Unlawful Approach of a First Responder; Federal Immigration Detainer Detention; Liability Coverage for Law Enforcement; 287(g) Agreements; Interference Crimes; HB 2372

HB 2372 creates the crime of unlawful approach of a first responder and creates law related to immigration enforcement to allow sheriffs to detain persons subject to a facially sufficient immigration detainer request, requires certain municipal insurance pools cover federally approved immigration detainer operations conducted by a law enforcement agency, requires the State to pay for certain federal civil judgment costs, requires the Attorney General to represent law enforcement in certain civil lawsuits, and provides civil immunity to officers or agencies acting in good faith under a 287(g) agreement or detainer. The bill amends the Interlocal Cooperation Act to specify that a sheriff does not need approval of a county commission to enter into a federal 287(g) agreement with U.S. Immigration and Customs Enforcement (ICE). The bill also incorporates federal law enforcement officers, their vehicles, and enforcement of federal law into certain traffic, criminal, and tort laws.

Unlawful Approach of a First Responder

The bill creates a new crime within the Kansas Criminal Code of unlawful approach of a first responder, which is defined as knowingly:

- Approaching or remaining within 25 feet of an individual who the person knows or reasonably should have known is a first responder;

- Acting while the first responder is engaged in the performance of their first responder's duties;

- Acting after receiving a visual or audible signal not to approach or remain within 25 feet of the first responder given by a first responder because of reasonable belief, under the totality of circumstances, that separation is necessary for the safety of any person or property; and

- Causing such first responder to:

    - Be distracted from performing their first responder's duties; or

    - Have an increased level of concern of physical harm to any person or damage to property.

The bill allows enforcement of the 25 feet boundary only by a state or local law enforcement officer.

The bill classifies unlawful approach of a first responder as a class B person misdemeanor.

The bill defines:

- "First responder" to mean a law enforcement officer, an emergency medical services provider as defined in law, or a firefighter as defined in law; and

- "Law enforcement officer" to mean the same as defined in continuing law and any federal law enforcement officer as defined in federal law.

Federal Detainer Detention

Pursuant to the federal Immigration and Nationality Act (INA), ICE may issue an immigration detainer request to a county sheriff to request that the sheriff detain an individual who ICE has probable cause to believe is unlawfully present in the country and subject to removal.

The bill authorizes a sheriff or keeper of the jail operating a county jail to detain a person with:

- A facially sufficient immigration detainer request issued by ICE on form I-247A; or
- A U.S. Department of Homeland Security (DHS) or ICE warrant.

Immigration Detainer Request

Under the bill, a form I-247A issued pursuant to the INA allows a sheriff or keeper of the jail to hold the listed person without criminal charges for the purposes of transferring custody to ICE.

The form is considered facially sufficient if it:

- Clearly states the identity of the person to be detained;
- Has box 1, statement of probable cause, or box 2, transfer of custody, completed; and
- Is signed by the federal immigration official.

If the form meets the identity and signature requirements but does not meet the probable cause or transfer of custody requirements, the bill deems the form facially sufficient if it is supported by a signed warrant as described by the bill or other affidavit or official documentation provided to law enforcement stating ICE has probable cause to believe the person to be detained is unlawfully present in the United States.

Federal Warrant

For purposes of the bill, a valid warrant includes:

- A DHS form I-200, warrant for arrest of an alien; or
- An ICE form I-205, warrant of removal, or a successor warrant or other warrant authorized by federal law.

Detention Procedure

After reviewing a form I-247A and finding it to be facially sufficient, a sheriff or keeper of the jail who has custody of the person named in the form is required to:

- Inform the person that they are being held pursuant to an immigration detainer request issued by ICE;

- Provide a copy of the facially sufficient form I-247A to the person as soon as practicable;

- Inform ICE that the person is in the custody of the sheriff or keeper of the jail pursuant to the detainer; and

- Complete the law enforcement agency section of the form I-247A and submit such completed form to ICE.

Release

A sheriff or keeper of the jail is required to release a person held under the bill upon:

- Receipt of a subsequent form I-247A with a checkmark in a box indicating cancellation of the detainer request;

- A finding that the detainer is not facially sufficient; or

- The person who is being held providing proof of U.S. citizenship or being confirmed by ICE as being a person lawfully present in the United States.

