

Legal Bulletin

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2017 Legislative Update

A summary of 2017 Kansas legislation affecting law enforcement officers.

NOTE: At the time of drafting this bulletin (May 31, 2017), the legislature was still in session (Day 103/90), and may pass additional bills. At this time, the legislature has not acted on the three big-ticket items from the start of the session: (1) school finance,; (2) a tax package and (3) the budget. If the legislature takes any additional action that may affect law enforcement officers, watch for an updated bulletin once the legislature adjourns.

All bills take effect July 1, 2017, unless otherwise stated below. Full text of the bills can be retrieved from the links below or at the Legislature's [website](#).

Alcohol

[SB 13](#)

Slowly crawling out of the dark ages, this bill enacts part of Uncork Kansas's initial proposal to allow sales of liquor and beer in grocery stores. Under a compromise bill, on and after April 1, 2019, grocery stores and other cereal malt beverage outlets will be able to sell beer not exceeding 6% alcohol by volume. In exchange, liquor stores will be able to sell mixers, tobacco and other items they were previously prohibited from selling. The bill takes effect on January 1, 2018, but as noted above, the sale provisions do not take effect until April 1, 2019.

[SB 65](#)

This bill allows creditors of retail liquor stores to repossess alcoholic liquors that were pledged as collateral for a loan. The sale must be to a licensee possessing a valid license issued pursuant to the Kansas liquor control act or to a licensee possessing a valid license issued pursuant to the club and drinking establishment act.

[HB 2277](#)

This bill allows creation of entertainment districts (common consumption areas) where patrons would be able to walk about freely with alcoholic beverages as long as they stay within a designated area. The boundaries of any common consumption area must be clearly marked using a physical barrier or any apparent line of demarcation. Any public streets or roadways in such area must be blocked from

motor vehicle traffic during the hours that alcohol is being consumed. If any licensees participate in these events, their drink cups must display the licensee's trade name or logo or other identifying mark that is unique to the licensee. Each licensee within a common consumption area shall be liable for violations of all liquor laws governing the sale and consumption of alcoholic liquor that occur on the licensee's premises. Each common consumption area permit holder shall be liable for violations that occur off the licensee's premises, but within the common consumption area identified in the permit. NOTE: As of May 31, 2017, the governor has not yet signed this bill.

Crimes and Punishment

[SB 112](#)

This is the one crime bill the legislature managed to pass this session and it does several things. First, a provision arising out of Floyd Bledsoe's acquittal on an alleged coerced confession, the bill enacts a new law that requires law enforcement agencies to adopt a detailed, written policy requiring electronic recording of any custodial interrogation conducted at a place of detention. Such policies must be in place by July 1, 2018. Second the bill amends the definition of domestic battery set out in K.S.A. 2016 Supp. 21-5414 to add persons who have in the past "been involved in a dating relationship." The law previously only applied to persons who were currently dating. Interestingly, there is no age requirement for person who are dating or were formerly dating, so it could cover juveniles under the age of 18. The

definition of "family or household member," still requires that persons covered by that relationship both be over the age of 18. Third, the bill also establishes the new crime of aggravated domestic battery, which occurs when someone strangles a person they currently or formerly dated or who is or was a family or household member. The bill defines strangulation as "knowingly impeding the normal breathing or circulation of the blood by applying pressure on the throat, neck or chest of a person," or knowingly impeding "the normal breathing or circulation of the blood by blocking the nose or mouth of a person." Aggravated domestic battery is a severity level 7, person felony, and offenders shall not be eligible for diversion on this charge. The bill also adds an extensive definition of "protective order," which covers virtually any court order limiting contact between persons, including bond and probation or parole conditions. Fourth, the bill amends the paraphernalia law, K.S.A. 21-5709, to decrease the penalty for possessing paraphernalia to store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body from an A misdemeanor to a B misdemeanor. Fifth, the bill amends the burglary statute K.S.A. 2016 Supp. 21-5807, to make entering into a Dwelling, with intent to commit a felony, theft or sexually motivated crime therein a person felony once again. Sixth, the bill enacts the "Law Enforcement Protection Act" proposed by Attorney General Schmidt that enhances the penalties for crimes committed against law enforcement officers either while performing their duties or due to their status of a police officer. Generally such offenses are one severity level higher for severity levels 2 through 10, and a hard 25 for severity level one. This

