

2022 Legislative Session Major Law Changes

(All laws are effective July 1, 2022, unless indicated otherwise)

<p>Appearance Bonds, Waiver of Forfeiture Effective 7/1/22 <u>HB2508 §4</u></p>	<p>Sheriffs are required to enter all felony failure to appear warrants into NCIC unless the warrant is served within 14 days of issuance of the warrant. The court must be notified if that is not done. Forfeiture of the bond will be set aside if: 1) The NCIC entry is not done; 2) the court fails to issue a warrant within 14 days of the forfeiture; 3) the person is in custody somewhere in the US at the time of forfeiture; or 4) the defendant is arrested outside the state and extradition is not sought. Existing law is unchanged allowing the court to require the surety to pay the cost of transporting the defendant back to the county.</p>
<p>ATM Machines: Theft and Criminal Damage Effective 7/1/22 <u>HB2492 §1</u> <u>SB483 §2</u></p>	<p>The theft statute, KSA 21-5801, was amended to provide the theft loss value includes the cost of restoring the site of a “remote service unit” (basically an ATM) to its condition prior to the theft. This is similar to the rule for theft loss calculations for the theft of scrap metal.</p> <p>The aggravated criminal damage to property statute, KSA 21-5813, is amended to include damage in excess of \$5,000 to a “remote service unit” with intent to obtain the cash from the machine. Again, similar to the scrap metal provisions.</p>
<p>Burglary Effective 7/1/22 <u>SB408 §2</u></p>	<p>The burglary statute was amended to clarify that even if the perpetrator enters a “structure” <u>with</u> authorization, if they enter into a secure portion of that structure <u>without</u> authority with intent to commit a theft, felony, or sexually motivated crime it is a burglary. Past court rulings have interpreted the law as requiring the entry into the <u>structure</u> had to be without authority, with the exception they created in case law for the portions of structure leased or rented by a person or entity other than the building owner. For example, a person entering a mall with authority but breaking into a closed business within the mall was a burglary. But a person entering an area of a church with authority then forcing entry to a locked room to commit a theft was not.</p>
<p>Child Abuse Effective 7/1/22 <u>HB2508 §2</u></p>	<p>The bill amends the elements of the crime of abuse of a child to include any of the following acts against a child under 18 years of age: 1) Knowingly torturing, cruelly beating, cruelly striking, or cruelly kicking (a severity level 5 person felony if the child is at least 6 years of age but less than 18 years of age and a severity level 3 person felony if the child is under 6 years of age); 2) Knowingly inflicting cruel and inhuman corporal punishment or knowingly using cruel and inhuman physical restraint, including caging or confining the child in a space not designated for human habitation or binding the child in a way that is not medically necessary (a severity level 5 person felony if the child is at least 6 years of age but less than 18 years of age and a severity level 3 person felony if the child is under 6 years of age); 3) Recklessly causing great bodily harm, abusive head trauma, permanent disability, or disfigurement (a severity level 4 person felony); 4) Knowingly causing great bodily harm, abusive head trauma, permanent disability, or disfigurement (a severity level 3 person felony); Knowingly inflicting cruel and inhuman corporal punishment with a deadly weapon (a severity level 3 person felony); or 5) Knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck, or chest of the child or by blocking the nose or mouth of the child in a manner whereby death or great bodily harm may be inflicted (a severity level 3 person felony).</p>

<p>Child Abuse and Neglect Investigations: Sharing on information by DCF</p> <p>Effective 7/1/22</p> <p>HB2299 §5-7</p>	<p>The statutes on sharing information between law enforcement and DCF during investigations of child abuse or neglect crimes are clarified to include all records that DCF maintains. The key amendment is in KSA 38-2212, adding a new subsection (e) placing the statutory rules for DCF sharing information with law enforcement in one place. That new section states:</p> <p><i>(e) Law enforcement access. The secretary shall disclose confidential agency records of a child alleged or adjudicated to be a child in need of care, as described in K.S.A. 38-2209, and amendments thereto, to the law enforcement agency investigating the alleged or substantiated report or investigation of abuse or neglect, regardless of the disposition of such report or investigation. Such records shall include, but not be limited to, any information regarding such report or investigation, records of past reports or investigations concerning such child and such child's siblings and the perpetrator or alleged perpetrator and the name and contact information of the reporter or persons alleging abuse or neglect and case managers, investigators or contracting agency employees assigned to or investigating such report. Such records shall only be used for the purposes of investigating the alleged or substantiated report or investigation of abuse or neglect.</i></p> <p>The intent is to stop DCF from sending redacted reports to law enforcement and to assure law enforcement is supplied with all relative information in any case under investigation alleging child abuse or neglect. To further clarify this, amendments were made in KSA 38-2210 and 38-2211 referencing the new subsection and specifically adding “an investigating law enforcement agency” to the various lists of who can access different types of DCF information.</p>
<p>Competency</p> <p>Effective 7/1/22</p> <p>HB2508 §6-11</p>	<p>The competency laws are amended to allow a court to order evaluation or treatment for competency at any appropriate state, county, or private institution or facility. It defines “appropriate state, county, or private institution or facility” (appropriate facility) to mean a facility with sufficient resources, staffing, and space to conduct the evaluation or restoration treatment of the defendant. The bill clarifies the evaluation or treatment is not performed <u>by</u> the jail but may be performed <u>at</u> a jail only if the administrative head or law enforcement official in charge of the jail or correctional facility agrees and the facility has the appropriate physical and care capabilities for such evaluation and treatment. It further clarifies the services are provided by: 1) The state security hospital or its agent or a state hospital or its agent; 2) A qualified mental health professional, as defined in the Care and Treatment Act for Mentally Ill Persons, who is qualified by training and expertise to conduct competency restoration treatment; 3) An individual who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the Behavioral Sciences Regulatory Board; or 4) A physician who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the State Board of Healing Arts.</p> <p>Forced medication cannot be performed at a jail unless the administrative head or law enforcement official in charge of the jail or correctional facility agrees and the facility has the appropriate physical and care capabilities.</p>

