New Kentucky Statutes (2019)

The 2019 Kentucky General Assembly was a “short” session.
Unless otherwise indicated, statutes will take effect the last week of June.
Effective Date: June 27, 2019

Kentucky Senate
SB 1 School Safety
EMERGENCY
Changes definition for School Resource Officer:
✓ An officer who has specialized training to work with youth at a school site, and is:
✓ A sworn law enforcement officer; or
✓ A SLEO appointed pursuant to KRS 61.902; and
✓ Employed through a contract between a local law enforcement agency and a school district;
✓ A KSP officer employed through a contract as secondary employment; or
✓ Employed directly through a local school board.

Increases reporting for schools.
Requires every district to have a school safety coordinator
Each school shall have a safety and security threat assessment team to implement local board policy.
Establishes a school safety coordinator training program for school districts.
Changes the makeup of the Center for School Safety.
Establishes the position of School Security Marshal under the DOCJT, who will oversee school security risk assessment.
Requires hiring of SROs (as funds allow).
Specialized training (through DOCJT) for SROs.
Increased building security for schools, including active shooter training for staff.
NOTE THESE REQUIREMENTS!!!
It is critical that agencies with SROs have a Memorandum of Understanding (MOU) with the school district and on file!!!
“... that specifically states the purpose of the SRO program and clearly defines the roles and expectations of each party.”
NOT RESPONSIBLE FOR SCHOOL DISCIPLINE!!!
SRO Training Curriculum Shall Include:
✓ Foundations of school-based law enforcement;
✓ Threat assessment and response;
✓ Youth drug use and abuse;
✓ Social media and cyber security;
✓ SROs as teachers and mentors;
✓ Youth mental health awareness training;
✓ Trauma-informed action;
✓ Understanding students with special needs; and
✓ De-escalation strategies.

Encourages LE collaboration with schools with respect to communicating student-involved trauma.
Reporting tool (through DOHS) for anonymous reporting of threats.
Increased mental health services in schools.
SB 18 Pregnancy Accommodations
Amends KRS 344.030 and KRS 344.040
Provides for employment protection for pregnant women similar to other employees. Includes reasonable accommodation before and after childbirth, and while breastfeeding.

**SB 55 Green Alert**
Green Alert for “veteran at risk” – someone known to have physical or mental condition, including PTSD, related to their service KRS 39F.010 / .180

**SB 67 Sex Crimes Involving Animals**
Creates new offense, KRS 525.137, entitled “Sexual Crimes Against An Animal”
Exceptions for veterinary practices and artificial insemination
Authority for Animal Control Officers to investigate
- Class D Felony
- Conviction requires relinquishing control over animals in possession.

**SB 70 Strangulation**
Creates new offenses, KRS 508.170 / .175 for Strangulation
Two degrees – only difference is state of mind (intentional / wanton)
- First Degree – Class C felony
- Second Degree – Class D felony
Includes strangulation in KRS 403.720 / 456.010 definition of “domestic violence and abuse”

**SB 77 Operator’s License Delayed 1/1/20**
Process to include information on donor status for operator’s licenses and identification cards
Amends 311.1947

**DELAYED ENACTMENT Effective 7/1/2020**

**SB 85 DUI / Blood Testing**
Tweaks use of blood tests for controlled substances if taken more than two hours after cessation.
Refusal to submit to breath test not an aggravating circumstance for first offenders.
Tweaks sentencing option for substance abuse treatment.
Amends multiple statutes in KRS 189A.010

**SB 85 DUI / Refusals/Suspensions Effective 7/1/2020**
LE may record refusals subject to existing provisions.
Note KRS 189A.100(7) – renumbered – 1st degree official misconduct if the video is released to an unauthorized party.
Refusal may result in suspension (not revocation).
Requires surrender of plates of vehicles owned by offender unless they qualify for an ignition interlock or hardship license.

**SB 85 DUI / Ignition Interlock**
Repeals and reenacts Ignition Interlock options for qualified offenders.
Updates Ignition Interlocks to require cameras.
Penalties for violating conditions of Ignition Interlock use both for driver and anyone who assists driver with false statements, etc.
Provisions for financial assistance to obtain Ignition Interlock devices.

**SB 89 Methamphetamine Decontamination**
Provides for local government to handle decontamination of a property and then recover costs from the owner. KRS 65.8823

**SB 97 Sexual Assault Kits Must be in place by 7/1/2020**
KSP required to create a tracking process for sexual assault kits, including a portal for victims. Amends 16.132
SEE ALSO SB 131 for definition of biological evidence, which amends 524.140

**SB 103 Sheriffs (Impound Fees)**
Increases fees for impound and storage of vehicles.
Amends KRS 64.090(3) and creates 70.155
Establishes hearing process.

**SB 121 Sexual Assault Training**
Amends KRS 15.334.
Changes in requirements for LE to obtain sexual assault training.
Dependent upon agency size:
11-20 officers = 1 officer with training
21-50 officers = 2 officers with training
51 or more = 4 officers with training

**SB 150  Fireams**
Amends KRS 527.020 and creates 237.109
Removes requirement for permit for CCDW for those over 21 and otherwise qualified to carry a firearm.
May only carry where a CCDW may be used.
All other prohibitions still apply.

