident jurisdiction. But for many of our members, including myself, getting away from the office and spending a couple days focused on professional development and networking is more valuable than the conveniences of a virtual conference.

To balance the needs of our membership, KCDA will host a virtual conference in Spring and the Fall conference will be in-person. The CLE Committee will be encouraged to consider the different dynamic and plan for speakers, topics, and how many hours will be dedicated to those topics to optimize the experience of both conferences. From a personal perspective, I will be thrilled for us to return to a conference where I can reconnect with prosecutors from all corners of our state.

Whether conferences are virtual or in-person, the board members and CLE Committee are always interested in hearing from the membership about ideas for speakers, topics to be addressed, and suggestions for how to improve and serve our membership. Content for conferences has to meet the needs of our newer members as well as those more experienced prosecutors, address new topics that affect our communities, and maintain a high level of quality and interest level to get the most benefit.

Establishing a virtual conference in the Spring and an in-person conference in the Fall is just one aspect of the purpose of our organization being fulfilled. Encouraging participation and input in all of our committees is really the message for us all to consider. Our Best Practices, Legislative, and Editorial Committees are needing members who want to help us meet our goals. KCDA's strength is truly found in its membership, and the calling of a career in prosecution assures me that we have the resources to promote, improve, and facilitate the administration of justice as well as keep our organization moving forward. 🇺🇸

Executive Director's Column

by Steve Kearney, KCDAAs Executive Director

2022 Legislative Session, Legislative RFP, Thank You, and Exercise our Freedom!

During the last legislative biennium, we tracked 265 pieces of legislation of interest to our members. That includes all the hearings for measures getting traction, providing testimony per instruction from the Board of Directors, drafting and offering amendments, and squiring the bills through conference committees at the end of the Session. That is when the real sausage gets made by combining as many as five different measures into one bill.

For example, one such measure was House Bill 2508 that contained several of the KCDAAs agenda items all of which started the Session as separate measures. This year's KCDAAs agenda adopted by

the Board included enhancing penalties for abuse of a child - House Bill 2362; clarifying the definition of possession - HB 2277; and the broadening of two-way video testimony at preliminary hearings instead of requiring in-person testimony. All three of those matters passed and were signed into law having been included together in HB 2508 in a conference committee report along with several other important measures that the KCDAAs weighed in on. Those included refinement of competency and commitment proceedings intended to help relieve the log jam in that system.

All KCDAAs members should have already received the detailed summary we prepared setting



Photo from the ceremonial bill signing of HB 2508. HB 2508 contained many components of the KCDAAs Legislative Agenda including strengthening the child abuse laws, clarifying the definition of "possession," and providing for presentation of witness testimony through a two-way electronic audio-video communication device at preliminary examinations. (L-R) Jeff Wagaman, Abe Pfannenstiel, and Steve Kearney, KCDAAs lobbyists; Representative Brad Ralph; Todd Thompson, KCDAAs Legislative Chair and Past President; Darrin Devinnay, KCDAAs President; and Sherri Schuck, KCDAAs Treasurer. Governor Laura Kelly seated.

out the final actions taken by the 2022 Legislature. It can be located on the members only section of the KCDAA website.

Our successes on your behalf would not be possible without the assistance of the Legislative Committee and the Board of Directors who take time through the interim to develop and approve the legislative agenda. They also participate throughout the session on a weekly basis to stay abreast of the latest happenings effecting KCDAA.

In keeping with our established process for developing each year's legislative priorities, the first step is seeking input from all of you regarding matters that you would like to see the Legislative Committee consider for recommendation to the Board as part of our legislative agenda. You will find on the next page our legislative RFP for you to complete and submit to us. The deadline for those submissions is August 15, 2022. You will also be receiving it electronically through a member blast. Please send your RFPs and supporting documents by email to Steve Kearney and Abe Pfannenstiel.

To our many legislative supporters who make improving the system of justice a priority, we cannot do this without you or thank you enough. Special thanks to the leadership of House Judiciary, Chair Fred Patton, Vice Chair Brad Ralph, and ranking member John Carmichael; Senate Judiciary, Chair Kellie Warren, Vice Chair Rick Wilborn and ranking member David Haley; and House Corrections and Juvenile Justice Chair Stephen Owens, Vice Chair Eric Smith, and ranking member Dennis "Boog"

Highberger.

Finally, this is your election year reminder to vote and exercise your freedom! I am certain that it is not necessary to remind you that the election season is upon us. Be sure to vote this year. It has never been more important to the well-being of your profession and the KCDAA membership.

As always, thank you for your support of our efforts on your behalf! 🇺🇸

Thanks to KCDAA Legislative Committee Chair Todd Thompson and all the committee members who spend time reviewing and narrowing down the legislative proposals to make a recommendation for the next year's legislative agenda to the Board of Directors at their fall meeting. Your time involved in this process is appreciated.

Also, thanks to the KCDAA Board of Directors who meet weekly during the Legislative Session to monitor and manage bills as they go through the legislative process.



Additional photos from the ceremonial bill signing of HB 2508. Above Left: Sherri Schuck, KCDAA Treasurer; Governor Laura Kelly, and Darrin Devinney, KCDAA President. Above Right: (L-R) Todd Thompson, KCDAA Legislative Chair and Past President; Rep. Brad Ralph (shaking hands with the Governor), Sherri Schuck, and Darrin Devinney.



2023 KCDAAs Legislative Request for Proposals

(One Proposal per page – use additional pages as needed)

The KCDAAs Legislative Committee is soliciting Legislative Proposals for the KCDAAs legislative agenda for the 2023 Legislative Session. This input from the membership will be considered by the Committee in making its’ recommendations to the KCDAAs Board of Directors this fall.

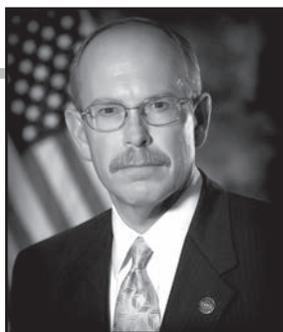
This RFP is the first step in the process by gaining the input of the membership in changes needed to the Kansas Statutes for the benefit of prosecutors. Please submit your proposals with the information below as a minimum. Feel free to use additional pages, provide other information, background or cases that will aid the Committee in selecting and targeting the most critical issues. Thank you for your prompt attention to this matter.

1. Statute to amend or affected: _____
2. Please describe the need for this change as it applies to the membership of the KCDAAs across the state as well as the specific concern in your jurisdiction.
3. Draft Language – Please attach an electronic copy of the statute with the change noted.
4. Are you aware of any previous legislative efforts like this proposal? If so, when and by whom?
5. Other organizations that might support this legislative proposal? Oppose?
6. Legislators or others already contacted about the proposal:
7. Your name and office in which you work and whether you would be willing to testify regarding the proposed legislation:

Submit proposals to: to Steve Kearney (steve@kearneyandassociates.com) and Abe Pfannenstiel (abe@kearneyandassociates.com).

Or to the KCDAAs Office, 1200 W. 10th Ave, Topeka, KS 66604

Deadline for submission is August 15, 2022



Guest Article

By Kirk Thompson, Director
Kansas Bureau of Investigation

Cold Case Playing Cards Developed in KS

Across Kansas, we have hundreds of cold cases that remain unsolved or unprosecuted. These include both homicide cases and missing persons cases where foul play is suspected. As the years have passed, these investigations, where the leads have ceased or where additional information is required before a suspect can be arrested or charged, have accumulated. New violent crimes occur and the finite resources law enforcement agencies possess are eventually transitioned to newer tragedies that are constantly occurring in our communities.

