Guide To
2020 Kansas Legislation
Impacting Law Enforcement

Version 1.0
June, 2020

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This document summarizes legislation impacting law enforcement passed by the 2020 legislature. This document is intended to address the statute changes most relevant to law enforcement operations. Not all changes are listed. **Always follow the guidance of your agency for application and implementation of new and amended laws.** The author is not an attorney and this document is not legal advice. It is a summary of the legislation based on observations and discussions during the legislative process, as well as published legislative reports. **Questions should be addressed within your agency following your agency's protocol.**

Additional documents available at www.KsLawEnforcementInfo.com/2020-session.html

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Errata Table

Version	Date	Correction
1.0	06/23/2020	Original Document

UPDATED STATUTES

Available now with current changes at:

http://kansasleo.com/statutes.htm

http://www.kscoplaw.com/thelawpage.htm

Will not be available on the state website until later in the year.

http://www.ksrevisor.org/ksa.html

Session Laws: https://www.sos.ks.gov/pubs/pubs_session_laws.html

SESSION NOTE: The COVID-19 issue became nearly the entire focus of the 2020 Legislature beginning in early March, midway through the session. Many good bills were poised to be passed that suddenly stalled when House and Senate leadership ordered cancellation of hearings on any topic not COVID-19 related unless it was an absolute necessity. This move also stalled several bills we were opposed to in their presented form.

Five Things from the 2020 Kansas Legislative Session Every Law Enforcement Officer Should Know

Presented by Kansas Peace Officers Association

June 22, 2020

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.

1. **Emergency Management Act-Violations**: Prior to the COVID-19/Emergency Management Act bill (Special Session HB2016) becoming effective on June 9, 2020, violations of orders issued under the Emergency Management Act was an A misdemeanor. This includes any order or proclamation issued under the Emergency Management Act Pursuant to a state of disaster emergency under either KSA 48-924 (State Order) or KSA 48-932 (Local Order). Affected orders include those issued under the Emergency Management Act by the Governor, state health officials, by regulations of the Adjutant General, and in some cases local orders of the governing body or local health officer. Effective June 9, 2020, the law was changed and all violations under KSA48-939 are now civil violations with a fine of up to $2500 per violation. These civil violations may be prosecuted by the local County/Distract Attorney or by the Attorney General. The law also authorizes the County/District Attorney or the Attorney General to seek an order to enjoin or a restraining order directing a person or business from disobeying an order. Violations of those court orders are handled as contempt of court cases.

   What does this mean for law enforcement? 1) No arrest and no citation for violations of the Emergency Management Act and related orders; 2) Educate the offender and seek compliance; 3) Submit report to local prosecutor for possible legal action, take no enforcement action on your own; 4) If legal action is filed it will be initiated like any civil case, not an arrest warrant. This is an amendment to KSA 48-939. See details in section 36, on page 37 of HB2016.
2. **Court Deadlines and Use of Electronic Appearance**: A major concern for the courts facing a COVID-19 related shutdown was how it would impact the speedy trial laws and required court appearances such as timely arraignments and other matters. To address this concern the legislature passed a new law allowing the Supreme Court to extend or suspend court deadlines or time limitations for up to 150 days after a state disaster emergency proclamation is terminated when necessary to secure health and safety of court users, staff and judicial officers. The Supreme Court is authorized to use two-way electronic audio-visual communications in any court proceeding when necessary to secure the health and safety of court users, staff and judicial officers. SB102, effective 3/19/20. New statute ins section 1 expires March 31, 2021. Also amends KSA 22-3402 and 60-206, which have no expiration date. Section 1 was later amended by section 24, on page 13 of Special Session HB2016, but not on this topic.
3. **Quarantine Information to be Shared with First Responders**: During a COVID-19 public health emergency, each county health officer is required to work with first responder agencies operating in the county to establish a method to share information indicating where a person testing positive for COVID or under quarantine or isolation for COVID resides or can be expected to be present. Information includes the address of such location and the duration of the quarantine, isolation, or recovery period. The information will only be used for alerting the first responders of the need to take precautions during the response activity. The information will be provided by the county health officer to the 911 center and the 911 center will disseminate the information to first responders responding to the address. The information shall not be made public and is not subject to open records. This is a new statute. See details in section 18, on page 8 of HB2016.
4. **Scrap Metal Theft Reduction Act**: As of July 1, the KBI database for reporting scrap metal sales is operational and scrap metal dealers are required to submit sales data and all scrap metal dealers are also required to register with the Kansas Attorney General. These actions are taken to provide law enforcement an investigative tool to locate stolen metal and to monitor for suspicious activity related to metal thefts. This is similar to successes we have seen utilizing pawn shop databases at the local level. The database will be accessible to law enforcement officers through the KCJIS system. **LE must use this**

tool or we will likely lose this ability when the law is reviewed in 2023 to determine if it is effective. Additional information may be available at the scrap dealer, which they are required to share with law enforcement. See KSA 50-6,111 subsection (a). The scrap metal dealer must retain the scrap metal for 30 days upon request for law enforcement. See KSA 50-6,111 subsection (e).

