

Guide To 2012 Kansas Legislation Impacting Law Enforcement

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This document summarizes legislation impacting law enforcement passed by the 2012 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.** This document is not legal advice. It is a summary of the legislation based on observations and discussions during the legislative process. The author is not an attorney. **Questions should be addressed within your agency following your agency's protocol.**

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Errata Sheet

Guide to Law Enforcement Legislation version 1 is corrected as follows:

Page 2, section A.1.g. Criminal Trespass

Clarified new posting provision for by written permission only.

Page 2, section A.1.1 Inherently Dangerous Felony

Amended statute is KSA 21-5402

Page 3, section A.1.q Murder, first degree

Amended statute is KSA 21-5402

Page 5, Section A.3.a Scrap Metal

Second amended statute is KSA 50-6,1112a

Page 14, section I.7. Trespassing

Permission as provided in 58-3201 does not provide an easement over another person's land.

Page 15, section J.8. LEO personal address protection

An officer may request the removal of the information or the agency head may request it for all officers in the agency. The officer can do this without going through their agency head.

Attachment A. DUI

Added reference to updated state forms.

A. LEGISLATION DIRECTLY AFFECTING LINE OPERATIONS

Also see “Drug Enforcement Legislation” and “Forfeiture Legislation.”

1. Criminal Law

a. Animals, unlawful disposition

Using certain animals as an "advertising device or promotional display" is no longer included in the offense of unlawful disposition of animals. This provision, as written, prevented pet stores from displaying live animals or using live animals as a key element in any advertising. Obviously this wasn't the legislative intent and the decision of the legislature was to simply repeal this portion of the statute. [Read the bill explainer](#). Amends KSA 21-6413. (Effective July 1, 2012. [HB2318](#)§28; 2012 Session Laws, chapter 150)

b. Blackmail

The blackmail statute is amended to include the culpability of "intentionally." [Read the bill explainer](#). Amends KSA 21-5428. (Effective July 1, 2012. [HB2792](#)§3; 2012 Session Laws, chapter 166)

c. Bribery

This statute is amended to clarify giving an officer or other government employee or elected official something which the receiving person is permitted by law to receive is not bribery. For our usual application of this statute there is no substantive change. [Read the bill explainer](#). Amends KSA 21-6001. (Effective July 1, 2012. [HB2318](#)§23; 2012 Session Laws, chapter 150)

d. Burglary

Unlawfully entering a structure, vehicle, etc. with intent to commit a sexually motivated crime is now burglary. This has been limited to intent to commit theft, a felony, or sexual battery. Sexually motivated crime is defined as any crime committed for the purpose of the defendants sexual gratification. So think photographing a person without their knowledge, eavesdropping (hidden cameras), vandalizing undergarments, and sick stuff like that. Just remember we will have to prove the defendant did those things for their own sexual gratification. [Read the bill explainer](#). Amends KSA 21-5807. (Effective July 1, 2012. [HB2318](#)§19; 2012 Session Laws, chapter 150)

e. Children, reporting of missing or deceased

A new statute makes it a SL8 nonperson felony for a parent, legal guardian, or caretaker to fail to report the disappearance of a child under the age of 13; or for a parent guardian or caretaker to fail to report the death of a child. It is a class A misdemeanor for other persons required by law (subsection (a) of KSA 38-2223) to fail to report the death of a child. [Read the bill explainer](#). Two new statutes. (Effective July 1, 2012. [HB2534](#)§1 and 2; 2012 Session Laws, chapter 119)

f. Conspiracy

Conspiracy requires two or more persons agreeing to commit a crime. The question would often arise whether conspiracy is still applicable if one of the parties alleged to conspire to commit a crime actually had no intent to commit the crime. For example, an undercover officer approached by a person to commit a crime. This amendment will clarify the belief of the offender that the co-conspirator intended to commit the crime is sufficient. [Read the bill explainer](#). Amends KSA 21-5302. (Effective July 1, 2012. [HB2318](#)§3; 2012 Session Laws, chapter 150)

g. Criminal Trespass

SB314 amends the criminal trespass statute by adding posting as provided in [KSA 32-1013](#), access by written permission only posted by signage or by purple painted markings to the list of ways property may be posted. The written permission must be carried by the permitted person while on the property. It does not change any other trespass provisions regarding fenced, locked, secured, etc. [Read the bill explainer](#). Amends KSA 21-5808. (Effective July 1, 2012. [SB314](#)§3; 2012 Session Laws, chapter 154)

h. Endangerment

This is a new statute designed to cover reckless acts that expose another person to a "danger of great bodily harm or death." Violation is a class A misdemeanor. [Read the bill explainer](#). New Statute. (Effective July 1, 2012. [HB2318](#)§1; 2012 Session Laws, chapter 150)

i. Escape

The law only covered escape from custody after a formal charge had been filed or after conviction. Some courts/prosecutors would support the charge if the person were in jail but not formally charged while others would not. Few courts would support the charge if the person was in police custody prior to booking into jail. Those cases would typically be charged as obstruction. This amendment includes escape after the "arrest" of a person. So once law enforcement has placed a person under arrest and has them in physical custody we will now be able to charge them with escape. The key is having them under our control and in custody. So the prisoner who is handcuffed and being taken to a patrol car that breaks away and flees would be charged with escape. The person arrested and in the patrol car and manages to get out and flee can be charged with escape. The person who is told they are under arrest and immediately runs without being in our physical control or custody will probably still be charged with obstructing. [Read the bill explainer](#). Amends KSA 21-5911. (Effective July 1, 2012. [HB2318](#)§22; 2012 Session Laws, chapter 150)

j. Explosives, Criminal Possession

The amendment adds "without proper authority" to the criminal disposal (distribution) of explosives. It also clarifies we do not have to prove the offender knew a person they give explosives to is under 21 for the charge of providing explosives to a person under 21. [Read the bill explainer](#). Amends KSA 21-6312. (Effective July 1, 2012. [HB2318](#)§26; 2012 Session Laws, chapter 150)

k. Human Trafficking

This amendment clarifies the provisions of aggravated human trafficking. It is primarily a technical correction requiring the elements of human trafficking (non-aggravated) must be met for the crime of recruiting, harboring, transporting, providing or obtaining a person under the age of 18 to be used to engage in forced labor, involuntary servitude, or sexual gratification. [Read the bill explainer](#). Amends KSA 21-5426. (Effective July 1, 2012. [HB2318](#)§5; 2012 Session Laws, chapter 150)

l. Inherently Dangerous Felony Definition

Abandonment of a child and Aggravated abandonment of a child, KSA 21-5605, are added to the crimes considered inherently dangerous felonies. [Read the bill explainer](#). Amends KSA 21-5402. (Effective July 1, 2012. [HB2318](#)§4; 2012 Session Laws, chapter 150)

m. Intimidation of a Witness

The law on intimidation of a witness is amended to include preventing or dissuading any

victim or witness or person acting on behalf of a victim from making a report of the victimization to the SRS or any mandatory reporter as required in KSA 38-2223. [Read the bill explainer](#). Amends KSA 21-5909. (Effective July 1, 2012. [SB307](#)§3; 2012 Session Laws, chapter 157)

n. Interference with Judicial Process

Interference with Judicial Process now includes interfering in a criminal investigation by 1) inducing a witness or informant to withhold or unreasonably delay producing any testimony, information, document or thing; 2) after being ordered by the court, withholding or unreasonably delaying producing any testimony, information, document or thing; 3) altering, damaging, removing, or destroying any record, document or thing with the intent to prevent it from being used as evidence; or 4) making, presenting or using a false record, document or thing material to a criminal case or investigation with the intent to mislead a justice, judge, magistrate, master or law enforcement officer. [Read the bill explainer](#). Amends KSA 21-5905. (Effective July 1, 2012. [HB2464](#)§2; 2012 Session Laws, chapter 143)

o. Interference with Law Enforcement Officer

This amendment may be one of the most useful tools the legislature has given us this session. Up until now interference of a law enforcement officer has only included either the serving of process or falsely reporting a crime. This amendment adds: 1) reporting a particular person committed a crime knowing the information to be false; 2) providing any information to law enforcement the person knows to be false and intending the information to influence, impede, or obstruct the officer or agency; or 3) concealing, destroying or materially altering evidence with the intent to prevent or hinder the apprehension or prosecution of any person. A violation is an A misdemeanor for non-felony cases, a SL8 felony for falsely reporting a particular person committed a felony or for the evidence provision in the case of a felony, and a SL9 for other false information in the case of a felony. [Read the bill explainer for HB2318](#); [Read the bill explainer for HB2534](#). Amends KSA 21-5904. (Effective July 1, 2012. [HB2318](#)§20; 2012 Session Laws, chapter 150 and [HB2534](#)§2; 2012 Session Laws, chapter 119)

