



2020 Year In Review

A letter from District Attorney Marc Bennett



**District Attorney Marc Bennett on September 29, 2020
after the sentencing of Rachael Hilyard.**



**OFFICE OF THE DISTRICT ATTORNEY
EIGHTEENTH JUDICIAL DISTRICT**

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April 16, 2021

At the close of each year since taking office, I have drafted and distributed a year-end update to let citizens and policy makers know what the staff of the Office of the District Attorney has accomplished during the previous 12 months and what we expect to accomplish in the future.

To say that calendar year 2020 was a year unlike any in the history of the American criminal justice system would be an understatement. The COVID-19 pandemic has had a sweeping effect on the day to day operations of the courts nationwide.

In Kansas, the legislature took steps in March of 2020 to grant the Chief Justice of the Kansas Supreme Court the emergency powers to manage the state's court system. Since then, there has been much discussion concerning the growing backlog of cases. It is important to recognize that, while jury trials could not be conducted while we complied with COVID-19 restrictions (the Constitution does not allow for remote witnesses to testify by Zoom or jurors to watch a trial from home), a great deal of work was accomplished this past year in the Sedgwick County Courthouse in every other aspect of the criminal justice system. Thousands of cases were reviewed prior to charging, preliminary hearings took place, cases were resolved by plea negotiations, sentencing and probation violation hearings took place.

The judges and attorneys in this jurisdiction have worked diligently to address the business of the people while still doing our best to protect the health of all who have business before the court. Adherence to state and local limits on the number of individuals allowed into courtrooms, cleaning regimens between hearings, social distancing and mask mandates have all been utilized to help us keep the doors open, the lights on and the courts functioning.

DOCKET MANAGEMENT AND CASES FILED

Despite the impact of the pandemic, the Office of the District Attorney remained exceptionally busy in 2020. The Kansas Sentencing Commission, which tracks statewide data by fiscal year has not yet issued its audit for 2020. However, the Sedgwick County (18th Judicial District) court system kept track and has reported that in 2020, 1,903 criminal cases were resolved in Sedgwick County by plea. We also conducted 15,586 hearings (primarily preliminary hearings, probation violation hearings, pleas, sentencing hearings and motions) before the judges of the criminal department in 2020. So, while the business of the court was impacted by the pandemic, we still got a great deal of work done under very trying circumstances.

Regarding the number of cases filed, in 2020 we filed 2,588 adult criminal cases, 2,400 of which were felonies. We filed 3,714 in 2019, 3,107 in 2018; 3,551 in 2017; 3,570 in 2016; 3,475 in 2015; 3,266 in 2014; and 3,360 in 2013.

In 2020, though the charging unit charged fewer low level, non-violent felonies and misdemeanor crimes as a result of the pandemic, our adult diversion program still accepted 126 criminal cases (drug, DUI and general criminal cases), saw 150 people successfully complete diversion (some began their diversion in 2019) and distributed \$97,248.52 in restitution to victims of crime; \$132,583.82 in 2019; \$141,309.90 in 2018 and \$131,984.70 in 2017.

In 2020, the office handled 138 criminal cases in which a mental competency examination was required. There were 143 cases in 2019, 151 cases in 2018; 123 cases in 2017; 108 cases in 2016; 101 in 2015; 68 in 2014; 79 in 2013; and 55 cases in 2012. The office also handled 183 extradition cases during 2020 involving 172 persons (some were extradited on multiple cases) to bring suspects back from out-of-state, up from 105 in 2018.

Every day of the year, we have two attorneys “on duty” who respond to calls 24 hrs/day from law enforcement officers and review search warrant applications for probable cause and to ensure that the warrants are proper as to form. In 2020, our attorneys reviewed 1388 warrants that were ultimately signed by a judge. In 2019, the number was 1222; 1103 in 2018; 1068 in 2017; in 2016, 1108; and in 2015, we reviewed 803 warrants.