provision adds a subsection (y) to K.S.A. 21-6804 that sets out these enhanced sentences. Seventh, the bill requires a prosecutor to seek expungement if a person is arrested as a result of mistaken identity or is a victim of identity theft. Eighth, the bill requires a hearing on a motion to correct an illegal sentence under K.S.A. 22-3504 unless the motion and the files and records of the case conclusively show that the defendant is entitled to no relief, and the bill adds a definition of illegal sentence that excludes "a change in the law that occurs after the sentence is pronounced." The bill took effect upon publication in the Kansas Register on May 18, 2017.

Drugs

[SB 51](#)

This bill changes the definition of a "Controlled substance analog" set out in K.S.A. 21-5701. Current law has been interpreted to require at least two criterion from the definition of a controlled substance analog. Under the amended version only one criterion must be present. The bill also adds cannabidiol to schedule Schedule IV and clarifies the definition of "marijuana" in K.S.A. 2016 Supp. 21-5701 and 65-4101 so that it would not include any substance listed in Schedules II through V of the Act. The amendments would help address increasing trends in the use of "designer drugs," or those synthesized with the specific intent of circumventing existing drug laws by slightly altering the molecular structure of a currently controlled substance, and to update the Kansas drug schedules to reflect recent

modifications to the federal drug schedules. The bill also amends the emergency drug scheduling statutes to allow the Board of Pharmacy to emergency schedule any drug they find is presenting an “imminent hazard to the public.” Currently only an analog of a scheduled drug can be emergency scheduled. The bill took effect upon publication in the Kansas Register on May 4, 2017.

[HB 2217](#)

This "Narcan" bill allows police officers and other first responders to administer emergency opioid antagonists (Narcan (Naloxone)), which are drugs that inhibit the effects of opioids and which are approved by the United States food and drug administration for the treatment of an opioid overdose. The bill allows first responders to possess, store and administer emergency opioid antagonists as clinically indicated, provided they are trained and work under the direction of a physician medical director. First responders administering an emergency opioid antagonist will have immunity from civil liability or criminal prosecution, unless personal injury results from the gross negligence or willful or wanton misconduct in the administration of the emergency opioid antagonist.

DUI

[HB 2085](#)

This bill changes the interlock statute, K.S.A 8-1015, to require those subject to an ignition interlock device to complete the program and show proof of completion from the approved service provider before the person’s driving privileges are fully

reinstated.

Human Trafficking

[SB 40](#)

This bill creates several new crimes designed to cover human trafficking situations. It creates a new crime, knowingly or intentionally using a communication facility to commit the crimes of human trafficking, commercial sexual exploitation of a child, or promoting the sale of sexual relations, as well as in any attempt, conspiracy, or solicitation of those crimes. It also makes it a class A person misdemeanor to use a communication facility in committing, causing, or facilitating the commission of the crime of buying sexual relations. Defendants would have an affirmative defense if they were subjected to human trafficking, aggravated human trafficking, or commercial sexual exploitation of a child.

The bill also creates the crime of promoting travel for child exploitation, a severity level 5 person felony, which the bill would define as knowingly selling or offering to sell travel services that include or facilitate travel for the purpose of any person engaging in conduct that would constitute aggravated human trafficking, using the definition as amended by the bill, or sexual exploitation of a child if it occurred in Kansas.