For purposes of the bill, the term "proof of citizenship" includes:

- A birth certificate;
- A U.S. passport indicating citizenship;
- An official U.S. document showing completed naturalization of citizenship;
- A court order declaring a person's U.S. citizenship; or
- Any other official U.S. or State of Kansas document indicating the person is a U.S. citizen.

Municipal Insurance Pool—Local Law Enforcement Coverage

Under the bill, any municipal insurance pool that issues liability coverage for law enforcement under the Kansas Municipal Group-funded Pool Act is required to continue such coverage and to include coverage for law enforcement operations authorized by the covered agency when enforcing federal law.

The bill requires the pool to cover such federal law enforcement operations to the same extent it covers the enforcement of state and local law, regardless of whether the federal operations are subject to a written agreement with the federal agency or whether the local law enforcement officers are deputized by the federal agency.

For actions against the covered local law enforcement agency, the bill requires the pool coverage provide legal representation. The pool is also allowed to provide legal representation to protect its own interest in a case in which the U.S. Department of Justice (DOJ) or the Kansas Office of the Attorney General is providing legal representation.

Legal Representation, Immunity, Judgment Costs—287(g) Agreement

Under the federal INA, the U.S. Attorney General is authorized to enter into a written agreement with a state or a political subdivision of a state, commonly referred to as a 287(g) agreement, which allows officers or employees of the state or local government entity to assist with or carry out certain federal immigration enforcement actions.

Legal Representation

If a federal civil action is brought against a law enforcement agency that has entered into an ICE 287(g) agreement or an officer who was deputized under the agreement, and such agency or officer was acting in good faith under the terms of the agreement, the Kansas Attorney General is required by the bill to represent or provide representation of the agency and officer in federal litigation.

Legal Representation—Habeas *Action*

If a person being held by an agency that has entered into an ICE 287(g) agreement and was acting in good faith pursuant to an ICE detainer files a *habeas corpus* action, the Kansas Office of the Attorney General is required to provide legal representation at the *habeas* hearing.

Immunity

In any state civil action where a law enforcement officer or law enforcement agency acts in good faith under an ICE 287(g) agreement or detainer and takes a person into custody or attempts to take a person into custody, the officer or agency is entitled to immunity for any civil liability.

Judgment Costs

If a judgment is rendered against a law enforcement agency or officer in a federal civil action based on operations conducted under a 287(g) agreement, the State of Kansas will pay the judgment costs or any portion of the costs that the DOJ has failed to cover if the agency or officer was acting in good faith.

Sheriff Authority—287(g) Agreement

The bill amends the Interlocal Cooperation Act (Act) to provide that a sheriff seeking to enter into a 287(g) agreement with ICE is exempt from certain requirements of the Act and is allowed to sign such agreement without authorization of the county's board of county commissioners.

Abandoned Vehicles

The bill amends law regarding abandoned and disabled motor vehicles to specify that any law enforcement officer is authorized to move an unattended vehicle that interferes with public highway operations or any law enforcement operations.

The bill defines "law enforcement officer" as defined in the Kansas Criminal Code and includes any federal law enforcement officer as defined in federal law.

The bill allows enforcement of the abandoned vehicle provisions only by a state or local law enforcement officer.

Emergency Vehicles

The bill amends the definition of "authorized emergency vehicle" in the Uniform Act Regulating Traffic on Highways to include law enforcement vehicles owned by the federal government.

The bill adds to the list of vehicles not required to be designated by the board of county commissioners as authorized emergency vehicles: any fire department vehicles or police vehicles that are publicly owned, including any such vehicle owned by the federal government.

Interference Crimes

The bill amends law governing the crime of interference with law enforcement to define "any person authorized by law" to include, but not be limited to, a law enforcement officer as defined in continuing law and any federal law enforcement officer as defined in federal law.

The bill amends law governing the crime of interference with the conduct of public business in public buildings to include conduct at public buildings owned, operated, or controlled by the United States.

The bill allows enforcement of the interference crimes provisions only by a state or local law enforcement officer.

Kansas Tort Claims Act

The bill amends the Kansas Tort Claims Act to add that a governmental entity or an employee acting within the scope of employment is not be liable for damages resulting from enforcement of or failure to enforce any federal law or executive order, whether valid or invalid.