

HB2145 amending KSA 21-6301 goes into effect Thursday, May 3, 2018.

This document was prepared for briefing purposes by Ed Klumpp, Chief of Police—Retired, eklumpp@cox.net. I am not an attorney, and this is not legal advice. It is merely a briefing document of legislation. Follow advice from your agency, prosecutors and agency attorneys in enforcement actions and legal interpretations.

The new law makes the following changes:

1. Adds four existing federal prohibitions to possessing a firearm to Kansas statutes. The additions are intended to have the same application and requirements of federal law. The prohibitions are added to KSA 21-6301 and make it illegal to possess a firearm by any person that is:
 - a. A fugitive from justice, as defined in the statute. [Subsection (a)(15)]
 - b. An illegal alien or otherwise in the country illegally. [Subsection (a)(16)]
 - c. Subject to a court order restraining the person from harassing, stalking, or threatening an intimate partner or a child of the person or the intimate partner, or from engaging in conduct placing the intimate partner or a child of the person or intimate partner in reasonable fear of bodily injury. It is required the person has had an opportunity to attend a hearing on the order. It is also required the order contain either 1) a finding they present a credible threat to an intimate partner or child, or 2) explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. [Subsection (a)(17)]
 - d. Within the preceding five years, has been convicted of a misdemeanor for a domestic violence offense, or a misdemeanor under a law of another jurisdiction which is substantially the same as such misdemeanor offense. [Subsection (a)(18)]
2. Moves the possession of a throwing star from subsection (a)(1) to subsection (a)(2). This makes possession of a throwing star only a violation if there is an intent to use it unlawfully against another. Mere possession of a throwing star is no longer a violation.
3. Adds an exemption to the state law violation of possessing a firearm sound suppressor if the suppressor was manufactured in Kansas and has not been taken out of state. See KSA 50-1204 for more conditions and information.

All the new crimes listed in item 1 above are a SL8, nonperson felony.

The changes in item 1 above have many conditions placed on them designed to assure they mirror federal law and do not create any additional restrictions to firearm possession not already illegal under federal law. This includes specific definitions for the terms “intimate partner,” “domestic violence,” and “fugitive from justice” as used in this statute. See subsection (m). These definitions may vary from the definition of these terms used in other statutes.

- Domestic violence is defined in subsection (m)(1) “the use or attempted use of physical force, or the threatened use of a deadly weapon, committed against a person with whom the offender is involved or has been involved in a dating relationship or is a family or household member.”
- Fugitive from justice is defined in subsection (m)(2) as “any person having knowledge that a warrant for the commission of a felony has been issued for the apprehension of such person under KSA 22-2713.”
- Intimate Partner is defined in subsection (m)(3) as “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person or an individual who cohabitates or has cohabitated with the person.”

Be sure to review the elements of each crime in the statute thoroughly and seek advice from your agency, your prosecutors, or other legal resources of your agency on the application of the new law provisions.

You can access the bill document at:

http://www.kslegislature.org/li/b2017_18/measures/documents/hb2145_enrolled.pdf

You can access the legislative briefing document at:

http://www.kslegislature.org/li/b2017_18/measures/documents/summary_hb_2145_2018.pdf

Relevant statutes

21-6301. Criminal use of weapons. As amended by 2018 HB2145, 2018 Session Law Chapter 61

(a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club, *or* metal knuckles ~~or throwing star~~;

(2) possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, *throwing star*, stiletto or any other dangerous or deadly weapon or instrument of like character;

(3) setting a spring gun;

(4) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(5) selling, manufacturing, purchasing or possessing a shotgun with a barrel less than 18 inches in length, or any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically;

(6) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight, whether the person knows or has reason to know that the plastic-coated bullet has a core of less than 60% lead by weight;

(7) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;

(8) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(9) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. [59-2946](#), and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. [59-29b46](#), and amendments thereto;

(10) possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(11) possessing any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;

(12) refusing to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;

(13) possessing any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. [59-2946](#), and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. [59-29b46](#), and amendments thereto; or

(14) possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age.

(15) possessing any firearm while a fugitive from justice;

(16) possessing any firearm by a person who is an alien illegally or unlawfully in the United States;

(17) possessing any firearm by a person while such person is subject to a court order that:

(A) Was issued after a hearing, of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking or threatening an intimate partner of such person or a child of such person or such intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child; and

(C) (i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(18) possessing any firearm by a person who, within the preceding five years, has been convicted of a misdemeanor for a domestic violence offense, or a misdemeanor under a law of another jurisdiction which is substantially the same as such misdemeanor offense.