Still, as investigators who responded to these appalling crimes, we never forget the victims, their families, or our desire to finish the pursuit of justice started years, or even decades prior.

A few years ago, the Kansas Bureau of Investigation (KBI) began hearing from some of our counterparts in other states who had successfully resolved several notorious unsolved cases by creating a deck of playing cards. These cards included summaries of unsolved cases that were distributed in jails and prisons. The theory is that incarcerated individuals may know a missing piece of information about a crime, or that while they play card games conversations might arise that could generate leads. These leads, if put in the hands of law enforcement, have the potential to move an unsolved case one step closer to prosecution.

So in early 2021, when the Kansas Department of Corrections (KDOC) approached us, after also hearing from other state leaders who successfully adopted this project, we were thrilled to partner with them to generate Cold Case Playing Cards for Kansas. KDOC led this effort by assigning a project manager and funding the production of the decks of cards with Kansas Correctional Industries. We worked with KDOC, and representatives from the

Kansas Association of Chiefs of Police, the Kansas Sheriffs' Association, and the Kansas Peace Officers Association to analyze and select 59 cases to include in a deck of 52 playing cards.

The selection committee reviewed over 80 cases that were submitted by Kansas law enforcement agencies. They chose to highlight the cases believed to have the highest chance of making it through the criminal justice system to eventual prosecution. Each of the cases represented was chosen with permission and support from the families of the victims. In many instances, surviving family members expressed hope that this project might provide long-awaited answers.

Among the cases in the deck, the oldest case is from 1976, and the most recent occurred in 2020. Of the 52 cards, 17 Kansas counties are represented.

Each playing card includes our crime line number of 1-800-KS-CRIME. As leads come into the KBI, the information will be vetted and directed to the agency investigating the case for appropriate follow-up. In addition to the crime line, KDOC also has several internal procedures where residents of the correctional facilities can safely report tips.

KDOC Secretary Jeff Zmuda said that "within Kansas correctional facilities and jails, we have segments of the population who want to do something good, perhaps atone for past mistakes, and they may have information about unsolved cases. Our hope is that we receive actionable intelligence that leads to solving cases."

We are optimistic that the cold case cards project will generate valuable leads. In my experience investigating major violent crimes, I know it can often be a very small piece of information that is the missing detail needed. New information can cause what was merely a theory to become the clearest and

best explanation. Finding adequate proof to answer just one outstanding question can revive a case that was previously stagnant.

It is my belief that if through this partnership Kansas law enforcement is able to hold even one offender accountable for their crimes, or if the project offers closure to any of these victims' families, it will have proved worthwhile. 

Information on how to order Kansas Cold Case Playing Cards will be available in the summer of 2022, on the KDOC website at <https://www.doc.ks.gov/victim-services/cold-case-playing-cards>. The decks will be available to Kansas government officials and law enforcement personnel to purchase.

Examples of Cards

2
♣

Floyd Johnson



HOMICIDE VICTIM

On April 12, 2009, Floyd Johnson, 47, was found dead of a gunshot wound in Coffeyville. A light colored, small car driven by a White female and occupied by several Black males was seen firing at Floyd.

Coffeyville Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♣ **2**

5
♠

Jesus Aaron Lerma



HOMICIDE VICTIM

Jesus Aaron Lerma's body was found on July 31, 2001, in a field in rural Ford County. An autopsy determined Jesus died from a single gunshot wound to the chest on or about July 26, 2001.

Ford County Sheriff's Office

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♠ **5**

5
♥

Ernie Ortiz



HOMICIDE VICTIM

On September 12, 2019, Ernie Ortiz was found shot outside of the El Conquistador restaurant he owned in Garden City. He died later at the hospital. It's believed Ernie was shot during a robbery after he closed the business for the night.

Garden City Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♥ **5**

8
♣

Emanuel Vargas-Avilas



HOMICIDE VICTIM

On June 28, 2020, Emanuel Vargas-Avilas, a homeless man, was found on a park bench in Wichita, dead from multiple gunshot wounds.

Wichita Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♣ **8**

A
♠

Candice Fisher & Christina Brandolese



HOMICIDE VICTIMS

Candice Fisher and Christina Brandolese were last seen on May 29, 1999, in Kansas City, MO. Christina's body was found the next day and Candice's body was found on June 2nd, both in rural Johnson County, KS.

Johnson County Sheriff's Office

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♠ **A**

9
♦

Jennifer Wilson



MISSING PERSON

Jennifer Wilson was last seen at her home in Sedgwick County in September of 2002. After a fight, her roommate left and upon her return, Jennifer was gone but her car, clothes, and dog remained.

Sedgwick County Sheriff's Office

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♦ **9**

10
♦

Alex Michael LaRussa



MISSING PERSON

On December 15, 2017, Alex LaRussa of Salina was reported missing after last being seen on December 8, 2017. Alex's vehicle was recovered in a secluded area, but his body was never found.

Salina Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♦ **10**

J
♣

John Waller



HOMICIDE VICTIM

On June 17, 2019, John Waller, 36, was found dead in his home in Topeka. It is believed that he was murdered approximately two weeks prior.

Topeka Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♣ **J**

Q
♠

Glenna Bullard



MISSING PERSON

On November 2, 2017, Glenna Bullard was supposed to travel to Texas from Lincoln County, but she never arrived. It is rumored that Glenna was killed and buried somewhere.

Kansas Bureau of Investigation

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♠ **Q**

Q
♥

Cortenna Trigg



HOMICIDE VICTIM

On September 9, 2004, Cortenna Trigg was leaving a bar in Wichita when a fight broke out between rival gangs. As she was getting into her car, Cortenna was caught in the middle of a shoot-out and was killed.

Wichita Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♥ **Q**

10
♥

Dwayne Brunson



HOMICIDE VICTIM

On March 18, 2018, Dwayne Brunson was at a club in Wichita when a fight broke out between other club patrons. Dwayne was shot multiple times in the torso and died at the scene.

Wichita Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♥ **10**

7
♥

Adrian Franklin



HOMICIDE VICTIM

On December 18, 2008, Adrian Franklin was at home in Wichita when a friend answered a knock at the door. Someone fired multiple shots into the house at Adrian and he died as a result of the gunshot wounds.

Wichita Police Department

If you have any information about any case, please call
1-800-KS-CRIME
(800-572-7463)

♥ **7**

Member Highlight: KCDAAs Members

By Laura Miser, Assistant Lyon County Attorney

For this issue of the *Kansas Prosecutor*, we would like to introduce you to two KCDAAs members. They have had varied backgrounds before they joined the Johnson County District Attorney's office, but both have experience in the military.

If you know of a KCDAAs member we should feature in an upcoming magazine, please email Editor Mary Napier at mary@napiercommunications.com with your ideas and reasons why they should be featured.

Tim Randolph

Baker University basketball alum, Tim Randolph, is one of the new assistant Johnson County District Attorneys. Tim was a college transfer out of Arizona, and graduated from Baker in 2012 with a degree in Business Administration. After he graduated, Tim returned to Arizona to take a job as a paralegal with the National Guard. After spending some time there, Tim decided to return to Kansas to work corrections at the Juvenile Detention Center.

