



Ten Things from the 2019 Kansas Legislative Session Every Law Enforcement Officer Should Know

Presented by Kansas Association of Chiefs of Police; Kansas Sheriffs Association; Kansas Peace Officers Association

June 10, 2019

Updated statutes are available on or after the effective date of the amendments at either <http://kansasleo.com/statutes.htm> or <http://www.kscoplaw.com/thelawpage.htm> . Statutes on the state website are not updated until sometime in the fall.

- 1. Juveniles: CINC Custody:** Effective May 2, 2019, KSA 38-2202; 38-2231; 38-2232; and KSA 38-2242 are amended directing a child taken into custody by a law enforcement officer under the CINC laws cannot be placed into a juvenile detention facility unless specifically authorized in statute. statutes: 1) KSA 38-2232(a)(3) if after being placed in a shelter facility and is alleged but not yet adjudicated as a runaway from home or parents; or if a runaway for the second or subsequent time from a court placement, the child may be placed in a JDF for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays IF the person in charge of the facility AND the law enforcement officer determines the child will not remain in the shelter facility; 2) KSA 38-2232(b)(1) for runaways detained under the interstate compact on juveniles; 3) KSA 38-2242(c)(2) and KSA 38-2260 if ordered by a court; 4) KSA 38-2243(g)(2) if alleged but not yet adjudicated as a runaway from home or parents; or if a runaway for the second or subsequent time from a court placement. This authorization is for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays; 5) KSA 38-2288 if the child is also alleged to be a juvenile offender. Placement in a juvenile detention facility is specifically prohibited in the following statutes: 1) KSA 38-2232(b)(2) a human trafficking victim; 2) KSA 38-2232(b)(3) a child who the officer believes to be in a mental health crisis AND is likely to cause harm to self or others. This was placed into law as part of the Juvenile Justice Reform bill in 2016 with a delayed implementation date in 2019. Those earlier amendments were further cleaned up this year and are now in effect. [HB2203](#) §3-5 [Bill Summary](#) and [HB2103](#) §3 [Bill Summary](#)
- 2. DUI Law Revisions:** The DUI laws were amended to remove the criminal violations for refusal of the evidentiary test and for refusal of the preliminary breath tests. These laws were found by the courts to be unconstitutional and officers should have already been advised to not make arrests for those violations. The advisories required for the preliminary test are deleted and should no longer be provided. However, provisions are retained allowing officers to use preliminary test results in assessing probable cause to arrest. The advisories required prior to evidentiary testing are changed effective July 1. New forms will be provided. [HB2104](#). [Bill Summary](#)
- 3. Driver's License: Delivery on demand:** Effective July 1, 2019, KSA 8-244 is amended changing the requirement to “display” a driver’s license on demand of law enforcement to “deliver” the license. The effect of this is they must hand it to you if they in fact have it in their possession, they can’t just hold it up to the window and show it to you. There is no violation of this new provision if they fail to deliver it to you because they don’t have it in their possession. The amendment also separates the two provisions of the statute, requirement to possess a driver’s license and requirement to “deliver” the license upon demand, into separate subsections. The provision requiring the case to be dismissed if the license is later shown to the court will only apply to not having the license in their possession. It does not apply to failing to “deliver” the license if it is in the driver’s possession. [HB2125](#) [Bill Summary](#)

4. Drugs

- a. **CBD Oil with THC:** Effective July 1, 2019, the criminal statute is amended to create an affirmative defense for possession of CBD Oil with up to 5% THC, provided the person has a letter from a physician confirming they or their minor child have certain medical conditions. The legislative intent is for persons with these limited diseases to have access to CBD Oils with THC without facing conviction. They used this path attempting to protect law enforcement ability to enforce illegal marijuana. This will create several dilemmas for law enforcement officers they will need guidance on. Since this is an affirmative defense and not legalization of these substances the person is still subject to arrest. But is that what you want your officers doing, especially if the person is in possession of the required letter? When should the officers seize the CBD oil when they suspect the conditions of the affirmative defense are not met or if the officer has reason to believe or probable cause the 5% THC limit is exceeded? When should the seizure result in arrest vs. referral to the prosecutor for charges? See the full Legislative Report for additional details on this new law. See [full details at this link](#). [SB28](#). [Bill Summary](#)
- b. **Agricultural Hemp:** Substantial changes are made to the commercial hemp laws passed last year. These will eventually expand the program. But for right now the “Research Program” is the only active program. The new “Commercial Program” will not be allowed until a state plan is submitted to the USDA and the USDA approves it. These programs make significant changes to the laws governing cannabis that will impact drug enforcement, drug search and seizure cases, and present new challenges to officers in determining what cannabis is legal and what is illegal. Those legally working with the hemp programs are required to be licensed by the Kansas Department of Agriculture and to carry a copy of the license with them when they are engaged in the operation or transportation of the legal products. There are certain things officers will need to be trained on relating to these matters. The ramifications and information are extensive, so I won’t go into all the detail here. But you can see those details at the following links: [full details at this link](#). [HB2167](#). [Bill Summary](#)

5. **Alcohol Enforcement: Temporary Permits; Extended Premises; Common Consumption Areas; and Samples:** Effective May 2, 2019, several alcohol statutes are amended effecting the above listed topics. Key changes include:

TEMPORARY PERMITS: 1) Temporary permits allow the holder to sell alcohol for consumption in the Temporary Permit Area for a limited period of time during a special event without additional liquor licensing; 2) the boundaries of the event must be clearly marked; the consumption of the alcohol can take place on public streets, highways, sidewalks and alleys provided such locations are approved by the city or county, within the approved event boundaries, and the areas are blocked off from vehicle traffic; 3) a Temporary Permit Holder may allow patrons to bring their own liquor into the area for consumption but the liquor container cannot be stored by the permit holder; 4) the liquor sold by the Temporary Permit holder cannot be for consumption off premises, removed beyond the approved boundaries, or consumed within a vehicle; 5) any person employed by or providing services to the Temporary Permit holder must be age 18 or older to serve alcohol, over age 21 to mix drinks, and cannot be convicted of any intoxicating liquor law in the last 2 years or of certain felonies; 6) a person under age 18 may be employed by the Temporary Permit holder for other duties provided they are supervised by a person age 21 or older.