<p>Driver's License, Age Restriction Effective 7/1/22 <u>SB446 §1</u></p>	<p>A 15 year old with an age restricted driver's license may drive on a direct route to and from a religious activity held by a religious organization between 6 AM and 9 PM.</p>
<p>DUI Effective 7/1/22 <u>HB2377 §5-16 & 18-19</u> <u>HB2492 §2</u></p>	<p>Significant amendments are made to the DUI laws, most are procedural affecting administrative, reporting, and sentencing requirements. 3rd offense DUI and 4th or subsequent DUI is moved from a non-grid felony to an on-grid SL6 nonperson felony. Time served for felony DUI, except minimum sentences prior to probation, work-release, or house arrest, are transferred from the county jail to DOC.</p>
<p>Immigration: Prohibiting Sanctuary Cities or Counties Effective 7/1/22 <u>HB2717</u></p>	<p>No city or county can prohibit or restrict a law enforcement officer, local official or local government employee, from taking the following actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual: (1) Communicate or cooperate with federal officials; (2) send or receive information with the United States Department of Homeland Security; (3) obtain or maintain information; or (4) exchange information with another federal, state, or local government entity. Or to limit enforcement of federal immigration laws.</p> <p>Municipal identification cards must have "Not valid for state ID" printed on their face. It adds municipal identification cards to the crime of unlawful use of an identification card, KSA 8-1327.</p> <p>Clarifies existing bias based policing laws are applicable to enforcement of federal immigration law and communications with federal agencies.</p>
<p>Law Enforcement Jurisdiction Effective 7/1/22 <u>HB2299 §3 & 8</u></p>	<p>KSA 22-2401a, the law on law enforcement jurisdiction, generally has three situations where local law enforcement is allowed jurisdiction (or authority to exercise the powers of a law enforcement officers). However, those three situations were not evenly applied to each of the law enforcement agency types. To fix this, those terms were removed from each of the specific agency provisions and placed in subsection (h) (1) through (3) so they apply equally to all types of agencies. Those are 1) assisting another law enforcement agency on request; 2) in fresh pursuit; and 3) when transporting persons in custody.</p> <p>In addition to those situations, the bill adds a provision to cover an officer who is outside their jurisdiction investigating a crime occurring in their jurisdiction. In this situation the officer must notify the agency with jurisdiction of the location the investigation will take place and coordinate with that agency. This notification is to support officer safety and safety of the person contacted.</p> <p>The bill also adds a provision to cover officers who are on-duty or travelling in a law enforcement vehicle and is either in uniform or otherwise properly identified as a law enforcement officer. It applies while going to or from work, or travelling for a law enforcement function and if the officer reasonably suspects a person is committing, has committed or is about to commit a crime and reasonably believes that a person is in imminent danger of death or bodily injury without immediate action. In acting under these conditions the officer is required to notify the agency with jurisdiction and remain at the location until officers with jurisdiction arrives. Any agency can impose further restrictions on their own officers by written policy.</p>