Tim notes he found this particular career very rewarding. He enjoyed the opportunity to interact with juveniles, finding he had the ability to connect with them. After a paralegal/trial assistant position opened at the Johnson County District Attorney's Office, he found himself with a new career. His time at the JDC and experiences at Johnson County spurred him on to become an attorney, and he attended UMKC at their part-time program. He continued working for Johnson County during law school and also managed to find time to complete officer candidate school for the Kansas National Guard.

Law school took a backseat to a 2018 deployment. Tim's deployment took him to Kuwait then on to serve at the Syrian/Jordan border. He

describes his tenure working as a liaison in those difficult zones as a great experience. Never one to appreciate downtime, he also started his MBA master's program. Returning stateside in 2019, he continued working. However, he decided in 2020 to change to full-time student status and received his law degree in 2021. He then obtained his current position as an ADA; and also became commissioned to be a JAG officer for the Kansas National Guard.

That MBA is not going to waste either. Tim has a personal passion for small business development, especially for those owned by women. He has been active in helping create resources for startups. He was inspired to work with women-owned businesses by the creator of "West 10th" an online business resource, when he had the opportunity to work with them in securing investors in Kansas City. While conducting due diligence for

West 10th, he was able to observe the growth in women-owned start-ups, women entrepreneurs, and female driven innovation. Cognizant of COVID's impact on women's careers, he found West 10th was an innovative and genius way of mitigating that impact on women business owners. He remains committed to supporting women entrepreneurs



Tim Randolph

and small businesses in the future. Other interests include travel; a trip to Australia is in the works, and he would like to visit Egypt one day. Tim is a great cook and known for his specialty of chicken with broccoli.

A career path full of challenges and rewards provided unique real-world experiences that continue to benefit him both personally and professionally. He feels his experiences developed communication skills along with his ability to establish relationships and connect with people. His

long history with Johnson County helps with the day to day prosecutor duties outside of the courtroom, but has also created a dynamic shift in relationships with long-time friends in the defense bar. It is a balancing act he feels he is still working on, but is enjoying the transition. Tim credits his office as military-friendly and appreciative of military service. He recommends any young attorneys looking to find their way should experience as much as they can. His advice is “don’t sell yourself short and get out of your comfort zone.” 

Jeff Shull

Johnson County native Jeff Shull did not stray far from home to find his niche. While his career path took a varied route, his passion for community service eventually landed him at the Johnson County District Attorney’s Office as an Assistant District Attorney. He graduated from KU with a history major in 2012. A previous car accident had planted a seed in his mind to become an EMT, but life intervened for a time, and he took a job in sales. It didn’t take long for that seed to grow, and he began taking EMT/firefighter classes culminating in a paramedic position with the Lawrence Fire Department.

Jeff entered law school, well aware of the physical toll EMT and firefighting takes on a person’s body. Community service drove his choices once again and when the opportunity for an internship in the Johnson County District Attorney’s Office arose, he took it. That internship cemented him on the career path he is on today. While an intern, he benefitted from the variety of issues he faced in CINC and misdemeanor criminal cases. Upon graduation, a short stint at Kansas Legal Services was completed prior to his hiring

as a full-time assistant district attorney. His current caseload consists of misdemeanors, truancies, and some felonies.

Jeff feels that his prior EMT service is invaluable in helping understanding police reports. Drawing on those prior personal experiences helps him

understand what the officers were seeing on scene and aids in processing cases. He enjoyed the camaraderie with his fellow emergency responders and is thankful for a similar camaraderie with his fellow prosecutors.

In addition to his service to his community in emergency services and prosecution, Jeff is also a member of the Army Reserve program. His completion of JAG training allows him opportunities to help fellow officers by providing general counsel to troop members. His Army commitments consist of trainings at Fort Riley, gun qualifications, conferences, and missions. In the future, if any international postings are

required, he would like to visit either Germany or Korea.

Johnson County is the beneficiary of his community spirit, not only through his work, but



Jeff Shull

his private life as well. Jeff and his wife, a speech pathologist, have two young children. He continues to engage in private acts of community service outside of work. In his free time, he enjoys cooking with his outdoor pizza oven and meat smoker. He has also been able to check skydiving off his bucket list. He would encourage anyone attending

law school to experience as much as possible. He suggests that you should take internships, complete clinics, watch court, and talk to people. All these things can be very important in helping choose a career. As he stated, you won't know if you like something if you don't try. You may discover a passion that you didn't know you had. 🇺🇸

KCDAA Milestones - News from Across the State

Douglas County District Attorney's Office

Katy M. Britton, Chief Assistant District Attorney, CINC, is celebrating her 15-year prosecution anniversary in August. Congratulations Katy!

Kansas Bureau of Investigation

Bryan A. Ross has joined the Kansas Bureau of Investigation's Legal Division as an Assistant Attorney General/Assistant General Counsel. Before joining the KBI, Bryan served as an Assistant Attorney General in the Civil Litigation Division of the Kansas Attorney General's Office. He possesses a diverse legal background, including more than a decade of experience practicing insurance defense at a Kansas City area law firm. Bryan also previously served as an Assistant County Attorney under Leavenworth



Bryan A. Ross

County Attorney, Todd Thompson, and was the city prosecutor for the City of Chanute, Kansas.

KBI's Legal Division also includes AAG/Associate General Counsel Kelly McPherron, who has served the Bureau for more than 11 years, and Laura Graham, who has been AAG/General Counsel at the Bureau for over 15 years.

Labette County Attorney's Office

Mandy Johnson became the Labette County Attorney in September 2021 when Steven Jones left. Alan Brereton was hired to be the Deputy County Attorney and started in April 2022.

Sedgwick County District Attorney's Office

Aaron Breitenbach of the Sedgwick County District Attorney's Office is now the Wichita Bar Association President for 2022-2023. The Wichita Bar Association is governed by a Board of Governors that meets monthly to set policy and review issues affecting the legal profession. 🇺🇸

We want to share your news!

If you have something you would like to share with the KCDAA membership, please keep us informed.



We'd like to publish baby announcements, new attorneys, anniversaries, retirements, awards won, office moves, if you've been published or anything else worth sharing

with the KCDAA! Information submitted is subject to space availability and the editorial board reserves the right to edit material.

Send your information and photos to:
Editor Mary Napier
mary@napiercommunications.com

Next Deadline: Fall/Winter: Nov. 1

Top Common Mistakes or Misunderstandings in Juvenile Risk Assessment

By Rachel Larsen, Senior Attorney, NDAA & Susan Broderick, Program Director, NDAA

This article was published in The Prosecutor, a publication of the National District Attorneys Association, Volume 56, Number 2 - April 2022. Reprinted with Permission.

A trend is emerging in some juvenile courtrooms and state legislatures to uncritically accept the latest risk assessment tools and adopt them without a thorough understanding of the tools' strengths and limitations. This trend is so prevalent that there are reports that some judges are making decisions around juvenile dispositions entirely based on a number produced by a juvenile risk assessor without first determining anything about the capacity, quality, or validity of the risk assessment.

With this trend in mind, here is a list of four overlooked issues with risk assessments performed in juvenile court:

1. General risk assessment tools can predict recidivism with moderate accuracy, but they cannot predict whether someone will re-offend with a serious or a minor offense.

Risk assessment tools are, on average, more accurate than non-tool outcomes based on experience, gut feelings, or even clinical-level psychology skills. That does not mean these tools are omniscient. In fact, they are far from it: a risk assessment tool operating at a 60% accuracy rate is considered acceptable and will not be thrown out. Do you know how well the risk assessment performs in your jurisdiction? If you don't, find the statistics keepers in your jurisdiction and ask for the numbers. After all, if one wants to follow scientifically valid best practices, it is necessary to know how accurate the assessment is in practice.