5. **Curbside Sales of Alcohol to Go:** This is temporary law as part of the COVID response. It allows legal patrons of licensed class A clubs, class B clubs, and drinking establishments to remove containers of alcoholic liquor from the premises if the following conditions are met. 1) It must be legal for the licensee to sell the alcoholic liquor; 2) Each container of alcoholic liquor must have been purchased by a patron on the licensed premises; 3) The licensee or the licensee's employee must provide the patron with a dated receipt for the alcoholic liquor; and 4) Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must place the container in a transparent bag that is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened. The changes do not amend or exempt other laws such as open container in a vehicle or consumption in public. It does not include delivery services. This is an amendment to KSA 41-2653. See details in section 26, on page 15 of HB2016. This provision expires January 21, 2021.

NON-LEGISLATIVE INFORMATION:

New Human Trafficking Protocol Amendments: An updated law enforcement protocol for handling juvenile human trafficking victims was approved late in 2019. The main change is the KBI becoming the contact point to initiate the request for an immediate response assessment (formerly the rapid response). These assessments are required by law for any child reasonably believed to be a victim of human trafficking unless the child is placed directly into a staff secured facility. This notice to the KBI is required by law and can be made 24 hours a day, seven days a week. The KBI contact is the intelligence unit, and the hope is to also share intelligence information about suspected human trafficking cases between the KBI and local law enforcement. Such information sharing is critical to identifying common factors in multiple human trafficking cases and tying related cases together from different local jurisdictions. See the new protocol at this link.

Vehicle Registration and DL Renewal Deadlines: To accommodate those who due to local county treasurer office closures cannot renew their registration or register a recently purchased vehicle, extensions were establish by Executive Order 20-12. New extensions will likely be implemented but were not available at the time of this writing. Those provisions for registration provide for an extension to 60-days after expiration of the emergency proclamation ends for all 60-day tags issued on or after January 1, 2020. The registration provisions for registration renewals alleviates the penalties and late fees but does not address operating with an expired registration. However, good practice would be to not enforce expired registration requiring renewal during March or later, until further direction is provided from the state.

Similar provisions were made in Executive Order 20-12 for renewals of driver's licenses due to the closure of motor vehicle stations around the state. Those provisions provide an extension for a driver's license renewal to 60-days after expiration of the emergency proclamation ends. This applies to any driver's license expiring on or after March 12.

The author of this document is not an attorney and this is not legal advice. It is a summary of legislation passed in the 2020 Kansas legislative session and based on explanations, observations, and studies of the bill and related documents.

Always follow your agency policies and utilize your agency protocol to refer to your local prosecutors and agency attorneys for legal interpretations and application of statutes and case law.

Five Things from the 2020 Kansas Legislative Session Every Law Enforcement Administrator Should Know

