



2021 Legislative Session Major Law Changes

(All laws are effective July 1, 2021, unless indicated otherwise)

<p>Adult Abuse, Neglect, Exploitation</p>	<p>The Crime of Mistreatment of Dependent Adult is change from a SL5 to a SL2 person felony when physical harm is inflicted and from SL8 to SL5 person felony for omission or deprivation while residing in an adult care home.</p> <p>Both DCF and LE have the “duty to receive and investigate” reports of abuse, neglect, or exploitation of an adult. DCF is required to notify law enforcement in writing immediately when information they receive or develop in an investigation reveal a crime has occurred or has appeared to have occurred. Provisions for DCF joint investigations and sharing of information between DCF and law enforcement are included and similar to the child abuse and neglect investigation laws. The Abuse, Neglect, and Exploitation of Persons Unit in the Office of the Attorney General is authorized to assist in any investigation or discussion of any elder and dependent adult abuse multidisciplinary team.</p>
<p>Attempt to Elude</p>	<p>The Attempt to Elude statute, KSA 8-1568, is amended to create a higher penalty for attempting to elude when the eluding vehicle is driven the wrong way into an opposing lane of travel on a divided highway; departs the appropriate lane of travel into an opposing lane of travel on any roadway causing an evasive maneuver by another driver; is driven through an intersection causing an evasive maneuver by another driver; or causes a collision involving another. The penalty under those conditions becomes a SL 7 person felony.</p>
<p>Auto Theft</p>	<p>The auto theft rate in Kansas is among the highest in the country. In an effort to counter this crime several changes were made in the criminal law. KSA 21-5804 is amended to specify it is prima facie evidence of intent to permanently deprive the owner of the vehicle to attempt to elude law enforcement in a stolen vehicle. Another amendment to KSA 8-1568 adds attempting to elude while operating a stolen motor vehicle to the list of things that makes the attempt to elude a felony and sets a minimum fine of \$500 in any case where the attempt to elude is with a stolen motor vehicle. The intent of these changes is to 1) assist with overcoming the often faced prosecutorial challenge in the theft case that the driver of a stolen care knew it was stolen, and 2) to assure there is some additional penalty for a conviction of attempting to elude in a stolen motor vehicle instead of just rolling the penalties as concurrent with other convictions in the case.</p>
<p>Child Abuse and Neglect Investigations: New Requirements</p>	<p>Effective on June 3, 2021.</p> <p>The statute on Investigations of Child Abuse or Neglect Crimes, KSA 38-2226, is amended to require a child who is an alleged victim of abuse or neglect to be visually observed by the DCF if the DCF is the investigating agency, or the law enforcement agency if law enforcement is investigating the report. The observation may be by a designee (medical personnel, officer from another jurisdiction, etc.). In the event of a joint investigation by DCF and law enforcement, both agencies are required to visually observe such child. Investigation reports must include the date, time, and location of any such visual observation of a child.</p>
<p>Expungement</p>	<p>The statute on Expungements, KSA 21-6614, is amended by:</p> <ol style="list-style-type: none"> 1) Adding an additional consideration by the courts when approving an expungement to determine the possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public. 2) Removing access of expunged record to Concealed Carry Licensing Unit and states an expunged record cannot be used to prohibit issuing a CCH permit. 3) Prohibiting sharing expunged records with the FBI for the NICS used to determine a person's qualification to possess a firearm and requiring the KBI to notify the FBI that the record should be removed from NICS.