**SB 155  Abuse of a Corpse**
Amends KRS 525.120. Makes all abuse of corpse offenses Class D felonies.

**SB 157 - Drones**
State prisons, juvenile justice facilities, jails or other detention facilities are included in the definition of “key infrastructure assets” where drones are prohibited from flying. KRS 511.100(8).
Includes drones, unmanned aircraft, or other remotely controlled vehicles, and any payload carried by those vehicles as “dangerous contraband.” KRS 520.010(3)

**SB 161 – Substance Abuse Assistance Programs**
Clarifies ineligibility for LE agency substance abuse assistance program.
Ineligible persons:
- Outstanding arrest warrant in Kentucky or another state.
- Places LE in “reasonable apprehension” of physical injury.
- Under 18 years of age and has no parental consent.

**SB 161 – Substance Abuse Assistance Programs**
Information gathered by LE agency as a result of this program is exempt from Open Records.
Criminal and civil immunity for LE personnel for referrals or services in these programs except for “intentional misconduct.” Amends KRS 15.525.

**SB 162  KSP / Schools**
Provides for KSP personnel to accept second employment with school districts to serve as SROs.
Outlines the policies and procedures for such employees.
Adds relevant definitions for KSP SROs. Amends KRS 158.441 and creates KRS 158.4415

**SB 230 – Open Records**
Open records shall be accepted by fax or email. Amends 61.872

**HB 11 - Alternative Nicotine Products**
Prohibits Alternative Nicotine Products (including Vape) on schools property/school functions.
Includes parents, volunteers, employees, etc.
Notice requirements. School districts can opt out. Creates KRS 438.345

**HB 130 Terroristic Threatening**
Adds public events and places of worship to locations under Terroristic Threatening 1 and 2 Degree. Amends KRS 508.078.

**HB 141  Forfeiture**
Requires restricted accounts for forfeiture proceeds.
Amends 67.0802

**HB 154 – Golf Carts**
Provides that a golf cart is a vehicle is equipped with:
- Headlamps, tail lamps, and stop lamps;
- Front and rear turn signals;
- Horn;
- Parking brake;
- Red reflex reflectors on each rear side and on the rear; and
- Driver’s side mirror plus one additional mirror.

Amends KRS 189.286
HB 158  Juveniles
Expands abuse categories to fictive kin, persons in positions of special trust and of authority. Provides for establishment of case reviews by 10/1/19 for children committed to the Cabinet. Amends KRS 620.030, KRS 620.040, KRS 620.180.

HB 191  Peace Officer Revocation
Establishes a process to revoke the certification of a Kentucky peace officer under specific circumstances. Amends KRS 15.391 / .386 / .440

HB 244  Traffic (Work Zones)
Clarifies work zone fines, and when the fine will be doubled. Note, will need a sign AND the presence of at least one worker. Creates KRS 189.2327

HB 248  Boating DUI
Increases penalties for Boating Under the Influence. Amends 431.005 to allow for a warrantless arrest for a BUI that involves an accident.

HB 254  University Freedom of Speech
Emphasizes free speech rights on college campuses and criminalizes disruption as a result of speech. Amends 164.348

HB 256  Alcohol Sales EMERGENCY
Allows consumption of alcoholic beverages in dry and moist counties: If legally purchased elsewhere, Not sold in a dry/moist territory, The possessor/consumer is at least 21 years of age. Possession/consumption does not occur at a public place. Caterers may serve at events in dry counties if the caterer has a licensed premises elsewhere. Amends 242.230 / .260 / 243.033

HB 257  Amusement Park Rides
New section of KRS 247.232 to KRS 247.236. Governs conduct on amusement park rides.
Obey instructions, signage, directions from staff, Refrain from activities that may harm self or others,
Does not ride under the influence of an intoxicant. Second-degree Criminal Trespass
Exceptions for blind, deaf, developmental disability.

HB 258  Scooters
Amends KRS 186.010 to define electric low-speed scooters and motor scooters. Provides for when and where they may be operated. Provides electric low-speed scooters are not motor vehicles under KRS 189.010. Provides that motor scooters must be registered as motorcycles and will be treated as such when operated on the highway.

HB 328  Firearms / Schools
Prohibits 18 year old students from having a firearm on school premises (in a vehicle). Amends KRS 527.070.

HB 337  Sheriffs
Permits appointment of deputies who live outside of Kentucky. Amends KRS 70.030(1).

HB 375  Wireless Communication
Mandates carriers to provide location information to PSAPs and LE agencies when needed. Other public responders must work through those entities to obtain the information. Creates 17.190

HB 393  Homeland Security
Creation of the Commonwealth Activity Taxonomy System (CATS) Committee to evaluate state special events for risks and threats. Amends KRS 39G.010.

HB 397  Sheriff Fees
Amends KRS 64.090(2). Sheriffs “shall charge and collect” a fee of $60 from third parties for service of process.