<p>License Plate Readers: Open Records Exception</p> <p>Effective 7/1/22</p> <p>SB434</p>	<p>The Kansas Open Records Act is amended to exempt license plate reader data from release upon an open records request. It also exempts the location information about where license plate readers are deployed.</p> <p>This amendment is intended to address the concerns of KDOT and allow for agencies to enter into agreements with KDOT to place license plate readers on state or federal highways.</p>
<p>Property Disposition</p> <p>Effective 7/1/22</p> <p>SB367</p>	<p>The statute on disposition of seized property, KSA 22-2512 is amended to clean up several different issues in existing law.</p> <p>The requirement to report to the court what items were seized is clarified that such report only applies to seizure of property relevant to a search warrant. This has been the practice for years. It also clarifies that this report of seized property <u>may</u> be submitted to the court electronically in a form and manner approved by the court. The existing law to provide a receipt to a person any property is seized from (with or without a search warrant) remains in effect.</p> <p>A provision is added to allow law enforcement to handle evidence consisting of “dangerous drugs” the same as existing law provides for the handling of hazardous materials. This is intended to allow an agency to document the quantity of illegal drugs, retain a “representative sample” for testing, and destroy the remainder of the illegal drugs. This is aimed primarily at large quantity drug seizures, but it is not limited by any stated quantity. “Dangerous drugs” is defined as anything in the drug schedules in KSA 65-4105, 65-4107, 65-4109, and 65-4111. “Representative sample” is defined as an amount large enough to contain a testable amount of substance without destroying the sample completely.” <u>This should include enough for independent testing requested by the defendant if the court orders it.</u></p> <p>The bill also remedies a problem in existing law requiring weapons to be returned to the person from whom we seized it unless the weapon is stolen, in which case we release it to the owner. The bill adds an order of persons to release a weapon to: 1) the owner if we know who the owner is; 2) a parent or guardian if the weapon is taken from a juvenile; 3) the person who the weapon is seized from. If any of those are prohibited by law from possessing the weapon, the agency is required to notify them of the prohibition determination and to retain the weapon for a minimum of 60-days. This 60-day period allows them to file a court action to challenge the agency determination they are prohibited. If the person is prohibited, a provision is added to ensure compliance with US Supreme Court case law in <u>Henderson vs. US</u>, ruling that while a firearms owner may have their right to <u>possess</u> a firearm prohibited, they retain their <u>ownership</u> right of the weapon. This means we must assist them in exercising that ownership right by placing the weapon in a safe place to retain ownership while not possessing it, or for them to sell the firearm through a firearms dealer or other legitimate method. Law enforcement should not arbitrarily destroy or sell a weapon seized under these conditions without consent of the owner.</p>
<p>Search Warrants</p> <p>Effective 7/1/22</p> <p>HB2299 §4</p>	<p>The search warrant statute, KSA 22-2506, is amended to allow 240 hours (10 days) from the time the judge issues a search warrant for it to be served. This is consistent with the majority of states and with all of the surrounding states and all of the states in the 10th Circuit. The idea is to provide more time for law enforcement to find safer alternatives for service and minimize the need for no-knock entry.</p>

<p>Sexual Assault Kit Procedures</p> <p>Effective 7/1/22</p> <p>HB2228</p>	<p>New law was created to require every law enforcement agency to have a written policy in place by January 31, 2023, ensuring all sexual assault evidence kits are submitted to a forensic laboratory within 30 business days of collection and include a procedure to ensure the examination results are received by the investigating officer upon the completion of the examination. This is meant to be sure all sexual assault kits are submitted to the KBI, regardless of the investigator’s or prosecutor’s belief of necessity and to address a problem sometimes occurring in large agencies where the lab report is received and placed into a file without the knowledge of the investigator. The law requires each law enforcement agency to collaborate with the prosecutor in the development of policy. There is a model policy available at: https://www.kansas.gov/kbi/saki.shtml.</p> <p>The law also is changed to allow qualified medical personnel in a Child Advocacy Center or a facility licensed or operated by a physician, physician assistant, or registered nurse to conduct the exams. It also requires the sexual assault kit used is one supplied by or approved by the KBI.</p> <p>The unreported (anonymous) kits submitted directly to the KBI will be retained by the KBI for a minimum of 20 years.</p>
<p>Sexually Violent Predator Process</p> <p>Effective 7/1/22</p> <p>HB2607 §1-3</p>	<p>The process of determining of whether a sex offender is a sexually violent predator is amended. The amendments do not change the steps in the process, but moves the start of the process earlier while they are still in DOC. Currently that time frame for DOC to notify the Office of the Attorney General that the offender may meet the sexually violent predator criteria is 90 days prior to anticipated release. The amendments will move that to two years prior to anticipated release. This will allow much of the court process to take place while the offender is still in DOC. This will reduce, and in some cases eliminate, those offenders having lengthy stays in the county jail. The sheriff will still be responsible for transporting the offender from DOC to court hearings. This change is phased in over two years to allow DOC to make a more orderly transition.</p>
<p>Theft (Porch Piracy)</p> <p>Effective 7/1/22</p> <p>HB2492 §1</p>	<p>The theft statute is amended to make it a SL9 nonperson felony to steal packages from where they are delivered if there are three or more locations victimized by the thief within a 72 hours period and the value of each theft is less than \$1500.</p>
<p>Victim Support: Victim Compensation</p> <p>Effective 7/1/22</p> <p>HB2574 §5-7</p>	<p>The Victim Compensation allowed expenses statute, KSA 74-7301, was amended to increase the maximum amount of compensation for a funeral from \$5,000 to \$7,500; and for crime scene cleanup from \$1,000 to \$2,500. The clean up provision is also amended to include the cost of “materials that were removed because such materials were biohazardous or were damaged as part of evidence collection.”</p> <p>An amendment to the Victim Compensation for mental health counseling adds compensation to a victim testifying in a sexually violent predator commitment or a victim who is notified of that DNA testing has identified the offender.</p>