



2023 LEGISLATIVE CHANGES TO THE KSGA AND RELATED CRIMINAL LAW

In the 2023 Legislative Session, several statutory changes were passed that will affect criminal law practice, including changes in criminal penalties, the addition of new crimes, and changes to crimes that already exist. The following is not a comprehensive list of all the changes made during the Legislative Session.

SB 174

Battery Against a Health Care Provider; Fentanyl-related Definitions and Penalties; Other Crimes; Attorney General Prosecutorial Authority

SB 174 amends the crime of battery to define battery against a health care provider; amends the definitions of manufacture and drug paraphernalia; adds a definition of fentanyl related controlled substances; increases the penalty for the unlawful manufacturing of fentanyl; amends the elements of the crimes of burglary and aggravated burglary to add domestic battery and violation of a protection order; amends the crime of interference with law enforcement to add conduct constituting the crime; creates special sentencing rules related to the manufacture and distribution of fentanyl; and amends law concerning the prosecutorial authority of the Attorney General.

Battery of a Health Care Provider

The bill amends the crime of battery to define battery against a health care provider as a battery committed against a health care provider while such provider is engaged in the performance of such provider's duty. "Healthcare provider" is defined as an individual who is licensed, registered, certified, or otherwise authorized by the state of Kansas to provide healthcare services in this state.

Battery against a health care provider is a class A person misdemeanor.

Definitions of Manufacture, Drug Paraphernalia, Fentanyl-related Controlled Substances

The bill amends the definition of "manufacture" to include placing a controlled substance into a pill or capsule form. The bill amends the definition of "drug paraphernalia" to exclude tests used to detect the presence of fentanyl, ketamine, or gamma-hydroxybutyric acid (GHB). The bill adds the definition of "fentanyl-related controlled substances" in the Kansas Criminal Code to include certain Schedule I and Schedule II controlled substances, as specified by the bill. The bill also makes a technical amendment to reconcile amendments made by the 2022 Legislature by removing the definition of the term "possession" from KSA 21-5701 and by repealing KSA 21-5701b.

Increased Penalty for the Unlawful Manufacture of Fentanyl

The bill amends the crime of manufacturing a controlled substance to make the manufacturing of a fentanyl-related controlled substance a drug severity level 1 felony, increased from a drug severity level 2 felony.

Crimes of Burglary and Aggravated Burglary

The bill amends the elements of the crimes of burglary and aggravated burglary to add domestic battery and violation of a protection order to the list of crimes that a person can have *Kansas Legislative Research Department 1 2023 Summary of Legislation* the intent to commit when they enter or remain in one of the locations specified in the crimes of burglary and aggravated burglary.

[*Note:* Under continuing law, the crimes of burglary and aggravated burglary require a person to have the intent to commit a felony, theft, or sexually motivated crime within a protected location.]

Crime of Interference with Law Enforcement

The bill amends the crime of interference with law enforcement to add conduct constituting the crime. The crime includes knowingly fleeing from a law enforcement officer by means other than operation of a motor vehicle, when:

- The officer has reason to stop the person under continuing law in the Kansas Code of Criminal Procedure; and
- The officer has given the person visual or audible signal to stop.

The offense is classified as one of the following:

- A class A nonperson misdemeanor in the case of a misdemeanor, or resulting from any authorized disposition for a misdemeanor, or a civil case;
- A severity level 7 nonperson felony in the case of a felony, or resulting from parole or any authorized disposition for a felony; or
- A severity level 5 nonperson felony if the offender discharged or used a firearm while fleeing.

Special Sentencing Rules Related to Manufacture or Distribution of Fentanyl

The bill creates a special sentencing rule for the penalty for the crime of manufacturing material that contains any quantity of fentanyl-related controlled substances; it includes presumptive imprisonment and two times the maximum duration of the presumptive sentence term. The sentence is not to be considered a departure and will not be subject to appeal.

The bill also creates a special sentencing rule for the penalty for the crime of manufacturing or distributing a controlled substance with the same penalty as described in the above rule. This rule applies if the trier of fact makes a finding beyond a reasonable doubt that the controlled substance involved, because of its appearance or packaging, was likely to be attractive to minors.

Prosecutorial Authority of the Attorney General

The bill amends law concerning the prosecutorial authority of the Attorney General. The bill authorizes the Attorney General, concurrently with a county or district attorney, to prosecute:

- Theft, under continuing law in the Revised Kansas Criminal Code;
- A violation of the Kansas Racketeer Influenced and Corrupt Organizations Act; and
- An attempt, conspiracy, or criminal solicitation of such crimes when the alleged course of conduct occurs in two or more counties.