The bill also creates the crime of Internet trading in child pornography, which is sexual exploitation of a child when the offender is 18 years of age or older and knowingly causes or permits the performance to be viewed by use of any

electronic device connected to the Internet by any person other than the offender or a person depicted in the performance. The crime would be a severity level 5 person felony. An aggravated form of the crime occurs where the child is under 14 years of age, which is an off-grid person felony, and severity reductions for an attempt, conspiracy, or solicitation would not apply. In addition to the venue provided for under any other provision of law, the bill would allow prosecution for these crimes to be brought in the county where the visual depiction or performance may be viewed by any person other than the offender using any electronic device connected to the Internet and is viewed by a law enforcement officer using an electronic device connected to the Internet while engaged in such officer's official duties.

The Internet trading in child pornography crimes would not apply where the crimes of unlawful possession of a visual depiction of a child or unlawful transmission of a visual depiction of a child apply.

Juvenile Justice Reform

[SB 124](#)

This bill amends a CINC statute, K.S.A. 38-2249 to allow reports of court ordered tests of person's blood, breath, urine or other bodily substance to be admissible in evidence in CINC proceedings.

KPERS

[SB 21](#)

This bill deals with KPERS and working after retirement. On July 1, 2017, the bill

would sunset the special exemptions for special education positions and hard-to-fill education positions and collapse them into a new special exemption. Retirees hired under the new exemption would continue to be exempt from the compensation cap; service under such exemptions would count toward the maximum period of time a retiree could be exempt from the compensation cap, four years or four school years, whichever is applicable. Under the new special exemption, the initial period of exemption from the earnings cap would be three years with a one-year extension. Currently the initial period is one year with the option of three one-year extensions.

NOTE: As of May 31, 23017, the governor has not yet signed this bill.

Law Enforcement Officer Qualifications

[HB 2054](#)

This bill amends K.S.A. 74-5605 (d) to expand the list of disqualifications to deferred judgment agreements entered into for a misdemeanor crime of domestic violence or a misdemeanor offense that the law enforcement training commission determines reflects on the honesty, trustworthiness, integrity or competence of the applicant as defined by rules and regulations by the commission and any diversion agreement or deferred judgment entered into on or after July 1, 1995, for a felony.

Mental Illness/Alcohol/Substance Abuse

[HB 2053](#)

This bill creates a new statute allowing law enforcement officers to transport persons to a crisis intervention center if the officer is in a crisis intervention center

service area. The crisis intervention center shall not refuse to accept any person for evaluation if such person is brought to the crisis intervention center by a law enforcement officer and such officer's jurisdiction is in the crisis intervention center's service area. Otherwise, officers must follow the procedures set forth in the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45, or 59-29b54(b), et seq., and amendments thereto or care and treatment act for persons with a mental illness, K.S.A. K.S.A. 59-2953 et seq. The bill extends immunity to law enforcement agencies and their personnel acting in good faith and without negligence for acting, or declining to act, pursuant to the law.

Miscellaneous

[SB 23](#)

This bill essentially abolishes the state securities commissioner's office and transfers its functions to a division under the jurisdiction of the Insurance Commissioner. The bill also creates a Fraud and Abuse Criminal Prosecution Fund to be administered by the attorney general's office. The bill would require the Attorney General, in expending moneys from the Fund, to give priority to criminal cases referred to the Attorney General for investigation or prosecution by or pursuant to the securities commissioner, the Criminal AntiFraud Division of the Insurance Department, and the Abuse, Neglect and Exploitation of Persons Unit of the Office of the Attorney General (OAG). The bill also establishes the public policy of Kansas would be for prosecuting attorneys who bring criminal actions in the

name of the state, other than county and district attorneys (and the secretary of state), to be located in the OAG under the jurisdiction of the Attorney General.

NOTE: As of May 31, 2017, the governor has not yet signed this bill.

[HB 2137](#)

This bill concerns public officials volunteering for certain public service agencies.

The bill amends K.S.A. 19-205 to allow a county commissioner to serve as a volunteer in any capacity for an emergency medical service or ambulance service or as a volunteer fire fighter. The bill also adopts a new statute that allows members of a city governing body to serve as a volunteer for the same agencies.