p. Legal Process, Simulating

The current law only covers judicial process. The amendments change that to legal process. So any kind of process covered by statute even if not directly a court or judicial process is now clearly included. For example, a fake debt collection notice, a fake eviction notice, and other similar notices or processes provided for by statute are now covered. [Read the bill explainer](#). Amends KSA 21-5907. (Effective July 1, 2012. [HB2318](#)§21; 2012 Session Laws, chapter 150)

q. Murder, First Degree

The first degree murder statute includes a list of "inherently dangerous felonies" which establish a violation if a death occurs during the commission, attempt to commit, or flight from one of the listed crimes. This amendment adds a violation of KSA 21-5605, abandonment of a child or aggravated abandonment of a child to that list of crimes. [Read the bill explainer](#). Amends KSA 21-5402. (Effective July 1, 2012. [HB2318](#)§4; 2012 Session Laws, chapter 150)

r. Recordings, Possession of Unlawful

The law has covered unauthorized duplication and distribution of unlawfully duplicated recordings. But the law has not covered knowingly possessing such recordings. The

amended law provides for a class B misdemeanor for knowingly possessing unlawfully duplicated recordings. [Read the bill explainer](#). Amends KSA 21-5806. (Effective July 1, 2012. [HB2318](#)§18; 2012 Session Laws, chapter 150)

s. Unlawful Sexual Relations

The unlawful sexual relations statute, pertaining to consensual sexual acts by certain person in positions of control, has additional provisions to cover SRS contractors; for all SRS employees/contractors when the victim is in SRS custody; a worker, volunteer, or other person of authority in a foster home licensed by KDHE when they engage in consensual sex, lewd fondling or touching, or sodomy with a foster child age 16 or over; in schools it adds lewd fondling or touching and sodomy by a teacher or other person of authority. Clarification is added when the provisions of other statutes are violated which apply instead of this one. [Read the bill explainer](#). Amends KSA 21-5512. (Effective July 1, 2012. [HB2613](#)§1; 2012 Session Laws, chapter 138)

2. Traffic Law

a. DUI

Follow-up bill to SB6 passed last year. A DUI Commission recommendation to criminalize evidentiary test refusal after the first offense is implemented. Provisions for KBI approval of preliminary drug test devices are also amended. See attachment A for more details. [Read the bill explainer](#). Amends several DUI related statutes. (Effective July 1, 2012. [SB60](#); 2012 Session Laws, chapter 172)

b. Vehicle Weight Restrictions

Trucks used for garbage, refuse or solid waste, and trucks mounted with a fertilizer spreader designed to spread animal dung are no longer subject to the gross weight table in KSA 8-1909. Instead they are restricted to 60,000 lbs for a three axle vehicle and 40,000 lbs for a two axle vehicle. [Read the bill explainer](#). Amends KSA 8-1901. (Effective July 1, 2012. [SB298](#)§1; 2012 Session Laws, chapter 26)

c. Registration

1. ~~30~~ 60-day tags

The temporary tags and the provision allowing a tag to be used on a purchased vehicle until transferred is changed from a 30 day period to a 60 day period. [Read the bill explainer](#). Amends KSA 8-127, 8-135, 8-135c, 8-143, 8-198, and 8-2409. (Effective July 1, 2012. [SB300](#)§1, 2, 3, 4, 5, and 6; 2012 Session Laws, chapter 130)

2. Antique Tags

For tags originally issued after 1976, the tag may display a renewal sticker for the year of the vehicle. Replacement stickers will be made available after January 1, 2013, by the Kansas Division of Vehicles. [Read the bill explainer](#). Amends KSA 8-172. (Effective July 1, 2012. [HB2599](#)§1; 2012 Session Laws, chapter 45)

3. Ducks Unlimited Specialized Tag

Yes, yet another specialty tag. [Read the bill explainer](#). New statute. (Effective January 1, 2013. [SB300](#)§7; 2012 Session Laws, chapter 130)

4. Fleet vehicle tags

Fleet vehicle registration plates are permanent and are not required to have a date decal on them. They are not transferrable and remain with the vehicle until removed from the

fleet they are registered to. The definition of fleet vehicle is also amended dealing primarily with the fees they pay. These tags will have the word "commercial" on them. [Read the bill explainer](#). Amends KSA 8-1,152. (Effective July 1, 2012. [HB2557](#)§3; 2012 Session Laws, chapter 87)

5. Masonic Lodge Specialized Tag

And another specialty tag. [Read the bill explainer](#). New statute. (Effective January 1, 2013. [SB300](#)§8; 2012 Session Laws, chapter 130)

3. Investigatory operations

a. Scrap metal

The provisions in the bill passed last year included a provision relating to wire or cable marked by a utility company with the sheathing removed. That provision was supposed to be removed but was not. Effective April 5, 2012, the provision was struck. It also made another change regarding renewal fees in response to an attorney general's opinion pointing out erroneous wording in last year's bill. [Read the bill explainer](#). Amends KSA 50-6,111 and 50-6,1112a. (Effective April 5, 2012. [HB2470](#)§1 and 2; 2012 Session Laws, chapter 38)

b. Search of probationers and parolees

Law enforcement officers will be permitted to search persons on parole or probation and their effects, vehicle, residence and property with reasonable suspicion they have committed a crime or are in violation of their probation/parole conditions. This authorization includes a prohibition of "arbitrary or capricious searches or searches for the sole purpose of harassment." The statute also requires a written report of every such search to be filed with the offender's parole officer, court services officer, or community correctional services officer no later than the end of the following business day. The report must include the facts leading to the search (the reasonable suspicion a new crime was committed by the person or the person was in violation of their conditions), the scope of the search, and the findings resulting from the search. The law does not allow the law enforcement officer to take any action on a condition violation other than to report it to the supervising agent. This provision does not appear to apply to the search of juveniles. Word of Caution: We need to use this very wisely or they will take this away from us. [Read the bill explainer](#). Amends KSA 21-6607 and 22-3717. (Effective July 1, 2012. [SB159](#)§1 and 2; 2012 Session Laws, chapter 70)

4. Firearms and Concealed carry

a. Carrying handgun while hunting, fishing, or fur harvesting

The Kansas Dept. of Wildlife, Parks and Tourism is prohibited from making any rule or regulation preventing a person from carrying a handgun while lawfully hunting, fishing or fur harvesting. [Read the bill explainer](#). Amends KSA 32-1002. (Effective July 1, 2012. [HB2491](#)§1; 2012 Session Laws, chapter 49)

5. Jail Operations

a. Bonds

Several bond statutes have been amended with technical amendments as a result of the changes to the drug grid to five levels. No substantive change in application. [Read the bill explainer](#). Amends KSA 22-2802 and 22-3604. (Effective July 1, 2012. [HB2318](#)§39 and 42; 2012 Session Laws, chapter 150)

b. Transfer to DOC

County and District Attorney reports are no longer required to go to DOC when a prisoner is

transferred unless they contain special facts not contained in other reports provided. This may be on a form provided by DOC. [Read the bill explainer](#). Amends KSA 22-3427 and 22-3432. (Effective July 1, 2012. [HB2055](#)§1 & 2; 2012 Session Laws, chapter 28)

6. Juvenile Offenders

a. Placement in detention facility

The placement of a juvenile into a detention facility is dependent upon the existence of at least one of ten conditions listed in statute. One of those has been that they are "alleged to have committed" a crime that would be a felony or other specified non-felony crimes. As amended, the statute requires "probable cause to believe that the juvenile has committed" such offenses. The rules also are amended to require specific probable cause findings to hold the juvenile longer than 48 hours. [Read the bill explainer](#). Amends KSA 38-2331 and 38-2343. (Effective July 1, 2012. [SB320](#)§1 and 2; 2012 Session Laws, chapter 69)

b. Offender commitment, juveniles

The statute controlling commitments of juveniles received technical amendments as a result of the changes to the drug grid to five levels. No substantive change in application. [Read the bill explainer](#). Amends KSA 38-2369, 38-2374, 38-2376. (Effective July 1, 2012. [HB2318](#)§47, 48, and 49; 2012 Session Laws, chapter 150)

Also see "Juveniles Committing New Crimes While in Juvenile Correction Facility" in section E, Sentencing Legislation.