(b) Criminal use of weapons as defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9) or (a)(12) is a class A nonperson misdemeanor;

(2) subsection (a)(4), (a)(5) or (a)(6) is a severity level 9, nonperson felony;

(3) subsection (a)(10) or (a)(11) is a class B nonperson select misdemeanor;

(4) subsection (a)(13), (a)(15), (a)(16), (a)(17) or (a)(18) is a severity level 8, nonperson felony; and

(5) subsection (a)(14) is a:

(A) Class A nonperson misdemeanor except as provided in subsection (b)(5)(B);

(B) severity level 8, nonperson felony upon a second or subsequent conviction.

(c) Subsections (a)(1), (a)(2) and (a)(5) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsections (a)(4) and (a)(5) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(6) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(4) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer's law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer's law enforcement agency to possess devices described in subsection (a)(4); and

(3) in possession of commercially manufactured devices which are:

(A) Owned by the law enforcement agency;

(B) in such officer's possession only during specific operations; and

(C) approved by the bureau of alcohol, tobacco, firearms and explosives of the United States department of justice.

(g) Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory.

(h) Subsections (a)(4) and (a)(5) shall not apply to or affect any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.

(i) (1) Subsection (a)(4) shall not apply to or affect any person in possession of a device or attachment designed, used or intended for use in suppressing the report of any firearm, if such device or attachment satisfies the description of a Kansas-made firearm accessory as set forth in K.S.A. 2017 Supp. 50-1204, and amendments thereto.

(2) *The provisions of this subsection shall apply to any violation of subsection (a)(4) that occurred on or after April 25, 2013.*

(j) Subsection (a)(11) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student; or

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or

(5) possession of a concealed handgun by an individual who is not prohibited from possessing a firearm under either federal or state law.

~~(j)~~(k) Subsections (a)(9) and (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2017 Supp. [75-7c26](#), and amendments thereto.

~~(k)~~(l) Subsection (a)(14) shall not apply if such person, less than 18 years of age, was:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located, or at another private range with permission of such person's parent or legal guardian;

(3) engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;

(4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(5) traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections ~~(k)~~(l) (1) through ~~(k)~~(l)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;

(6) on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

(7) at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. 2017 Supp. [21-5222](#), [21-5223](#) or [21-5225](#), and amendments thereto.

~~(l)~~(m) As used in this section,

(1) *"Domestic violence" means the use or attempted use of physical force, or the threatened use of a deadly weapon, committed against a person with whom the offender is involved or has been involved in a dating relationship or is a family or household member.*

(2) *"Fugitive from justice" means any person having knowledge that a warrant for the commission of a felony has been issued for the apprehension of such person under K.S.A. 22-2713, and amendments thereto.*

(3) *"Intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person or an individual who cohabitates or has cohabitated with the person.*

(4) *"throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.*

22-2713. Arrest prior to requisition; prisoners in federal facilities, waiver of requirements for extradition. (a) Whenever any person within this state is charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state and, except in cases arising under K.S.A. [22-2706](#), and amendments thereto, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of the person's bail, probation, assignment to a community correctional services program, postrelease supervision or parole, or with being under sentence, some portion of which remains unexecuted, from which such person has

not been paroled, placed on postrelease supervision or discharged or otherwise released, or whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under K.S.A. [22-2706](#), and amendments thereto, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of the person's bail, probation, assignment to a community correctional services program, postrelease supervision or parole, or with being under sentence, some portion of which remains unexecuted, from which such person has not been paroled, placed on postrelease supervision or discharged or otherwise released, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any law enforcement officer commanding the apprehension of the person named therein, wherever such person may be found in this state, and to bring such person before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(b) Any person incarcerated in any federal facility may be released to the custody of the duly accredited officers, or such officer's designees, of a foreign state, if:

(1) Such person has violated the terms of such person's probation, postrelease supervision, parole or who has an unexpired sentence in the foreign state;

(2) the foreign state has personal jurisdiction over such person; and

(3) the foreign state has issued a valid warrant for the apprehension of such person. For that purpose no formalities shall be required other than establishing the authority of the officer and the identity of the person to be apprehended. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived by the state of Kansas, as to such persons.

50-1204. Personal firearms, accessories and ammunition manufactured in Kansas; exempt, interstate commerce. (a) A personal firearm, a firearm accessory or ammunition that is manufactured commercially or privately and owned in Kansas and that remains within the borders of Kansas is not subject to any federal law, treaty, federal regulation, or federal executive action, including any federal firearm or ammunition registration program, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory or ammunition that is manufactured commercially or privately and owned in the state of Kansas.

(b) Component parts are not firearms, firearms accessories or ammunition, and their importation into Kansas and incorporation into a firearm, a firearm accessory or ammunition manufactured and owned in Kansas does not subject the firearm, firearm accessory or ammunition to federal regulation. It is declared by the legislature that such component parts are not firearms, firearms accessories or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories and ammunition under interstate commerce as if they were actually firearms, firearms accessories or ammunition.

(c) Firearms accessories that are imported into Kansas from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Kansas.