SB 217
Restrictions on Electronic Tracking; Timeframes of Protective Orders

SB 217 amends law regarding the use of electronic tracking systems to target a person’s location, movement, or travel patterns and the timeframes of protective orders.

Kansas Criminal Code—Crime of Stalking

The bill adds to the definition of “course of conduct” in the crime of stalking the following conduct:

- Utilizing any electronic tracking system or acquiring tracking information to determine the targeted person’s location, movement, or travel patterns.

Kansas Family Law Code—Permissible Orders After the Filing of a Petition for Divorce, Annulment, or Separate Maintenance Before Action Final

The bill expands permissible orders related to restraining parties with regard to disposition of property and with regard to molesting or interfering with the privacy or rights of each other to specify these orders cover the conduct of utilizing any electronic tracking system or acquiring tracking information to determine the other person’s location, movement, or travel patterns.

Kansas Parentage Act—Court Orders

The bill specifies a court’s power to make and enforce orders related to restraining parties from molesting or interfering with the privacy or rights of each other to include utilizing any electronic tracking system or acquiring tracking information to determine the other person’s location, movement, or travel patterns.

Revised Kansas Code for Care of Children—Temporary Custody Orders, Informal Supervision Restraining Orders, and Prohibitions on Authorized Dispositions of Custody

The bill specifies, for the purposes of sections of law concerning temporary custody orders, informal supervision restraining orders, and prohibitions on authorized dispositions of custody, the terms “harassing or intimidating” and “harass or intimidate” to include, but are not limited to, utilizing any electronic tracking system or acquiring tracking information to determine the targeted person’s location, movement, or travel.

Protection From Abuse Act

The bill specifies restraining orders granted under the Protection from Abuse Act to include restraining the defendant from utilizing any electronic tracking system or acquiring tracking information to determine the other person’s location, movement, or travel patterns.

Protection from Stalking, Sexual Assault, or Human Trafficking Act

The bill specifies, for the purposes of restraining orders granted under the Protection from Stalking, Sexual Assault, or Human Trafficking Act, the terms “harassing” or “interfering with the privacy rights” to include, but are not limited to, utilizing any electronic tracking system or acquiring tracking information to determine the targeted person’s location, movement, or travel patterns.

Timeframes of Protective Orders

The bill amends law governing the timeframes for initial protective orders and related extension periods in the Protection from Abuse Act and the Protection from Stalking, Sexual Assault, or Human Trafficking Act.

Current law allows orders initiated under both acts to remain in effect up to one year, with options to extend such orders for up to one additional year. The bill changes the time period for which initial orders may remain effective to a period of

one to two years and changes the time period for extensions of such orders to be effective for an additional one to three years.

The bill also amends a provision in the Protection from Abuse Act requiring the court to extend protective orders for up to the lifetime of the defendant when the court determines a violation has occurred, by lowering the floor of the possible extension period from two additional years to one additional year.

HB 2010
Criminal Discharge of a Firearm; Special Sentencing Rules; SB 123 Program
Eligibility; Postrelease Supervision Time

Senate Sub for HB 2010 updates certain cross references to statutes that have been repealed; amends the definition of criminal discharge of a firearm; creates special sentencing rules related to the use of firearms; amends law concerning eligibility for certain offenders for the nonprison sanction of placement in a certified drug abuse treatment (SB 123) program; and amends law concerning the tolling of postrelease supervision time.

Statutory Cross References (Sections 1, 5, and 6)

The bill updates statutory cross references in statutes concerning:

- Jury instructions for persons who lack the required mental state to commit a crime;
- Annual hearings on the continued commitment of persons who were found to lack the required mental state to commit a crime; and
- Municipal zoning of group homes.

Definition of Criminal Discharge of a Firearm (Section 2)

The bill amends the definition of criminal discharge of a firearm to include the reckless and unauthorized discharge of any firearm at a motor vehicle in which there is a human being, regardless of whether the offender knows or has reason to know that a human being is present.

Special Sentencing Rules (Section 3)

Violation of Criminal Possession of a Weapon by a Convicted Felon

The bill creates a special sentencing rule stating that, notwithstanding statutory provisions regarding lesser and included crimes or any other provisions of law to the contrary, the sentence for a violation of criminal possession of a weapon by a convicted felon is a presumptive term of imprisonment, required to be served consecutively to any other term(s) of imprisonment imposed. The rule is triggered if the trier of fact finds beyond a reasonable doubt that:

- The weapon the offender possessed during such violation was a firearm; and
- Such firearm was used by the offender during the commission of any violent felony, as defined by the bill.

The bill specifies that this sentencing rule does not apply to an offender who is prohibited from possessing a weapon as a result of a juvenile adjudication.