Presented by Kansas Peace Officers Association

June 22, 2020

1. **Emergency Management Act-Violations**: Prior to the COVID-19/Emergency Management Act bill (Special Session HB2016) becoming effective on June 9, 2020, violations of orders issued under the Emergency Management Act was an A misdemeanor. This includes any order or proclamation issued under the Emergency Management Act Pursuant to a state of disaster emergency under either KSA 48-924 (State Order) or KSA 48-932 (Local Order). Affected orders include those issued under the Emergency Management Act by the Governor, state health officials, by regulations of the Adjutant General, and in some cases local orders of the governing body or local health officer. Effective June 9, 2020, the law was changed and all violations under KSA48-939 are now civil violations with a fine of up to $2500 per violation. These civil violations may be prosecuted by the local County/Distract Attorney or by the Attorney General. The law also authorizes the County/District Attorney or the Attorney General to seek an order to enjoin or a restraining order directing a person or business from disobeying an order. Violations of those court orders are handled as contempt of court cases. This is an amendment to KSA 48-939 and has no expiration. See details in section 36, on page 37 of HB2016.
2. **Court Deadlines and Use of Electronic Appearance**: A major concern for the courts facing a COVID-19 related shutdown was how it would impact the speedy trial laws and required court appearances such as timely arraignments and other matters. To address this concern the legislature passed a new law allowing the Supreme Court to extend or suspend court deadlines or time limitations for up to 150 days after a state disaster emergency proclamation is terminated when necessary to secure health and safety of court users, staff and judicial officers. The Supreme Court is authorized to use two-way electronic audio-visual communications in any court proceeding when necessary to secure the health and safety of court users, staff and judicial officers. SB102, effective 3/19/20. New statute ins section 1 expires March 31, 2021. Also amends KSA 22-3402 and 60-206, which have no expiration date. Section 1 was later amended by section 24, on page 13 of Special Session HB2016, but not on this topic.
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4. **Counties Can Override Statewide Orders issued by the Governor for a Public Health Emergency**: Effective June 9, 2020, a Board of County Commissioners may override statewide orders issued by the Governor under a public health emergency by implementing less restrictive provisions for their county than in the statewide order. In taking such action, the Board of County Commissioners is required to: Consult with the local health officer or other local health officials regarding the governor's executive order; make a finding that implementation of the full scope of the provisions in the governor's executive order are not necessary to protect the public health and safety of the county; and a finding that all other relevant findings support the board's decision. This is an amendment to KSA 48-925(h). See details in section 33(h), on page 34 of HB2016. This provision expires on January 26, 2021.

5. **Board of County Commissioners my Override Orders issued by the County Health Officer**: Any order of a county health officer may be reviewed, amended or revoked by the Board of County Commissioners at their next meeting. This is an amendment to KSA 65-201 and 65-202. See details in sections 37 and 38, on page 37 of HB2016. This provision does not expire.

ALSO SEE THE FIVE THINGS EVERY LAW ENFORCEMENT OFFICER SHOULD KNOW FROM THE 2020 LEGISLATIVE SESSION.

NON-LEGISLATIVE INFORMATION:

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2020 Passed Legislation Topic List

TOPIC	Final Bill	Final Brief	Summary	Bill Section	Effective Date
Alcohol: Curbside Sales	SS HB2016	Supp Note	Summary	26	6/9/2020
Contact Tracing	SS HB2016	Supp Note	Summary	16	6/9/2020
Courts: Deadlines	SB102	Supp Note	Summary	2, and 3	3/19/2020
Courts: Appearance by Video	SB102	Supp Note	Summary	2	3/19/2020
	SS HB2016	Supp Note	Summary	24	6/9/2020
KEMA: Altering Elections Prohibited	SS HB2016	Supp Note	Summary	33(f)	6/9/2020
KEMA: Bd of County Commission May Issue Less Restrictive Order than Governor's Order	SS HB2016	Supp Note	Summary	33(h)	6/9/2020
KEMA: Bd. Of County Commission may review, amend, or revoke order by local health officer.	SS HB2016	Supp Note	Summary	37, 38	6/9/2020
KEMA: Closing of Businesses	SS HB2016	Supp Note	Summary	6. 33(e)	6/9/2020
KEMA: Closing of Schools	SS HB2016	Supp Note	Summary	7	6/9/2020
KEMA: Compliance with Kansas Constitution & Bill of Rights	SS HB2016	Supp Note	Summary	33(c)(11)	6/9/2020
KEMA: Emergency Orders	SS HB2016	Supp Note	Summary	33(b)	6/9/2020
KEMA: Emergency Proclamations	SS HB2016	Supp Note	Summary	5, 32	6/9/2020
KEMA: Executive Orders Must Identify Statute Authorization	SS HB2016	Supp Note	Summary	33(g)	6/9/2020
KEMA: Limitations on Firearms and Ammunition Prohibited	SS HB2016	Supp Note	Summary	33(d)	6/9/2020
KEMA: Local governing body may review, amend, or revoke local government order.	SS HB2016	Supp Note	Summary	35	6/9/2020
KEMA: Violation of Act or Orders	SS HB2016	Supp Note	Summary	36	6/9/2020
Notary Act: Personal Appearance	SS HB2016	Supp Note	Summary	17	6/9/2020
Open Records: Annual Review	HB2137	Supp Note	Summary	1-3	7/1/2020
Quarantine Information to First Responders	SS HB2016	Supp Note	Summary	18	6/9/2020
Restitution	HB2034	Supp Note	Summary	All	6/11/2020
Scrap Metal	HB2137	Supp Note	Summary	4	7/1/2020

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2020 Enacted Legislation

Criminal Law

Violations of Kansas Emergency Management Act

Prior to the COVID-19/Emergency Management Act amendments becoming effective on June 9, 2020, violations of orders issued under KSA 48-939 of the Emergency Management Act was an A misdemeanor. This includes violations of any order or proclamation issued under the Emergency Management Act including a state of disaster emergency under either KSA 48-924 (State Order) or KSA 48-932 (Local Order). These orders may be issued by the Governor, state health officials, regulations of the Adjutant General, and in some cases local orders of the governing body or local health officer.