The trial attorneys in the criminal division also tried 26 cases from January 1, 2020 through March 18, 2020 when the system was shut down. The courts were able to outfit two courtrooms with Plexiglass to allow jury trials to resume in mid-September of 2020, which allowed another six cases to be tried. Prior to the pandemic, we tried 77 jury trials in 2019, 106 in 2018; 85 in 2017; 86 in 2016; and 67 in 2015.

Finally, our staff gathers restitution information from victims who have suffered monetary loss as a result of the crimes committed against them. In 2020, in adult criminal cases, district judges ordered defendants to pay \$2,595,968.74 back to victims as a condition of probation or parole/post-release. In 2019, the number was \$2,517,197.58.

DATA MANAGEMENT/ DISCOVERY

Prosecutors are required to provide the defense with full “discovery” in each case we file: i.e., the reports, transcripts, audio files, videos (typically, of interviews as well as commercial and private surveillance footage) as well as body camera video. In 2020, the staff in our discovery unit responded to 3,306 original and 3,593 supplemental requests for discovery from defense counsel for a total of 6,899. That compares to totals of 10,016 in 2019, 9,564 in 2018, 8,430 in 2017; 7,541 in 2016; and 6,489 in 2015.

In 2020, those requests for discovery led us to provide defense counsel with 695,052 pages of discovery; 101,116 videos; another 40,173 body camera videos; 83,766 audio files; and 235,840 photos for a total of 14.91859 terabytes of information (not including body camera video, as that is processed outside the office). In 2019, those numbers were 882,903 pages of discovery; 32,371 videos; another 39,175 body camera videos; 61,189 audio files; and 208,287 photos for a total of 9.89 terabytes of information; and in 2018, 677,805 pages of discovery; 38,657 videos; another 32,933 body camera videos; 56,341 audio files; and 199,851 photos. In 2017, those numbers were: 572,623 pages of discovery; 30,217 videos; 30,610 body camera videos; 35,121 audio files; and 209,247 photos.



Traffic Court outside the County Courthouse, June 15, 2020

With the proliferation of video recorded by law enforcement officers’ body-worn cameras, we worked with the police department and defense counsel to find a system that effectively and efficiently provides access to the videos utilizing the vendor’s platform. As set forth above, 40,173 Axon (body worn camera) videos were made accessible to the defense counsel in 2020, up from 39,175 in 2019; 32,933 in 2018, 30,610 in 2017 and 16,485 in 2016.

The attorneys in our office are in court every day. In the criminal department alone, preliminary hearings, probation violation hearings and sentencing hearings are held in multiple courtrooms throughout each day. These

are in addition to jury trials that occur each week and may last anywhere from a few days to a week or more. Our attorneys also cover a multitude of dockets related to child in need of care proceedings, juvenile offender, traffic, and care and treatment as well as appellate responsibilities.

To ensure our attorneys go to court prepared for each of these hearings, our staff drafts charging documents; drafts, issues and sometimes personally serves subpoenas; drafts motions; file documents; makes contact with victims and witnesses to advise them of hearings; makes travel arrangements for out-of-town witnesses; gathers and disseminates discovery; gathers restitution paperwork; prepares exhibits for court; examines phone records including cell tower information and call-log information; and prepares journal entries to memorialize what occurred in court.

CRIMINAL COURT HEARINGS

In 2009, there were 8,283 preliminary hearings set in Sedgwick County. In 2020, the number had risen to 16,123, up from 16,017 in 2019, up from 13,261 in 2018; 12,874 in 2017; and 11,255 in 2016. That is not to say that each setting led to an actual contested hearing, but each of the 16,123 settings required the attention of our staff.

In 2020, we had 32,503 *settings* for preliminary hearings, arraignments, bench trials, jury trials, sentencings and probation violations in the criminal department, down

slightly from 33,720 in 2019, and 33,287 in 2018. Again, not every setting leads to an appearance in court—continuances do play a significant role—but each hearing does require the attention of staff and at least one attorney to ensure this office is prepared.