7. Other issues of interest to line operations

a. Electronic cigarettes, sales to minors

It is unlawful to sell, furnish, or distribute electronic cigarettes to a minor. [Read the bill explainer](#). Amends KSA 79-3301, 79-3303, and 79-3321. (Effective July 1, 2012. [HB2324](#); 2012 Session Laws, chapter 127)

b. Mental health information available to officers

The law passed last year allows law enforcement access to medical information limited to whether the person has been a patient within the last 6 months in a treatment facility but required the person to be arrested prior to obtaining the information. It is amended this year to provide the information is available when law enforcement has the person detained and has reason to believe the person is committing, has committed, or is about to commit a misdemeanor or felony. This is not available if the person is stopped for a traffic or smoking infraction. [Read the bill explainer](#). Amends KSA 65-5603. (Effective July 1, 2012. [HB2600](#)§1; 2012 Session Laws, chapter 39)

c. Nuisances, criminal

The criminal nuisance statutes have technical amendments as a result of the changes to the drug grid to five levels and moving the drug statutes to chapter 21, article 57. No substantive change in application. [Read the bill explainer](#). Amends KSA 22-3901. (Effective July 1, 2012. [HB2318](#)§44; 2012 Session Laws, chapter 150)

d. Protection Orders

A court may extend a protection order for a period from 2 years to the life of the defendant if the defendant has previously violated a protection order or has been convicted of a person felony committed against the plaintiff. Violation of an extended order is a SL6 person felony. [Read the bill explainer](#). Amends KSA 21-5924 and 60-3107. (Effective July 1, 2012. [HB2613](#)§2 and 5; 2012 Session Laws, chapter 138)

e. Protection from Stalking Orders

A petition for a protection from stalking order may now be filed with any district court instead of only with the court in the county of the stalking case. Upon motion of the plaintiff the court may extend the protection from stalking order for an additional year, and may also extend the order for a period from 2 years to the life of the defendant if the defendant has previously violated a protection order or has been convicted of a person felony committed against the plaintiff. Violation of the new extended order is a SL6 person felony. [Read the bill explainer](#). Amends KSA 21-5924, 60-31a04 and 60-31a06. (Effective July 1, 2012. [HB2613](#)§2, 6 and 7; 2012 Session Laws, chapter 138)

f. Smoking

The no smoking statutes were amended to implement the new criminal culpability terms put in place last year. These create no substantive change in our application of the law. There is no need to prove intent or knowledge of the law in order to charge and convict on these smoking infractions. [Read the bill explainer](#). Amends KSA 21-6110 and 21-6112. (Effective July 1, 2012. [HB2318](#)§24 and 25; 2012 Session Laws, chapter 150)

B. DRUG ENFORCEMENT LEGISLATION (Also see Attachment E for more details)

1. Communication Facility, Use of

Several technical amendments were made updating the statute with the new Chapter 21, Article 57 statute references. [Read the bill explainer](#). Amends KSA 21-5707. (Effective July 1, 2012. [HB2318](#)§11; 2012 Session Laws, chapter 150)

2. Cultivation

Severity levels of cultivation are changed. They are no longer determined by prior convictions but by the quantity of the plants cultivated. See Attachment E for more details. [Read the bill explainer](#). Amends KSA 21-5705. (Effective July 1, 2012. [HB2318](#)§9; 2012 Session Laws, chapter 150)

3. Distribution

Severity levels of distribution are changed. They are no longer determined by prior convictions but by the quantity of the drugs distributed. Quantity is defined as the weight of the product distributed including any cutting agents. Including the cutting agents avoids the need to determine the purity of the distributed product. It also is only right since that is how the dope dealers are peddling it. The amendments also establish a "rebuttable presumption" of intent to distribute based on quantities in the offender's possession. See Attachment E for more details. [Read the bill explainer](#). Amends KSA 21-5705. (Effective July 1, 2012. [HB2318](#)§9; 2012 Session Laws, chapter 150)

4. Distribution of non-controlled substance represented to be a controlled substance

A provision is added to the statute which provides an offender who sells such a non-controlled substance represented to be a controlled substance may also be charged with theft by deception. See Attachment E for more details. [Read the bill explainer](#). Amends KSA 21-5714. (Effective July 1, 2012. [HB2318](#)§16; 2012 Session Laws, chapter 150)

5. Drug Crimes, Definitions

Several definitions were amended. *Drug paraphernalia* now excludes items listed in KSA 21-5709 subsection (a) which are precursors for manufacturing drugs. *Manufacture* no longer includes any packaging or repackaging of the substance or labeling or relabeling of its

container. *Manufacture* also no longer includes the addition of diluents or adulterants used for cutting a controlled substance. See Attachment E for more details. [Read the bill explainer](#). Amends KSA 21-5701. (Effective July 1, 2012. [HB2318](#)§7; 2012 Session Laws, chapter 150)

6. Drug Sentencing Grid

The drug grid is expanded to five levels with the new level midway between what was SL1 and SL 2. This requires a lot of statutes to be amended with technical amendments changing drug severity levels 2-4 to levels 3-5. Those changes result in no change to the length of sentence. The amendments also add two new "border boxes" to the grid for severity level 5, categories C and D. The primary changes are in distribution and manufacturing sentencing provisions. See manufacturing and distribution under this section of the document for more details. Also see Attachment E for more details. [Read the bill explainer](#). Amends KSA 21-6805. (Effective July 1, 2012. [HB2318](#)§33; 2012 Session Laws, chapter 150)

7. Manufacturing

The first offense of manufacturing now is a SL2 crime (the new level in the drug grid) unless it was meth that was manufactured (which is always a SL1 crime). Second or subsequent convictions are a drug severity level 1 crime. [Read the bill explainer](#). See Attachment E for more details. Amends KSA 21-5703. (Effective July 1, 2012. [HB2318](#)§8; 2012 Session Laws, chapter 150)

8. Prescription Drug Monitoring

The information in the Prescription Drug Monitoring has only been available to law enforcement with a court order relating to an ongoing criminal investigation. This amendment will allow the Board of Pharmacy to report to "the appropriate law enforcement agency" when the Pharmacy Board has reasonable suspicion a crime has been committed. In another section of the bill a new SL10 nonperson felony is created for obtaining or attempting to obtain prescription monitoring information without authority. A Word of Caution: It is already a SL10 non-person felony for anyone authorized to have information from the Prescription Monitoring program to share that information in violation of the act. So only share it with law enforcement and the prosecutors as required to investigate and prosecute. [Read the bill explainer](#). Amends KSA 65-1685 and KSA 65-1693. (Effective May 17, 2012. [SB134](#)§5 & 6; 2012 Session Laws, chapter 107)

9. Proceeds from illegal drugs

The severity level of receiving or acquiring drug proceeds of \$250,000 to \$500,000 is increased to the new SL2 on the drug grid. See Attachment E for more details. [Read the bill explainer](#). Amends KSA 21-5716. (Effective July 1, 2012. [HB2318](#)§17; 2012 Session Laws, chapter 150)

10. Schedules, Drug

a. Definitions

Definitions in Article 41 of Chapter 65 now include definitions of cultivate, controlled substance analog, and isomer. This will have limited impact on law enforcement. [Read the bill explainer](#). Amends KSA 65-4101. (Effective May 17, 2012. [SB134](#)§7; 2012 Session Laws, chapter 107)

b. Schedule IV - Adds *Carisoprodol* to the schedule. [Read the bill explainer](#). Amends KSA 65-4111. (Effective May 17, 2012. [SB134](#)§8; 2012 Session Laws, chapter 107)

c. Schedule V - Adds *Ezogabine N-[2-amino-4(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester* to the schedule. [Read the bill explainer](#). Amends KSA 65-4113. (Effective May 17, 2012. [SB134](#)§9; 2012 Session Laws, chapter 107)

d. New law that pharmaceutical companies and distributors may not provide samples of any

drugs on schedules II, III, IV or V except non-narcotic depressants in Schedule V affecting the central nervous system. This is a regulatory law and not a criminal law. [Read the bill explainer](#). New Statute. (Effective May 17, 2012. [SB134](#)§11; 2012 Session Laws, chapter 107)

11. Technical Amendments

The change of the grid to five levels resulted in many technical corrections throughout the drug statutes. Most of these are simply converting to the new grid level to maintain the same sentencing provisions. However, there are other technical amendments included that clean up some provisions from the earlier changes to chapter 21, article 57. [Read the bill explainer](#). Various statutes in chapter 21, article 57. (Effective July 1, 2012. [HB2318](#); 2012 Session Laws, chapter 150)

C. ALCOHOL ENFORCEMENT LEGISLATION

NOTE: HB2689 became effective on May 31, 2012, upon publication in the Kansas Register. However, most sections go into effect on July 1, 2012 with a couple becoming effective on January 1, 2013. Pay close attention to the effective dates in this section. Also see the ABC release on these amendments at: <http://www.ksrevenue.org/pdf/abcIndustryNotice6-4-12.pdf>.