As we know, an A misdemeanor is punishable by not only a fine but also by jail time. An A misdemeanor also allows for an "on-view" arrest or the issuance of a criminal warrant. While this approach is necessary in some emergencies, for example those requiring curfews and limited access to disaster areas, it created a great deal of controversy in a health emergency.

As a result, the legislature changed those violations to a civil violation with a civil penalty of up to $2500 per violation. As sometimes happens in the Legislature, there was so much focus on the immediate problem that the impact of this change in other types of emergencies was overlooked, resulting in the change applying to any type of emergency, not just health emergencies.

These new civil violations are enforced by a civil action filed by a county/district attorney or the Kansas attorney general.

The attorney general or a county/district attorney may also file an action to enjoin or obtain a restraining order against a person who has violated, is violating or is otherwise likely to violate the Emergency Management Act.

What does this mean for law enforcement?

No arrest and no citation for violations of the Emergency Management Act and related orders.

- Point out violation to the offender and seek compliance.
- Submit report to local prosecutor for possible legal action.
- If legal action is filed it will be initiated like any civil case, not an arrest warrant.
- A violation of this type of restraining order is handled as contempt of court.

2020 Special Session HB2016 (SL Ch. 1), Section 36, Page 37. Effective 6/9/20, no expiration. Amends KSA 48-939.

Criminal Procedure

Court Deadlines

A major concern for the courts facing a COVID-19 related shutdown was how it would impact the speedy trial laws and required court appearances such as timely arraignments and other matters.

To address this concern the legislature passed a new law allowing, when necessary to secure health and safety of court users, staff and judicial officers, the Supreme Court to extend or suspend court deadlines or time limitations for up to 150 days after a state disaster emergency proclamation is terminated.

SB102, effective 3/19/20. New statute expires March 31, 2021. Also amends KSA 22-3402 and 60-206, which have no expiration date. Section 1, the new statute, was later amended by Special Session HB2016 section 24, page 13, but not on this topic.

Court Appearances by Video

This new law allows the Supreme Court to authorize the use of two-way electronic audio-visual communications in any court proceeding when necessary to secure the health and safety of court users, staff and judicial officers. A disaster declaration is not required.

This provision will expire on March 31, 2021, unless the 2021 legislature acts to extend it. SB102 (SL Ch. 4), section 1 was effective March 19, 2020, and was amended again effective June 9, 2020, in Special Session HB2016 (SL Ch. 1), Section 24, Page 13. New statute.

Restitution

Early in the 2020 legislative session, the Kansas Court of Appeals ruled in State v. Roberts that a restitution order without a payment plan was an illegal sentence. The case has been appealed to the Kansas Supreme Court, but the legislature was compelled to create a remedy to protect from a strong potential of losing all improperly sentenced restitution orders. This obviously would have a negative impact on many crime victims.

To remedy this, KSA 21-6604(b) is amended to clarify the sentencing including a restitution order must have a payment plan or an order for immediate payment. It is also amended to require any defendant with an unpaid restitution order without a payment plan in place to submit to the sentencing court a payment plan by the end of the year or the restitution payment becomes immediately due.

2020 HB2034 (SL Ch. 9), effective June 11, 2020. Amends KSA 21-6604 and 21-6607.

Investigative Procedure

Scrap Metal Theft Reduction Act

As of July 1, the KBI database for reporting scrap metal sales is operational and scrap metal dealers are required to submit sales data. All scrap metal dealers are also required to register with the Kansas Attorney General. This is from 2019 legislation.

These actions are taken to provide law enforcement an investigative tool to locate stolen metal and to monitor for suspicious activity related to metal thefts. This is similar to successes we have seen utilizing pawn shop databases at the local level. The database will be accessible to law enforcement officers through the KCJIS system.

LE must use this tool or we will likely lose this ability when the law is reviewed in 2023 to determine if it is effective.