The bill defines “violent felony” to mean the following crimes as defined in statute:

- Capital murder or first- or second-degree murder;
- Voluntary manslaughter;
- Kidnapping, when the crime involves holding a person for ransom or as a shield or hostage, or aggravated kidnapping;

- Aggravated assault, when committed with a deadly weapon, or aggravated assault of a law enforcement officer, when committed with a deadly weapon;
- Aggravated battery, when the conduct causes great bodily harm or disfigurement, or when the conduct causes bodily harm that could cause great bodily harm, disfigurement or death or aggravated battery against a law enforcement officer, unless the conduct involves bodily harm caused with a motor vehicle;
- Mistreatment of a dependent adult or mistreatment of an elder person, when the conduct involves infliction of physical injury or unreasonable confinement or punishment;
- Rape;
- Aggravated criminal sodomy;
- Abuse of a child, unless the acts constituting the crime are committed recklessly;
- Any felony offense under statutes prohibiting the unlawful manufacturing, cultivation, or distribution of controlled substances;
- Treason;
- Criminal discharge of a firearm, when the acts constituting the crime are committed in the presence of another human being;
- Fleeing or attempting to elude a police officer;
- Any felony that includes the domestic violence designation, as determined by the trier of fact under the relevant statutory procedure; or
- Any attempt, conspiracy, or criminal solicitation of any felony offense described above.

A whereas clause designates amendments made in this section as the “Reduce Armed Violence Act.”

Violation of Criminal Discharge of a Firearm

The bill creates a special sentencing rule for a violation of criminal discharge of a firearm involving the reckless and unauthorized discharge of a firearm at a dwelling, building, structure, or motor vehicle.

The rule is triggered if the trier of fact makes a finding beyond a reasonable doubt that the offender discharged a firearm and that the offender knew or reasonably should have known a person was present at the above-mentioned locations.

When the person present is 14 years of age or older, the sentence is a presumptive term of imprisonment per the Kansas Sentencing Guidelines, plus 60 months of additional imprisonment, to be served consecutively to any other term(s) of imprisonment.

When the person present is less than 14 years of age, the sentence is a presumptive term of imprisonment per the Kansas Sentencing Guidelines plus 120 months of additional imprisonment, to be served consecutively to any other term(s) of imprisonment.

The bill provides that a sentence imposed under both special rules is not to be considered a departure sentence and is not subject to appeal and, for a sentence imposed for a violation of criminal possession of a weapon by a convicted felon, no other sentence may be permitted.

SB 123 Program Eligibility (Section 4)

The bill amends law to expand eligibility for certain offenders for the nonprison sanction of placement in a certified drug abuse treatment (SB 123) program. [*Note: SB 123 (2003) created mandatory community-based supervision and substance abuse treatment for certain nonviolent offenders convicted of drug possession.*]

The bill amends law to allow a defendant convicted of a nonperson severity level 7, 8, 9, or 10 felony with a criminal history score of C through I to participate in a certified drug abuse treatment program if the defendant has no prior convictions for manufacturing a controlled substance, cultivating or distributing a controlled substance, or unlawful acts involving proceeds from drug crimes.

The bill amends law to allow a defendant convicted of a nonperson severity level 7, 8, 9, or 10 felony with a criminal history score of A or B to be able to participate in a certified drug abuse treatment program if the defendant has no prior

convictions for manufacturing a controlled substance, cultivating or distributing a controlled substance, or unlawful acts involving proceeds from drug crimes, and:

- The person felonies in the defendant’s history are nondrug severity level 8 or lower, and
- The court finds that the safety of the members of the public will not be jeopardized by the placement of the defendant in a certified drug abuse treatment program.

Tolling of Postrelease Supervision Time (Section 7)

The bill amends a statute governing parole, conditional release, and postrelease supervision to specify that the service of postrelease supervision time shall not toll, except as provided in the statute governing violations of conditions of release.

HB 2021
Evidence-based Program Account Expenditures; Agency Collaboration in
Juvenile Offender and CINC Cases

HB 2021 creates and amends law regarding the assessment of and provision of services to children in the child welfare and juvenile justice systems; overall case length limits and community-based graduated sanctions under the Revised Kansas Juvenile Justice Code (Juvenile Code); exchange of confidential data within the juvenile justice system; and use of funds from the Evidence-based Programs Account (Account) of the State General Fund. The bill also changes the criteria used to admit youths to a juvenile crisis intervention center by adding definitions for “behavioral health crisis” and changing the phrase “mental health crisis” to “behavioral health crisis” in various statutes.