1. Happy Hour

The restriction that drink prices cannot be lower one part of the day from another part of the day (Happy Hour drinks) is removed. [Read the bill explainer](#). Amends KSA 41-2722. (Effective July 1, 2012. [HB2689](#)§43; 2012 Session Laws, chapter 144)

2. Microdistilleries

A new license class is created for microdistilleries allowing the distillation of up to 50,000 gallons of spirits per year. The microdistillery can serve samples and sell their products on their licensed premises and at licensed special events. [Read the bill explainer](#). Creates a new statute and amends KSA 41-102, 41-304, 41-311, 41-313, 41-316, 41-317, 41-318, 41-320, 41-501, 41-601, 41-602, 41-710, 41-714, 41-717, 41-718, 41-719, 41-803, 41-901, 41-1101, 41-2629, 75-5733, 79-4101, 79-4102, 79-4103, and 79-4104. (Effective July 1, 2012. [HB2689](#)§2, 4, 5, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 30, 31, 32, 40, 44, 45, 46, 47, and 48; 2012 Session Laws, chapter 144)

3. Public Venue Licensing

A new public venue license is created. A public venue is an arena, stadium or other place used primarily for sporting or athletic events, live theatre, or live concerts having not less than 4,000 permanent seats and at least two private suites. A public venue may sell drinks in a designated area by individual drinks, unlimited drinks for a single price, and liquor in original packages for consumption in private suites. [Read the bill explainer](#). Creates a new statute and amends KSA 41-306, 41-306a, 41-307, 41-308, 41-308a, 41-701, 41-2601, 41-2608, 41-2613, 41-2614, 41-2622, 41-2629, 41-2640, 79-41a01, 79-41a02, 79-41a03, 79-41a04, 79-41a06, 79-41a07, and 79-41a08. (Effective July 1, 2012. [HB2689](#)§1, 7, 8, 9, 10, 12, 23, 33, 34, 36, 37, 38, 40, 41, 49, 50, 51, 52, 53, 54, and 55; 2012 Session Laws, chapter 144)

4. Sales Person Permits are repealed

The provisions for licensure of sales persons is repealed. [Read the bill explainer](#). Repeals KSA 41-333 through 41-341. (Effective July 1, 2012. [HB2689](#)§56; 2012 Session Laws, chapter 144)

5. Samples (Tastings)

Tasting samples of wine, beer or distilled spirits will be allowed on or adjacent to the licensed

premises by those licensed to sell liquor in the original container at retail. Licensed manufacturers may also provide free samples or tastings of the products they make. Manufacturers must be located in a county allowing liquor by the drink to serve samples or tastings. Microdistilleries may serve samples on the licensed premises. Wineries have been allowed to serve samples both on their premises and at licensed special events. There can be no charge for the sample. They can serve a person multiple samples. The sample cannot be taken from the premises. Sampling is not permitted in clubs, restaurants, or taverns. [Read the bill explainer](#). Creates a new statute and amends KSA 41-305, 41-308, and 41-308a. (Effective July 1, 2012. [HB2689](#)§2, 3, 6, and 11; 2012 Session Laws, chapter 144)

6. Special Event (Temporary) Permit

The special event law provisions are amended to allow the permit to be issued for up to 30 days but not any longer than the duration of the special event. [Read the bill explainer](#). Amends KSA 41-2645. (Effective July 1, 2012. [HB2689](#)§42; 2012 Session Laws, chapter 144)

7. Wildlife, Parks and Tourism property

Consumption of alcohol will be allowed on property owned or managed by the Department of Wildlife, Parks and Tourism property unless prohibited by rules and regulations of the Department. [Read the bill explainer](#). Amends KSA 41-719. (Effective January 1, 2013. [HB2689](#)§29; 2012 Session Laws, chapter 144)

8. Wineries

Farm wineries will be permitted to sell their products for consumption on the premises provided it is in a county which allows liquor by the drink. However, it is not considered liquor by the drink and is not taxed as such. [Read the bill explainer](#). Amends KSA 41-308a. (Effective May 31, 2012. [HB2689](#)§11; 2012 Session Laws, chapter 144)

D. CRIMINAL PROCEDURE AND TRIAL LEGISLATION

1. Animal Cruelty

Prosecutors are permitted to apply prosecutorial discretion to animal cruelty cases as they are in every other criminal prosecution. The law as amended several years ago required a prosecutor to file a charge based on a complaint from certain parties even if the evidence clearly lacked the ability to achieve a conviction. This was the only place in Kansas statute where this provision was in place. [Read the bill explainer](#). Amends KSA 21-6412. (Effective July 1, 2012. [HB2318](#)§27; 2012 Session Laws, chapter 150)

2. Discovery and production requirements for defense attorneys

Defense attorneys will be required to produce a summary or written report of expected expert witness testimony including the witness' qualifications, opinions, and the basis for such opinions. [Read the bill explainer](#). Amends KSA 22-3212. (Effective July 1, 2012. [HB2468](#)§1; 2012 Session Laws, chapter 40)

3. Diversions

Diversion statutes received technical amendments as a result of the changes to the drug grid to five levels. No substantive change in application. [Read the bill explainer](#). Amends KSA 22-2908. (Effective July 1, 2012. [HB2318](#)§40; 2012 Session Laws, chapter 150)

4. Murder, First Degree, Lesser Included Offenses

There is no longer lesser degrees of first degree murder under KSA 21-5402 subsection (a)(2). [Read the bill explainer](#). Amends KSA 21-5109. (Effective July 1, 2012. [SB307](#)§2; 2012 Session Laws, chapter 157)

5. Pornographic Evidence

Evidence containing child pornography cannot be duplicated and provided to the defense. It must remain in law enforcement custody. But it must also be made available for the defense to review including by a defense expert. [Read the bill explainer](#). Amends KSA 22-2312. (Effective July 1, 2012. [HB2464](#)§1; 2012 Session Laws, chapter 143)

6. Sexually Violent Predators

Expert testimony is now allowed in any proceeding (was only in a trial) of a sexually violent predator case. Persons conducting the evaluations of a person accused of being a sexually violent predator must give certain notifications about the evaluation process to the detained person. [Read the bill explainer](#). Amends KSA 59-29a05 and 59-29a06. (Effective July 1, 2012. [SB280](#)§1 and 2; 2012 Session Law Chapter 59).

7. Speedy Trial

The time period that a competency ruling is pending is not counted against the state for the purpose of calculating speedy trial. Additional conditions that do not count against the state are also added: In certain cases where the defense asks for a continuance §4(g); the period a court is making certain determinations §4(h); when the state requests a delay and there are certain later conditions and appellate court rulings. [Read the bill explainer](#). Amends KSA 22-3402. (Effective July 1, 2012. [SB307](#)§4; 2012 Session Laws, chapter 157)

8. Statute of Limitations on Sexually Violent Crimes with Juvenile Victim

The period of the statute of limitations is started the day after the victim's 18th birthday in cases where the victim of a sexually violent crime is under the age of 18 at the time of the crime. Thus the statute of limitation will generally run until the victim is age 23 unless another condition is met allowing it to run longer or to stop running. [Read the bill explainer](#). Amends KSA 21-5107. (Effective July 1, 2012. [SB307](#)§1; 2012 Session Laws, chapter 157)

E. SENTENCING LEGISLATION

1. Drug Grid

The drug grid is expanded to five levels with the new level midway between what was SL1 and SL 2. See the section on Drug Legislation and Attachment E for more details. [Read the bill explainer](#). Amends KSA 21-6805. (Effective July 1, 2012. [HB2318](#)§33; 2012 Session Laws, chapter 150)

2. Incest

This amendment increases the penalty from a non-drug severity level 5 to a non-drug severity level 3 when the victim is the biological, step or adoptive child of the offender. [Read the bill explainer](#). Amends KSA 21-5604. (Effective July 1, 2012. [HB2318](#)§6; 2012 Session Laws, chapter 150)

3. Juveniles Committing New Crimes While in Juvenile Correction Facility

Juveniles who commit a new crime while in a juvenile correction facility may be sentenced to serve a consecutive term in a juvenile correction facility. [Read the bill explainer](#). Amends KSA 38-2369. (Effective July 1, 2012. [HB2737](#)§1; 2012 Session Laws, chapter 33)

4. McAdam case law fix.

The McAdam case declared that if two statutes have the same elements of a crime, regardless of which one a person was convicted of they could only be sentenced to the least severe sentence of

the applicable statutes. This law is designed to fix that by clarifying the legislative intent to allow a prosecutor to decide which of the statutes will be charged and the penalties of the charged statute will apply. [Read the bill explainer](#). Amends KSA 21-5109. (Effective July 1, 2012. [HB2318](#)§2; 2012 Session Laws, chapter 150)

