



## Ten Things from the 2023 Kansas Legislative Session Every Law Enforcement Officer Should Know

Updated statutes are available on or after the effective date of the amendments at either <http://kansasleo.com/statutes.htm> or <http://www.kscoplaw.com/thelawpage.htm>.

Statutes on the state website are not updated until sometime in the fall when the amended statutes are officially published.

### 1. Child Abuse and Neglect Investigations

New law creates a CARE (Child Abuse Review and Evaluation) referral process. This referral process is described as “a brief written review of allegations of physical abuse, emotional abuse, medical neglect or physical neglect submitted by the secretary or law enforcement agency to a child abuse medical resource center for a recommendation of such child's need for medical care that may include a CARE exam.”

This is accomplished through CARE providers identified by KDHE. The purpose of this is to assure the case is reviewed by medical personnel trained in child abuse and child neglect related examinations. The new law requires the reports on any investigation of child physical abuse or physical neglect where the alleged victim is age 5 or under the case must be referred to a CARE specialist for review. When an alleged victim of child abuse or child neglect is over age 5, the referral is optional. The details of how the referral will be made by law enforcement is not finalized, but it will likely be that law enforcement would provide the information to DCF who would then make the referral to a CARE specialist. More information will be provided as the process is finalized.

[HB2024 \(2023 SL Ch 70\) §1, 5, 6](#), New Statute; KSA 38-2202; 38-2226. [Bill Summary](#). Eff. 5/4/23.

### 2. Interference with Law Enforcement

The statute on Interference with Law Enforcement is amended to create a higher penalty for fleeing from an officer other than by operating a motor vehicle. This change was made to address the higher risk to the public, to the officer, and to the offender when fleeing from officers on foot. The language would include other sorts of fleeing such as on a bicycle or other device. The sentencing enhancement requires two things to occur: 1) the officer must have reason to detain the offender as provided in KSA 22-2402 (reasonable belief the person is committing, has committed or is about to commit a crime); and 2) the officer gives the person visual or audible signal to stop.

The penalty increase is when the person is fleeing from a circumstance involving a felony. It raises the penalty from a SL9 nonperson felony to a SL 7 nonperson felony. It is a SL5 nonperson felony if the person discharges or uses as firearm while fleeing. There is no change in the penalty if the person is fleeing from a circumstance involving a misdemeanor crime or civil case.

[SB174 \(2023 SL Ch 94\) §5](#), KSA 21-5904 [Bill Summary](#). Effective 7/1/23.

### 3. Burglary

The burglary statute is amended by adding “domestic battery” and “violation of a protection order” to the list of intended crimes within the protected structure or vehicle. It covers “protection orders” of all types but does not include “restraining orders.” There is no change to the other elements of the crime and no changes to sentencing.

[SB174 \(2023 SL Ch 94\) §4](#), KSA 21-5807 [Bill Summary](#). Effective 7/1/23.

#### 4. **Criminal Discharge of a Firearm**

The crime of criminal discharge of a firearm is amended to include when the firearm is discharged at a vehicle in which there is a person present regardless of whether the person discharging the firearm knows or has reason to know that there is a human being present.

A special sentencing rule is created for convictions of criminal discharge of a firearm involving the reckless and unauthorized discharge of a firearm at a dwelling, building, structure, or motor vehicle. Application of the special rule requires a finding by the trier of fact that the offender knew or reasonably should have known a person was present at the locations listed above.

When the person present is 14 years of age or older, the length of sentence is as provided on the sentencing grid plus 60 months. When the person present is less than 14 years of age, the sentence is as provided on the sentencing grid plus 120 months. The sentence must be served consecutive to any other sentence and must be presumed imprisonment regardless of where the sentence falls on the sentencing grid.

[HB2010 \(2023 SL Ch 93\)](#) §2 and 3, KSA 21-6308; 21-6804(aa). [Bill Summary](#). Effective 7/1/23.