Risk and Needs Assessments for Children Exhibiting Criminogenic Behaviors

The bill requires, on or before October 1, 2023, the Secretary for Children and Families to identify an evidence-based risk and needs assessment to administer to children identified as exhibiting behavior that could lead to juvenile offender charges related to physical violence, aggression, damage to property, or use of life-threatening drugs during the course of a child in need of care (CINC) case. The bill directs the Secretary for Children and Families to administer the assessment and requires the Secretary to collaborate with the Secretary of Corrections to allow these identified children to participate in programs funded by the Account. The bill clarifies such assessment is part of the child’s official CINC file and cannot be admitted to evidence during the course of a proceeding under the Juvenile Code. The bill requires the Secretary for Children and Families to report on the implementation of this section, and to provide the assessment used to the Joint Committee on Corrections and Juvenile Justice Oversight (JCCJJO) on or before January 1, 2024.

Standardized Risk and Needs Assessments for Juvenile Offenders

The bill directs the Secretary of Corrections to ensure when a juvenile is placed in detention, the juvenile:

- Receives a standardized risk and needs assessment within 72 hours, or has appropriate updates made to such assessment if one has already been conducted;
- Receives an updated or completed case plan within 48 hours after such assessment has been conducted or updated; and
- Has access to behavioral health services, mental health services, and substance use treatment disorder services while in detention.

The bill requires the Secretary of Corrections to coordinate with court services, community corrections, and juvenile detention centers to provide the services described above in a timely manner, and, for a juvenile in the custody of the Department for Children and Families (DCF), to coordinate with the Secretary for Children and Families to provide such services. The cost of assessments conducted or services provided to juvenile offenders may be assessed to the Kansas Department of Corrections (KDOC).

The bill also directs the Secretary of Corrections to collect data regarding these assessments and services and report findings to JCCJJO before July 1 of each year.

Collaboration Between Agencies

The bill amends the Revised Kansas Code for Care of Children (CINC Code) and the Juvenile Code to require, if a child, juvenile, or juvenile offender is eligible to receive services from DCF, KDOC, or the Judicial Branch, that these agencies collaborate to provide such services. The bill states that nothing in the CINC Code provision or in the Juvenile Code precludes the eligible child from accessing services by the listed agencies or any other state agency if the child is otherwise eligible for services.

In the Juvenile Code, this provision replaces an existing provision requiring collaboration between KDOC and the Secretary for Children and Families to furnish services.

Juvenile Code Case Length

The bill amends the overall case length limits for juvenile offenders. The court may extend the overall case length limit to allow for completion of an evidence-based program if the juvenile's repeated, intentional effort to delay is the reason for failure to complete the evidence based program, as reported by the evidence-based services provider. Such extensions may only be granted incrementally.

Community-based Graduated Sanctions for Violations of Sentence Disposition by Juveniles

The bill amends law governing community-based graduated responses to certain violations of juvenile sentencing dispositions including probation, conditional release, and condition of sentence by juveniles to require the court services officer or community correctional services officer to immediately notify the court and submit a written report showing in what manner the juvenile has violated such sentencing disposition.

The bill also amends the section to allow a judge to commit a juvenile, who is on probation, to detention for a probation violation if the judge makes a finding that the juvenile is demonstrating escalating use of physical violence, aggression, weapons, damage to property, or life-threatening substances. The detention period may not exceed 24 hours for the first violation, 48 hours for the second violation, and 15 days for the third or subsequent violation.

Confidential Data Exchange System

The bill requires KDOC to develop a system, or contract with an entity to develop an electronic records system not maintained by KDOC, by July 1, 2025, to facilitate the exchange of confidential information among all parts of the juvenile justice system. The bill requires any contracted system to include a verification system that is operated by KDOC for the purpose of verifying the authenticity and validity of electronic records and specifies such electronic records have the same legal effect as paper records. KDOC is required to report to the JCCJJO, House Committee on Appropriations, Senate Committee on Judiciary, Senate Committee on Ways and Means, and House Committee on Corrections and Juvenile Justice on the progress of the development by the first day of the 2024 Legislative Session.

Amendments to Evidence-based Programs Account

The bill amends law governing the Account to expand allowable expenditures to include evidence-based community programs and practices for:

- Juvenile offenders and their families [*Note: Current law does not allow expenditures for juvenile offenders' families*];
- Juveniles experiencing a behavioral health crisis and their families [*Note: Current law allows expenditures for juveniles experiencing a mental health crisis*];
- Children who have been administered a risk and needs assessment and have been identified as exhibiting criminogenic behaviors as described in the bill; and

- Grants under provisions described below.

The bill expands those eligible to administer such programs and practices to include:

- Community mental health centers;
- Community health centers;
- The Youth Advocate Program;
- Jobs for America’s Graduates—Kansas Transition Services; and
- Any other community-based service provider offering evidence-based community programs.