5. Multiple Offenses (Consecutive Sentencing)

Since the introduction of the sentencing grids in 1993, the court could sentence a defendant to consecutive sentences for multiple crimes but each of the sentences could only be as provided for in the sentencing grid for each crime. This amendment will allow a judge to enter a sentence for all crimes consecutive to the first crime of conviction. The consecutive sentence may be for any length of time less than the maximum for each crime as provided in the grid and sentencing guidelines. It is hoped judges will be less reluctant to use consecutive sentencing. [Read the bill explainer](#). Amends KSA 21-6819. (Effective July 1, 2012. [HB2318](#)§36; 2012 Session Laws, chapter 150)

6. Electronic monitoring, lifetime for certain sex offenders

Requires certain sex offenders where the victim was a child to be placed under lifetime electronic monitoring upon release from imprisonment and the offender may be ordered to reimburse all or part of the costs of such monitoring, as determined by the Prisoner Review Board. [Read the bill explainer](#). Amends KSA 21-6604 and 22-3717. (Effective July 1, 2012. [HB2465](#)§1 and 2; 2012 Session Laws, chapter 32)

F. FORFEITURE LEGISLATION

1. Attempting to Elude

A new provision will allow a motor vehicle used in a felony attempting to elude case to be subject to forfeiture. The process is the same for any other forfeiture. [Read the bill explainer](#). Amends KSA 60-4104. (Effective July 1, 2012. [SB282](#)§1; 2012 Session Laws, chapter 60)

G. TRAFFIC LAW LEGISLATION (Not directly affecting line operations)

1. Attempting to Elude

Vehicles used in felony attempt to elude are now subject to forfeiture. See Section F. for details.

2. Drivers Licenses

a. CDL Testing

An applicant for a CDL will not have to take the skills test if they show they have military commercial driver experience. [Read the bill explainer](#). Amends KSA 8-2,133. (Effective July 1, 2012. [SB334](#)§1; 2012 Session Laws, chapter 132)

b. Restricted class C or M licenses

A restricted license may be issued to a person who has an instructional permit from another state with requirements equal to or greater than Kansas requirements. [Read the bill explainer](#). Amends KSA 8-2,100. (Effective July 1, 2012. [SB334](#)§2; 2012 Session Laws, chapter 132)

c. Motorcycle license

Applicants may substitute the Department of Defense motorcycle training in lieu of the Kansas written and driving tests. [Read the bill explainer](#). Amends KSA 8-240. (Effective July 1, 2012. [HB2459](#)§1; 2012 Session Laws, chapter 15)

d. Motorized bicycle license

A person who has had their license revoked as a habitual violator but does not have any conviction in the last five years for DUI, felony attempt to elude, or any alcohol/drug related offense as defined in KSA 8-1013 (vehicular battery or vehicular homicide while DUI), may apply for and receive a license to operate a motorized bicycle. [Read the bill explainer](#). Amends KSA 8-240. (Effective July 1, 2012. [SB60](#)§1; 2012 Session Laws, chapter 172)

H. OFFENDER REGISTRY

1. Major revisions to Offender Registry statutes. See attachment B. [Read the bill explainer](#). Amends KSA 22-4902, 22-4903, 22-4903, 22-4904, 22-4905, 22-4906, 22-4907, 22-4908, 22-4009. Also repeals 22-4902a and 22-4906a. (Effective July 1, 2012. [HB2568](#); 2012 Session Laws, chapter 149)
2. Expungement
Persons who are required to register on the offender registry are not eligible for expungement of their convictions or any part of their criminal record. The law is also amended to allow release of expunged record information to the KBI for the purpose of keeping the central repository criminal history information up-to-date or to provide information to the national instant criminal background check system. It further requires the court to provide such information to the KBI for all future and past convictions. [Read the bill explainer](#). Amends KSA 21-6614, 21-2410, and 38-2215. (Effective April 12, 2012. [SB322](#)§3, 4, and 13; 2012 Session Laws, chapter 66) KSA 21-6614 is also amended by [HB2535](#)§6; 2012 Session Laws, chapter 16 with the same amendments. HB2535 is effective on July 1, 2012.

I. WILDLIFE AND PARKS

1. Deer Hunting
No later than 4/30/2013 a "combination antlered and antlerless deer permit" will be implemented as will a "pre-rut antlerless deer rifle season." There will also be a pilot program for cross-bow deer hunting. [Read the bill explainer](#). KSA 32-937. (Effective January 1, 2013. [SB314](#)§6; 2012 Session Laws, chapter 154)
2. Fishing License Exceptions
Effective 1/1/2013 the age exemptions for fishing license requirements are changed. Currently a resident of Kansas age 65 or over is not required to have a license. After 1/1/2013 a resident age 65 to 75 must have a senior license and a resident age 75 or over remains exempt. The exemption for residents over age 75 expires on July 1, 2020. [Read the bill explainer](#). Amends KSA 32-906 as amended by 2012 SB316 §45. (Effective January 1, 2013. [SB314](#)§4; 2012 Session Laws, chapter 154)
3. Handgun, carrying while hunting, fishing, or fur harvesting
The Kansas Dept. of Wildlife, Parks and Tourism is prohibited from making any rule or regulation preventing a person from carrying a handgun while lawfully hunting, fishing or fur harvesting. [Read the bill explainer](#). Amends KSA 32-1002. (Effective July 1, 2012. [HB2491](#)§1; 2012 Session Laws, chapter 49)
4. Hunting License Exceptions
Effective 1/1/2013 the age exemptions for hunting license requirements are changed. Currently a resident of Kansas age 65 or over is not required to have a license. After 1/1/2013 a resident age 65 to 75 must have senior license and a resident age 75 or over remains exempt. The exemption for residents over age 75 expires on July 1, 2020. [Read the bill explainer](#). Amends KSA 32-919. (Effective January 1, 2013. [SB314](#)§5; 2012 Session Laws, chapter 154)
5. Technical Amendments Due to Reorganization
Technical amendments were made throughout the Parks and Wildlife statutes to bring the statutes in line with the reorganization order which went into effect last year. [Read the bill explainer](#). Amends numerous statutes, see bill header. (Effective July 1, 2012. [SB316](#); 2012 Session Laws, chapter 47)

6. Senior Licensing

After 1/1/2013 there will be a "senior combination hunting and fishing license" for Kansas residents age 65 and over. This provision sunsets on 6/30/2020. [Read the bill explainer](#). New statute. (Effective January 1, 2013. [SB314](#)§1; 2012 Session Laws, chapter 154)

7. Trespassing

See Criminal Trespassing in the Criminal Law section on page 1. A provision is also added to clarify that obtaining permission of a land owner to enter their land as provided in KSA 58-3201 *et seq.* does not grant an easement over the land. [Read the bill explainer](#). New statute. (Effective January 1, 2013. [SB314](#)§2; 2012 Session Laws, chapter 154)

J. OTHER LEGISLATION OF INTEREST

1. 911 funding

A bill was passed cleaning up issues from last year's 911 bill. It amends the definition of *subscriber account*; adds a definition for *multi-line phone system*; staggers the terms of persons appointed to the 911 Coordinating Council; and amends the collection process for prepaid wireless fees. [Read the bill explainer](#). Amends KSA 12-5363, 12-5364, and 12-5374. (Effective July 1, 2012. [SB384](#)§1, 2, and 3; 2012 Session Laws, chapter 21)

2. City Ordinance Publication and Notice

Cities may publish a summary of an ordinance in the official newspaper if they post the full ordinance on a website. [Read the bill explainer](#). Amends KSA 12-3001 and 12-3007. (Effective July 1, 2012. [HB2166](#)§1 and 2; 2012 Session Laws, chapter 46)

3. Community Correction Grants

The community correction grant authorization statute is amended for technical changes, changes to the drug grid to five levels, and the addition of DUI case provisions. [Read the bill explainer](#). Amends KSA 75-5291. (Effective July 1, 2012. [HB2318](#)§50; 2012 Session Laws, chapter 150)

4. CPOST (Law Enforcement Training Act)

Many changes are made to the act to clarify the authority of CPOST and to address long standing legal weaknesses in the governing statutes. Adds authority regarding violations of racial profiling and other biased based policing. See Attachment D for more details. [Read the bill explainer](#). Amends KSA 19-801b, 31-157, 74-5601, 12-1,120, 74-5602, 74-5603, 74-5605, 74-5607, 74-5607a, 74-5608a, and 74-5616. (Effective July 1, 2012. [SB424](#); 2012 Session Laws, chapter 89)