#### 5. **Felon in Possession of a Firearm**

A special sentencing rule is created for convictions of felon in possession of a firearm when 1) The conviction of the felony leading to the prohibition to possess the firearm was as not a juvenile adjudication; 2) The weapon the offender possessed during such violation was a firearm; and 3) such firearm was used by the offender during the commission of any violent felony. In such cases, the sentence for felon in possession of a firearm must be served consecutive for any other sentence and must be presumed imprisonment regardless of where the sentence falls on the sentencing grid.

For the purposes of this provision, violent felony is defined as: Capital murder or first- or second-degree murder; voluntary manslaughter; kidnapping, when the crime involves holding a person for ransom or as a shield or hostage, or aggravated kidnapping; Aggravated assault, when committed with a deadly weapon, or aggravated assault of a law enforcement officer, when committed with a deadly weapon; aggravated battery, when the conduct causes great bodily harm or disfigurement, or when the conduct causes bodily harm that could cause great bodily harm, disfigurement or death or aggravated battery against a law enforcement officer, unless the conduct involves bodily harm caused with a motor vehicle; mistreatment of a dependent adult or mistreatment of an elder person, when the conduct involves infliction of physical injury or unreasonable confinement or punishment; rape; aggravated criminal sodomy; abuse of a child, unless the acts constituting the crime are committed recklessly; any felony offense under statutes prohibiting the unlawful manufacturing, cultivation, or distribution of controlled substances; treason; criminal discharge of a firearm in the presence of another human being; fleeing or attempting to elude a police officer; any felony that includes the domestic violence designation, as determined by the trier of fact.

[HB2010 \(2023 SL Ch 93\)](#) §3, KSA 21-6804(z). [Bill Summary](#). Effective 7/1/23.

#### 6. **Jail Pre-Booking Medical Screening Standards**

Jails are still required to accept prisoners for arrests by municipal agencies as provided in the unamended subsection (a)(1). However, there are now statutory exceptions requiring medical screening when certain medical conditions are present. These include:

Unconsciousness any time during or after the incident leading to the arrest; serious illness (as defined in the statute); serious injury (as defined in the statute); seriously impaired by alcohol (as defined in the statute).

Serious illness: This includes, but is not limited to: (A) Any illness or ailment resulting in loss of consciousness or responsiveness or affecting a person's level of consciousness to a degree immediate intervention is prudent; (B) a body temperature in excess of 101° F; (C) acute or chronic blood loss indicative of underlying illness; or (D) pain to a degree it affects the person's ability to function.

Serious injury: This includes any injury with a substantial risk of death or resulting in: (A) Loss of orientation, loss of full movement of a limb or complaint of neck or spinal pain with an onset related to the incident leading to or during the person's custody; (B) a reasonable belief a bone fracture may exist; (C) laceration with an appearance it needs sutures; (D) loss or serious impairment of vision with an onset during or subsequent to the events leading to the arrest; (E) loss or fracture of any teeth with an onset during or subsequent to the events leading to the arrest; or (F) any similar condition reasonably indicating immediate assessment by a medical care provider is prudent.

Seriously impaired by alcohol or drugs or combination thereof: This includes the loss of consciousness, inability to stand without assistance or inability to move from one location to another without assistance reasonably believed to be induced by the consumption of alcohol, a controlled substance as defined in chapter 65 of the statutes, a drug other than a controlled substance or a combination of alcohol, controlled substances or drugs.

The responsibility for custody during the screening is with the arresting agency.

The cost of the screening lies first with the person in custody or their insurance, then by the arresting agency as provided in KSA 19-4444 (allows cost recovery from prisoner in certain cases) and 22-4612 (provides for charges to arresting agency to be paid at Medicaid rates and prohibits releasing the person just to shift the cost responsibility).

None of this rules out consideration at time of arrest of the cost versus public safety benefit of making the arrest at that time or seek a warrant to make the arrest after the medical crisis has passed. However, we cannot overlook those few provisions in law mandating an immediate physical arrest, such as domestic violence.

