

Summary of 2008 Kansas Legislation Impacting Law Enforcement

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This document summarizes legislation impacting law enforcement passed by the 2008 legislature. Not all changes are listed. This document is intended to address the statute changes most relevant to law enforcement operations. **Always follow the guidance of your agency for application and implementation of these new and amended laws.** This document is not legal advice. It is a summary of the interpretation by the author who is not an attorney. **Questions should be addressed within your agency following your agency's protocol.**

MAJOR TRAINING ISSUES RESULTING FROM 2008 LEGISLATIVE ACTION:

- Federal Class III firearms regulations: We have never had to be concerned with this in the past because state law restricted ownership of class III weapons. These restrictions were removed this year. Training will be important so that officers recognize when persons possessing class III weapons are not following the law.
- Hiring and promotion processes for veteran preference.
- New DUI law provisions, especially as applicable to accident cases involving serious injury or death and procedures with medical personnel to draw samples.
- New requirements in SB414 relating the investigation and enforcement of stalking violations.

SUGGESTED ADMINISTRATIVE CONSIDERATIONS BASED ON 2008 LEGISLATIVE ACTION:

- Consider contacting your local school administration in regards to changes to the process for reporting and investigating school safety violations. See SB470 under "School Safety Violations" in the Law Enforcement Administration section.
- Issues regarding new DUI laws, including:
 - Agencies should clearly state how officers are expected to respond to medical staff refusing to draw the sample. For example, does the agency want an officer arresting a medical staff member and removing them from their work place? Or does the agency want reports submitted to prosecutors to determine the course of action?
 - Officers should be clearly instructed on these new provisions as they are markedly different in many aspects.
 - Officers should be instructed that although the law allows an "EMT-I" to draw a blood sample, not every EMT-I is qualified to do so due to inadequate training and/or protocols. So officers should be instructed to not get overly excited if an EMT-I says they can't do a blood draw.
 - Consider meeting with local EMS to establish who can perform draws.
- Prepare a written directive as required in SB414 for investigation and enforcement of the new stalking law.

Concealed carry

AG access to expungements

The only concealed carry issue during the 2008 session was a provision in the expungement statutes to allow the Attorney General's Office to access expungements for the purpose of concealed carry application processing. The bill was passed after a great deal of delay. The bill contained a provision not supported by the KPOA or by the AG's Office. That provision limits the applicability of the expunged record to concealed carry licensing to five years after the person became eligible for expungement of the record. What is troubling about this is that an aggravated battery conviction, such as for a stabbing or serious beating, can be expunged and after five years the person can be eligible for a concealed carry permit.

([HB2359](#)) Amends KSA 21-4619, 12-4516, and 75-7c04. [Effective 7/1/08]

Corrections

Aiding escape when committed by a DOC employee or volunteer; or by an employee or volunteer of a DOC contractor is a level 4 nonperson felony.

([HB2845](#)) Amends KSA 21-3811. [Effective 7/1/08]

Criminal Code

Firearms

Also see "Concealed Carry"

Altered serial numbers or other identifying marks on firearms

The penalty for altering the identifying marks on a firearm or possessing a firearm with altered, removed, or obliterated identification marks changes from a class B misdemeanor to a level 10, nonperson felony. We did not support or oppose this bill. As a level 10 nonperson felony most offenders will be in the presumptive probation area of the sentencing grid. As a misdemeanor the judge can sentence them to local jail if they find the circumstances warrant a jail sentence.

([SB46](#)) Amends KSA 21-4205. [Effective 7/1/08]

Machine Guns, Short Barreled Shotguns, and Silencers

Private citizens will be authorized by state law to possess machine guns, short barreled shotguns, and silencers. Such ownership is contingent upon the person meeting the federal requirements for possessing class III weapons. For federally licensed firearms dealers they must meet the federal requirements for dealing in class III weapons.

([SB46](#)) Amends KSA 21-4201. [Effective 7/1/08]

Sales of firearms during a declared emergency

The governor no longer has authority during a declared state of disaster emergency to suspend or limit the sales of firearms. Never fear though, the governor can still suspend or limit the sales of alcoholic beverages, explosives, and combustibles.

([HB2280](#), section 2) Amends KSA 48-925 [Effective 7/1/08]

Seizure of firearms during declared emergency

No government authority may seize any firearm within the area of and during a declared emergency. Seizure, as used in this statute, means, "the act of forcible dispossessing an owner of property under actual or apparent authority of law." The intent of this definition is to make it clear firearms which are insecure and not in control of a person may be secured by authorities for safe keeping and return to the rightful owner.