The other piece of information we need to know

is how likely is it that someone will re-offend, according to the assessment that your jurisdiction uses. For example, what are the chances that someone classified as low risk will re-offend? What are the chances that someone classified as medium risk will re-offend? In one study of the YASI (Youth Assessment and Screening Instrument), the one-year new petition rate based on the pre-screen showed that low-risk offenders reoffended at 9.9%; medium-risk offenders reoffended at 24.9%; and high-risk offenders reoffended at 36.8%.¹ The definition of petition was any new referral to the court with new charges.

And this is where one runs into a limitation on understanding of how to translate the risk assessment prediction into courtroom practice. One might reasonably say about a juvenile offender in the low-risk category that they do not need to have a courtroom intervention and instead should be diverted. Unnecessary involvement in the criminal justice system is harmful to juveniles, and it should be avoided.² That is a well-respected tenant of risk assessment science. But, what if the juvenile in question is charged with murder? Should one look at the low-risk score and release them to the custody of their parents?

For multiple reasons, prosecutors and judges should not release low-risk juveniles based solely on a risk score if there are indications of danger to the public because of a very serious offense. The first is that low risk may mean that the juvenile has a 10% risk of re-offending within one year, but the risk score, very importantly, does not indicate what type

Footnotes

1. Robinson, D. & Jones, N. (2017) The Validity of the Youth Assessment and Screening Instrument for Justice Involved Youth in Milwaukee County. Orbis Partners. Long-Term Validation of the Youth Assessment and Screening Instrument (YASI) in New York State

Juvenile Probation (2007). <https://www.criminaljustice.ny.gov/opca/pdfs/YASI-Long-Term-Validation-Report.pdf>

2. Andrews, D.A. Bonta, Hoge. The Psychology of Criminal Conduct, 5th ed. Chapter 2 (New Providence, NJ: Anderson Publishing, 2010).

of re-offending will occur.

What the 10% rate of re-offending for low-risk juveniles – means is that the juvenile has a roughly 10% chance of committing a crime and that the crime could be anything from murder to stealing a pack of chewing gum. General risk assessments are incapable of predicting violent offenses.³ So, when one considers this hypothetical 10% chance of re-offending and understands that re-offense could be something minor or another murder, the low-risk score is less re-assuring in the context of someone already charged with murder.

Another reason that a low-risk score should not mean immediate release is that “[r]isk assessment tools should inform legal decision-making and offer additional grounds for decisions but should not replace legal decision-making.”⁴ This is fundamental; a risk assessment score is not the only factor in legal decision making. Other factors, often not included in risk assessments, include the seriousness of the current offense, victim input, offender accountability, whether there are pending cases, the current supervision status, and acceptance of responsibility. I have yet to meet a doctor in forensic psychology who believes that the risk assessment score should trump the seriousness of the current offense. And yet, some courtrooms operate as if the risk score is the only input to be considered.

2. Risk assessment instruments must be tested on the juvenile population in your state and be separately calibrated for males and females.

I recently spoke with a jurisdiction that is, by statute, rolling out several mandated risk assessment instruments. One of the assessments is newly created and has never been validated, and there currently aren't plans to validate it. The jurisdiction is also using YASI, which is widely used and researched. I asked one of the state trainers for

the YASI risk assessment how long they planned on waiting before they validated the YASI on the population of their state. The answer was that there is no need to validate the test because it is “self-validating.”

There is no such thing as a “self-validating” risk assessment. Each state has a unique population of individuals that vary due to the state’s unique culture, population subsets, and other factors. To give an idea of how this works, in a 2014 study, the LS-CMI (Level of Service Case Management Inventory) risk assessment which was developed in Canada functioned with almost 50 percent less accuracy in the U.S.⁵ You might wonder how that can be the case when the principles of risk assessment don’t vary no matter which country or state they are used in. Well, it turns out that when it comes to risk assessments, a test validated in Canada cannot be used in the U.S. without first studying its accuracy and adjusting its cut off points accordingly. The same is true for each state. The differences between states may not be 50%, but they are not negligible either. Yet, the states charged with validating the risk assessment (not an inexpensive endeavor) often do not know that for the test to perform most accurately, it must be validated on that state’s population.

Once validated on the state’s population, the need for validation does not end. Population characteristics, and thus risks, change as the population changes over time. Imagine, for example, giving the same risk assessment to a 1970s population of adolescents and a population living in 2020. The test for each group would need to be adjusted for that group. The phenomenon holds with shorter periods of time: if your jurisdiction adopted its risk assessment tool a decade ago and hasn’t validated it for the current adolescent population, a new validation study needs to be done.

3. Min Yang, Stephen C.P. Wong, and Jeremy Coid, “The Efficacy of Violence Prediction: A Meta-Analytic Comparison of Nine Risk Assessment Tools,” *Psychological Bulletin*, vol. 136, no. 5, 2010, p. 757.

4. Vincent, G.S., Guy, L.S., Grisso, T. (2012) *Risk Assessment in Juvenile Justice*. https://njjn.org/uploads/digitallibrary/Risk_Assessment_in_Juvenile_Justice_A

[Guidebook_for_Implementation.pdf](#)

5. Olver, M.E., Stockdale, K.C., & Wormith, J.S. (2014). Thirty years of research on the level of service scales: a meta-analytic examination of predictive accuracy and sources of variability. *Psychological assessment*, 26 1, 156-76.

Another issue occurs when risk assessment instruments treat male and female adolescents the same. Males and females are different and respond differently to various forms of treatment and supervision. Yet when it comes to risk assessment, some tools treat them the same. Recidivism studies consistently show that females are less involved in criminal behavior, are less likely to commit violent crimes, and are less likely to recidivate after being placed on probation or parole. Thus, if the test isn't calibrated to these differences, it is not accurate.

3. Those that deliver risk assessments must be trained annually, certified to deliver the risk assessment, and their competence must be reviewed regularly. (Training alone is not enough.)

To determine if the staff is sufficiently skilled enough to conduct the risk assessment, jurisdictions must measure the reliability of the individual test administrators. The best practice for doing this is called inter-rater reliability testing.

In this type of testing, all assessors are given the same example of an adolescent and asked to score his risk. For risk administrators whose results are too far outside of the correct risk score, retraining will be needed. This is a matter of quality control. We need to know that no matter which administrator gives the test, the results will be consistent. And yet, this is not being done in the field, and best practices can only be implemented when stakeholders, and in particular, prosecutors understand that it is a best practice to do this type of training and assessment. Go ahead and ask your risk assessment administrator whether they have received inter-rater reliability training and assessment. If they haven't, the lack of best practices needs to be brought up inside and outside of court.

Intensive initial certification as well as yearly training reboots are also necessary for accurate results. Complicated risk assessments like YASI and the LS require a well-structured interview and a review of all relevant case file data as well

as contact with secondary sources of information. Complicated risk assessments often have over 30 inputs with several sub-scales reflecting varying spheres of risk levels. With such instruments it is more difficult to achieve the minimal levels of reliability without periodic auditing by qualified staff and yearly refresher training. While this finding may not apply to all jurisdictions, one 2015 study showed that only one in 69 officers administered Risk/Needs Assessment (RNA) correctly.⁶ Without highly trained staff, the use of these instruments is not recommended.