The bill requires the Secretary of Corrections to develop and implement a grant program with the goal of implementing evidence-based community programs and promising practices throughout the state, subject to the availability of funding in the Account after other expenditures for evidence-based programs are made. The Secretary is required to adopt grant requirements and to evaluate grant-funded programs to ensure the program is being delivered as intended. Any provider of evidence-based community programs for juveniles may apply for a grant, and priority is given to any county that demonstrates low availability of evidence-based community programs for juveniles. Child welfare case management providers are not eligible to receive grants through the Account.

The bill requires expenditures made from the Account to be made promptly and on a rolling basis to develop and implement evidence-based community programs as services are needed throughout the state.

Definition of Behavioral Health Crisis

This bill defines “behavioral health crisis” in the CINC Code to mean “behavioral and conduct issues that impact the safety or health of a child, members of the child’s household or family or members of the community, including, but not limited to, non-life threatening mental health and substance abuse concerns.” A definition, identical except for the use of the term of “juvenile” rather than “child,” is also added to the Juvenile Code and to a statute regarding juvenile crisis intervention centers.

The bill amends statutes relating to law enforcement officers taking children or juveniles into custody and the court directing temporary custody to refer to behavioral health crisis instead of mental health crisis.

Juvenile Crisis Intervention Centers

This bill amends the statute establishing juvenile crisis intervention centers to add substance abuse services to the services to be provided by a juvenile crisis center. The bill also adds a behavioral health condition as a reason a juvenile could be determined to be likely to cause harm to self or others.

HB 2121

Extension of Statutory Speedy Trial Suspension

Sub. for HB 2121 amends law governing statutory speedy trial in the Kansas Code of Criminal Procedure.

The bill extends the suspension of statutory speedy trial rights for defendants in all criminal cases until March 1, 2024. [Note: Current law suspends statutory speedy trial rights until May 1, 2023.]

The bill specifies that time between March 19, 2020, and March 1, 2024, may not be assessed against the State for any reason. The bill also provides that any person arraigned before March 1, 2024, is deemed to have been arraigned on that date for the application of statutory speed trial.

The bill takes effect upon publication in the *Kansas Register*.

HB 2127
Statute of Limitations—Childhood Sexual Abuse

Senate Sub. for HB 2127 permits a criminal prosecution for childhood sexual abuse to be commenced at any time, extends the time to file a civil action for recovery of damages resulting from childhood sexual abuse, and provides exceptions in the Kansas Tort Claims Act (KTCA) for claims arising from such abuse.

Criminal Prosecution (Section 2)

The bill adds the crime of childhood sexual abuse, as defined by the bill, to the list of crimes in which a criminal prosecution may be commenced at any time. [*Note: Continuing law provides that the prosecution for the crimes of rape, aggravated criminal sodomy, murder, terrorism, or illegal use of weapons of mass destruction may be prosecuted at any time.*]

For the purposes of the bill, “childhood sexual abuse” means any of the following crimes, as defined by the Kansas Criminal Code, when the victim is under 18 years of age:

- Indecent liberties with a child or aggravated indecent liberties with a child;
- Criminal sodomy;
- Enticement of a child;
- Indecent solicitation of a child or aggravated indecent solicitation of a child;
- Sexual exploitation of a child;
- Aggravated sexual battery;
- Aggravated incest;
- Aggravated human trafficking, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- Internet trading in child pornography or aggravated internet trading in child pornography; or
- Commercial sexual exploitation of a child.

Limitations on Civil Actions

The bill amends law governing the limitations on civil actions for recovery of damages suffered as a result of childhood sexual abuse to allow such actions be commenced within the following time frames, whichever occurs later:

- No more than 13 years after the date the victim turns 18 years of age; or
- No more than three years after the date of a criminal conviction for a crime related to childhood sexual abuse, as specified by the bill.

Under current law, such actions may be brought no more than three years after the victim turns 18, or no more than three years after the person discovers or reasonably should have discovered that the injury or illness was caused by childhood sexual abuse.

In addition, the bill clarifies that the damages recovered for childhood sexual abuse include those for illness or injury suffered as a result of such abuse, removes language concerning the discovery of the injury or illness that was caused by childhood sexual abuse to reflect the amendments made by the bill and makes a technical amendment to remove a reference to actions pending on July 1, 1992.

HB 2147 **Sale of a Towed Vehicle; Counterfeit Airbags; Vehicle Ground Effect Lighting**

HB 2147 creates and amends law to change procedures regarding purchase of a vehicle that had been towed. It also amends the Uniform Act Regulating Traffic on Highways to add law to prohibit counterfeit airbags and to amend law to authorize certain ground effect lighting on vehicles.

Selling an Abandoned or Towed Vehicle

The bill creates law to require a public agency or towing or wrecking service lawfully selling an abandoned or towed motor vehicle to provide a certification to the purchaser that statutory recovery, storage, notification, and verification requirements associated with abandoned or towed vehicles have been satisfied, and that vehicle identification number inspection requirements have been met, beginning January 1, 2024.