([HB2280](#), section 1) New statute. [Effective 7/1/08]

Funeral picketing

A new law was enacted last year regarding funeral picketing but it could not be enforced until after the Kansas Supreme Court ruled on the constitutionality of the new law. The supreme court ruled the portion of the statute requiring the court to act before it can be enforced is unconstitutional. This year the legislature passed the same law but without the enforceability clause the court ruled against. So the law is now enforceable, but expect appeals.

The law restricts picketing or other “public demonstration” within 150 feet of any public entrance to any location where a funeral service is held. The restriction applies one hour prior to the scheduled start of the service until two hours after the conclusion of the service. It also makes it illegal to obstruct block, impede, or hinder another person’s entry or exit from a funeral or to knowingly impede vehicles in a funeral procession.

([SB226](#)) Amends KSA 21-4015. [Eff. 4/10/08]

Scrap metal

- Stainless steel was added to the metals covered in the scrap metal laws. The purpose was to address the theft of beer kegs.
- Aluminum in beverage and food containers is now specifically exempted from the scrap metal laws.

([HB2692](#)) Amends KSA 50-619 and 50-6,109. [Effective 7/1/08]

Stalking

The stalking laws were completely rewritten. This is the result of work completed by the Judicial Council on this issue, at the request of the legislature. It is believed the changes will make stalking cases easier to investigate and prove. See attachment B for more details.

The bill also increases penalties for the crime and changes the provisions for issuing and enforcing protection orders related to stalking.

([SB414](#)) Amends KSA 21-3438, 21-3843, 60-31a06, 74-5604a and 74-5607a. [Effective 7/1/08]

Theft

Prima facie evidence to permanently deprived now includes failing to return a rental or lease vehicle on the date of return stated in the agreement provided a three day notice is given to return the vehicle; or a person authorized use of a vehicle is given written notice at the time the vehicle is provided to the person stating a specific time and place for the vehicle to be returned and stating that failure to return the vehicle as specified may be prosecuted for theft. The new provision also requires law enforcement to make an offense report in such cases and to enter the vehicle in NCIC as stolen.

([HB2707](#)) Amends KSA 21-3702. [Effective 7/1/07.]

Also see *Criminal Procedures/Sentencing* for sentencing enhancements to persons convicted of theft and temporary deprivation of property (motor vehicles).

Criminal Procedure

Detention of Parole/Probation Violator

Officers may detain a parole/probation violator upon verbal order of the supervising parole/probation officer or court services officer. The written detention order is still required for booking the person into the detention facility where they will be held. This remedies a problem with current law where an officer can detain the violator only with a written order of the parole/probation officer.

([HB2707](#), sections 8 and 11) Amends KSA 22-3716 and 75-5217. [Effective 7/1/07.]

Expungements

An omission in the concealed carry implementation was corrected by clarifying the use of expunged municipal or state criminal records during the processing of applicants for concealed carry license by the attorney general's office. The bill authorizes the access to the expunged records by the attorney general's office for the purpose of processing concealed carry applications. But the use of those expunged records is limited to only those within five years of the date when the person was eligible for the expungement.

[\(HB2359\)](#) Amends KSA 21-4619, 12-4516, and 75-7c04. [Effective 7/1/08]

Aggravated endangering a child is added to the list of convictions which cannot be expunged.

[\(HB2780\)](#), section 3) Amends KSA 21-4619 [Effective 7/1/08]

Sentencing provisions

Aggravated criminal threat is now a level 5 person felony regardless of the resulting dollar loss. It was a level 4, 5 or 6 person felony depending on the total resulting dollar loss.

[\(SB430\)](#) Amends KSA 21-3419a. [Effective 5/1/08]

Burglary convictions after two prior convictions for felony theft, burglary, or aggravated burglary will result in presumptive imprisonment. If the sentencing judge finds on the record an underlying substance abuse issue with the defendant, the defendant may be sentenced to substance abuse treatment and upon completing a minimum of four months treatment will return to the sentencing court where the judge may (or may not) modify the sentence. This treatment option in a DOC facility is only available one time.

[\(HB2707\)](#), section 4(p)) Amends KSA 21-4704 [Effective 7/1/07]

Cruelty to animals 2nd offense establishes a fine of not less than \$500 and not more than \$2,500.

[\(HB2780\)](#), section 2) Amends KSA 21-4310 [Effective 7/1/08]

Domestic battery third offense maximum fine is raised to \$7500.