EXTENDED PREMISES: An establishment holding a liquor license located within or adjacent to the site of a temporary sales permit event may extend their premises into the area listed in the temporary sales permit for the duration of the event. Licensees, not related to a temporary sales permit, may extend their licensed premises into the city, county or township street, alley, road, sidewalk or highway, provided the public way is closed to vehicular traffic; and the extension is approved by ordinance or resolution of the city, county or township.

COMMON CONSUMPTION AREAS: One or more licensees may participate in a common consumption area in which they may all sell and serve alcoholic liquor from one non-contiguous service area within the common consumption area as approved by the common consumption area permit holder. The licensee is required to display a copy of the drinking establishment license and the approval of the common consumption area permit holder at the non-contiguous service area.

SAMPLES: Samples may be served by holders of liquor licenses or temporary permits, provided 1) a sample size is limited to no more than ½ ounce of distilled spirits; 1 ounce of wine; or 2 ounces of beer or CMB; 2) there can be no charge for any sample; 3) a sample may not be served to a person under age 21; and 4) samples may not be removed from the premises. More than one sample may be served to any person. Only a Temporary Permit holder may charge a cover charge and still serve samples, all other license holders cannot serve samples if a cover charge has been required.

REMINDER: The ABC cannot take action on a violation of the liquor laws based on a report from local law enforcement unless the violation is reported as required in KSA 41-106, which requires law enforcement to provide written notice of the violation to the person in charge of the licensed premises at the time the violation is discovered. The ABC provides a form at: <https://www.ksrevenue.org/pdf/abc60.pdf>

See [full details at this link](#) [SB70 Bill Summary](#) See the revised statutes at: <http://kansasleo.com/statutes.htm#Ch41> go to K.S.A. Chapter 41.

6. **Window Tint:** Effective July 1, 2019, KSA 8-1749a on window tint now allows a nearly clear window tint film to be applied to a windshield provided 1) the windshield combined with the tint has a 70% or greater transparency; 2) the person has letter from a physician in their possession stating the tint is medically necessary; and 3) the tint material is not scratched, bubbled or otherwise obstructs clear vision. A person in violation of possessing the physician letter has 60 days to demonstrate they have removed the tint or obtained the physician letter. That 60 day period does not apply to a violation of the tint being too dark or in poor condition. The law relating to window tint on law enforcement vehicles is changed to allow window tint on any law enforcement vehicle, not just marked vehicles. [SB63 §4 Bill Summary](#) See the revised statutes at: <http://www.kansasleo.com/vehcode/art17.htm#8-1749a>
7. **ATV and Work Site Utility Vehicle Operation on Roadways:** ATVs and Work Site Utility Vehicles may now be operated on roadways outside of cities when the following conditions are met: 1) The operator has a valid driver's license; 2) the trip is for an agricultural purpose; 3) the speed limit of the roadway is 65 mph or less; and 4) the vehicle is operated near the right side or the

roadway. [SB281](#) §5 & 6 [Bill Summary](#) See the revised statutes at:

<http://www.kscofplaw.com/KSAs/Ch60Art31.htm>

8. **Electric Assisted Scooters:** Effective July 1, 2019, electric assisted scooters must follow the same laws as bicycles but cannot be operated on state, federal or interstate highways except to cross a state or federal (non-interstate) highway. An electric-assisted scooter is a self-propelled vehicle that has at least two wheels in contact with the ground, an electric motor, handlebars, a brake and a deck that is designed to stand upon when riding. Cities may further regulate operations. [HB2523](#) §2 [Bill Summary](#) See the revised statutes at: <http://www.kscofplaw.com/crimcode/2668code/art55.htm#21-5512>
9. **Search Warrants for Electronic Data:** Specific search warrant provisions were added to KSA 22-2503 for searching devices and media for electronic data. The amendments only apply to search warrants issued after July 1, 2019. The revised statute retains the 96-hour rule for seizure of the device or media containing the data, but specifically removes the time period required for extraction and analysis of the data unless the warrant specifies such a time period. The new provisions also allow for the devices or media containing the data to be sent out of state for the extraction and analysis of the data. [HB2191](#). [Bill Summary](#)
10. **Domestic Violence Policy:** Effective July 1, 2019, the requirement to provide certain information to be given to domestic violence victims is expanded with additional notifications. When an arrest is made for a domestic violence offense of KSA 21-5111 or KSA 21-5924, including a violation of a protection order, the victim must be informed: (A) That in some cases the person arrested can be released from custody in a short amount of time; (B) that in some cases a bond condition may be imposed on the person arrested that prohibits contact with the victim for 72 hours, and that if the person arrested contacts the victim during that time, the victim should notify law enforcement immediately; and (C) any available services within the jurisdiction to monitor custody changes of the person being arrested, such as the [Kansas Victim Information And Notification Everyday \(VINE\)](#) service. See [SB18](#) §12 [Bill Summary](#)

NOTE: If this document has been printed making the internal links unavailable, you can locate the bills and summaries at: http://www.kslegislature.org/li/b2017_18/measures/bills/ Enter only the bill number (leave off the SB or HB).

The author of this document is not an attorney and this is not legal advice. It is a summary of legislation passed in the 2019 Kansas legislative session and based on explanations, observations, and studies of the bill and related documents.

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