



## Ten Things from the 2024 Kansas Legislative Session Every Law Enforcement Officer Should Know

### 1. Breach of Privacy

The Breach of Privacy statute is amended by removing the requirement that a recording device be “concealed” or a recording be done “secretly” in violation of the statute. It is a violation to record a person under or through the victim’s clothing or who is nude or in a state of undress, for the purpose of viewing the body of or the undergarments worn by the person being recorded, without the consent or knowledge of the person being recorded and with intent to invade the privacy of the victim, under circumstances in which that other person has a reasonable expectation of privacy.

[SB414 \(2024 SL Ch 96\) §5](#) Amending KSA 21-6101. [Bill Summary](#) Effective 7/1/24

### 2. Encouraging Suicide

“Encouraging suicide” is knowingly encouraging a person to commit or attempt to commit suicide if the offender 1) knows the other person has communicated a desire to commit suicide; 2) the encouraging action is made proximate in time to the other person committing or attempting to commit suicide; AND 3) the encouraging action substantially influences the other person’s decision or methods used to commit or attempt to commit suicide.

“Encouraging a person to commit or attempt to commit suicide” as oral, written, or visual communication that is persuasive or intended to be persuasive and that gives advice to commit suicide, attempt to commit suicide, or develop a plan to commit suicide.

[HB2144 \(2024 SL Ch 86\) §1](#) New Statute. [Bill Summary](#) Effective 7/1/24

### 3. Endangering A Child

The Endangering a Child statute is amended by adding fentanyl-related controlled substance to methamphetamine in existing law that is an element for aggravated endangering a child if the child is allowed to be in an environment where the person knows or should have known any person is distributing, possessing with intent to distribute, or manufacturing methamphetamine or any fentanyl-related controlled substance. It also changes the elements of aggravated endangering a child to include allowing a child to be in an environment where any drug paraphernalia or volatile, toxic or flammable chemicals are stored or used for the purpose of manufacturing fentanyl-related controlled substance (continuing law already has this for methamphetamine).

[SB414 \(2024 SL Ch 96\) §3](#) Amending KSA 21-5601. [Bill Summary](#) Effective 7/1/24

### 4. Organized Retail Crime

A new “organized retail crime” is created. Any of the following acts is a violation: 1) Acting with one or more other persons to receive, purchase, sell, or possess merchandise with an aggregate retail market value of \$5,000 or more within a 12-month period, knowing or believing such merchandise to have been stolen; 2) Taking merchandise with an aggregate retail market value of \$5,000 or more from multiple retailers within a 12-month period, as part of an organized plan to commit theft; or 3) Recruiting, coordinating, organizing, supervising, directing, managing, or financing other persons to undertake any of the above-mentioned actions.

The crime may be prosecuted in any county in which at least \$1 of the aggregate value was taken, received, stolen or purchased. The attorney general’s prosecution authority is expanded to include a violation of the new law or any crime related to the conduct of the new crime. A violation of this law is included in the laws for the Kansas Racketeer Influenced Corrupt Organization Act (RICO).

[HB2144 \(2024 SL Ch 86\) §2-4](#) New statute and Amending KSA 21-6328 and 75-702. [Bill Summary](#) Eff: 7/1/24

**5. Immunity From Prosecution of Simple Possession Charges When Assisting a Person Suffering a Drug Emergency**

Law enforcement officers are prohibited from taking a person into custody, and prosecution is prohibited, based on an alleged offense of simple possession of a controlled substance or possession with the intent to use drug paraphernalia to use a controlled substance when the following immunity conditions exist.

Immunity extends to persons who: 1) on behalf of a person who appeared to need medical assistance due to the use of a controlled substance rendered aid or initiated contact with law enforcement or EMS and requested medical assistance for the person appearing to need medical assistance; or 2) reasonably appeared to need medical assistance due to the use of a controlled substance.

For the immunity to apply to an eligible person, the person must: 1) Cooperate with law enforcement and EMS while medical assistance was provided; 2) provide their full name and any other relevant information necessary to provide medical assistance requested by law enforcement or EMS personnel; 3) remain at the scene with the person needing medical assistance until EMS personnel and law enforcement officers arrived; and 4) cooperate with EMS personnel and law enforcement in providing medical assistance.

Immunity does not apply if: 1) Medical assistance is needed during the execution of an arrest warrant or search warrant; 2) a quantity of controlled substances was found at the scene of the encounter with law enforcement that would be sufficient to create a rebuttable presumption of intent to distribute; or 3) if the person possesses and intend to use drug paraphernalia to manufacture, cultivate, plant, propagate, harvest, test, analyze, or distribute a controlled substance, as specified in continuing law. Prosecution can be initiated later if evidence of the crime is developed from an independent source. Officers and agencies are not subject to civil liability for compliance with or failure to comply with the immunity provisions or when a person is arrested prior to discovering the person is eligible for immunity, unless the officer's conduct was reckless or intentional misconduct. [SB419 \(2024 SL Ch 97\)](#) New Statute [Bill Summary](#) Effective 7/1/24

**6. Search of Probationers or Parolees**

Current law allows a search of a probationer or parolee person, belongings, vehicle, and property by a law enforcement officer based on reasonable suspicion of condition violations or criminal activity. Current law requires a report to the supervising agent when such a search is conducted on a probationer, but prior to this amendment, the reporting requirement was not included for a search of a parolee. When a search of a parolee or probationer is conducted under this authorization, a written report must be submitted by the end of the next business day, whether the search resulted in a seizure or not, and must include: 1) The facts leading to the search; 2) the scope of the search; and 3) any findings of the search. The written notice is required.