[\(HB2780\)](#), section 1) Amends KSA 21-3412a [Effective 7/1/08]

Drug possession convictions (KSA 65-4160 or 65-4162) for a third offense will result in sentencing to in-custody DOC substance abuse treatment and upon completed a minimum of four months treatment will return to the sentencing court where the judge may (or may not) modify the sentence. This treatment option in a DOC facility is only available one time. The new law also requires a drug assessment of the defendant prior to sentencing.

[\(HB2707\)](#), section 5 and 6) Amends KSA 21-4705 and 21-4714. [Effective 7/1/07]

Persons convicted of **Crimes of Extreme Sexual Violence** (as defined in KSA 21-4716) may not receive dispositional departures and any durational departures must be for a sentence of at least one-half of the mid range sentence on the sentencing grid.

[\(HB2707\)](#), section 7) Amends KSA 21-4719. [Effective 7/1/07]

Post release supervision will be required for an offender whose non-prison sanction for a sexually motivated crime is revoked; and for an offender who is sentenced to a non-prison sanction for a crime with a presumptive imprisonment sentence on the sentencing grid.

[\(HB2780\)](#), section 4) Amends KSA 22-3716 [Effective 7/1/08]

Temporary Deprivation of Motor Vehicle upon third or subsequent conviction is a level 9 nonperson felony with presumptive imprisonment.

[\(HB2707\)](#), sections 2 and 4(n)) Amends KSA 21-4704 [Effective 7/1/07]

Felony Theft convictions after three prior convictions for felony theft, burglary, or aggravated burglary will result in presumptive imprisonment. If the sentencing judge finds on the record an underlying substance abuse issue with the defendant, the defendant may be sentenced to substance abuse treatment and upon completed a minimum of four months treatment will return to the sentencing court where the judge may (or may not) modify the sentence. This treatment option in a DOC facility is only available one time.

([HB2707](#), section 4(p)) Amends KSA 21-4704 [Effective 7/1/07]

Sexual assault investigations

An alleged sexual assault victim cannot be required to submit to a polygraph or other truth telling device as a condition to continue the investigation or to determine if a case will be charged or prosecuted. This is the result of federal grant mandates for victim assistance funding.

([HB2726](#)) Creates new statute. [Effective 7/1/08]

Sexual assault evidence collection by medical personnel may be done at the sole request of the victim and law enforcement notification is prohibited without written consent of the victim. This is the result of federal grant mandates for victim assistance funding. The cost of the evidence collection will be paid by the county in which the assault occurred. The kits will be sent to the KBI where they will be stored for five years then destroyed. The KBI will adopt regulations for the process to assure proper evidence chain of custody.

([HB2727](#)) Amends KSA 65-448. [Effective 7/1/08]

Drugs

Jimson weed or Gypsum weed

Datura stramonium, also known as Jimson Weed or Gypsum Weed was added to schedule I drugs. Jimson weed commonly grows in the wild in Kansas, much like marijuana does. The mere presence of the weed in the wild is not an offense.

([SB481](#)) Amends KSA 65-4105. [Effective 5/1/08]

MDMA

MDMA (ecstasy) is added to the provisions of 65-4162 making possession of it a violation with the same severity as marijuana.

([HB2545](#)) Amends KSA 65-4162. [7/1/08]

Methamphetamine Precursor Scheduling Task Force

In response to the KBI's quest to make pseudoephedrine a scheduled drug only available by prescription, the legislature created the Methamphetamine Precursor Scheduling Task Force to study the feasibility of this concept.

([SB491](#), section 14) New statute [Effective 7/1/08]

Out of State Pharmacies

A civil penalty will now be allowed for out of state pharmacies who do not comply with requests from the board of pharmacy.

([SB491](#), section 17) Amends KSA 65-1657. [Effective 7/1/08]

Prescription Monitoring

A prescription monitoring program will be set up in Kansas. It will allow pharmacists and physicians to check patients overall drug prescriptions to identify those getting multiple prescriptions to support an addiction to the drug. The focus is on prevention and the ability of medical professionals to identify those in need of treatment. The information is confidential and not open to the public or open records. Law enforcement access to the information is only allowed regarding a specific investigation through a search warrant.

([SB491](#), sections 1-13) Creates several new statutes. [Effective 7/1/08]

Salvia divinorum

Salvia divinorum was added to schedule I drugs. Salvia is grown in two regions of the world not in the US. It has been readily available for purchase in head shops and by internet.

([SB481](#)) Amends KSA 65-4105. [Effective 5/1/08]

Veterinary Prescription Monitoring Program Task Force

A task force was created to study the feasibility of having a prescription monitoring program for prescription drugs prescribed or distributed by a veterinarian.