4. To meet the promise of the current generation of risk assessments, there must be adequate treatment for the identified risks.

The most important reason to identify needs (i.e., dynamic risks) in juvenile court is so that they can be treated. But the assumption in evidence-based policy, that juveniles are to be treated relative to their need, cannot be implemented in many jurisdictions. This occurs because the assessed risk level does not matter if the high-quality treatment programs needed do not exist. In one state that we worked with on risk assessments, the assessment tool pointed to four different levels of treatment need, but state statutes only provided for two levels. The greatest value and most recent developments in the newest generation of risk assessments are their ability to pinpoint treatment needs to reduce risk. Thus, much of the value of these tools are lost if the needed treatments are not funded. More importantly, if the risk scores are used solely to decide whether to detain a juvenile or not, than these assessments are being used for unintended purposes and missing the greater opportunity, the opportunity to treat areas that are known to reduce risk.

In contentious times, policymakers often get caught up in avoidable debates rather than address the common ground. The common ground here is that some juveniles need to be treated to reduce the risk they pose to their communities and to increase their quality of life and future potential. Risk assessments of today are better than they have ever been at identifying treatment needs, strengthening the mandate for policy makers to put more focus

6. Jill Viglione; Danielle S. Rudes; Faye S. Taxman. *Criminal Justice and Behavior* Volume: 42 Issue: 3 Dated: March 2015 Pages: 263-285.

on supporting appropriate treatment programs. Community safety can benefit from risk assessment that is then harnessed to provide the right type and level of treatment.

However, judges, prosecutors, defense attorneys and law makers should better understand what is needed to make their risk assessment tools the most accurate they possibly can be. Risk assessment tools are not fool proof. Accuracy rates for general re-offending predictions can be low and these rates don't predict which re-offenders will commit violent crimes. Low risk of re-offending does not necessarily translate to low-level re-offending. The seriousness of the current offense, victim input, offender accountability and other legal considerations should be added to the information from risk assessment tools to inform the process of legal decision-making. And the risk that is identified

during the assessment process should be treated. It's asking a lot, but in juvenile court the purpose of risk is not to punish it, it is to treat it. 

About the Authors

Rachel Larsen is a former juvenile court prosecutor. She joined NDAA after many years working on child sexual abuse prosecutions, prosecution best practices, and raising the age in juvenile court for the North Carolina Conference of District Attorneys.

Susan Broderick started her career as an Assistant District Attorney in the Manhattan District Attorney's Office, where she served for fourteen years. Susan joined the NDAA in 2003, then departed to work as an Assistant Research Professor at Georgetown from 2008-2018 until rejoining NDAA as the Program Director of the Juvenile Justice Section.



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Innovative Ways to Address the Changing Culture of Prosecution: Child Advocacy Centers in Kansas

By Darrin Devinney, Butler County Attorney &
Kasey L. Dalke, Executive Director, Children's Advocacy Centers of Kansas, Inc.

Editor's Note: The Kansas Prosecutor is publishing a multi-part series on innovative ways to address the changing culture of prosecution. In this article, we are going to discuss Child Advocacy Centers (CACs) in Kansas. While not new, CACs continue to provide a vital role for children in our state, and in our nation while continuing to evolve as the needs of children evolve. For this issue, Darrin Devinney discusses his perspective on creating a CAC in Butler County and the need for CACs. We also get more in-depth information about CACs regarding what, why, and how they operate from the Children's Advocacy Centers of Kansas, Inc.

For future issues, we invite others to submit articles on topics such as meeting victims' needs, addressing mental health concerns with defendants, approaches in reducing violence within communities, most effective ways of dealing with addiction, or any other topic that could be helpful in improving the criminal justice system. If you have an idea you would like to contribute, please contact Editor Mary Napier at mary@napiercommunications.com.

The Calling of Public Service

By Darrin Devinney

Understanding the perspective of a victim of crime is essential for prosecutors to be effective at carrying out their duties, and the different dynamics at play for each case means that we must have a broad base of experience to be able to accomplish success in our profession. One of the most delicate and nuanced areas for a prosecutor to understand is the perspective of a child who has been the victim of crime. Thanks to ingenuity, initiative, and a heart for children who were abused, the first Child Advocacy Center was created in 1985 in Huntsville, Alabama, from the experience and leadership of Robert E. "Bud" Cramer, who was the District Attorney in Madison County, Alabama. The National Children's Advocacy Center was born from a need for improvement of services for child victims of abuse through interagency cooperation. It was a *prosecutor* that started it all.

There are now more than a thousand Child Advocacy Centers (CACs) in 34 countries around the world. Seventeen of those are in Kansas, serving children across our state. The statewide membership

association representing these CACs is Children's Advocacy Centers of Kansas (CAKKS), which provides facilitation, support, and collaborative leadership to CACs in Kansas. The common belief they all share is that a coordinated, multidisciplinary response to child abuse is the most effective and most compassionate response to abused children.

Twenty-two years ago, I started my career as a prosecutor. I was fortunate to find a spot in Butler County, a medium-sized county with a population of about 60,000 people. I filled a new open position expanding the office to six prosecutors. Like many of us, I started out handling juvenile offender cases, some traffic matters, and a few miscellaneous misdemeanors. I was a new prosecutor, a new attorney, and a new father. On top of that, I had to train myself and get up to speed on the actual practice of criminal law, which was different from my recent law school experiences.

After about nine months into my position, I was assigned the Child in Need of Care (CINC) cases and began yet another layer of development in my

prosecutorial career. The dynamics of court were no longer the adversarial and linear approach of State and defense. I was quickly thrown into multi-party dynamic problem-solving that involved any number of alphabet agencies and interests. But I held onto the concept of “best interests of the child,” my daily mantra, espoused over and over again in court. But what did that really mean and how was I to presume I had the wisdom or intellect to divine what that could mean for the child at the center of each individual case?

In time, our experience gives us the confidence to make reasonable decisions that can translate to circumstances. Such was my path in representing the State in the CINC cases. But it was clear that there needed to be a swifter, more thorough understanding of the child and his or her experience for a court to determine the “best interests” and make the subsequent orders that would affect the individual child and the family surrounding him or her.

A Child Advocacy Center project was born in Butler County around the time I was assisting with prosecuting the child victim crimes caseload in our office. I would prosecute the criminal conduct of adults and juvenile offenders and often handle the CINC cases that involved the victims of the crimes. The overall approach to these matters allowed for consistency in understanding the dynamics of all court matters and a more consistent approach with witnesses, the most important of which were the child victims. Thanks to the leadership of Butler County Attorney Jan Satterfield and Andover Detective Randy Coffman, I was about to find a model for a monumental step forward in what it meant to utilize leadership as a prosecutor.

In 2004, they combined their desires to have a Child Advocacy Center and a Children’s Home into one large project and began the process of gaining participation and support for the children and families in our area. In a matter of months, community stakeholders began having meetings to discuss the viability of the two projects, determining that the CAC would be the first stage, with a Children’s Home to follow. I was enlisted to help with details and logistics, provide input with regard to our current cases, and describe the dynamics that are present in the cases. I was surrounded with

hundreds of years of experience from a number of people, including law enforcement, medical professionals, social workers, community members, and volunteers who were brought in for a breadth of cooperation and action.

In the span of several meetings over a period of almost two years, a non-profit corporation was created that would be the base of our CAC and Children’s Home. Grants were sought, donations rolled in slowly, and we had scheduled a fundraiser to start implementing the vision of our local CAC. It was the greatest example of teamwork I had ever seen short of the 1978 Pittsburgh Steelers.