[SB414 \(2024 SL Ch 96\) §6 & 10](#) Amending KSA 21-6607 & 22-3717. [Bill Summary](#) Effective 7/1/24.

**7. Civil Asset Forfeiture**

Drug crimes consisting only of simple possession, that is crimes where there is no profit to the offender are removed from the list of drug crimes that can be used as the basis for

forfeiture. The crimes that can still be grounds for forfeiture are: KSA 21-5703, manufacturing controlled substances; 21-5705, cultivation or distribution of controlled substances; 21-5707, using a communication facility to facilitate manufacturing, distribution, cultivation, or possession of controlled substances; 21-5708(b), selling a prescription only drug; 21-5709(a), possessing precursors to manufacture a controlled substance; (b)(1), Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; (c), use or possess with intent to use anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas Department of Agriculture; (d), purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-day period; 21-5710, distribution of drug precursors or drug paraphernalia; 21-5713(a), distribute, possess with the intent to distribute, or manufacture with the intent to distribute any simulated controlled substance; 21-5714, distribute or intend to distribute a noncontrolled substance that is represented as a controlled substance; 21-5716, unlawful acts involving proceeds derived from violations of KSA 21-5701 through 5717.

In continuing law, seizures for forfeiture must be “proportional” to the nature and severity of the illegal conduct leading to forfeiture. The law is changed to allow the court to make this determination earlier in the legal process. Proportionality is an 8th amendment issue and has been part of Kansas forfeiture law since 1994.

When property is seized for forfeiture under this act, the seizing agency shall not request, induce or otherwise coerce a person who has at any time asserted rights as an owner or interest holder of such property to waive in writing such rights in the property until forfeiture proceedings are commenced pursuant to K.S.A. 60-4109.

The burden of proof in a forfeiture proceeding is “by clear and convincing evidence,” in place of “by the preponderance of evidence.”

New law provides that if less than half the value of property seized for forfeiture is ordered forfeited, the defendant’s attorney fees must be paid by the agency seizing the items. These costs can be paid from forfeiture funds, but if inadequate forfeiture funds exist, the agency must pay the fees from other funds. The bottom line for this is agencies will be wise to carefully consider the strength of the forfeiture case as it pertains to each item seized prior to filing the case in court. There is no good faith exception included.

SB458 (2024 SL Ch 83) Amending KSA 60-4104, 60-4106, 60-4107, 60-4109, 60-4111, 60-4112, 60-4113, 60-4116, 60-4117 and 60-4127. Bill Summary Effective 7/1/24.

#### **8. Missing Persons with Developmental Disabilities: Purple Alert**

A new missing person public alert classification is created called the Purple Alert Plan for a missing person who suffers intellectual disabilities. The alert is similar to the Silver Alert Plan. The alert should be promptly used when a missing person meets the below criteria and conditions indicate the alert aid in more quickly locating the individual to lower the risk of serious injury or death:

- 18 years of age or older;
- Has been diagnosed with an intellectual disability;

- Their whereabouts are unknown;
- Believed to be in imminent danger of serious bodily injury or death because of their disability; and
- Believed to be unable to return to safety without assistance.

The Office of Attorney General and the KBI will develop details of the plan. The alerts will most likely be initiated using the same process used for Silver Alerts.

[HB2531 \(2024 SL Ch 106\)](#) New Statute. [Bill Summary](#) Effective 7/1/24

#### 9. **Leaving the Scene of Fatal Crash**

The penalty for leaving the scene of a fatality accident is increased to a SL4 person felony if the offender should have reasonably known the accident resulted in injury or death, and to a SL3 person felony if accident resulted in the death of more than one person and the offender should have reasonably known the accident resulted in injury or death. Penalties for other circumstances or results of the accident remain unchanged.

[HB2665 \(2024 SL Ch 51\)](#) Amends KSA 8-1602. [Bill Summary](#) Effective 7/1/24

#### 10. **Intent to Distribute Drugs: Inference**

In cases of intent to distribute drugs, a rebuttable presumption of an intent to distribute exists in prior law if a person possesses certain quantities of controlled substances. In the amended law, rebuttable presumption is replaced with “an inference,” if the facts support such an inference. The difference is that now the weight or dosage units of the drugs may not stand on their own, additional evidence of distribution intent may be needed. The trier of fact can find the evidence supports the presumption or not.

Testimony at hearings on the bill indicated as a practical matter this change in the law is a purely technical law change and doesn't change the practical process since prosecutors have already been including supporting evidence of distribution, such as, packaging materials, scales, etc.

[SB318 \(2024 SL Ch 98\)](#). Amending KSA 21-5705 & 60-416. [Bill Summary](#). Effective 7/1/24.