([SB491](#), section 15) New statute. [Effective 7/1/08]

Law Enforcement Administration

Reserves and part time officers—full time employment protected

The full time employment of a reserve officer and part time officer cannot be terminated because of their law enforcement service. This bill was initiated solely for volunteer firefighters. We requested law enforcement reserves and part time law enforcement be added. Volunteer EMS responders were also added. At our request an amendment was added to exempt the full time employer who also is an emergency service provider. So for example if you have a full time LEO who is also a volunteer firefighter their first obligation is to the full time employment. This prevents one emergency service provider from taking staffing from another emergency provider, especially in time of crisis or when it jeopardizes the full time employer's level of emergency service.

([SB438](#)) This is a new statute. [Effective 7/1/08]

School Safety Violations

Last year a bill was passed amending the process for suspending a driver's license for school safety violations. The provisions of that bill were found to be in conflict with federal school privacy laws. This year the legislature remedied those conflicts while maintaining the time line requirements they imposed in last years bill. The schools are required to report any acts of school safety violations to law enforcement within 10 days of them becoming aware of the violation. LE then is required to investigate and forward a report to the MVD within 10 days of their receipt of the information from the school. The MVD will hold a hearing if requested by the violator to provide for the due process requirements. Last years law had required reporting the suspension resulting from a school safety violation. Reporting of a suspension, which is an administrative action, is what violated the federal privacy laws. The law passed this year removes that and returns to the requirement to report the act of a school safety violation, not the resulting administrative action.

([SB470](#)) Amends KSA 72-5437, 72-1397, 72-89c01, and 72-89c02. Repeals 72-5411. [Effective 5/1/08]

Offender Registration

Electronic solicitation

Persons convicted of electronic solicitation (KSA 21-3523) were added to the list of those required to be added to the offender registry.

([SB477](#)) Amends KSA 22-4902. [Effective 4/17/08]

Residency Restrictions

The sunset provision (for 7-1-08) was removed from the law prohibiting local governments from placing any residency restriction on persons due to their listing in the offender registry. It also clarifies that the restriction does not apply to local zoning requirements for correctional placement residences.

([SB536](#)) Amends KSA 22-4913. [Effective 7/1/08]

Traffic

DUI

The law on when we can request tests for alcohol and drugs has been changed to allow for more testing in accidents involving serious injury or death. The new law also clarifies the relationship and responsibilities of medical staff and law enforcement in regards to the collection of blood and urine specimens. These provisions were worked on by law enforcement, prosecutors, and medical associations and are intended to reduce (hopefully eliminate) the conflicts between law enforcement and medical staff regarding the collection of blood and urine specimens. This law has many changes and the details are included as Attachment A to this document.

Also see the “Suggested Administrative Considerations” section on page 1.

([HB2617](#)) Amends KSA 8-1001, and 8-1567; and repeals 8-1567b. [Effective 7-1-08]

Driver’s Licenses

Photo license enhancements were funded and authorized by SB 23. The enhancements will create a more secure identification document with new features on the licenses and ID cards. It also provides the ability to scan documents a person presents and to take the photo of the applicant at the time of application. Currently, copies of documents are not retained the photo is only taken after the person is approved for the license or ID card. It is funded by an increased fee to the “photo fee” charged when a person gets a new license or ID card. It increases from \$4 to \$8.

([SB23](#)) Amends KSA 8-243, 8-299, and 8-1324. [Effective 7-1-08]

Surrendered driver’s licenses returned to the state no longer have to be retained by the state. They may be destroyed and the person will have to get a new one when it is reinstated.

([HB2665](#)) Amends KSA 8-257. [Effective 7/1/08]

Fines – District Court fines changed:

\$60 for unlawful operation of a work-site utility vehicle is deleted and a \$60 fine for unlawful operation of a micro utility truck is established.

([HB2119](#), section 8) Amends KSA 8-2118. [Effective 7/1/08]

Motor Carriers

Technical amendments were made to the motor carrier statutes primarily to bring them into compliance with changes in the federal statutes and regulations.

([SB462](#)) Amends KSA 66-1,139a, 44-765, 66-1,115, 66-1,116, 66-1,128, 66-1,139 and 66-1a01. [Effective 4/10/08]

Fleet registrations are now allowed for vehicles with a gross weight over 26,000 pounds if the vehicle is not driven out of state and the vehicle is part of a commercial fleet.

