

Legislative Update

Kansas Municipal Judges Association Annual Conference

April 18-19, 2016

Legislation Passed *the "911 Bill"*

SB 133 amends the crime of possessing, consuming, obtaining, purchasing, or attempting to obtain or purchase alcohol by a person under 21 to include immunity from prosecution for a person and, if applicable, one or two other persons acting in concert with such person, who initiated contact with law enforcement or emergency medical services; requested medical assistance on such person's behalf because such person reasonably believed he or she was in need of medical assistance; and cooperated with emergency medical services personnel and law enforcement officers in providing medical assistance.

The bill also extends immunity from prosecution when a person and, if applicable, one or two other persons acting in concert with such person, initiated contact with law enforcement or emergency medical services or was one of one or two other persons who acted in concert with such person; requested medical assistance for another person who reasonably appeared to be in need of medical assistance; provided their full name, the name of one or two other persons acting in concert with such person, if applicable, and any other relevant information requested by law enforcement or emergency medical services; remained at the scene with the person who reasonably appeared to be in need of medical assistance until emergency medical services personnel and law enforcement officers arrived; and cooperated with emergency medical services personnel and law enforcement officers in providing medical assistance. Immunity also shall be extended to the person who reasonably appeared to be in need of medical assistance but did not initiate contact with law enforcement or emergency medical services if the person cooperated with emergency medical services personnel and law enforcement in providing medical assistance.

The bill states a person shall not be allowed to initiate or maintain an action against a law enforcement officer or such officer's employer based on the officer's compliance or failure to comply with these new provisions.

Approved February 23, 2016; Effective July 1, 2016

262? *Hearsay Exception for KJIS*
SB 362 amends law relating to the Kansas Criminal Justice Information System (KCJIS). The bill allows the Kansas Bureau of Investigation to enter into agreements with state agencies and municipalities to share and authenticate electronically stored information to the KCJIS central repository. The definition of "criminal justice information system" is amended to incorporate such electronically stored information, and a definition for "electronically stored information" is added.

The bill also includes KCJIS central repository records within the hearsay evidence exception for content of official records or absence of records.

Approved March 31, 2016; Effective July 1, 2016

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HB 2048 established the Scrap Metal Theft Reduction Act by adding law and amending existing law related to scrap metal dealer registration and scrap metal sales. The bill prohibited municipalities from enacting or enforcing any ordinance, resolution, or regulation relating to the implementation, administration, and enforcement of the Act, and declared any such ordinance, resolution, or regulation adopted prior to July 1, 2015, null and void. No action or prosecution based upon such ordinance, resolution, or regulation can be taken for any violation on or after July 1, 2014. Additionally, the bill amended criminal provisions related to scrap metal theft.

Approved June 12, 2015; Effective July 1, 2015

HB 2055 amended one of the statutes governing the determination of an offender's criminal history to establish a procedure for classifying out-of-state misdemeanor convictions. The comparable Kansas offense is used to classify the out-of-state conviction as a class A, B, or C misdemeanor. If the comparable Kansas offense is a felony, the conviction is classified as a class A misdemeanor. If there is no comparable Kansas offense, the conviction will not be included in the criminal history.

The bill also amended this statute with provisions known as Mija Stockman's Law, which creates a special rule for determining criminal history for a conviction of aggravated battery when a person is driving under the influence (DUI) and great bodily harm to another person or disfigurement of another person results from such act. The rule provides that for the purposes of determining an offender's criminal history, the first prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication of DUI, commercial DUI, or DUI test refusal counts as one nonperson felony. Each second or subsequent prior adult conviction, diversion in lieu of criminal prosecution, or juvenile adjudication of these offenses would count as one person felony.

The bill adds commercial DUI and DUI test refusal to prior convictions, diversions, or juvenile adjudications that shall count as person felonies in determining the criminal history for a conviction of involuntary manslaughter while DUI.

Approved June 8, 2015; Effective 2015

Sub. for HB 2159 amended provisions related to expungement of DUI and test refusal offenses. Specifically, the bill amended the statutes governing expungement of DUIs and test refusal convictions and city ordinance violations that also would constitute a DUI or test refusal to change to five the number of years that must have elapsed since the person satisfied the sentence or the terms of a diversion agreement or was discharged from probation, parole, postrelease supervision, conditional release, or a suspended sentence before petitioning for expungement of a first DUI conviction. A person can petition for expungement of a second or subsequent conviction of DUI or test refusal after ten years. Previously, the law required the elapse of ten years for a municipal DUI violation and seven years for a DUI conviction under state law. For test refusal, the law previously required the elapse of three years for a municipal violation and seven years for a conviction under state law.