HB 411  Assistance Animals
Clarifies who may sign off on an emotional support animal in Kentucky. Provides for criminal penalty for fraud, deceit or dishonesty in assistance animals. Amends 383.085

HB 470  Manslaughter / Naloxone
Provides for an additional element to Manslaughter 2 if the person sells a drug to another that is the proximate cause of the recipient’s death.
Provides for naloxone training by pharmacists. Amends KRS 217.186
Mt. Lemmon Fire District v. Guido, 139 S.Ct. 22 (2018)

ISSUE: Does the ADEA apply to government entities with fewer than 20 employees?

HOLDING: Yes


ISSUE: Is burglary a violent crime under the Armed Career Criminal Act?

HOLDING: Yes (most of the time).

City of Escondido v. Emmons, 139 S.Ct. 500 (2019)

ISSUE: Is an officer immune from suit if it is even debatable whether the force was excessive under clearly established law?

HOLDING: Yes.


ISSUE: Is a robbery under the common law elements a predicate offense for the ACCA?

HOLDING: Yes.

Timbs v. Indiana, 139 S.Ct. 682 (2019)

ISSUE: Is the Eighth Amendment’s Excessive Fines Clause applicable to the states under the Fourteenth Amendment’s Due Process Clause?

HOLDING: Yes.


ISSUE: Does probable cause defeat a First Amendment retaliatory-arrest claim under 42 U.S.C. §1983?

HOLDING: Yes, in most instances.


ISSUE: May an individual be prosecuted for the same essential offense under both state and federal law?

HOLDING: Yes.


ISSUE: When does the statute of limitations for a malicious prosecution claim under 42 U.S.C. §1983 accrue?

HOLDING: At the favorable termination of the defendant’s underlying criminal case.


ISSUE: Must a subject know that it is illegal for them to possess a firearm as a criminal alien and that they are, in fact, a criminal alien?

HOLDING: Yes.


ISSUE: Does a statute authorizing a blood draw from an unconscious motorist provides an exception to the Fourth Amendment warrant requirement?

HOLDING: No, but it can be justified under exigency.

Kentucky and Federal Courts

Sixth Circuit Court of Appeals, Kentucky Supreme Court and Kentucky Court of Appeals

Penal Code and related offenses

KRS 503 – MENTAL STATES

Com. v. Caudill, 540 S.W.3d 364 (Ky. 2018)

ISSUE: Is the wanton state of mind applicable in self-defense case?

HOLDING: No

KRS 510 – SPECIAL TRUST

Caldwell v. Com., 554 S.W.3d 874 (Ky. App. 2018)

ISSUE: May a family friend be in a “position of special trust?”

HOLDING: Yes

KRS 514 - THEFT

Hall v. Com., 551 S.W. 3d 7 (Ky. 2018)

ISSUE: Is taking a cruiser to escape necessarily a theft?

HOLDING: No

Domestic Violence

Dunn v. Thacker, 546 S.W.3d 576 (Ky. App. 2018)

ISSUE: May a DVO be issued against a parent who allows another to harm his or her child?

HOLDING: Yes

Driving under the influence

Com. v. Riker, 573 S.W.3d 622 (Ky. 2018)

ISSUE: Are hospitals limited on how much can be charged for an independent test?

HOLDING: No


ISSUE: Must the 20 minute observation of a DUI arrestee take place at the breath test site?

HOLDING: Yes

Whitlow v. Com., 2019 WL 2462782 (Ky. 2019)

ISSUE: Is a search warrant the proper document to use to seek a blood sample in a DUI case?

HOLDING: Yes

Search & Seizure

SEARCH WARRANT

U.S. v. Kemp, 732 Fed.Appx. 368 (Sixth Cir. 2018)

ISSUE: Must a nexus be shown between criminal activity and the location for which the warrant is sought?

HOLDING: Yes
ISSUE: Will good faith reliance on a search warrant that was erroneously issued permit the admissibility of evidence obtained as a result of the execution of that warrant?

HOLDING: Yes

ISSUE: If an affidavit includes the basis of knowledge for an unnamed informant’s information, is that sufficient?

HOLDING: Yes

KNOCK AND TALK

ISSUE: Is knock and announce the default rule for a search warrant?

HOLDING: Yes

CURTILAGE

ISSUE: Is it proper to enter a back curtilage during a knock and talk?

HOLDING: No.

COLLECTIVE KNOWLEDGE

ISSUE: May collective knowledge provide justification for a stop?

HOLDING: Yes

PLATE READERS

ISSUE: Is simply talking to a suspect interrogation?

HOLDING: No


ISSUE: Is being interviewed in one’s own vehicle custodial?

HOLDING: No

CIVIL LITIGATION

ISSUE: Is the per se no proximate cause rule established by Chambers abandoned in Kentucky law?

HOLDING: Yes

EMPLOYMENT KRS 15.520

ISSUE: Is an officer’s resignation coerced if elicited by information relayed to the officer concerning any accrued retirement benefits?

HOLDING: No.

QUESTIONS?

If you have any questions concerning this presentation, please feel free to contact the Legal Training Section in one of the following ways:

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