([SB522](#)) Amends KSA 8-1,152. [Effective 7/1/08]

Registration Plates

License plates can no longer be displayed on the front of a vehicle registered in Kansas except for tractor trailers displaying the current tag on the front and antique vehicles may display a tag for a year of the vehicle model.

([HB2622](#)) Amends KSA 8-133. [Effective 7/1/08]

Gold Star license plates for passenger cars, motorcycles, and trucks 20M or less, will be available to mothers of a soldier who died while in good standing on active military duty.

([HB2691](#)) Amends KSA 8-1,141 and 8-1,147. [Effective 7/1/08]

In God We Trust license plates authorized for cars, motorcycles, and trucks 20M or less.

([HB2704](#)) Creates new statute. [Effective 7/1/08]

Other Traffic

Micro Utility Truck is a vehicle at least 44 inches wide, 144 inches or less in length, an empty weight including fuel and fluids of at least 1500 pounds, and designed with a metal cab and for speeds exceeding 40 mph. They do not include Work-site utility vehicles. Work-site utility vehicles and Micro Utility Trucks must be titled as a non-highway vehicle and cannot be registered. Like Work-site utility vehicles, micro utility trucks cannot be operated on state or federal highways except to cross them. They also cannot be operated on streets or highways within a city unless the city adopts an ordinance authorizing it. They cannot be operated on any street or highway unless they meet the equipment requirements of 8-1701 et. seq.-these provisions are required even for the vehicle to cross a highway. Establishes a fine of \$60 for illegal operation of a micro utility truck. The sale of these vehicles requires a dealer license.

([HB2119](#)) Creates two new statutes; amends KSA 8-2401, 8-126, 8-128, 8-197, 8-1486, 8-1493, 8-2118; and repeals KSA 8-15,105. [Effective 7/1/08]

Retirement System

Technical amendments to the retirement system were made including some required to keep the system in compliance with federal law. Washburn University retirements will now be exempt from state income tax like the state system is.

([SB309](#)) Amends K.S.A. 12-5005, 13-14a02, 13-14a10, 13-14a13, 14-10a02, 14-10a13, 20-2601, 20-2623, 72-5501, 74-4912, 74-4917a, 74-4919b, 74-4924, 74-4988, 74-4998c, 74-49,105, 74-49,122, 74-49,123 and 74-49,124 and K.S.A. 2007 Supp. 74-4902, 74-4914, 74-49,202, 74-49,203, 74-49,207, 74-49,208 and 79-32,117. [Effective 7/1/08]

Post Retirement payments – The proposed 1% COLA per year for three years as proposed by the governor didn't make it through the legislative process. But another one time payment of \$300 to those who are on KPERs/KP&F disability; and those who worked more than 10 years and have been retired for ten years on or before July 1, 1998, was approved. The payment is contingent upon ELARF money (that is the legislature's way of saying new gambling revenues without saying gambling revenues) being available to pay for the costs. That is not anticipated to be a problem unless the court strikes down the law passed last year authorizing the expanded gambling. Payment cannot be made prior to 10/1/08 and not until adequate ELARF funds are available to pay the state share of the costs. Like last year, local governments will have to pay an actuarial adjusted cost for the payment to their retirees.

([HB2390](#)) Creates a new law and amends KSA 74-4920. [Will be effective upon publication in the Kansas Register (probably on May 29, 2008, and when the omnibus appropriations bill, HB2946, takes effect on 7-1-08)]

Wildlife and Parks

Allows the Secretary of Wildlife and Parks to create regulations concerning the requirement to attach carcass tags and check station tags to wild turkey carcasses or big game carcasses. This is intended to allow some flexibility for Wildlife and Parks regarding hunting seasons and may result in periods when such tags are not required. We will have to follow implementation of the regulations to stay up to date on this issue.

([HB2748](#)) Amends KSA 32-969 and 32-1004. [Effective 7/1/08]

Boat exhaust noise limitations are changed from 86 decibels to 92 decibels. The statute is substantially changed to specify testing method, compliance of boat operators to testing, and removes the muffler requirements.

([HB2657](#)) Amends KSA 32-1120. [Effective 4/24/08]

Misc Provisions

Court fees for mailing notice of drivers license suspension for non-compliance

The municipal and district courts may charge a \$5 fee for mailing notice to defendants for certain violations that if they do not comply with the court appearance or sentencing within 30 days of notice their driver's license will be suspended.

Also requires district court notices to appear to include information stating that failure to appear may result in a driver's license suspension.

([SB366](#)) Amends KSA 8-2110. [Effective 7/1/08]

E-911 Funds

There was a problem with the distribution of certain funds collected that could not be attributed to a specific PSAP. This was remedied by specifying an order for the distribution of those funds to achieve the intended purpose of the funds.