[SB 184](#)

This bill enacts a new Kansas intelligence fusion center act. The bill describes the mission and goals of the fusion center and creates a fusion center oversight board to oversee operations. The adjutant general's department shall provide facilities, budget and administrative support for the fusion center and its employees and participants. This bill took effect upon publication in the Kansas Register on April 20, 2017.

Traffic and Vehicles

[HB 2170](#)

This bill amends the statute on bicycle equipment, K.S.A. 8-1592, to allow either a reflector visible from 100 to 600 feet, or a red light visible from 500 feet on the back of a bicycle, or a red or amber light visible from 500 feet on the back of a rider,

between sunset and sunrise.

[HB 2095](#)

This bill concerns overweight vehicles. It adopts a new traffic code provision that allows the secretary of transportation to issue an annual \$200 overweight divisible load permit for certain vehicles with a gross vehicle weight of more than 85,500 pounds but not more than 90,000 pounds transporting divisible loads on six or more axles. The bill sets out the allowable gross weight on two or more consecutive axles, and sets out certain restrictions on such vehicles, including:

- No operation on interstate if loaded in excess of 80,000 pounds
- Must be registered at the maximum weight category
- No operation on bridges or highways with posted gross weight limit or posted axle weight limit less than that which the vehicle is operating
- Permit must be carried in the vehicle when the vehicle is operating at a weight over 85,500 pounds
- Vehicle must comply with K.S.A. 8-1908 (gross weight limits on wheels and axles) and 8-1909 (gross weight limits for vehicles) except as otherwise provided by this section
- Vehicle cannot violate the width provisions of K.S.A. 8-1902, and amendments thereto, or the height and length provisions of K.S.A. 8-1904, and amendments thereto
- cannot operate vehicle carrying in excess of 85,500 pounds when highway surfaces have ice or snowpack or drifting snow; and

- When operating in excess of 85,500 pounds the vehicle shall only carry agricultural inputs, farm supplies, biofuels, feed, raw or processed agricultural commodities, livestock, raw meat products intended by the shipper for further processing or farm products

The bill also amends K.S.A. 2016 Supp. 8-1908 to allow for axle spacing on triple axles up to 132 inches apart, an increase from 120 inches.

[HB 2174](#)

This bill creates distinctive license plates for Autism awareness and the Kansas 4-H foundation on or after January 1, 2018. The bill also amends the disabled tag statute, K.S.A. 2016 Supp. 8-1,125 to allow for issuance of an individual disabled identification card and a permanent placard and a wheelchair emblem decal to be affixed to a distinctive license plate. Vehicles bearing a distinctive license plate with a wheel chair emblem decal and a disabled placard will have the same privileges as a vehicle the a disabled license plate. The bill also amends the statute for distinctive military license plates, K.S.A. 2016 Supp. 8-1,156 to allow for display of decals for the army of occupation medal or navy occupation service medal.

[SB 74](#)

This bill, cited as Joey's Law, enacts a new statute that allows persons with autism spectrum disorder or other cognition difficulties to obtain a placard suitable for attachment to the visor of the vehicle or placing on the dash of the vehicle to notify law enforcement of their condition. They may also request a decal to be affixed to

the license plate of a motor vehicle in addition to the placard and that such information be included as part of the vehicle registration. The person will also be able to obtain a drivers license or an individual identification card containing notification of the condition that must be carried by the person who needs assistance with cognition when the motor vehicle is being operated or occupied by such person. The bill was created in honor of Joey Weber, an autistic man shot and killed by a Hays police officer in August 2016. The goal of the notification devices mentioned in the statute is to inform law enforcement that a person they are dealing with may have trouble understanding what law enforcement wants them to do.

[SB 89](#)

This bill, among other things, amends K.S.A. 8-2504 increasing the fines on adult seatbelt violations to \$30 (and no court costs) to fund an expanded seat belt safety fund program in the schools. The fund shall be used for the purpose of promotion and education of occupant protection among children through the Seat Belts Are For Everyone (SAFE) program.

Please advise if you have any questions about these bills.