

Fred Patton

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To: Fred Patton; Eric Rucker
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Subject: Thoughts on the Penalty Provision in KSA 48-939

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Rep. Patton and Sen. Rucker,

Here are some additional thoughts on the KEMA violation issue. These came after the questions, other testimony, and discussions during the lunch break on Wednesday.

Sanctions for disobedience of orders:

Amend KSA 48-939 to provide for the civil penalty

“except as provided in subsection (new) . . . may incur a civil penalty in an amount not to exceed \$2500.

New subsection: “Violations of the following shall be a class A misdemeanor: (1) curfew order; or (2) an order prohibiting entry into a designated area by a person who is not a resident, property owner, or business operator or a person not accompanied by a resident, property owner, or business operator.”

There are options to the civil violation if the committee wants to allow the option of police intervention on those matters. In place of the civil violation you could replace it with a penalty that excludes jail or physical arrest by:

1. Create a new class of “infraction” similar to a traffic infraction or smoking infraction that may be cited by law enforcement or even by health officials with a specified range of fine.
2. Create an unclassified misdemeanor with a specific monetary penalty. Specifically limit the action to issuance of a citation unless the person’s identity is not known.
3. I believe a statute could also direct that charges other than those in the proposed “new section” above that are filed by the prosecutor must be initiated by court summons and not an arrest warrant.

We recognize that some local jurisdictions desire to have law enforcement involved in enforcement of minor violations of orders while others do not. The above options would allow for that local decision on enforcement methods while prohibiting a physical arrest in most cases or in jail sanctions.

We still believe these amendments are important to carrying out our mission in certain types of crises. The existing statutes such as interference, unlawful assembly, etc. have limited application in these situations. For example, unlawful assembly requires 5 or more people to gather while committing disorderly conduct or rioting. This would not address the single potential looter or a group of potential looters of less than 5 people. In another example, in my experience to charge interference there would have to be an overt act to interfere with a LEO, firefighter or medical personnel and the mere presence in a closed area by itself would probably not stand, especially if there is clear law in another statute stating those acts have a lesser penalty.

Thanks for your consideration.