Firearm, Out of state CCH permit Valid in Kansas	Amendments are made to provide the recognition of CCH permits from other states.
Firearm, Possession by Felon	The statute on Felon in Possession of a Firearm, KSA 21-6304, is amended. The main changes are: 1) The time period time for the prohibition to expire starts upon completion of sentence, diversion agreement, probation or parole. The current time period starts at time of conviction or in some cases release from prison. 2) A rights restoration process is created based on expungement of the prohibiting conviction. See attachment for more details.
Firearm, Possession on Certain Gov't Property	Subsection (d)(4) of the statute on Unlawful Possession of a Firearm on Certain Government Property, KSA 21-6309, is amended. A revised exemption only exempts those not otherwise prohibited from firearm possession and is over the age of 21 or a CCH permit holder who is under the age of 21 (ages 18, 19, or 20). Prior law made this exemption available to anyone not otherwise prohibited regardless of age or CCH status. The change affects those ages 18 through 20 carrying an unconcealed firearm and anyone under the age of 18 carrying a firearm.
Firearm, CCH	Amends the Personal and Family Protection Act to create a provisional CCH permit for a person ages
Firearm, Concealed	The statute on Criminal carrying of a Weapon, KSA 21-6302, is amended by adding an exemption for those under age 21 (ages 18, 19, or 20) possessing the new provisional CCH permit to subsection (a)(4), carrying of a concealed firearm by a person under the age of 21.
Firearm, On School Property	Subsection (j) of the statute on Criminal Use of Weapons, KSA 21-6301, addressing firearms on school property is amended. A revised exemption only exempts those not otherwise prohibited from firearm possession <u>and</u> is over the age of 21 or a CCH permit holder who is under the age of 21 (ages 18, 19, or 20). Prior law made this exemption available to anyone not otherwise prohibited regardless of age or CCH status. The change affects those ages 18 through 20 carrying an unconcealed firearm and anyone under the age of 18 carrying a firearm.
Firearm, Restoration of Rights to Possess	The statute on Expungements, KSA 21-6614, is amended to provide an expungement of a crime prohibiting possession of a firearm results in restoration of rights to use, transport, receive, purchase, transfer and possess firearms, including any past expungement.
Firearm, Traffic in Contraband	The subsection of the statute relating to possession of firearms in a public parking lot in the current statute on Trafficking Contraband in a Correctional Institution or Care and Treatment Facility, KSA 21-5914, is amended. The exemption to the application of an increased penalty for the possession of a firearm or ammunition in a vehicle on a public parking lot of a correctional facility is amended to exempt only persons over the age of 21 or to a CCH permit holder who is under the age of 21 (ages 18, 19, or 20) from the higher penalty for this firearms violation. Prior law made this exemption available to everyone regardless of age or CCH status. The change affects those ages 18 through 20 carrying unconcealed firearms and anyone under the age of 18 carrying a firearm.
Fraudulent Liens	A new statute is created for a SL8 nonperson felony for filing a fraudulent lien. The fraudulent lien civil procedures in KSA 58-4301 and 58-4302 are amended to require when a lien or claim is set aside, the court must issue an order prohibiting the person who filed such lien or claim from filing any future lien or claim with any filing officer without approval of the court that enters the order. A violation of the order may subject the party in violation to civil and criminal penalties.

KEMA Violations	<p>Effective March 25, 2021</p> <p>The statute in the Kansas Emergency Management Act relating to criminal penalties for violating emergency orders, KSA 48-939, is amended to restore a class A misdemeanor for violations of an emergency order issued pursuant to KSA 48-925 mandating a curfew or prohibiting public entry in an area affected by a disaster. These can be local or state orders. All other violations continue to be a civil violation.</p>
Officer Safety: Exposure to body fluids, Court ordered infectious disease testing	<p>Prior law already authorized court ordered testing, but the testing was limited to only HIV and Hepatitis B. The revised law expands the list of infectious diseases to include those already identified in a KDHE regulation as exposure risks for medical and first responder personnel. These tests can be ordered by the court for exposure to officers, victims and others. The law is also amended to require the court to order the defendant to be tested at first appearance if it “appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved” and one of the following conditions exist:</p> <p>(1) The victim of the crime or the county or district attorney requests the court to order such tests of the alleged offender; or</p> <p>(2) Such person stated they had an infectious disease or were infected with an infectious disease, or used words of like effect, to the law enforcement officer making such arrest.</p>
Sexual Battery	<p>The statute on sexual battery, KSA 21-5505, is amended by removing the exemption for defendants that are a spouse of the victim. This change applies to both the misdemeanor and felony violations.</p>
Sexual Extortion	<p>A new crime of Sexual Extortion is created and the violation is a SL7 person felony when committed with the intent to (A) Engage in sexual contact, sexual intercourse or conduct that is of a sexual nature; or (B) produce, provide or distribute an image, video or other recording of a person in a state of nudity or engaging in conduct that is of a sexual nature. It is a SL 4 person felony if the coercive conduct actually results in the victim (A) Engaging in sexual contact, sexual intercourse or conduct that is of a sexual nature; or (B) producing, providing or distributing an image, video or other recording of a person in a state of nudity or engaging in conduct that is of a sexual nature. Note age is not a factor here and other existing statutes may apply in certain circumstances if the victim is a juvenile. Additionally, the offender registry statutes, KSA 22-4902 and 22-4906, are amended to add commission of the new crime to the list of offenses defining a sex offender and requiring offender registration for 15 years, but this new registration provision does not apply to juvenile offenders.</p>
Unemployment Fraud	<p>Effective May 13, 2021</p> <p>A new statute is created to allow Kansas law enforcement agencies to opt in to a Dept. of Labor program to assist in confirming the identity of a person who has been a victim of unemployment fraud identity theft to assist confirming the identity of a person attempting to file a legitimate unemployment claim.</p>