The certification of compliance will allow the purchaser of such a vehicle to apply for and receive a certificate of title free and clear of liens, security interests, and encumbrances.

The bill requires the certification to be completed on a form and in a manner approved by the Secretary of Revenue, or the Secretary's designee, and subject to a fee of \$20 to be paid by the public agency or towing or wrecking service, to be retained by the county treasurer, Division of Vehicles of the Department of Revenue, or contractor that processes the certification of compliance form. The bill specifies the fee could be passed on to a purchaser or the vehicle's original owner upon reclamation.

The bill amends statutes regarding sale of a vehicle that has been abandoned or towed to require a notice to the owner or lienholder of a towed vehicle to be mailed within 15 calendar days, rather than 10 days, after receipt of verification of the last owner and any lienholders.

The bill also makes conforming amendments to continuing law.

Counterfeit Airbags

The bill creates the crime of knowingly or intentionally manufacturing, importing, distributing, selling, offering for sale, installing, or reinstalling a device intended to replace a supplemental restraint system component in a vehicle if the device is counterfeit, a nonfunctional airbag, or an object not designed in accordance with federal safety regulations for the make, model, and year of the vehicle.

The violation will be a class A nonperson misdemeanor.

The bill defines four terms:

- "Airbag," to mean an inflatable occupant restraint system device that is part of a supplemental restraint system in a vehicle;
- "Counterfeit supplemental restraint system component," to mean a replacement component displaying a mark identical or substantially similar to the genuine mark of a motor vehicle manufacturer or parts supplier without authorization from that manufacturer or supplier;
- "Nonfunctional airbag," to mean a replacement airbag that was previously deployed or damaged, has an electric fault that is detected by the vehicle's diagnostic systems, includes a part or object installed in the vehicle to mislead the owner into believing that a functional airbag has been installed, or is an airbag prohibited by federal law; and

- “Supplemental restraint system,” to mean a passive inflatable vehicle occupant crash protection system designed for use in conjunction with active restraint systems (*i.e.*, seat belts) that includes each airbag, installed according to the vehicle manufacturer’s design, and all components required to ensure the airbag operates as designed and meeting federal safety standards.

The bill adds these provisions to the Uniform Act Regulating Traffic on Highways.

Ground Effect Lighting

The bill authorizes equipping a motor vehicle with any type of ground effect lighting rather than only neon ground effect lighting, as authorized by current law. The bill makes conforming amendments to specify that no portion of the bulb or lighting fixture, rather than neon tubes, can be visible and makes conforming amendments to the definition of “ground effect lighting,” which is lighting that illuminates the ground below the vehicle.

HB 2216

Removing Mandatory Confinement for Certain Driving Violations

HB 2216 removes, for a first-time offender, the mandatory term of imprisonment for driving with a driver’s license that was canceled, suspended, or revoked for failure to appear in response to a traffic citation or failure to pay fines or otherwise comply with a traffic citation. Convictions for the offense will be subject to a mandatory fine of at least \$100. The bill also replaces all references to “imprisonment” with “confinement.” The bill takes effect upon publication in the *Kansas Register*.

HB 2264

Definition of Abortion; Medication Abortion Reversal Notification

HB 2264 amends the definition of abortion and clarifies certain medical procedures and methods of contraception are not considered an abortion. The bill adopts the amended definition of abortion uniformly for multiple statutes. The bill also amends the Woman’s-Right-to-Know Act to add a notification requirement about reversal of abortion options with certain medications.

Definitions

The bill amends the definition of abortion and adopts the definition of abortion uniformly for statutes pertaining to insurance coverage for elective abortions, abortion facility licensure, abortion of a pain-capable unborn child, the Kansas Unborn Child Protection from Dismemberment Abortion Act, and general abortion statutes addressing viability, restrictions and prohibitions, and information to be provided. The bill defines “abortion” in multiple statutes to be the same as in KSA 65-6701, a public health statute, which the bill amends to “the use or prescription of any instrument, medicine, drug, or any other means to terminate the pregnancy of a woman knowing that such termination will, with reasonable likelihood, result in the death of an unborn child.” The bill adds to the definition of abortion that the use or prescription of any instrument, medicine, drug, or any other means to terminate the pregnancy of a woman does not mean an “abortion” when done with the intent to:

- Preserve the life or health of the unborn child;
- Increase the probability of a live birth;
- Remove a dead unborn child who died as a result of natural causes in utero, accidental trauma, or a criminal assault on the pregnant woman or the unborn child; or
- Remove an ectopic pregnancy.