CHARGING UNIT

Before a case is charged in District Court, an attorney must review the case to ensure the case is supported by admissible evidence sufficient to establish all the elements of the charged crime beyond a reasonable doubt. Three attorneys reviewed cases full time and a fourth attorney split time between the charging unit and drug court. In 2020, these attorneys reviewed 6,881 adult criminal cases and charged 2,588. All told, in 2020 they reviewed 7,992 cases for charging considerations despite the shutdown. The unit reviewed 9,500 cases total in 2019 and 9,300 in 2018.

Each day, the attorneys in this unit review from the “hold for state warrant” arrests from the night before. In 2020, the attorneys reviewed 5,301 cases, compared to 5,560 in 2019, 4,953 in 2018 and 4,283 in 2016.

Under Kansas law, a number of years after a person completes their term of supervision (probation or parole), they can apply for *expungement*, which allows the applicant to have a conviction removed from their record. The charging unit approved 237 expungements in 2020; 274 in 2019; 241 in 2018.

One attorney from the unit handled the drug court responsibilities as well, attending hearings all day each Thursday and again Friday mornings. This attorney also handled the IAD cases (the “initial assessment docket”) which are low level cases targeted for plea negotiations at the point the case is filed. Since the IAD program was implemented in 2013, 1,976 cases have been resolved by plea off of that docket.

Members of the charging unit also serve as an adjunct professor at WSU; as a judge of Ford’s Oratory Competition at a local high school; coach youth volleyball; organize a team in the Walk MS fundraiser each year; and sit on a board that manages scholastic scholarships for deserving kids.

ECONOMIC CRIMES UNIT AND CONSUMER PROTECTION UNIT

The creation of the Economic Crimes Unit in 2013 solidified our renewed commitment to victims of property crimes. In 2020, \$206,620.94 in cash and property was returned directly to victims of crime at or before the time of plea; up from \$199,017.34 in 2019. Examples include more than \$75,000 by the bookkeeper of a local church; a man operating a golf cart while inebriated paid more than \$50,000 in medical bills for a

pedestrian that he backed over at a golf tournament; \$10,000 returned to the victim of a phone scam that targeted a local nonprofit medical clinic; a financial advisor who paid \$6,000 to an elderly investor (and still went to prison); and \$1,600 for a small business on a bad check case.

Since 2013, \$1,542,065.04 has now been returned in direct payments to victims. The four attorneys in this unit also tried 10 jury trials in 2020. Members of the unit also volunteer at their respective churches; engage in wood-working projects; and speak to civic groups.

The Consumer Protection Division, which consists of one attorney, four part-time investigators and one staff member obtained 18 separate civil judgements in 2020--up from 14 in 2019--wherein the Defendants were ordered to pay fees and fines as well as restitution for violations of the Kansas Consumer Protection Act (KCPA). The unit processed 436 complaints by local consumers, an increase of 30.53% from 2019. 79% of completed investigations resulted in a favorable or voluntary disposition including 15 settled civil actions, three default judgments and one successful verdict at trial.

In 2020, this division was responsible for obtaining restitution orders and/or refunds to consumers totaling \$179,056.42; \$ 130,384.05 in 2019; \$109,918.17 in 2018; \$88,007.14 in 2017; and \$70,706.98 in 2016.