The scrap metal act is amended by 2020 legislation to remove the requirement for scrap metal dealers to photograph the vehicle used to deliver scrap metal to them. It retains the requirement to photograph the scrap metal received, as defined in the law.

2020 HB2137 (SL Ch. 12), Section 4, Page 5 Effective July 1. Amends KSA 50-6,110.

Alcohol

Curbside To Go Sales

This is temporary law as part of the COVID response, allowing legal patrons of licensed class A clubs, class B clubs, and drinking establishments to remove containers of alcoholic liquor from the premises if the following conditions are met.

1. It must be legal for the licensee to sell the alcoholic liquor;
2. Each container of alcoholic liquor must have been purchased by a patron on the licensed premises;
3. The licensee or the licensee's employee must provide the patron with a dated receipt for the alcoholic liquor; and
4. Before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must place the container in a transparent bag that is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

The primary purpose is to allow licensed businesses to sell alcoholic liquor to go during carry out or curbside sales transactions necessitated by COVID-19 public gathering restrictions.

The changes do not amend or exempt other laws such as open container in a vehicle or consumption in public. It does not include delivery services.

This places into statute a provision previously covered in two Governor's Executive Orders 20-27 and 20-42.

2020 Spec. Session HB2016 (SL Ch. 1), Sect. 26, Pg. 15 Effective 6/9/20 expiring 1/26/21. Amends KSA 41-2653.

Kansas Open Records Act

Legislation retained the following open records exemptions during the annual review process.

- ID of certain juvenile victims in LE Records [KSA 38-2310(c)]
- Home addresses of certain public officials [KSA 45-221(a)(52)]

The Attorney General issued a proposed guidance on charges for open records requests. They are received public comment until June 19. The final document will be released after consideration of those comments and was not available at the time of this writing.

State Hospitals

Funding for additional mental health beds, primarily to address the now five year old moratorium at Osawatomie State Hospital was fully approved in the Budget bill. However, we know there are going to have to be some budget cuts dues to the impact of COVID on the state revenue. So far, there has not been any discussions about cutting this funding that we are aware of. The funding will add some beds at OSH where space is available but staffing funding has been lacking. The funds are also designed to start utilizing some regional beds in the OSH catchment area. KDADS has recently stated they have been moving forward on those projects in anticipation the funding will still be there starting on July 1. Funding was also added for 8 additional acute care psychiatric beds for youth at Hays.

SB66 (SL Ch. 5) Appropriations bill.

VINE Coordinator

Funding for a VINE Coordinator in the Attorney General's Office was approved. This position will be responsible for coordinating the use of the Victim Notification Everyday (VINE) system with the vendor, local jails, law enforcement, victims, and victim services.

SB66 (SL5) Appropriations bill.

Emergency Management Act (non-criminal provisions)

Governor Proclamation

The current Governor's Emergency Proclamation was extended to September 15, 2020. However, the Governor can request an extension which must be approved by the State Finance Council (unless the legislature is in session) by a super majority vote of the legislative members of the Council (6 votes). The current order cannot be extended past January 26, 2021, without approval of the legislature. The Governor cannot issue a new proclamation related to COVID during calendar year 2020 without a super majority vote (6 votes) of the legislative members of the State Finance Council.

2020 Spec. Session HB2016 (SL Ch. 1), Section 5, page 3 and section 32, page 32. Effective 6/9/20, no expiration. New statute and amending KSA 48-924.

Governor's Executive (Emergency) Orders

Must be reviewed [the statute does not say "approved"] by State Finance Council within 24 hours of issuing an order. Orders must identify the specific statutory authority for the contents of the order.

2020 Spec. Session HB2016 (SL Ch. 1), Sections 33(b), page 33 and 33(g), page 34. Effective 6/9/20, expiring January 26, 2021. Amending KSA 48-925.

Quarantine Information Sharing with First Responders

During a COVID-19 public health emergency, each county health officer is required to work with first responder agencies operating in the county to establish a method to share information indicating where a person testing positive for COVID or under quarantine or isolation for COVID resides or can be expected to be present. Information includes the address of such location and the duration of the quarantine, isolation, or recovery period.

The information will be provided by the county health officer to the 911 center and the 911 center will disseminate the information to first responders responding to the address. The information will only be used for alerting the first responders of the need to take precautions during the response activity and shall not be made public and is not subject to open records.