NOTE: Another statute in the Law Enforcement Training Act was amended in [HB2496](#)§2 which was later amended by [HB2792](#)§17. The amendments are technical corrections to the reference to KU. [Read the bill explainer](#). Amends KSA 74-5602. (Effective July 1, 2012. [HB2792](#)§17; 2012 Session Laws, chapter 166)

5. Domestic Violence

a. Batterer Intervention Program

The statutes necessary to implement the Batterer Intervention Program required to be established by the Attorney General were amended or created. The program establishes certification processes and requirements for qualified programs. [Read the bill explainer](#). Creates thirteen new statutes and amends KSA 21-5414, 21-6604, and 65-6608. (Effective May 31, 2012. [SB304](#)§1-13, 15, and 88; 2012 Session Laws, chapter 162)

b. Municipal Court Findings

Effective May 31, 2012, Municipal Courts will be required to determine if the defendant committed an act of domestic violence in any case where the defendant is found guilty of a criminal charge. In another section of the same bill is a repetitive requirement effective July 1, 2013, (A year from now, this isn't a typo) for Municipal Courts to determine if the defendant committed an act of domestic violence in any case where the defendant is found guilty of a criminal charge. At some point (it is a little unclear on which effective date applies), if the court finds domestic violence occurred, the case must be marked as a domestic violence crime and the defendant must be sentenced accordingly including the amended provisions of 21-6604 which requires use of the new domestic batterer intervention program. [Read the bill explainer](#). Amends KSA 12-4509 and 22-4606. (Effective May 31, 2012 in §14 and July 1, 2013 in §17. [SB304](#)§14 and 17; 2012 Session Laws, chapter 162)

6. Foreign Law Application

Commonly referred to as the Sharia Law, this new law requires any foreign law used in courts, arbitration, tribunals, or administrative decisions to provide the "fundamental liberties, rights, and privileges granted by the U.S. and Kansas constitutions" are granted the affected parties. [Read the bill explainer](#). New law. (Effective July 1, 2012. [SB79](#); 2012 Session Laws, chapter 136)

7. Good Samaritan Law

A new law exempts anyone who is not a health care provider that renders aid at the scene of an emergency or accident from liability except in cases of gross negligence or willful or wanton acts or omissions. [Read the bill explainer](#). New statute. (Effective May 24, 2012. [HB2562](#)§1; 2012 Session Laws, chapter 116)

8. Home Address of Officer Protected -- Open Records

The open records statutes are amended to require removal of availability of officer's home addresses in public records. The removal is only required upon request by the officer or the agency head. It also allows this protection for prosecutors and judges. [Read the bill explainer](#). Amends KSA 45-221. (Effective July 1, 2012. [HB2427](#)§1; 2012 Session Laws, chapter 147)

9. JJA Law Enforcement Officers

The JJA is now authorized to have certified law enforcement officers. These officers investigate JJA related criminal acts, primarily those committed in JJA institutions or by JJA employees. [Read the bill explainer](#). Amends KSA 32-1002. (Effective July 1, 2012. [HB2496](#)§1; 2012 Session Laws, chapter 56)

10. Justice Reinvestment Working Group

A Justice Reinvestment Working Group is created for the purpose of "a study of the data-driven, fiscally responsible policies and practices that can increase public safety and reduce recidivism and spending on corrections in Kansas." Among the statutory representatives on the working group are a sheriff appointed by the KSA and a law enforcement representative appointed by the KACP. The intent is to redirect some of the funds saved back to public safety needs. [Read the bill explainer](#). Amends KSA 74-49,123. (Effective July 1, 2012. [HB2684](#)§1; 2012 Session Laws, chapter 120)

11. KPERS

a. IRS Compliance

Several changes are made to bring statutes into compliance with IRS rules. [Read the bill explainer](#). Amends KSA 74-49,123. (Effective July 1, 2012. [HB2460](#)§3; 2012 Session Laws,

chapter 11)

b. New employer affiliation

Allows new employer affiliates to opt for KPERS coverage only for future service. It also changes the first year contribution rate for new employers. [Read the bill explainer](#). Amends KSA 74-4910 and 74-4920. (Effective July 1, 2012. [HB2460](#)§1 and 2; 2012 Session Laws, chapter 11)

c. New Retirement Plan

A new plan (Tier III) is created for new employees hired after January 1, 2015. It also changes the contribution rates for Tier I and II employees starting January 1, 2014. These revisions do not affect KP&F plans. See attachment C for details. [Read the bill explainer](#). Amends numerous KPERS statutes and adds new ones. (Effective July 1, 2012 but changes to current employees go into effect January 1, 2014 and the new plan for new employees on January 1, 2015. [HB2333](#); 2012 Session Laws, chapter 171)

d. Surplus real property proceeds

Eighty percent of the proceeds of the sale of real property owned by the state will now go toward the KPERS unfunded actuarial liability instead of to the general fund. [Read the bill explainer](#). Amends KSA 75-6609. (Effective June 7, 2012. [SB434](#)§3; 2012 Session Laws, chapter 165)

12. Livestock

a. Brand books supplied to sheriffs

The Brand Books required to be supplied to each sheriff may now be in electronic format. [Read the bill explainer](#). Amends KSA 47-424 (Effective July 1, 2012. [HB2596](#)§10; 2012 Session Laws, chapter 125)

b. Driving and Running at Large

Livestock statutes are amended including a new definition of livestock in KSA 47-120 which are applicable to the driving of livestock and livestock running at large. [Read the bill explainer](#). Amends KSA 47-120, 47-121 and 47-122. (Effective July 1, 2012. [HB2596](#)§3, 4 and 5; 2012 Session Laws, chapter 125)

c. Stray livestock

Stray livestock whose ownership cannot be established must now be taken to a public livestock auction by the sheriff. The provision "or to a terminal livestock market" is removed from the statute. [Read the bill explainer](#). Amends KSA 47-238. (Effective July 1, 2012. [HB2596](#)§7; 2012 Session Laws, chapter 125)

d. Sentencing and technical amendments

Many technical amendments and increases in fines and jail sentencing are made to many livestock related statutes in chapter 47. [Read the bill explainer](#). Amends and repeals many statutes, see the bill header. (Effective July 1, 2012. [HB2596](#); 2012 Session Laws, chapter 125)

13. Medical costs of persons in law enforcement custody

The statute covering law enforcement agencies responsibility for medical costs of person in custody were amended to reflect the organizational change eliminating the Health Policy Authority. We now work with the Secretary of Health and Environment to determine the appropriate amount we must pay for those medical services. [Read the bill explainer](#). Amends

KSA 22-4612. (Effective July 1, 2012. [HB2416](#)§2; 2012 Session Laws, chapter 102)

14. Parole, prisoner review board

Amendments were made to a long list of statutes to bring the statutes into alignment with the elimination of the Parole Board last year. [Read the bill explainer](#). (Effective July 1, 2012. [HB2535](#); 2012 Session Laws, chapter 16)

15. Prisoner Release of DOC Prisoner from County Jail

The provision allowing DOC to order the release of a DOC prisoner from the county jail if there is 10 or less days remaining on their sentence is amended to 20 or less days. [Read the bill explainer](#). Amends KSA 75-5220(f). (Effective July 1, 2012. [HB2704](#)§2; 2012 Session Laws, chapter 148)

16. Records Checks of certain public employees

Employees and applicants of the Legislative Post Audit may be showing up asking for fingerprint cards to be completed due to a new requirement for them to have a fingerprint based records check completed. [Read the bill explainer](#). Amends KSA 46-1103. (Effective July 1, 2012. [SB249](#)§1; 2012 Session Laws, chapter 20)

17. Reporting Offenses to Central Repository

Reporting requirements are clarified to include the filing of charges. This refers to the formal charge. The reporting of the arrest has previously been required. [Read the bill explainer](#). Amends KSA 22-4705. (Effective July 1, 2012. [HB2792](#)§6; 2012 Session Laws, chapter 166)

18. School, Compulsory Attendance

New definition of "education alternatives." [Read the bill explainer](#). Amends KSA 46-1103. (Effective July 1, 2012. [HB2477](#)§1; 2012 Session Laws, chapter 76)

19. Sexual Predators Evaluations

Several amendments were made to the sexual predator evaluation process. These include a required notice to the defendant about how the evaluation will be used and disseminated. It also provides the defendant can have expert testimony at any "proceeding" where it currently states at any "trial." [Read the bill explainer](#). Amends KSA 59-29a05 and 59-29a06. (Effective July 1, 2012. [SB280](#)§1 and 2; 2012 Session Laws, chapter 59)

20. Sheriff's Civil Process Fees

The fees for sheriff's service of civil process are increased from \$5 to \$10 effective July 1, 2012. Then it goes up to \$15 effective July 1, 2013. Several amendments were also made to the statute hopefully clarifying alias warrants. [Read the bill explainer](#). Amends KSA 28-110. (Effective July 1, 2012. [SB283](#)§1; 2012 Session Laws, chapter 151)

Refusal of Evidentiary Test

Evidentiary test refusals are now criminalized after the first offense. The penalty is generally the same as the penalty for DUI for the offenders DUI related history. There are still administrative penalties as well. So there is still the requirement for the forms and administrative hearings—for now. Updated DC27, DC28, DC70 and CDL5 forms are required on and after July 1, 2012.