The bill affirmatively states that “abortion” does not include the prescription, dispensing, administration, sale, or use of any method of contraception.

The bill also defines the following terms:

- “Medication abortion” means the use or prescription of any drug for the purpose of inducing an abortion; and

- “Medical emergency” means the same as defined in KSA 65-6701: “A condition that, in reasonable medical judgment, so complicates the medical condition of the pregnant woman as to necessitate the immediate abortion of her pregnancy to avert the death of the woman for which a delay necessary to comply with the applicable statutory requirements will create serious risk of substantial or irreversible physical impairment of a major bodily function. No condition shall be deemed a medical emergency if based on a claim or diagnosis that the woman will engage in conduct which would result in her death or substantial and irreversible physical impairment of a major bodily function.”

The bill also replaces the definition of “medical emergency” in several statutes with a reference to the definition in KSA 65-6701.

Notification Requirements Regarding Medication Abortion

The bill requires any private office, freestanding surgical outpatient clinic, hospital, or other facility or clinic where medication abortions that use mifepristone are provided to post a conspicuous sign that is clearly visible to patients, printed with lettering that is legible and at least 3/4 of an inch boldfaced type, and contains the following text:

NOTICE TO PATIENTS HAVING MEDICATION ABORTIONS THAT USE MIFEPRISTONE:

Mifepristone, also known as RU-486 or Mifeprex, alone is not always effective in ending a pregnancy. It may be possible to reverse its intended effect if the second pill or tablet has not been taken or administered. If you change your mind and wish to try to continue the pregnancy, you can get immediate help by accessing available resources.

The bill requires the notice to include information about the Kansas Department of Health and Environment (KDHE) website required by continuing law and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

Facilities

The bill requires private offices or freestanding surgical outpatient clinics where medication abortions that use mifepristone are provided to post the sign in each patient waiting room and patient consultation room used by patients for whom medication abortions are provided.

Hospitals or other facilities where medication abortions that use mifepristone are provided that are not private offices or freestanding surgical outpatient clinics are required to post the sign in each patient admission area used by patients for whom medication abortions that use mifepristone are provided.

Pharmacies where mifepristone is prescribed, dispensed, or administered for the purpose of inducing a medication abortion are required to post the sign in each area inside the premises where customers are provided prescription medications and on the exterior of the premises in the area where customers are provided prescription medications via a drive-through window.

Physician

Except in the case of a medical emergency, the bill prohibits a physician from providing, inducing, or attempting to provide or induce a medication abortion that uses mifepristone without informing the woman, in writing as prescribed in the Woman’s-Right-to-Know Act and by telephone or in person, at least 24 hours prior to the medication abortion, of the following:

- It may be possible to reverse the intended effects of a medication abortion that uses mifepristone, if the woman changes her mind, but that time is of the essence; and
- Information on reversing the effects of a medication abortion that uses mifepristone is available on the KDHE website, as required by law, and other relevant telephone and internet resources containing information on where the patient can obtain timely assistance to attempt to reverse the medication abortion.

After a physician dispenses or provides an initial administration of mifepristone to a patient for the purposes of performing a medication abortion, the physician or an agent of the physician must provide a legible, written notice to the patient that includes the same information stated above.

When a medical emergency compels the performance of a medication abortion that uses mifepristone, the physician must inform the woman, prior to the medication abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary to avert the woman's death or a 24-hour delay would create serious risk of substantial and irreversible impairment of a major bodily function, excluding psychological or emotional conditions.

Anonymity

In any civil or criminal proceeding or action brought under the provisions of bill, the bill requires the court to rule whether the anonymity of any woman to whom a medication abortion has been provided, induced, or attempted to be provided or induced is preserved from public disclosure, if she does not give her consent to such disclosure. The bill requires the court, upon motion of a party or on its own accord, to make such a ruling and, upon determining the woman's anonymity should be preserved, to issue orders to the parties, witnesses, and counsel and to direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to safeguard the woman's identity from public disclosure. The bill requires each such order to be accompanied by specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists. In the absence of written consent of the woman to whom a medication abortion has been provided, induced, or attempted to be provided or induced, any person, other than a public official, who brings an action under this section is required to do so under a pseudonym. The bill states these provisions are not to be construed to conceal the identity of the plaintiff or witnesses from the defendant.

HB 2269

Amending the Kansas Cigarette and Tobacco Products Act to Raise the Minimum Age to 21

HB 2269 amends the Kansas Cigarette and Tobacco Products Act (Act) to raise the minimum age to 21 to sell, purchase, or possess cigarettes, electronic cigarettes, or tobacco products.

Licensing

The bill amends a statute concerning licensing to raise the minimum age to receive a license governed by the Act to age 21.