2020 Spec. Session HB2016 (SL Ch. 1), Sect. 18, Page 8 Effective 6/9/20, no expiration. New statute.

Gatherings or Movement of Individuals

Prior to September 15, 2020, the Governor cannot order statewide limitations on movement or gathering of people based on the Governor's COVID Proclamation. During this period, such decisions are made through emergency proclamations and orders at the local level under existing law.

2020 Special Session HB2016 (SL Ch. 1), Section 33(e), Page 34. Effective June 9, expiring Sept. 15, 2020. Amends KSA 48-925.

Restrictions on Businesses

Prior to September 15, 2020, the Governor cannot order statewide limitations on businesses based on the Governor's COVID Proclamation. During this period, such decisions are made through emergency proclamations and orders at the local level under existing law.

After September 15, 2020, before issuing any order placing restrictions on the operation of businesses based on any emergency declaration the Governor must consult with the state finance council at least 24 hours in advance of the order.

After September 15, 2020, any order by the Governor placing restrictions on the operation of businesses based on any emergency declaration cannot exceed 15 days total under a single proclamation, unless additional time of restriction is approved by 6 votes of the legislative members of the state Finance Council. Extensions may only be made up to 30 days at a time.

2020 Special Session HB2016 (SL Ch. 1), section 6, Page 4, effective June 9 and expiring January 26, 2021, and section 33(e), page 34, effective June 9, expiring Sept. 15, 2020. New statute and amending KSA 48-925.

County Override of Statewide Orders

The amended statutes provide the county may override statewide orders issued by the Governor under a public health emergency by implementing less restrictive provisions for their county than in the statewide order. The Board of County Commissioners is required to take the following steps and to make the following findings if such an action is approved:

- The Board has consulted with the local health officer or other local health officials regarding the governor's executive order;
- That implementation of the full scope of the provisions in the governor's executive order are not necessary to protect the public health and safety of the county; and
- All other relevant findings support the board's decision.

2020 Special Session HB2016 (SL Ch. 1), Section 33(h), Page 34. Effective June 9 expiring January 26,2021 (See section 34). Amends KSA 48-925.

Review of Local Emergency Declaration by Authorized Local Elected Official

The governing body (city or county) may review, amend, or revoke an emergency order issued by an elected official authorized by statute.

2020 Special Session HB2016 (SL Ch. 1), Section 35, Page 36. Effective June 9 with no expiration. Amends KSA 48-932.

County Review of Orders by Local Health Officer

The County Commission may review, amend, or revoke orders issued by the local health officer, even if issued under authority of a Governor's proclamation. The order must include an expiration date.

2020 Special Session HB2016 (SL Ch. 1), Sections 37 and 38, Page 37. Effective June 9 with no expiration. Amends KSA 65-201 and 65-202.

Firearms and Ammunition

The Governor cannot order or authorize seizure of any ammunition or suspend or limit the sale, dispensing, or transportation of firearms or ammunition.

This restriction applies to any emergency declaration, not just the COVID proclamation and not just health emergencies. This section of the bill will revert back to original provisions on January 26, 2021, without further legislative action.

This proclamation does not appear to apply to emergency proclamations and orders at the local level under existing law.

2020 Special Session HB2016 (SL Ch. 1), Section 33(d), Page 34. Effective June 9 expiring January 26,2021 (See section 34). Amends KSA 48-925.

Election Laws

The Governor cannot alter or modify any provisions of the election laws of the state including the method elections are conducted or the timing of such elections. This applies to any emergency declaration, not just the COVID proclamation.

2020 Special Session HB2016 (SL Ch. 1), Section 33(f), Page 34. Effective June 9 expiring January 26,2021 (See section 34). Amends KSA 48-925.

Contact Tracing

Contact Tracing is a necessary function of public health officials in controlling the spread of infectious diseases. It consists of trained personnel contacting a person known to be infected to identify other places and persons they have been in contact with during the infectious period of the disease.

This comes with some concerns about privacy and forced compliance. As a result of those concerns, the legislature implemented law containing the following protections.

- Contact Tracing information is confidential, and the identification of infected persons is prohibited.
- Participation is voluntary. No violation for refusing to participate.
- Tracing through cell phone data is prohibited.
- Only ordered by state or local health officers.
- KDHE will develop rules and regulations.

2020 Special Session HB2016 (SL Ch. 1), Section 16, Page 7. Effective June 9 expires May 1, 2021. New statute.

Notaries

A Governor's Order under an Emergency Management Act proclamation may include an exemption for personal appearance before a notary provided all other requirements of law are met.