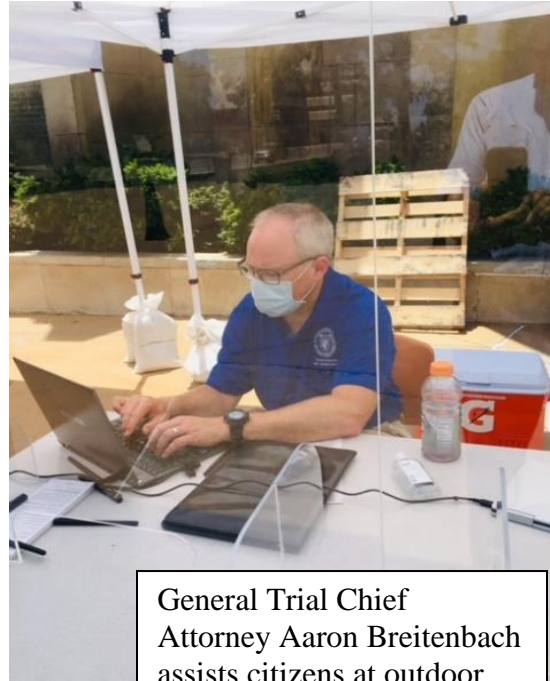
The unit investigates about 150 cases a year, filters hundreds of additional complaints, advertisements, and reported scams, and continues to issue regular fraud warnings throughout the year, both through the media and by way of public speaking appearances throughout Sedgwick County.

GANG UNIT

The attorneys in the gang and violent crimes unit tried four jury trials before the pandemic shut down in 2020. Of those, three were homicides. In addition, the attorneys in that unit handled numerous cases involving shootings and cases where a gun was used to commit the offense such as aggravated robberies, aggravated assaults, and criminal discharge of a firearm.

In addition, the unit continues to actively participate in the Project Safe Neighborhoods initiative in cooperation with the Wichita Police Department, Garden City Police Department, US Attorney's Office, ATF and FBI. As part of that initiative, an attorney from this unit attends weekly meetings with the Wichita Crime Gun Intelligence

Center to review firearm-related leads generated using the National Integrated Ballistic Information Network (NIBIN) technology. NIBIN leads are generated when law enforcement agencies collect firearms evidence from one scene and connect that evidence to firearms evidence collected from another scene. From the leads generated in 2020, the District Attorney's Office filed 45 cases that had a NIBIN lead generated.



General Trial Chief
Attorney Aaron Breitenbach
assists citizens at outdoor
Traffic Court, June 15, 2020

DV/SEX CRIMES UNIT

The five attorneys in the domestic violence/sex crimes Unit tried 12 jury trials in 2020, despite the shutdown. The Sedgwick County Child Advocacy Center recognized Alice Osburn, the Chief of this Unit and Margaret McIntire, the Chief of the charging unit, for their work in the State v. Tonesmeyer child-sex case.

Each attorney in the unit handles a high volume of rapes, child abuse cases—physical and sexual—human trafficking cases and, consistent with what jurisdictions around the country experienced during the pandemic, a high volume of domestic violence cases.

In addition to the taxing work inherent in these difficult cases, the members of the unit worked with Catholic Charities Harbor House (domestic violence shelter); served on the board of directors at the Wichita Area Sexual Assault Center (WASAC); the board of directors of the Kansas Attorney General's Human Trafficking Advisory Board and Batterer's Intervention Program Board; the board of directors at Step Stone (a domestic violence service provider); the Board of Trustees at the Independent School; served on the Wichita Bar Association's Criminal Practice Committee; trained the Kansas Highway Patrol's recruit class on Human Trafficking; trained on the subject of domestic violence at the National Advocacy Center in South Carolina; and have regularly spoken at various public events.

GENERAL TRIAL UNITS

The 14 attorneys who worked in one of the two general trial units during 2020 handled cases ranging from first degree murder to DUI, along with a high volume of gun, drug, person felony and property crimes. Several attorneys in these units with prior experience as sex crimes/DV prosecutors also take on domestic violence and sex crimes cases as well.

The attorneys in these two units serve on the criminal law committee for the Wichita Bar Association; chair of the mentoring committee; teach criminal law at a local university; have volunteered to judge high school regional mock trials; and have spoken to various civic groups; and serve as a Scoutmaster with the Boy Scouts.

The attorneys in this unit also serve on the Best Practices Committee (which promulgates best practices model policies and protocol) for the Kansas County and District Attorney's Association; conduct training for various law enforcement agencies, for 911 operators/call takers, for sexual assault nurse examiners and on behalf of the "Childfirst" child abuse training. Additionally, Aaron Breitenbach, the Chief attorney of one of the two units served as Vice President of the Wichita Bar Association in 2020.