By 2007, the CAC opened and just a few short years later, a Children’s Home was built in Andover on donated land. It’s now 15 years of our CAC serving children in our community, and I was the fortunate person to assist these great people with serving the needs of children and watching our dream become a reality. From idea to implementation, I handled the caseload that was intertwined with the services that were created. But it was the work and labor of so many people who deserve credit beyond calculation.

The fruits of this project were instantly evident and a fresh way of handling matters quickly became daily practice. Just as the multi-disciplinary team convened to create the CAC, they continued on as a team to review the intakes and ongoing cases to assure that the services were utilized to serve the children and their best interests. Those meetings are an essential part of the CAC model, required by law in K.S.A. 38-2227. Child Advocacy Centers also provide statistical data regarding their cases, medical and mental health services either directly or via referral, and most importantly, are “...a neutral, child-focused facility where forensic interviews take place with children in appropriate cases of suspected or alleged physical, mental or emotional abuse, or sexual abuse. ...” K.S.A. 38-2227(a)(3).

Therein lies the connection I yearned for as I started my career as a prosecutor. The community in which I live and work saw a need for better understanding of a child’s experience and trauma response in instances of abuse, as I did when I started as a prosecutor. Over the past 15 years, there is a system – a procedure – for us to gain the understanding and insight from these vulnerable

and hurt victims. Serving their “best interests” can’t start until we comprehend what has occurred and seek to assist each child with services to address the issue. Through the use of the CAC for interviewing the child victims of abuse, the teamwork and contributions from many disciplines, and a consistent and compassionate heart that is shared by all of the professionals who work with these children, it’s clear that prosecutors are in an excellent position to determine and recommend what is in the best interests of an individual child.

But my personal reflections on CACs are not the purpose of the article. Rather, it is a beacon to draw

out the leadership that is inherent to our profession. Child Advocacy Centers are a fantastic model for showing how leadership of just one prosecutor can blossom into changing lives for countless numbers of people. “Bud” Cramer is just one example of how prosecutorial leadership can instill great changes to the administration of justice, coordinate multiple agencies and disciplines, and inspire greatness in others. I am among those who are inspired by his efforts and encourage all prosecutors to consider how their calling to be a prosecutor can yield such wonderful results that benefit the people you serve. 🌟

Child Advocacy Centers - What, Why, and How They Operate

By Kasey L. Dalke

The Children’s Advocacy Centers of Kansas, Inc. (CAKKS) is a nationally accredited state “Chapter” of the National Children’s Alliance (NCA), the accrediting body of Child Advocacy Centers (CACs) across the country. As the state Chapter for Kansas CACs, CAKKS provides direct technical assistance, state level training, access to regional and national training and resources, assistance with achieving and maintaining accreditation, advocacy support, and leadership directly related to the critical work CACs provide across Kansas and the partnerships that are essential for effective service delivery.

Following an outcry of abuse, there is ONE model in Kansas that brings all of the key services and professionals within an investigation and treatment together for a coordinated, efficient, cost-saving approach. This model is Children’s Advocacy Centers. These are Centers of excellence in the way our communities respond to children who have been sexually and physically abused, exploited, trafficked, and neglected. Our Centers are designed to create the opportunity for healing for children and non-offending caregivers through advocacy and therapeutic services and helps facilitate a pathway to justice through a multidisciplinary approach that results in more collaborative and efficient case investigations.

By definition a Child Advocacy Center (CAC) is a child-focused, facility-based program in which representatives from core disciplines come together through a multidisciplinary team approach to meet the needs of each individual case of child abuse. These disciplines include, but are not limited to: law enforcement, child protection services, prosecution, mental health, medical, and victim advocacy. These core disciplines collaborate to investigate child abuse reports, conduct forensic interviews, determine and provide evidence-based interventions, and assess cases for prosecution.

Currently, there are 16 nationally accredited CACs across the state of Kansas, with one new CAC currently going through its accreditation process. These 17 CACs include 26 physical locations or sites for communities to access as well as six mobile units allowing the CAC to travel to children and families in some of the more rural areas of Kansas. In the calendar year 2021, 4,479 victims of child abuse from all ages, income levels, ethnicities, and community demographics were provided essential services by Kansas CACs. CACs are non-profit organizations that operate on grant funding and donations. Additionally CACs are statutorily identified entities eligible for state funding through K.S.A. 38-2227 (9)(b) and were developed to fulfill the requirements of K.S.A.

38-2226. Currently only 31% of Kansas counties remain underserved or unserved by a CAC.

As community-based programs, CACs are designed to meet the unique needs of the communities they serve and as such, no two CACs look or operate exactly alike. They are founded on a shared belief that child abuse is a multi-faceted community problem and no single agency, individual, or discipline has the necessary knowledge, skills, or resources to serve the needs of all children and their families. This is the exact reason that CACs are incredibly crucial to the service, support, and treatment of our most vulnerable population in Kansas, our children.

Our Kansas CACs operate by a shared philosophy that combined expertise of professionals across disciplines results in a more complete understanding of cases and better provides help, support, and protection to children and families as they pursue healing and justice. For this very reason, relationships with our multi-disciplinary team (MDT) are cornerstone for the overall functionality of the CAC model and all it represents.

CACs facilitate interagency coordinated response through a formal working memorandum of understanding (MOU). All MDT representatives contribute their knowledge, experience, and expertise for a coordinated comprehensive, compassionate response that is relevant and accessible to all aimed to serve. Quality assurance and a review of the effectiveness of the MDT's collaborative efforts are also critical aspects of the MDT response. Each member plays a critical role from the beginning of a case through the end.

Progress is measured by case reviews coordinated by CACs either monthly, bi-monthly, or quarterly all depending on the demand and needs of each county. Case reviews are in-person consultations of all MDT partners to discuss the status of new and pending cases that have been referred to and serviced by their local CAC.

Although MDT members bring their own needs and perspective to these case reviews, the end goals remain similar for each discipline. These goals include recognizing abuse, protecting children from further abuse, wrap around supportive services for children and their families, and perpetrator accountability to ensure no more children are

harmed creating safe, healthy communities.

Support, full engagement, and strong relationships with prosecutors are important for all disciplines as the role of our prosecutors within our MDT is key in perpetrator accountability. Consistent open communication and redirection are needed from prosecutors to ensure that cases are built with the strength needed to have a positive outcome within the judicial system. Prosecutors often look to other professionals within the MDT to be "experts" of their fields as they integrate input from MDT members to optimize their ability to hold offenders accountable and ensure community safety. Prosecutors also hold the role of providing information about the criminal justice process, victim rights, and seek input from children and families to inform decisions.

If you are in an underserved area of the state, and you would like to know more about how to start a CAC or other information about these centers, please contact Kasey L. Dalke, Executive Director, Children's Advocacy Centers of Kansas, Inc. at 620-566-7336 or executive@kscac.org.

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Translating Hearsay:

What You Need to Know About *Gutierrez-Fuentes*

By Natalie Chalmers, Assistant Attorney General

On April 22, 2022, the Kansas Supreme Court released an opinion that has the potential to fundamentally change cases with non-English speaking witnesses. In *State v. Gutierrez-Fuentes*, No. 120,339, 2022 WL 1276722 (2022), the court held that an English interpretation of an out-of-court foreign language statement is hearsay and requires the presence of the translator for the admission of the statement.