2020 Special Session HB2016 (SL Ch. 1), Section 17, Page 8. Effective June 9, no expiration. New statute.

Kansas Emergency Management Act Law Enforcement Review

A review of criminal statutes and their application and other matters effecting law enforcement operations.

PRIMARY SOURCE: Kansas Attorney General memorandum to Law Enforcement and Prosecutors issued on March 24, 2020.
Also see: Addendum #1 to memo and Addendum #2 to memo.

The following state statutes provide penalties and enforcement mechanisms for violations of the Emergency Management Act or orders issued under the Act or by health officials in response to infectious or contagious disease.

- KSA 48-939 provides for a Class A misdemeanor prior to June 9, 2020, and a civil violation on or after June 9. Any knowing or willful violation of any of the following:
  - Any provision of the Emergency Management Act
  - Any rule and regulation adopted by the adjutant general under KEMA
  - Any lawful order or proclamation issued pursuant to a proclamation declaring a:
  - State of disaster emergency under K.S.A. 48-924 (State order)
  - State of local disaster emergency under K.S.A. 48-932 (Local order).

  This is the most common violation under emergency orders.

- KSA 65-127 provides for a non-classified crime with a fine of $25-$100 with no possible jail time. It applies only to violations of any of the following statutes:
  - KSA 65-118, Reporting of infectious or contagious diseases by health care providers, confidentiality of information.
  - KSA 65-119, Duties and powers of local health officers; contagious diseases; confidentiality of information.
  - KSA 65-122, Schools and child care facilities; non-admissions and exclusions; readmissions of persons with infectious or contagious diseases.
  - KSA 65-123 Funerals of persons with infectious or contagious diseases.
  - KSA 65-126 Quarantines of geographical areas.
- KSA 65-129 provides for a Class C misdemeanor for a violation of, or refusing or neglecting to obey, any of the following:
  - Rules and regulations adopted by the secretary of health and environment for the prevention, suppression and control of infectious or contagious diseases
  - Leaving any isolation area of a hospital or other quarantined area without the consent of the local health officer having jurisdiction, or
  - Evading or breaking quarantine or knowingly conceal a case of infectious or contagious disease.

In the Attorney General's Memorandum, law enforcement is cautioned:

> "In addition to exercising common sense and good judgment, law enforcement officers should coordinate with the local prosecutor regarding how law enforcement should criminally enforce any orders issued pursuant to emergency powers currently in effect in that jurisdiction—for example, whether an arrest warrant or summons should be issued in lieu of a warrantless

misdemeanor arrest if and when necessary. Courts have recognized that a county attorney or district attorney is the representative of the State in criminal prosecutions and has broad discretion in controlling those prosecutions. The scope of this discretion extends to the power to investigate and to determine who shall be prosecuted and what crimes shall be charged."

The Attorney General also describes the challenges created by the complexity of the statutes, regulations and emergency plans.

Law enforcement may be empowered to enforce some, but not all, directives arising from various federal, state, and local actions. It is possible that in some local jurisdictions, law enforcement officers may be subject not only to duties and authorities ordinarily placed upon them by law but also by up to *six additional and separate sources of emergency duties and authorities* imposed by different authorities as a result of the COVID-19 response:

- Federal,
- State (governor's orders)
- State (secretary of health and environment's orders)
- County (commission declaration)
- County (health officer's orders), and
- City (mayor's declaration)

The situation is further complicated because there exists a state disaster emergency plan, various interjurisdictional disaster emergency plans, and numerous local disaster emergency plans, all of which now are activated, and any one (or all) of these plans may impose obligations on law enforcement and may displace local ordinances that ordinarily are in effect.

To determine which emergency authorities are currently in effect in each law enforcement agency's jurisdiction, and what extraordinary duties or authorities are thus imposed on law enforcement officers in that jurisdiction, a law enforcement agency should consult with its legal counsel.

KSA 65-129b(a)(2) grants authority to any local health officer or to the secretary of health and environment to "order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued." Thus, a law enforcement officer may be required to assist in enforcing any lawful orders of the secretary of health and environment or of any local health officer *even if no criminal conduct occurs*.

The plain wording of the statute requires the secretary or local health officer to specifically invoke this authority—to order law enforcement to assist—before the statute imposes a duty or grants authority to law enforcement. While this specific statutory provision is new, this general principle—that law enforcement may be required to assist health officials in enforcing requirements during health emergencies even in the absence of any crime—is a longstanding principle that has been upheld by Kansas courts.