[SB228 \(2023 SL Ch 83\) §12](#) KSA 19-1930. [Bill Summary](#). Effective 7/1/23.

## **7. Electronic Tracking Devices to Violate Stalking Crimes or Protection/Restraining Orders**

The stalking statute is amended by adding the “utilizing any electronic tracking system or acquiring tracking information to determine the targeted person's location, movement or travel patterns” by the offender to the list of acts that can be used to show a “course of conduct.”

There is no change to the penalties or the core elements of the crime.

[SB217 \(2023 SL Ch 78\) §1](#), KSA 21-5427. [Bill Summary](#). Effective 7/1/23.

Statutes providing for protection or restraining orders were amended to make it clear the use of an electronic tracking system or tracking information to determine the protected person's location, movement or travel patterns of a protected person is a violation of the order.

Penalties for violations are not changed. The term “electronic tracking system” is intended to encompass all devices that provide tracking data including cell phones, air tags or similar

devices, or any other device designed to provide location data. The phrase “acquiring tracking information” is included to cover a person who gets someone else to actually gather the data then provide it to them.

[SB217 \(2023 SL Ch 78\) §2-8](#), KSA 23-2224; 23-2707; 38-2243; 38-2244; 38-2255; 60-3107; 60-31a06. [Bill Summary](#). Effective 7/1/23.

#### 8. **Drug Test Strips**

The definition of “drug paraphernalia” is amended to specifically exclude “any material used or intended for use to test a substance for the presence of fentanyl, a fentanyl analog, ketamine, or gamma hydroxybutyric acid.” Ketamine and gamma hydroxybutyric acid are common date rape drugs.

[SB174 \(2023 SL Ch 94\) §2](#), KSA 21-5413 [Bill Summary](#). Effective 7/1/23.

#### 9. **Human Smuggling**

A new crime of human smuggling is defined as “intentionally transporting, harboring or concealing an individual into or within Kansas when the person: (A) Knows, or should have known, that the individual is entering into or remaining in the United States illegally; (B) benefits financially or receives anything of value; and (C) knows, or should have known, that the individual being smuggled is likely to be exploited for the financial gain of another.”

Aggravated human smuggling is defined as “human smuggling that: (A) Is committed using a deadly weapon or by threat of use of a deadly weapon; (B) causes bodily harm, great bodily harm or disfigurement to the individual being smuggled; or (C) causes the individual being smuggled to become a victim of a sex offense described in article 55 of chapter 21 of the Kansas Statutes, or human trafficking as defined in K.S.A. 21-5426, or causes the person to commit selling sexual relations as defined in K.S.A. 21-6419.”

Human smuggling is a SL5 person felony. Aggravated human smuggling is a SL3 person felony. [HB2350 \(2023 SL Ch 89\)](#), New statute [Bill Summary](#). Effective 7/1/23.

#### 10. **Child Sexual Assault Statute of Limitations**

The statute of limitations is removed for criminal charges related to childhood sexual abuse.

For criminal prosecution, “Childhood Sexual Abuse” is defined as any of the following crimes committed against a person who is under the age of 18 at the time of the offense: KSA 21-5506 (indecent liberties with a child); KSA 21-21-5504(a)(3) or (4) (criminal sodomy). KSA 21-3509 (enticement of a child); KSA 21-5508 (indecent solicitation of a child); KSA 21-5510 (sexual exploitation of a child); KSA 21-5505(b) (aggravated sexual battery); KSA 21-5604(b) (aggravated incest); KSA 21-5426(b) (aggravated human trafficking, if committed for the purpose of sexual gratification of the another); KSA 21-5514 (internet trading in child pornography); or KSA 21-6422 (commercial sexual exploitation of a child). Prior statutes on those crimes also apply.

[HB2127 \(2023 SL Ch 28\) §2](#), KSA 21-5107. [Bill Summary](#). Effective 7/1/23.