The required time for interlock devices on all refusals is increased by one year.

A person suspended for test refusal cannot apply for interlock provisions for 90 days. This is increased from 45 days.

Preliminary Drug Testing Devices

The KBI requested the law to be changed to remove the deadline and mandate for creating a list of approved devices for saliva based preliminary drug screening. (See Section 38 of the bill amending KSA 75-712h.) The change also removes the requirement that only devices with such approval can be used for saliva based preliminary drug screening. (See Section 14 of the bill amending KSA 8-1012.) Work with your local prosecutors regarding the use of preliminary drug screening device.

\$250 Portion of Fine Cannot Be Retained By Cities

Last year the fines for DUI were increased by \$250 with that amount to go to the state general fund. The intent was for the money to go to the state from the city courts as well as district courts. However, they didn't say that in the statute and most cities were retaining it. This year they made their intent clear. The funds must be sent to the state where they are directed to the Community Corrections Supervision Fund.

Time Served in Work Release or House Arrest

The bill last year failed to correct the hours that must be served in House Arrest or Work Release prior to release. Third or subsequent offenders are required to serve a minimum of 2160 hours in house arrest or work release.

Consent Advisory

The consent advisory, therefore the forms, are revised due to the changes in criminalization of evidentiary test refusals.

Interlock Restrictions

A first time offender on interlock restriction can drive an employer's vehicle.

Additional permissible driving purposes for while on interlock restrictions for both test refusal and for test failure.

Vehicle Impoundment and Other Provisions Stricken

The vehicle impoundment provision, the revocation of license plate provision and the provisions regarding habitual violators in KSA 8-1567 are stricken

Several changes are made to assessment provisions and for indigency determinations.

[See Summary Document](#)

The Kansas Offender Registration Act is amended again this year. Several amendments are just cleanup of last year's bill. However, there are other major changes as well.

Crimes requiring registration

- Sexual battery is no longer restricted only to crimes with a victim under the age of 18. §5(a)(1)(A)
- Sexual battery is no longer included in the definition of sexually violent crime since KSA 22-4902a has been repealed. It had been included in one bill revising KSA 22-4902 last year and not in another. The conflict created in those two bills revising the same statute differently are remedied. §9 repealing KSA 22-4902a.
- Adds any offense when ordered by the court §5 subsection (a)(1)(C)
- Aggravated human trafficking is no longer restricted to crimes with a victim under the age of 18. §5 subsection (d)(6)

Incarcerated Offenders

- Must be registered by the correctional facility or registering law enforcement agency within 3 business days of initial custody. §3 subsection (b)(1)
- Provide a copy of the form to the offender and send a copy of the form to the KBI within 3 business days. (b)(1)

Reporting, Required Information

- Offender must report all personal web pages and all internet screen names §6 subsection (a)(19)

Registration of school address is required if:

- The offender attends the school for three or more consecutive days
- The offender attends the school for ten or more non-consecutive days in a 30 day period.
- §1 subsection (h)

Registration of employer address is required if:

- The offender is employed for three or more consecutive days §1 subsection (i)
- The offender is employed for 10 or more non-consecutive days in a 30 day period. §1 subsection (i)
- Volunteer work counts as employment §1 subsection (i)
- Employment address cannot be posted on KBI or local registered offender website. It is still available upon request from the registering agency or via the KBI Community Notification System §8 subsection (b) and (c)

Registration of residential address is required if:

- The offender resides at an address for three or more consecutive days. §1 subsection (j)
- The offender resides at an address for ten or more non-consecutive days in a 30 day period. §1 subsection (j)

Travel out of US by Offender must be reported by the offender:

- In person to the registering agency
- In writing to the KBI
- Must include itinerary with destination, means of travel, and duration of travel
- The registering agency may require additional information as deemed appropriate
- §4 subsection (o)

Certified Letters

- If registering agency chooses to use certified letter for registration, a copy of the letter must be supplied to the KBI within 3 business days. §3 subsection (c)(5)

Entering information in NCIC

- The registering agency no longer does the NCIC entry if they submit the data to the KBI electronically. If they don't submit it electronically then they must enter the data in NCIC themselves. §3 subsection (b)(1)(E)
- The KBI is required to submit the data to NCIC for all registrations submitted electronically. §3 subsection (e)(1)(D)

Courts §3 subsection (a)

- Courts are no longer required to register an offender. Instead they must instruct the offender on the requirements to register at time of conviction or adjudication.
- If the offender is released the court must:
 - Complete a notice of duty to register, which shall include title and statute number of conviction or adjudication and other identification data
 - Require the offender to read and sign the notice of duty to register
 - Order the offender to report within three business days to the registering law enforcement agency in the county or tribal land of conviction or adjudication and to the registering law enforcement agency in any place where the offender resides, maintains employment or attends school, to complete the registration form with all information and any updated information required for registration.
 - Provide a copy of the notice of duty to register to the offender and, within three business days, send a copy of the form to the law enforcement agency having initial jurisdiction and to the Kansas bureau of investigation.
- At the time of sentencing or disposition for an offense requiring registration ensure the age of the victim is documented in the journal entry

Expungements

- Clarifies an expungement does not end the requirement to register §8 subsection (e)
- Expungements are no longer allowed for an offender while required to register. This is in a different bill, SB322§3, 4, and 13

Throughout the statutes, “adjudication” is added to the term “conviction” in most, but not all, places it is used. Conviction is still used by itself in the sentencing provisions, in references to out of state convictions, registration requirement statutes, and a few other places.

Hospitals and Treatment Facilities:

- Treatment facilities have been removed from the list of registering entities. §1 subsection (o)
- Hospitals have also been removed from the definition of treatment facility. §1 subsection (p)
- Treatment facilities are entities providing inpatient mental health, drug or alcohol treatment or counseling. §1 subsection (p)
- Treatment facilities must report to the registering law enforcement agency within 3 business days the release or discharge of the offender. §3 subsection (C)(2)

Fingerprints/Palmprints

- Adds requirement for KBI to forward palm prints to FBI. §3 subsection (e)(1)(C)
- Adds requirement for fingerprints and palmprints to be taken prior to any release from incarceration. §3 subsection (b)(3)(E)

[READ THE EXPLAINER](#)

KPERS Website Links: [KPERS Tier 1 and Tier 2 changes](#) [New Plan](#) [2012 Legislative Summary](#)

The following is a general summary and does not include all details of the plan.

Current Tier I employees (Employed prior to July 1, 2009)

Tier I employees will have two options to choose from:

1. Employee contribution to increase to 5% on 1/1/2014 and to 6% on 1/1/2015, with a multiplier of 1.85 for all years worked after 1/1/2014, and 1.75 for all years worked prior to 1/1/2014; OR
 2. Employee contribution to remain at 4% with a multiplier of 1.40 for all years worked after 1/1/2014 and 1.75 for all years worked prior to 1/1/2014.
- If the employee fails to elect an option they will be placed under option 1.
 - Retirement qualification remains the same as current (85 point rule).

Current Tier II employees (Employed on or after July 1, 2009)

- No options.
- Employee contribution rate will remain at 6% with a 1.85 multiplier going back to start of KPERS membership. The post retirement COLA is removed.
- Retirement qualification remains the same as current (age 60 with 30 years of service or age 65 with five or more years of service).

Tier III New employees (Employed after January 1, 2015)

- Cash Balance Plan
- Retirement qualification at age 60 with 30 years of service or age 65 with less than 30 years of service.
- Employee contribution rate is 6%.
 - These funds go into an investment fund managed by KPERS with a guaranteed interest of 5.25%.
 - These funds remain the employee's funds from day one of employment.
 - In years when the investment returns exceed 8%, the KPERS Board may pay dividends up to 4% in addition to the interest paid. If the unfunded actuarial liability reaches 80% for all KPERS funds, then the dividends are mandatory and not at the discretion of the Board.
- Employer contribution 3% for first 5 years of employment, 4% for years 6 through 11, 5% for years 12 through 23, and 6% for year 24 and beyond.
 - Employer contributions go into an investment fund managed by KPERS with a guaranteed interest of 5.25%..
- Vesting is immediately for employee contribution fund and 5 years for employer contribution funds.
- Benefits at retirement are through a single life with 10 years certain annuity with a 6% conversion rate.
- At retirement, an employee may elect to have a post retirement COLA with a reduced benefit.