TRAFFIC UNIT

20,505 traffic cases were filed in 2020 in Sedgwick County, compared to 25,424 in 2019; 20,727 in 2018; and 17,616 in 2017. Many people pay their tickets, but the remaining cases kept the three attorneys and 1 1/2 staff members assigned full-time to the traffic unit very busy. In 2020, our one traffic diversion coordinator handled 1,436 traffic cases placed into traffic diversion, compared to 2,055 in 2019 and 1,373 in 2018. Those placed on diversion in 2020 paid \$157,080.00 in court costs.

PROBATE/ CARE & TREATMENT

We have two attorneys who share the responsibility of handling "care and treatment" cases (involuntary mental commitments for those deemed to be a threat to themselves or others by reason of mental illness) in addition to their full time responsibility with the child in need of care unit. In 2020, the office handled 449 care and treatment cases, compared to 500 in 2019; 687 in 2018 and 662 in 2017. These cases take place in the Probate Department.

CHILD IN NEED OF CARE

Each year, the five attorneys and multiple staff members in the child in need of care (CINC) unit handle some of the most taxing and emotionally draining cases in the judicial system, bringing cases on behalf of children who have been sexually or physically abused or neglected. Attention must be paid to each child's case to ensure the best possible outcome, which requires multiple hearings per case. In 2020, the unit filed cases involving 450 children in Sedgwick County. By comparison, in 2019, the unit filed 650 cases; 590 in 2018; 578 in 2017; and 500 children in 2016.

In 2020, the five attorneys in the CINC unit handled 2,083 hearings in court despite the shutdown.

In addition, the attorneys in this unit are involved with their kids' Boy Scout and Girl Scout troops; serve on boards including the Wichita Coalition for Child Abuse Prevention; the Judicial Council CINC Committee; coach their kids' ball teams; and are involved in their respective churches.

JUVENILE OFFENDER

The juvenile offender unit handled 598 juvenile offender cases in 2020. In addition, the attorneys in the juvenile offender unit hold positions with the Kansas Judicial Council's Advisory Committee on Sex Offenses and Registration; the Juvenile Justice Intervention Board and the Sedgwick County Child Abduction Response team. These attorneys train law enforcement on juvenile-specific law; coach kids' cross country, basketball, track and rec. leagues; and are active in local animal rescue. One attorney is a Major in the Air Force Reserve, having served in two military branches for nearly 30 years, currently as a Deputy Staff Judge Advocate.

In an effort to steer kids back out of the criminal justice system, our juvenile department accepted 156 juvenile offenders into diversion in 2020. In 2019, the number was 185; 222 in 2018; 236 in 2017; 291 in 2016; 298 in 2015; 260 in 2014 and 289 in 2013. The Truancy program was also re-established for the 2019-2020 academic year. We started by notifying all Sedgwick County (and surrounding area) schools of the restart and supplied updated forms and reporting/program guidelines. We received approximately 2,000 referrals (1,600 from USD 259). We responded in some way to each referral, with the majority receiving written communication. We placed

approximately 98 kids on either a formal or informal contract for supervision and received positive feedback from the schools and district offices. The staff of our juvenile diversion unit also conducts biannual food drives to benefit the food bank and the “Partners Filling the Gap” lunch program.

APPELLATE UNIT & POST-CONVICTION UNIT

In 2020, the five attorneys in our Appellate Division filed 193 briefs for the state; 110 motions, orders and responses and conducted 25 oral arguments before the Kansas Court of Appeals or Kansas Supreme Court. In over 87% of the cases handled by this unit, the state was successful in whole or in part.

By comparison, in 2019, the unit filed 229 briefs, 132 motions, orders and responses and conducted 33 oral arguments before the Kansas Court of Appeals or Kansas Supreme Court. In 2018, the unit filed 219 briefs; 155 motions, orders and responses and conducted 39 oral arguments. In 2017, the unit filed 286 briefs, 113 motions, orders and responses, and again conducted 39 oral arguments.