Approved May 27, 2015; Effective July 1, 2015

HB 2256 created and amended law related to the enforcement of the Kansas Open Records Act (KORA) and Kansas Open Meetings Act (KOMA). Among other changes, the bill added exceptions to KORA for records of a public agency on a public website that are

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searchable by a keyword search and identify the home address or home ownership of a municipal judge, city attorney, assistant city attorney, special assistant city attorney, special assistant U.S. attorney, special assistant attorney general, special assistant county attorney, or special assistant district attorney.

Approved May 22, 2015; Effective July 1, 2015

Legislation Pending

→ Will be in another bill (vehicle)

Sub. for SB 22 would increase from \$20 to \$22.50 the fee assessed in cases filed in municipal courts, other than nonmoving traffic violations, where there is a finding of guilt or a plea of guilty, a plea of no contest, forfeiture of bond, or a diversion. Additionally, the bill would increase from \$2.50 to \$5 the amount of such fee that would go to the Kansas Commission on Peace Officers' Standards and Training Fund. Further, the bill would remove the names of funds from the statute that prohibits fees from being administered in municipal court cases except in accordance with certain statutory provisions, leaving just the statutory references to the relevant funds.

The bill also would amend the statutes governing expungement for convictions of city ordinances or state laws, as well as arrests, to provide that when an expungement is ordered for a case that was appealed from a municipal court, the district court clerk must send a certified copy of the expungement order to the municipal court, which shall order the case expunged once the copy of the order is received. The bill would amend the statute governing appeals from municipal courts to require the district court to send notice of dismissal, conviction, or acquittal to the municipal court clerk at the end of the case.

Current Status – Being considered in conference committee.

Senate Sub for HB 2049, as amended, would amend the penalties for possession of marijuana so that a first offense would be a class B nonperson misdemeanor, a second offense would be a class A nonperson misdemeanor, and a third or subsequent offense would be a drug severity level 5 felony. Under current law, a first offense is a class A nonperson misdemeanor and any subsequent offense is a drug severity level 5 felony.

The bill also would amend the law concerning burglary.

Current Status – Being considered in conference committee.

Sub for HB 2289 would amend the law concerning a driver's license suspension due to test refusal or test failure. Specifically, the bill would require a law enforcement officer's certification and notice of suspension to inform the person that constitutional issues cannot be decided at the administrative hearing, but may be preserved and raised in a petition for review of the hearing. At or prior to the time notice of an administrative hearing is sent, the bill would require the Division of Vehicles to issue an order allowing the licensee to review any law enforcement report at the location where it is kept at a reasonable time designated by the law enforcement agency. Copies of the report could be obtained at a cost of \$0.25 per page. Such review and copying already is allowed for video and audio tape.

If a licensee appeals a suspension or restriction of his or her license, notwithstanding a statutory provision limiting issues that may be raised before the court if not raised before the

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agency, the bill would allow the court to consider and determine constitutional issues, including, but not limited to, the lawfulness of the law enforcement encounter, even if such issue was not raised before the agency. Similarly, even if such issue was not raised before the agency, the bill would require the court to consider and determine such issues, if such issue is raised by the petitioner in the petition for review.

Current Status – Being considered in conference committee.

HB 2462, as amended, would amend the crime of theft to increase the floor for a severity level 9, nonperson felony theft of property or services from \$1,000 to \$1,250. Accordingly, the ceiling for class A nonperson misdemeanor theft of property and services would be raised from "less than \$1,000" to "less than \$1,250," as well as the ceilings for exceptions raising the severity level for such amounts to a severity level 9, nonperson felony when the property is taken from 3 separate mercantile establishments within a period of 72 hours as part of the same act or common scheme, or when the person committing the theft has been convicted of theft 2 or more times. The bill also would establish a floor of \$50 for the exception raising the severity level to a severity level 9, nonperson felony when the person committing the theft has been convicted of theft 2 or more times, and would add a 5-year lookback provision to this exception.

May not make it out of conference

SB19 Electronic Service (mostly civil)

SB128 KORA Exception for Police ~~body cam~~ body camera. Video's treated as "evidence"

SB403 Dead (Taking court revenue)