([SB526](#)) Amends KSA 12-5331. [Effective 7/1/08]

Heart of America Regional Computer Forensics Laboratory

The Heart of America Regional Computer Forensics Laboratory is added to the list of laboratories that can have a \$400 fee assessed to a defendant convicted in a case where the lab performed forensic analysis.

([HB2780](#)) Amends KSA 28-176. [Effective 7/1/08]

Impounded Vehicles-Impounded by the KCC

The KCC was previously authorized to impound certain vehicles but they were not given the authority to dispose of those vehicles if they were not eventually returned to the owners. That was remedied with this bill and they are now allowed to dispose of them as other public agencies are. The funds go to the state general fund except for any expenses related to the impoundment and sale.

([SB509](#)) Amends KSA 66-1,129a. [Effective 7/1/08]

Johnson County Sentencing Program

This is a pilot project in Johnson County which allows certain felony offenders to be sentenced to community corrections. The legislature hopes to make this statewide in the near future. The legislature extended the 7/1/08 sunset until 7/1/2010 with a stipulation for a report to the legislature in January 2009. Started as HB 2700.

([SB411](#), section 2) Amends KSA 75-5291. [Effective 7/1/08]

Juvenile Code

Enacts a major overhaul of the juvenile code primarily in the area of parental rights, child in need of care hearings, and infectious disease testing in certain cases. Primarily from a request from the Judicial Council making technical amendments to laws passed last year.

([SB435](#)) Amends K.S.A. 2007 Supp. 38-2202, 38-2203, 38-2211, 38-2217, 38-2237, 38-2241, 38-2243, 38-2244, 38-2247, 38-2248, 38-2251, 38-2254, 38-2258, 38-2259, 38-2260, 38-2264, 38-2265, 38-2268, 38-2269, 38-2302, 38-2304 and 38-2317. Repeals K.S.A. 2007 Supp. 38-133. [Effective 7/1/08]

Parole Procedures

The parole board will have three new factors to consider when considering parole. 1) risk factors as determined in DOC risk assessments, 2) recommendations of DOC staff, and 3) for those serving time for a crime committed prior to the sentencing guidelines, the proportionality of the sentence they received as compared to the sentence for the same crime under the guidelines.

([SB411](#), section 1) Amends KSA 22-3717 [Effective 7/1/08]

Vehicle Modernization Project

This project will replace the very old and very inadequate computer software and hardware used for driver's licenses, ID cards, vehicle registration and vehicle titles. The new program will include a greatly enhanced search capability for law enforcement use. It should also include some additional data and links between data in the systems. This is a four year project that will be paid by an increase of \$4 in vehicle registration fees over the next four years beginning on 1/1/09. The Department of Revenue has promised they will heavily engage law enforcement in the design needs of these systems.

([HB2542](#)) Creates a new statute and amends KSA 8-145. [Effective 7/1/08]

Veteran Preference

The bill started out as a concept for absolute preference for a veteran over a non-veteran regardless of qualifications or abilities. We worked last year with the legislative subcommittee, as did several veterans organizations, veteran advocates, and others. The bill is a mix of some of the changes we supported and some we didn't support. In the end, the bill seems to be a fairly good compromise since some veterans don't like some provisions and likes others, and some non-veterans don't like some provisions and likes others. This was a bill that could not make everyone happy. Some of the provisions are fashioned after federal law and some came from studying Kansas case law. See attachment C for more details.

([HB2562](#)) Creates a new statute and amends KSA 73-301, and 73-1210a. [Effective 7/1/08]

2007 Legislation becoming effective on July 1, 2008

Collection of DNA sample for identification purposes when arrested:

Effective July 1, 2008, the collection of DNA samples for adults and juveniles arrested is expanded to include all felonies and for certain additional misdemeanors, as follows:

- *a violation of subsection (a)(1) of K.S.A. 21-3505;*
- *a violation of K.S.A. 21-3508;*
- *a violation of K.S.A. 21-4310;*
- *a violation of K.S.A. 21-3424, when the victim is less than 18 years of age;*
- *a violation of K.S.A. 21-3507, when one of the parties involved is less than 18 years of age;*
- *a violation of subsection (b)(1) of K.S.A. 21-3513, when one of the parties involved is less than 18 years of age;*
- *a violation of K.S.A. 21-3515, when one of the parties involved is less than 18 years of age; or*
- *a violation of K.S.A. 21-3517*

(2007 SB 103, section 2, paragraph (e)(2); [Chapter 145](#) of 2007 Session Laws)