Our appellate attorneys serve the community as coaches for League 42 (a little-league baseball league for underserved youth); serve on the Community Leadership Council for the Kansas Children’s Service league; as an Advisor for Community Projects with Junior League; volunteer with Girl Scouts; raise money for Partners For Wichita, participate in Meals On Wheels, volunteer with the Wichita Children’s Home – Opportunity Zone, raise money for the Ronald McDonald House Charities Red Shoe Society, KS K-9 Rescue, serve as the Wichita Collegiate School alumni board president, and are active in their churches. The quality of the attorneys in the appellate unit was recently highlighted by the nomination by the Governor and approval by the Kansas Senate of Lesley Isherwood to the bench of the Kansas Court of Appeals.

At the District Court (local) level, two attorneys contributed to post-conviction matters like motions filed pursuant to KSA 60-1507, which is when a defendant's pleading alleges ineffective assistance of counsel. There are a myriad of other motions filed in this context. In 2020 the unit filed 28 KSA 60-1507 responses, as well as 116 responses to other types of pro se motions. The attorneys in this unit also serve the community in a

number of ways outside of the office, including volunteering at an organization to create safe and inclusive schools in our community.

INVESTIGATIONS UNIT

In 2020, the seven members of Investigations Unit assisted outside agencies in 58 criminal investigations, with emphasis on cell phone tracking/assessment and financial investigations with significant loss. The unit also conducted 138 consumer protection investigations and served 303 subpoenas. The unit also opened 183 inquisitions in 2020, which are proceedings under Kansas law to allow for pre-charging investigations sworn to before a judge to authorize



Marc Bennett at joint news conference with Sheriff Jeff Easter, May 29, 2020

subpoena power. The unit was utilized to conduct independent investigations involving a city council member, a county commissioner, and a state representative.

CASES PROSECUTED BY THE DISTRICT ATTORNEY

Between the 1st of January, 2020 and the COVID-19 shutdown in mid-March, I was one of two attorneys who successfully tried a woman for the first-degree, decapitation murder of Micki Davis. I was also one of the attorneys who tried a man for the murder of Christopher Coley. A mistrial was declared before deliberations could occur when one juror recognized a family member of the defendant, but the defendant later pled in early 2021 and was sentenced to more than 20 years in prison.

As promised during my election campaign in 2012, I have stayed active in the courtroom, having now successfully tried 13 separate cases to jury since being sworn-in and personally handled dozens more cases that resulted in guilty pleas.

CONCLUSION AND FUTURE GOALS

In addition to the many responsibilities set forth above, the members of this office successfully handled multiple high profile cases that affected the community including the prosecution of a record number of homicides committed in Wichita in 2020, cases involving public employees, including two deputies with the Sheriff's Department who took items from the property and evidence section, as well as the Mayor of Goddard charged with counterfeiting.

In the coming year, the office will continue to seek justice despite the challenges of working in a system impacted by COVID.

The state's court system continues to roll out an entirely new records management system for the collection and storage of all data flowing through the courts statewide. Our office has been actively engaged with the Office of Judicial Administration in Topeka to identify issues to ensure we are able to interact with the system and maintain long-standing efficiencies.

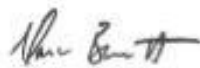
We are still getting used to the de-centralization of our dockets from the way they had been run since the 1960s, to the new silo/vertical approach implemented in 2018.

Finally, the board of county commissioners has recognized the need to expand the downtown office space for the office. In April of 2021, we began expanding into two new areas within the courthouse. In short, the challenges will be many in the next 12 to 18 months.

As always, running one of the busiest offices in the state is a daily challenge. I am proud of the excellent team of lawyers and staff who work diligently to seek justice on behalf of Sedgwick County residents. 2020 was a challenge, but the citizens of this county would be proud of the work accomplished this past year.

Thank you again for this opportunity.

Sincerely,



Marc Bennett
District Attorney