The facts of *Gutierrez-Fuentes* are not rare. A victim of domestic violence spoke only Spanish, while a law enforcement officer that had contact with her spoke English. Thus, a translator was used for the two to communicate. At trial, both the officer and the victim testified. But the court held that the translator was required to testify in order for the out-of-court translated statement to be admissible. It deemed the translated statement to be hearsay without the testimony of the interpreter.

The rationale deeming the translation to be hearsay relied on a somewhat inapt comparison to a game of telephone:

Consider the “telephone game.” Three or more players form a circle. The game begins with one person whispering a detailed and specific message to the next person in the circle. The second person then whispers precisely the same message to the third person—and so on until you get to the last person, who announces the message out loud. The game is fun and interesting because the first person is often surprised by the message as relayed by the last person. Almost always, the message has changed—sometimes slightly, sometimes dramatically—despite each player’s best efforts to keep it the same. It is a game which reminds us that language is a complicated enterprise and communication is rarely perfect. Yet in the game, everyone is speaking the *same* language.

Since a person speaking to a translator does not typically whisper and questions can be asked if something is not understood, this analogy seems

flawed. Regardless, it convinced a unanimous court that there could be real problems with a translator that required the translator to testify at trial in order for victim’s translated statements to the English speaking officer to be admissible under the rules of hearsay.

Luckily for the State, in *Gutierrez-Fuentes*, the error was harmless. This was, in part, because a Spanish speaking officer arrived and questioned the victim in her native language.

Going forward, some consideration may be given to whether a “language conduit” rule should be added to the hearsay statute to statutorily overrule the Kansas Supreme Court’s decision. Under the language conduit rule, “[a]bsent a motive to mislead, distort or some other indication of inaccuracy, when persons speaking different languages rely upon a[n interpreter] as a conduit for their communication, the statements of the [interpreter] should be regarded as the statements of the persons themselves without creating an additional layer of hearsay.” 2022 WL 1276722 at *7.

But short of a legislative fix, anyone interviewing a person speaking a language they do not speak must take care to get contact information for any translator they use for the interview. Perhaps they should also consider recording those statements, especially for translators, such as those who work for hospitals, who may not take notes or otherwise be likely to remember what the conversation entailed.

And for prosecutors with interpreted statements, know that you’ll need to be prepared to call translators as witnesses. To the extent defense counsel is willing to agree to the admission of the evidence without a translator, take care to document that agreement. Doing so should help protect against claims that counsel was ineffective for failing to object to the admission of the testimony.

In sum, unless a legislative fix occurs, *Gutierrez-Fuentes* requires the translator to testify to admit the out-of-court interpreted statements of a non-English speaking victim, witness, or defendant. 

Was the Matter Within Kansas?

By Kendall Kaut, Assistant Johnson County District Attorney

What’s Kansas? A simple question that can turn out to be far too complicated given its importance for criminal prosecutions.¹

In Johnson County, the Automated Information Mapping System (AIMS) provides dividing lines between our county and Jackson County, Missouri. Periodically, surveys are done to pinpoint what’s Kansas and what’s Missouri.

Unfortunately, the dividing lines often go through the middle of roads. On State Line Road in Leawood, Kansas, one of the best estimates claims half of the lane of travel is in Johnson County, while the other half of the lane is in Jackson County.

Ambiguity can reign too. Over the years, surveyors disagree. On the Johnson County system, a map from 1995 has a slightly different line than one from 2011. And that is often different than what Google Earth shows.

Venue is a requirement of K.S.A. 22-2602, which states, “Except as otherwise provide by law, the prosecution shall be in the county where the crime was committed.”

Many statutes contain exceptions or expand venue beyond a narrow technical reading of the statute. For intrastate boundaries—say between Johnson and Miami County—the State has almost no issue because K.S.A. 22-2604 provides, “Where a crime is committed on or so near the boundary of two or more counties that it cannot be readily determined in which county the crime was committed, the prosecution may be in any of such counties.”

The issue comes up when the boundary is between Kansas and another state. Some statutes are helpful for arguing the status quo is sufficient to ensure prosecution.

First, K.S.A. 22-2603 notes, “Where two or more acts are requisite to the commission of any

crime and such acts occur in different counties the prosecution may be in any county in which any of such acts occur.” That leads to the question: what’s an act?

Acts have been defined quite broadly in Kansas. A panel of the Kansas Court of Appeals noted, “[O]ur Supreme Court has used the element of a crime to analyze whether there were any “acts” to trigger venue under K.S.A. 22-2603.”²

With such a broad definition—any element is sufficient—the State can fall back on a small part of the crime occurring in Kansas. One seminal case noted that if a defendant removes a victim from her home but kills her in another county, taking the victim is an act requisite to the murder and makes the removal county appropriate for prosecution.³ From that framework, a prosecutor can argue that a host of acts are sufficient to trigger prosecution if the crime originates in Kansas.

For vehicle or plane crimes,⁴ the State also has options. K.S.A. 22-2608 provides, “If a crime is committed in, on or against any vehicle or means of conveyance passing through or above this state, and it cannot readily be determined in which county the crime was committed, the prosecution may be in any county in this state through or above which such vehicle or means of conveyance has passed or in which such travel commenced or terminated.”

While that statute seemingly ends the debate for vehicle crimes, it sets up some challenges for the State: what if the area the vehicle traveled before the crime is unknown? Imagine an involuntary manslaughter DUI where police arrive at the scene of a crash in a lane that bisects Kansas and Missouri. The driver has a .258 B.A.C. leaving little doubt he’s good for that crime. Without any witnesses to the prior driving, police may have no idea if the vehicle commenced in Kansas, or even if the vehicle

Footnotes

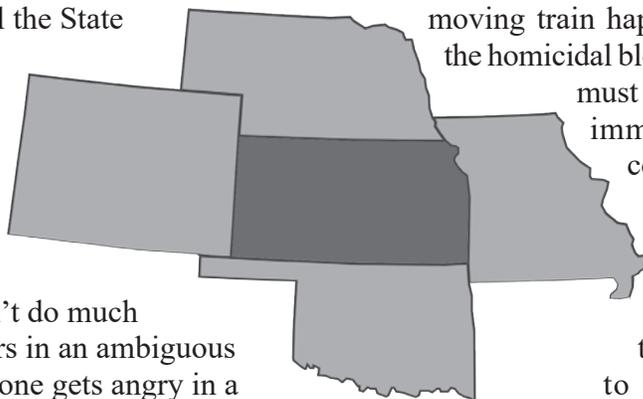
1. At no time will this article endorse, “I’ve a feeling we’re not in Kansas anymore” as a reference. We’ve all lived through too many “Wizard of Oz” analogies. The article’s title pun on “What’s the Matter with Kansas” may be approaching cliched status too. The author also believes Kansas is a fantastic state.
2. *State v. Briones*, No. 119,760, 2019 WL 3980652, at *6 (Kan. App. 2019) (unpublished opinion).
3. *State v. Pyle*, 216 Kan. 423, 435, 532 P.3d (1975).
4. Flying under the influence is now a crime with the new DUI statutory scheme, so maybe we’ll see some more plane crimes.

passed through Kansas. All the State can prove is that the crash occurred in an ambiguous zone. While this statute is a blessing to have, it leaves the State in a tough spot in that scenario.