**DUI Testing Procedures as Amended in [HB2617](#)
KSA 8-1001**

Attachment A
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Current law	HB 2617
Drivers <u>not</u> involved in an accident are tested only if the officer has reason to believe the person was driving and reason to believe the person is under the influence of alcohol and/or drugs <u>and</u> the person is taken into custody for DUI.	No change.
Drivers <u>involved in an accident without fatal or serious injuries</u> are tested only if the officer has reason to believe the person was driving and reason to believe the person is under the influence of alcohol and/or drugs.	No change.
Persons <u>involved in a fatal or serious injury accident</u> are tested for alcohol only if officer has reason to believe person was driving and reason to believe person is under the influence of alcohol and/or drugs.	Persons involved in fatal or serious injury accidents are tested if the driver can be cited with any traffic infraction in KSA 8-2117, even absent a reason to believe the person is under the influence; unless it is clear the driver did not contribute to the accident. Any driver who the officer has reason to believe is under the influence of alcohol and/or drugs can still be tested.
Urine testing for drugs (regardless of whether the person was involved in accident or not) can only be done if the officer has reason to believe the person is under the influence of drugs (specifically drugs, not alcohol and/or drugs), <u>and</u> if the officer has reason to believe the drug cannot be detected in the blood or breath sample.	For a driver <u>not</u> involved in a fatal or serious injury accident , a urine test for drugs <u>may</u> be requested if reasonable grounds exist to believe the driver is under the influence of alcohol and/or drugs if the driver is placed under arrest for DUI or if the driver was involved in an accident not resulting in serious injury or death. For a driver involved in a fatal or serious injury accident , a urine test for drugs <u>shall</u> be requested if the driver can be cited with any traffic infraction in KSA 8-2117, even absent a reason to believe the person is under the influence; unless it is clear the driver did not contribute to the accident. Any driver who the officer has reason to believe is under the influence of alcohol and/or drugs can still be tested.
If a driver of a vehicle involved in a fatal or serious injury accident refuses to submit to a test, the collection of a sample can be obtained through a search warrant or with exigent circumstances if that person operated the vehicle in a manner to have caused the death or serious injury of any person.	No change.
Independent test requested by defendant will be as customarily available at medical care facilities and physicians.	Strikes physicians so that it is as "customarily available from medical care facilities willing to conduct such testing."
Serious injury not defined in current law	Defines serious injury with specific conditions to qualify as serious injury and also provides whether or not serious injury occurred is "as determined by law enforcement officer".
Not addressed specifically in current law	Allows the collection of urine sample pursuant to search warrant or exigent circumstances.

Law Enforcement/Medical Personnel DUI Testing Responsibilities
As amended by HB2617
KSA 8-1001

Current law	HB 2617
Specifies the criteria but does not state who has the responsibility to determine the criteria is met.	Specifies when an officer may direct medical personnel to take a sample and the criteria the officer needs to meet for such request. Clearly makes this determination the responsibility of the officer and clearly removes the medical personnel from considering the factors of the criteria.
Medical personnel authorized to draw sample: licensed to practice medicine or surgery; person acting under supervision of such licensed person; RN or LPN; qualified medical technician (EMT-I or MICT); phlebotomist.	Adds physician assistant and requires EMT-I and MICT to be acting under approved protocol. Changes "under supervision of" to "under direction of" such licensed person.
Requires the request to draw sample be in writing	No change
Not specifically covered in current law.	Clarifies qualified medical personnel directed to draw a sample for DUI testing <u>shall</u> draw the sample as soon as practical (medical care of life threatening injuries/conditions take priority) and the sample <u>shall</u> be delivered to the law enforcement officer as soon as practical.
Not covered in current law	Requires the medical personnel drawing the sample to complete the collection documents for the sample.
Not covered in current law	Sample is to be an independent sample and not a portion of a sample taken for medical purposes. This avoids a potential HIPAA issue.
Not covered in current law	If a person has to be restrained to obtain the sample pursuant to a search warrant or exigent circumstances, law enforcement must do the restraining. This is due to a federal regulation which forbids medical staff from restraining a patient except under specific circumstances. DUI sample collection is not one of those circumstances.
Not covered in current law	Requires the supervising person during urine collection to be a law enforcement officer when possible. Still allows for other arrangements when an officer of the same sex as the suspect is not available or other unusual circumstances.
Release from liability for medical personnel is included in section specifically addressing blood draws. Raises questions about what acts are covered by the release.	Release from liability for medical personnel is moved to a separate section of the statute to assure it covers all aspects of the sample collection as provided in the entire statute.