Many changes to the act that have been in the works for several years. The Commission is allowed to adopt administrative rules and regulations (KAR) to further define the application of statutes.

1. Certification of applicant meeting minimum qualifications must be sent to CPOST and KLETC [Page 3, §4, subsection (b)]
2. Minimum requirements include no "misdemeanor offense that the commission determines reflects on the honesty, trustworthiness, integrity or competence. . .as defined by rule and regulations of the commission." [Page 3, §4, subsection (b)(3)]
3. In regards to a high school diploma, adds "have obtained the equivalent of a high school education as defined by rules and regulations of the commission." [Page 3, §4, subsection (b)(4)]
4. Amends the good moral character provision to, "be of good moral character sufficient to warrant the public trust in the applicant as a police officer or law enforcement officer." [Page 3, §4, subsection (b)(5)]
5. Amends the psychological testing provisions to an assessment and testing to determine the applicant has no mental or personality disorders, and no physical/mental condition that would prevent performing the essential functions with reasonable skill, safety and judgment. [Page 3, §4, subsections (b)(6) and (b)(7)]
6. The commission may deny a provisional certification after a conditional job offer if they determine the qualifications are not met. The appointing agency may request the commission's determination of whether they will issue a provisional certification. [Page 4, §4, subsection (c)]
7. Conviction includes judgment in military courts, US courts, court of any competent jurisdiction in any state, expunged convictions, diversions for domestic violence, or diversion for any felony after 7/1/1995. [Page 4, §4, subsection (d)]
8. Fingerprinting of applicants at time of application are required. Fingerprinting may be required if the commission is investigating an employee certified prior to July 1, 2012. [Page 5, §5, subsection (f)]
9. Action taken by the commission can now include "condition" the certification of an officer. [Page 6, §8, subsection (b)]
10. Sanctions may be placed on an officer who
 - a. fails to "maintain" the minimum qualifications. [Page 6, Section 8, subsection (b)(1)]
 - b. knowingly submits false or misleading documents or willfully failed to obtain a required certification [Page 6, §8, subsection (b)(2)]
 - c. engaged in conduct which would constitute a felony, misdemeanor domestic violence, or a misdemeanor the commission determines reflects on the officers honesty, trustworthiness, integrity or competence as defined in rules and regulations by the commission. [Page 6, §8, subsection (b)(5)]
 - d. provides false information or otherwise fails to cooperate in a commission investigation to determine a person's continued suitability for law enforcement certification. [Page 6, §8, subsection (b)(3)]
 - e. fails to maintain the required annual continuing education or otherwise fails to comply with the requirements of the Act. [technical amendment only, Page 6, §8, subsection (b)(4)]
 - f. uses racial or other biased based policing prohibited by statute [Page 6, §8, subsection (b)(6)]
 - g. has engaged in unprofessional conduct as defined by rules and regulations adopted by the commission. [Page 6, §8, subsection (b)(7)]
11. Clarifies the commission may use emergency proceedings under the Kansas administrative procedure act to suspend a certification in certain circumstances. [Page 7, §8, subsection (d)]
12. Clarifies the establishes a process for petitioning the commission for reinstatement of certification that has been suspended or revoked. [Page 7, §9, subsection (b)]

[Read the bill explainer](#)

- A new drug sentencing grid with five levels is created. A new level 2 is added midway between the current severity levels 1 and 2. The grid makes levels 5C and 5D (formerly levels 4C and 4D) border boxes.
- Offenders determined by a drug abuse assessment to be high risk, and by the criminal risk assessment to be a moderate or high risk, are to be committed to a drug-abuse treatment program and supervised by community correctional services. Those not assessed at those risk levels are supervised either by community correctional services or court services. The court retains the right to order any of these offenders to drug risk assessment, and drug abuse treatment if the assessment establishes the need.
- The bill deletes the packaging or repackaging of a substance or labeling or relabeling its container from the definition of "manufacture" and removes the addition of diluants or adulterants from the crime of manufacturing.
- The definition of "drug paraphernalia" no longer includes certain drug precursors.
- Severity levels for KSA 21-5703, manufacture or attempted manufacture of a controlled substance or controlled substance analog:
 - Change a first conviction to a drug severity level 2 felony for a first conviction. Second and subsequent offenses remain a drug severity level 1 felony; and
 - All offenses of manufacturing methamphetamine remains a drug severity level 1 felony.
- Severity levels for KSA 21-5705, distribution is now based on quantity:
 - Less than 3.5 grams, severity level 4;
 - At least 3.5 grams but less than 100 grams, severity level 3;
 - At least 100 grams but less than 1 kilogram, severity level 2; and
 - 1 kilogram or more, severity level 1.

The bill would create exceptions to these penalties, as follows:

- For violations involving marijuana:
 - Less than 25 grams, severity level 4;
 - At least 25 grams but less than 450 grams, severity level 3;
 - At least 450 grams but less than 30 kilograms, severity level 2; and
 - 30 kilograms or more, severity level 1 felony.
- For violations involving heroin or methamphetamine:
 - Less than 1 gram, severity level 4;
 - At least 1 gram but less than 3.5 grams, severity level 3;
 - At least 3.5 grams but less than 100 grams, severity level 2; or
 - 100 grams or more, severity level 1.
- For substances sold by dosage units have the following felony classifications:
 - Fewer than 10 dosage units, severity level 4;
 - At least 10 dosage units but less than 100 dosage units, severity level 3;
 - At least 100 dosage units but less than 1,000 dosage units, severity level 2; and
 - 1,000 dosage units or more, severity level 1.
- Violations occurring within 1,000 feet of school property increases the severity level by 1 level.
- The crime of distribution or possession with the intent to distribute a controlled substance listed in schedule V would be a class A person misdemeanor, except that if distributed to or possessed with the intent to distribute to a minor, it would be a nondrug severity level 7, person felony.
- For cultivation of a controlled substance the sentence is based on the number of plants cultivated:

- More than 4, but fewer than 50, severity level 3;
- At least 50, but fewer than 100, severity level 2; or
- 100 or more, severity level 1.
- A rebuttable presumption of intent to distribute is created for possession of the following amounts of controlled substances:
 - 450 grams or more of marijuana;
 - 3.5 grams or more of heroin or methamphetamine;
 - 100 dosage units or more of a controlled sold by dosage units; or
 - 100 grams or more of any other controlled substance.
- The bill also would amend KSA 21-5705 to bar the use of certain defenses and define some key terms.
- Distribution of paraphernalia or causing paraphernalia to be distributed to a minor on or within 1,000 feet of any school property is amended by striking the requirement that the offender be 18 or older.
- A person prosecuted for the distribution or possession with the intent to distribute a noncontrolled substance as a controlled substance may additionally be prosecuted for theft by deception.
- Obtaining proceeds derived from the commission of any drug crime for proceeds of \$250,000-\$500,000, the severity level becomes the new level 2 drug felony.

REFERENCES:

Updates to this document will be available on: [KS Law Enforcement Information
http://www.KsLawEnforcementInfo.com/bill-information.html](http://www.KsLawEnforcementInfo.com/bill-information.html)

Kansas Legislature, Legislative Research publishes various summaries at:
<http://skyways.lib.ks.us/ksleg/KLRD/Summaries.htm>

Kansas Legislature, [Bill Locator and Index end of 2012 Session
http://www.kslegislature.org/li/documents/senate_house_actions_subject_index_20120524.pdf](http://www.kslegislature.org/li/documents/senate_house_actions_subject_index_20120524.pdf)

Available at a later date:

In late July or early August the Revisor's Office will publish a listing of new statutes created by the 2012 legislature. They will post it on their website at <http://www.ksrevisor.org/> with the link in the list of reports located just under the picture of the capital dome on the right side of their main page.

In July the 2012 Kansas Session Laws will be available on the Kansas Secretary of State's session law web site:
<http://www.kansas.gov/government/legislative/sessionlaws/>.

A list of Session Law Chapter Numbers is currently available on the Kansas Secretary of State's session law web site:
http://www.kssos.org/pubs/bills/2012_Bill_Chapter_List.xlsx

To read the text of a bill go to: <http://www.kslegislature.org/li/> and click on "Bill Search" just under the picture of the dome in the upper left corner of the page.

Statutes are available on line at: <http://www.kslegislature.org/li/statute/>

CAUTION: The online statutes will not have the 2012 amendments added to them for quite some time, usually around the beginning of the following calendar year.

Kansas Register is available at: http://www.kssos.org/pubs/pubs_kansas_register.asp

KPERS: <http://www.kpers.org>

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