These statutes also don't do much when the crime itself occurs in an ambiguous border area. Imagine someone gets angry in a store that bisects Colorado and Kansas. Someone pulls out a gun and shoots and kills someone inside the store. The State presents evidence the shooting occurred in Kansas, but the defense counters that a host of surveys show the shooting took place in Colorado. Given beyond a reasonable doubt is a high standard—and PIK tells the jury the county is an element of the crime—the jury could return a not guilty verdict because the State didn't prove beyond a reasonable doubt where the crime occurred.

While these state line incidents are rare, they're certainly possible. In one Kansas Court of Appeals case,⁵ a panel approved language from an Illinois decision⁶ noting the devastation that can come from jurisdictional issues:

Whenever the locus in quo of the offense can be precisely identified, under [the general venue statute], the trial should of course be had in the county where it was committed, but when such is not the case, a somewhat different rule must be applied or the offender cannot be tried at all. When it cannot be determined in which of two or more counties the criminal act was perpetrated, the offender must, ex necessitate, be tried in a county which cannot be proved beyond a reasonable doubt to be the actual visne of the crime. If he cannot be so tried, the law is powerless to punish him. The evidence of his guilt may be never so conclusive, but, because of the impossibility of proving upon which side of an imaginary line the swiftly



moving train happened to be at the instant the homicidal blow was struck, the murderer must be given complete practical immunity from all the penal consequences of his heinous offense. No court should adopt a construction of the law which would involve consequences of this character, unless forced to do so by considerations which are insurmountable.

To alleviate this catastrophe possibly, the legislature could consider several legislative solutions. First, the legislature could clarify which dividing lines should be used to determine boundaries for crimes. Is it the last survey by a certain agency? Can any survey be used? That would help law enforcement agencies coordinate between boundaries.

Second, the legislature could work on an interstate compact with surrounding states to allow prosecution by the primary responding state if a crime occurs within a few miles of a state's border. Most states aren't eager to go into other states to investigate, and the legislature could consider what acquiescence is necessary between the two states to determine prosecution.

Finally, Kansas and surrounding states could look to do a compact clarifying completely what the borders of the state are, and which state will prosecute if a crime occurs in lanes or areas that bisect one of the compact states. This would be an onerous task as it would require going through lanes and rural areas to a high-degree of precision. But it could clarify things as well.

Kansas might decide this is a rare enough problem to not warrant legislative attention, or that some states will balk at possibly losing sovereignty if another state responds to a crime near the Kansas border. But the worst outcome is one where someone who commits a heinous crime escapes prosecution because they were fortunate enough to murder someone where it's ambiguous if the crime took place in Kansas. Kansas and surrounding states have plenty of options to try and alleviate that small but devastating risk. 🙏

5. *State v. Versnel*, No. 91,294, 2004 WL 228212, at *3 (Kan. App. 2020) (unpublished opinion)

6. *Watt v. The People*, 126 Ill. 9, 17, 18 N.E. 340, 343 (1888).



2022 KCDA A Award Nominations

Please take time to nominate a member of the KCDA A whom you believe to be deserving of an award. This is the opportunity to recognize the accomplishments of the hard-working prosecutors who make up the membership of the KCDA A, and a policy maker who has championed the interests of the KCDA A.

FOUR categories of awards are eligible for nomination: Prosecutor of the Year, Lifetime Achievement Award, Associate Member Prosecutor of the Year, and Policymaker of the Year. The awards winners are chosen by the KCDA A Board of Directors. *

Award Qualifications:

The Prosecutor of the Year Award is presented to a prosecutor for outstanding prosecution of a case or cases throughout the year. Nominations may be made by either the prosecutor himself/herself or by a colleague. The nominee must be a regular member of the KCDA A.

The Lifetime Achievement Award is presented to a regular KCDA A member for his/her longevity as a prosecutor. The nominee must have served no less than 25 years in a prosecutor position, and not previously received this award. Nominations may be made by either the prosecutor himself/herself or by a colleague.

The Associate Member Prosecutor of the Year Award is presented to a prosecutor for outstanding prosecution of a case or cases throughout the year from an office other than a County or District Attorney's office. Nominations may be made by either the prosecutor himself/herself or by a colleague. The nominee must be an associate member of the KCDA A.

The Policymaker of the Year Award is presented to an individual who is determined to have made the most significant impact on policy related to county and district attorneys either during the past year or over an extended career of public service. One award is presented each year. The award is open to individuals having public policy making authority as evidenced by legislative support of the KCDA A.

To nominate yourself or one of your colleagues, please use the nomination form on page 2. You may send your nominations to:

KCDA A
1200 SW 10th Ave.
Topeka, KS 66604
Fax: (785) 234-2433
E-mail: kcdaa10@gmail.com

All nominations MUST BE received by 5:00 p.m. on September 30, 2022. For questions, please contact Melissa M. at (785) 232-5822 or via e-mail at kcdaa10@gmail.com

*The Board of Directors reserves the right to choose which awards categories are granted each year, if any.

Also, download the form at kcdaa.org/awards and mail it or e-mail it by Sept. 30!



2022 KCDA A Award Nomination Form

Name of Nominee:

Place of Employment:

Title:

Award being nominated for (Please check one):

- | | |
|--|---|
| <input type="checkbox"/> Prosecutor of the Year | <input type="checkbox"/> Lifetime Achievement Award |
| <input type="checkbox"/> Associate Member Prosecutor of the Year | <input type="checkbox"/> Policymaker of the Year |

Nominee's number of years as a prosecutor (if applicable):

Length of time in current position:

Community involvement:

KCDA A Involvement:

Please provide examples of nominee's **excellence in prosecution or as a policymaker** (may use additional paper as necessary):

Nominator's Name:

County:

Phone:

Title:

E-mail:

Spring 2022 KCDAAC Virtual Conference

By Shannon Wilson, KCDAAC CLE Committee Chair

Thank you to those of you who attended (by ZOOM) our Spring Conference. We had great numbers. The CLE committee sincerely appreciates the hard work and effort put in by our presenters. We were especially fortunate to have Justice Wilson presenting. The committee is making a concerted effort to focus our continuing education on trial advocacy. It is our hope that our members will come away from these trainings with practical tools to assist them in continuing to provide excellence in prosecution for the State of Kansas. To that end, we are actively planning our fall conference. We will be in Wichita at the Wichita Marriott. We are excited to have an in-person conference for the first time since the fall of 2019. There are multiple out-of-state presenters slated to attend as well as some of our own experts.

Finally, as some of you may recall from the prompt questions during the Spring conference, the CLE committee is planning to conduct a Trial

Advocacy School for Prosecutors in 2023. This will be modeled after the National Advocacy Center training programs some of us were fortunate enough to have attended. It will be a two-day course with active participation by those attending. Enrollment will be limited in number to 30. This will facilitate a small faculty-to-student ratio and more individual attention. Enrollment will be limited to those with 10 felony jury trials or less, with priority given to those with five felony jury trials or less. We will be providing additional information in the fall about this great opportunity.

As always, it is your CLE Committee's sincere pleasure to serve the KCDAAC membership. Please do not hesitate to reach out to me should you have questions, concerns, or a desire to participate in the important work of this committee by email to shannon.wilson@sedgwick.gov.

Best wishes for a happy, healthy and restful summer. 🍷

Thanks to our sponsors!

To learn more about them and see their virtual exhibit, visit: kcdac.org/sponsors.

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Save The Date



**October 20th & 21st
at the Marriott in Wichita, KS**

9100 E Corporate Hills Dr, Wichita, KS 67207

Registration & Additional Information at: KCDA.org



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