Comparison Chart for KSA 21-6304 as Amended by HB2058

Law Prior to July 1, 2021		Law on and after July 1, 2021	
Prohibition Period	Included Offenses	Prohibition Period	Included Offenses
Permanent	Person felony while <u>in possession of</u> a firearm. Article 57 of Ch 21 (any drug felony) while <u>in possession of</u> a firearm. <u>No</u> expungement/pardon provision.	Permanent	Person felony while <u>using</u> a firearm. Article 57 of Ch 21 (any drug felony) while <u>using</u> a firearm. <u>Expungement/pardon</u> provision.
10 year from <u>conviction or release from prison</u>	Felony while <u>not in possession of</u> a firearm under the following statutes 21-5402 1st degree murder 21-5403 2nd degree murder 21-5404 Voluntary manslaughter 21-5405 Involuntary manslaughter 21-5408 Kidnapping 21-5412(b) or (d) Agg assault deadly weapon 21-5413(b) or (d) Agg battery deadly weapon 21-5415(a) Criminal threat 21-5420(b) Agg. robbery 21-5503 Rape 21-5504(b) Agg. sodomy 21-5505(b) Agg. sexual battery 21-5807(b) Agg. burglary article 57 of chapter 21 Drug felonies Expungement/pardon provision exists. Nonperson felony possessing firearm. No expungement/pardon provision.	8 year from <u>end of sentence</u>	Felony while <u>not using</u> a firearm under the following statutes 21-5402 1st degree murder 21-5403 2nd degree murder 21-5404 Voluntary manslaughter 21-5405 Involuntary manslaughter 21-5408 Kidnapping 21-5412(b) or (d) Agg assault deadly weapon 21-5413(b) or (d) Agg battery deadly weapon 21-5415(a) Criminal threat 21-5420(b) Agg. robbery 21-5503 Rape 21-5504(b) Agg. sodomy 21-5505(b) Agg. sexual battery 21-5807(b) Agg. burglary article 57 of chapter 21 Drug felonies <u>No</u> expungement/pardon provision exists. Nonperson felony while using a firearm moved to 3 month prohibition.
5 years from <u>conviction or release from prison</u>	<u>Any felony</u> not listed in the 10 year prohibition group above, was not found to be <u>in possession of</u> a firearm when the crime was committed. No expungement/pardon provision.	3 years from <u>end of sentence</u>	<u>Any person felony</u> not listed in the 8 year prohibition group above, was not found to be using a firearm when the crime was committed. Expungement/pardon provision.
	See 10 year prohibition provisions above for nonperson felony while in possession of firearm. Current law had no prohibition for nonperson felony when no firearm was in possession.	3 Months from end of sentence	Any nonperson felony not listed in the three areas shown above. Use of firearm or no use of firearm included. Expungement/pardon provision.

NOTES:

Expungement/pardon provision provides prohibition ends if charge is expunged or pardoned.
End of sentence is latest of end of prison, probation, or parole.