Lawful enforcement requires one of the following:

- A lawful proclamation of a disaster emergency and/or emergency order by the Governor or local authority, or
- In the case of a health emergency an order from the Secretary of Health and Environment or the local health officer specifically ordering or authorizing law enforcement to assist in enforcing the order. (NOTE: This does not require a state or local proclamation or order.)

Additionally, in order to enforce a criminal law, there should be public notice of the unlawful act similar to or the same as used in publishing criminal law prior to the act leading to a criminal charge.

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Other Administrative Matters of Interest (Non-Legislative)

Human Trafficking Procedures

An updated law enforcement protocol for handling juvenile human trafficking victims was approved late in 2019.

The main change is the KBI becoming the contact point to initiate the request for an immediate response assessment (formerly the rapid response). These assessments are required by law for any child reasonably believed to be a victim of human trafficking unless the child is placed directly into a staff secured facility. This notice to the KBI is required by law and can be made 24 hours a day, seven days a week, by calling (785) 296-4017.

The KBI contact is the intelligence unit, and the hope is to also share intelligence information about suspected human trafficking cases between the KBI and local law enforcement. Such information sharing is critical to identifying common factors in multiple human trafficking cases and tying related cases together from different local jurisdictions.

The revised section of the protocol for law enforcement reporting requirements states:

a. A Kansas law enforcement officer who places a juvenile into police protective custody, who they believe to be a victim of CSE/HT, and the child is not placed at a staff secure facility, shall contact the Kansas Bureau of Investigation Criminal Intelligence Unit (KBI-CIU) at 1-785-296-4017 (24/7) to facilitate a Department for Children and Families (DCF) Immediate Response Assessment (IRA) to determine safety, placement, and treatment needs for the child. (KSA 38-2232(b)(2). The (KBI-CIU) will provide support to DCF and law enforcement with documenting CSE/HT events and facilitating the Immediate Response Assessment.

b. The Department for Children and Families Protection Report Center (DCF Hotline) shall be notified as soon as practical by calling1-800-922-5330 (24/7)to make a report in all cases where the officer reasonably believes the juvenile is a victim of CSE/HT crimes. KSA 38-2232

Scrap Metal Theft Reduction Act

The KBI is finalizing the Rules and Regulations for scrap metal dealers to report the required data on regulated scrap metal they acquire. Software is in place and ready to meet the July 1 statutory initiation date. All scrap metal dealers must register with the Attorney General.

Law enforcement will have direct access to the database will be through KCJIS.

The Scrap Metal Reduction Act is found in KSA Chapter 50 Article 6 starting at KSA 50-6,109.

The provisions of the Scrap Metal Theft Reduction Act can be a valuable tool for recovering stolen property and bringing criminals to justice. Some records will not be in the central database but are required to be maintained by the scrap metal dealer. Important provisions in the Act allowing law enforcement access to the information and recover of stolen property includes:

KSA 50-6,111(a) provides: "All records kept in accordance with the provisions of the scrap metal theft reduction act shall be open at all times to law enforcement officers and shall be kept for two years. If the required information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to law enforcement officers upon request."

KSA 50-6,111(e) provides: "It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the law enforcement agency for 30 days, exclusive of weekends and holidays."

Vehicle Registration and Driver's License Renewals

Vehicle registration at county treasurer offices has been limited due to COVID response measures. To accommodate those who cannot renew their registration or register a recently purchased vehicle, extensions were establish by Executive Order 20-12. New extensions will likely be implemented but were not available at the time of this writing.

Those provisions for registration provide for an extension to 60-days after expiration of the emergency proclamation ends for all 60-day tags issued on or after January 1, 2020.

The registration provisions for registration renewals alleviates the penalties and late fees, but does not address operating with an expired registration. However, good practice would be to not enforce expired registration requiring renewal by the end of March or later, until further direction is provided from the state.

Similar provisions were made in EO 20-12 for renewals of driver's licenses due to the closure of motor vehicle stations around the state. Those provisions provide an extension for a driver's license renewal to 60-days after expiration of the emergency proclamation ends. This applies to any driver's license expiring on or after March 12.

The Governor's Executive Order 20-12 provides the following direction to law enforcement relating to vehicle registration and driver's licenses:

"All law enforcement agencies or officers shall use their discretion in deciding whether to enforce laws related to expired driver's licenses and should consider the State of Disaster Emergency when reviewing credentials issued by the State of Kansas, as the Division of Vehicles will not indicate in its system that such driver's credentials are or will be extended while the State of Disaster Emergency remains in effect."