The bill amends a related statute to require the Kansas Department of Revenue Director of Taxation (Director) to notify licensees who are not yet age 21 of the Director's intention to suspend or revoke such person's license due to them being under 21 years of age.

Unlawful Acts and Related Penalties

The bill amends the Act's unlawful act provisions concerning cigarettes, electronic cigarettes, or tobacco products. Specifically, the bill amends references to the minimum age in statutes concerning the following:

- Sale, furnishing, or distribution of cigarettes, electronic cigarettes, or tobacco products;
- Possession or attempt to possess such products;
- The age listed on required notice of the minimum age to be sold such products;
- Distribution of samples within 500 feet of a school when the facility is primarily used by persons under the minimum age;
- Distribution of samples in an area to which persons under the minimum age are allowed access; and
- Use of a self-service display in a facility where the retailer allows persons younger than the minimum age to be present or permitted to enter at any time.

Criminal Penalty

The bill amends provisions setting out criminal penalties for the unlawful acts of selling, giving, furnishing, or buying such cigarettes or tobacco products to reflect the raising of the minimum age from 18 to 21. The bill also makes related amendments to provisions concerning defenses to such offenses.

Civil Penalty

The bill also amends provisions setting out civil penalties for unlawful acts related to selling, giving, furnishing, or buying cigarette or tobacco products for persons under the minimum age to reflect the raising of the minimum age from 18 to 21. The bill also makes a related amendment to a provision specifying certain sale-avoidance training shall be a mitigating circumstance in determination of a fine by the Director.

HB 2313 Born-alive Infants Protection Act

HB 2313 enacts the Born-alive Infants Protection Act (Act).

Definitions

The bill defines the following terms:

- “Abortion” means the same as defined in KSA 65-6701 [*Note: This definition is amended by 2023 HB 2264, which was passed by the Legislature on April 6, 2023.*];
- “Born alive” means the complete expulsion or extraction of a human being from its mother, at any stage of development, who, after such expulsion or extraction, breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion;
- “Healthcare provider” means a physician, licensed physician assistant, licensed advanced practice registered nurse, or person licensed, registered, certified, or otherwise authorized to practice by the Behavioral Sciences Regulatory Board; and
- “Medical care facility” means a hospital, ambulatory surgical center, or recuperation center, except that “medical care facility” does not include a hospice that is certified to participate in the Medicare program and that provides services only to hospice patients.

The bill also specifies that the definitions of terms “child,” “human being,” or “person” include each member of the species *Homo sapiens* who is born alive.

Requirements for Health Care Providers

In the event an abortion or attempted abortion results in a child being born alive, the bill requires any health care provider present at the time the child is born alive to:

- Exercise the same degree of professional skill, care, and diligence, to preserve the life and health of the child as a reasonably diligent and conscientious health care provider would render to any other child born alive at the same gestational age; and
- Ensure that the child who is born alive is immediately transported to a hospital.

The bill requires any health care provider or any employee of a medical care facility who has knowledge of a failure to comply with the reporting requirements to immediately report such failure to an appropriate law enforcement agency.

Penalties

The bill provides for any person who knowingly or recklessly violates the requirements for care and reporting to be guilty of a severity level 10 nonperson felony.

Any person who intentionally performs or attempts to perform an overt act that kills a child who is born alive during an abortion or attempted abortion is guilty of a severity level 1 person felony.

The provisions of this section do not apply to the woman upon whom the abortion is performed or attempted.

Anonymity and Requirements to Prevent Public Disclosure

In any civil or criminal action brought pursuant to sections regarding penalties or civil action, upon a motion by either party or on the court's own accord, the bill directs the court to determine whether the anonymity of such woman should be preserved.

HB 2350 Crime of Human Smuggling

HB 2350 creates the crimes of human smuggling and aggravated human smuggling, provides for criminal penalties, and makes these provisions supplemental to the Kansas Criminal Code.

Crime of Human Smuggling

The bill defines the crime of human smuggling as intentionally transporting, harboring, or concealing an individual into or within Kansas when the person:

- Knows, or should have known, that the individual is entering into or remaining in the United States illegally;
- Benefits financially or receives anything of value; and
- Knows, or should have known, that the individual being smuggled is likely to be exploited for the financial gain of another.

The bill makes the crime of human smuggling a severity level 5-person felony.

Crime of Aggravated Human Smuggling

The bill defines aggravated human smuggling as human smuggling that:

- Is committed using a deadly weapon or by threat of use of a deadly weapon;
- Causes bodily harm, great bodily harm, or disfigurement to the individual being smuggled; or
- Causes the individual being smuggled to become a victim of a sex offense, or human trafficking, or causes the person to commit selling sexual relations, all as defined in statute.

The bill makes the crime of aggravated human smuggling a severity level 3 person felony.