ALSO SEE [Conference Committee Report Brief](http://www.kslegislature.org/supplemental/2008/CCRB2617.pdf) at: <http://www.kslegislature.org/supplemental/2008/CCRB2617.pdf>

STALKING as Amended by [SB414](#)
Effective 7/1/08

Stalking is a violation under one of the following:

- Intentionally or recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family, and the targeted person is actually placed in such fear;
- Intentionally engaging in a course of conduct targeted at a specific person which the individual knows will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or
- After being served with, or otherwise provided notice of, any protective order that prohibits contact with a targeted person, intentionally or recklessly engaging in at least one act that violates the provisions of the order and would cause a reasonable person to fear for safety, or the safety of a member of the person's immediate family, and the targeted person is actually placed in such fear.

The current statutory language requiring the proof of a "credible threat" is eliminated.

- The new law defines "intentional" as
 - Acting in violation of protective order, or
 - committing an act of stalking after having been advised by a uniformed LEO that the actions are in violation

The bill also adds some LE requirements:

- Require all law enforcement agencies and prosecutors to adopt written policies regarding the protocol to be used when investigating or prosecuting an allegation of stalking;
 - The LE policy requirements mirror those for domestic violence policies including,
 - Directing officers to make arrest with PC
 - Define stalking
 - Dispatcher responsibilities
 - Officer responsibilities when
 - Suspect at scene
 - Suspect has left scene
 - Protective or court order exists
 - Information provided to victim
 - Offense report to be completed
- Authorizes, but not require, a law enforcement training course on the procedures to follow when responding to an allegation of stalking; and
- Authorizes, but not require, continuing education or training on procedures to follow when responding to an allegation of stalking.

The bill also

- Increases penalties for the crime
- Changes the provisions for issuing and enforcing protection orders related to stalking
- Exempts certain legal contacts by attorneys from the protection orders.

ALSO SEE [Conference Committee Report Brief](#) at: <http://www.kslegislature.org/supplemental/2008/CCRB414.pdf>

Veteran Preference
As amended by [HB2562](#)

Key points of the new law include:

- The criteria used to assess the applicant’s qualifications must be determined and posted prior to the assessment of qualifications taking place.
- A statement of applicability of veteran preference and other related information must be posted like equal opportunity statements and fair labor law notifications have to be posted.
- All notices of opening and application forms must state veteran preference is applicable.
- If a veteran requests veteran preference,
 - It is their obligation to supply you with the documentation to show they are eligible.
 - You must notify them in writing if they are not selected.
- It changes language to state “veterans shall be preferred for initial appointment and first promotion. . .”
- It changes the language to state it is the duty of the person responsible to fill the position “shall, if the applicant be a veteran of good reputation, and can competently perform the duties of the position. . .consider the veteran for appointment. . .”
- It codifies language from a court ruling and clarifies the veteran must meet more than the minimum qualifications and must be able to perform the job being sought at a “competent” level. It also requires the person to be of good reputation.
 - It defines competent as, “a good faith determination that the person is likely to successfully meet the performance standards of the position based on what a reasonable person knowledgeable in the operation of the position would conclude from all information available at the time the decision is made.” It includes factors such as experience, training, education, licensure, certification or other factors determined by the decision making authority.
- It clarifies that a veteran appealing a decision to not hire or to not promote must exhaust administrative remedies prior to seeking court action.
- It makes veteran preference available to spouses ONLY IF:
 - They are a spouse of a veteran with a 100% service connected total disability, or
 - They are the unmarried widow of a veteran killed as the result of military service, or
 - They are the spouse of a prisoner of war.
- Not all veterans are eligible. See section 1 of the bill for list of eligibility.

ALSO SEE [Conference Committee Report Brief](#) at: <http://www.kslegislature.org/supplemental/2008/CCRB23.pdf>

ADDITIONAL RESOURCES

The legislative bills are available at: <http://www.kslegislature.org/legsrv-bills/enrolledBills.do>

The Session Laws are available at: <http://www.kslegislature.org/legsrv-sessionlaws/index.do>

The Legislative Research Department publishes legislative summaries at:
<http://skyways.lib.ks.us/ksleg/KLRD/Summaries.htm>

NOTE: This is version 1.1 with some additions and revisions to the original document. Those revisions and additions are in areas with the vertical line in the left margin. These additions include statute numbers assigned to new statutes.

A new version will be released if corrections are needed. A new version will also be released when statute numbers are assigned to the new statutes and the session laws are published.

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