

HOUSE BILL No. 2658

By Representative Martinez

2-3

1 AN ACT concerning law enforcement; enacting the safe and transparent
2 arrest act; requiring all law enforcement agencies operating in Kansas
3 to adopt a written policy regarding the use of facial coverings;
4 prohibiting law enforcement officers from wearing a facial covering
5 that conceals or obscures their facial identity in the performance of
6 their duties except as expressly authorized by law; waiving any
7 privilege or immunity against a claim of civil liability for certain
8 tortious conduct committed while committing violations thereof;
9 providing criminal penalties for violations thereof.

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11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. (a) Sections 1 through 3, and amendments thereto, shall be
13 known and may be cited as the safe and transparent arrest act.

14 (b) The provisions of this act are severable. If any portion of this act
15 is held by a court to be unconstitutional or invalid, or the application of
16 any portion of this act to any person or circumstance is held by a court to
17 be unconstitutional or invalid, the invalidity shall not affect other portions
18 of this act that can be given effect without the invalid portion or
19 application, and the applicability of such other portions of this act to any
20 person or circumstance remains valid and enforceable.

21 Sec. 2. (a) On or before July 1, 2026, all law enforcement agencies
22 operating in this state shall adopt and publicly post a written policy
23 regarding the use of facial coverings.

24 (b) Such policy shall include, but not be limited to, the following:

25 (1) A purpose statement affirming the agency's commitment to
26 transparency, accountability and public trust;

27 (2) a requirement restricting the use of facial coverings by law
28 enforcement officers when performing their duties to the following
29 specific, clearly defined and limited circumstances:

30 (A) Active undercover operations or assignments authorized by
31 supervising personnel or a court order;

32 (B) tactical operations where protective gear is required for physical
33 safety;

34 (C) compliance with applicable law governing occupational health
35 and safety;

36 (D) protection of identity during prosecution; and

1 (E) compliance with applicable law governing reasonable
2 accommodations;

3 (3) a requirement that facial coverings shall only be used when no
4 other reasonable alternative exists and the necessity is documented;

5 (4) a requirement that generalized and undifferentiated fear and
6 apprehension about officer safety shall not be sufficient to justify the use
7 of facial coverings; and

8 (5) a requirement that a supervisor shall not knowingly allow a law
9 enforcement officer under their supervision to violate state law or agency
10 policy limiting the use of facial coverings.

11 (c) A member of the public, an oversight body or a local governing
12 authority may submit a verified written challenge to a policy adopted
13 pursuant to this section alleging that such policy is not consistent with the
14 requirements of this section. Such written challenge shall be submitted to
15 the head of the law enforcement agency. If the agency has failed to
16 adequately address the challenge and correct any deficiencies in the policy
17 within 90 days after receiving such challenge, the complaining party may
18 proceed to a court of competent jurisdiction for a judicial determination of
19 the agency's compliance with such requirements. The agency's policy shall
20 remain in effect unless a court issues a ruling that the agency's policy is
21 not in compliance with such requirements and all potential appeals to
22 higher courts have been exhausted by the agency.

23 (d) Notwithstanding any other law, any law enforcement officer who
24 is found to have committed an assault, battery, false imprisonment, false
25 arrest, abuse of process or malicious prosecution while wearing a facial
26 covering in violation of this section or a policy adopted pursuant to this
27 section shall not be entitled to assert any privilege or immunity for such
28 person's tortious conduct against a claim of civil liability, and shall be
29 liable to the individual harmed by such conduct for actual damages or
30 statutory damages of not less than \$10,000, whichever is greater.

31 (e) As used in this section:

32 (1) "Facial covering" means any opaque mask, garment, helmet,
33 headgear or other item that conceals or obscures the facial identity of an
34 individual, including, but not limited to, a balaclava, tactical mask, gator,
35 ski mask and any similar type of facial covering or face-shielding item.
36 "Facial covering" does not include any of the following:

37 (A) A translucent face shield or clear mask that does not conceal the
38 wearer's facial identity;

39 (B) a medical mask or surgical mask when used to protect against
40 transmission of disease or infection;

41 (C) any mask, helmet or device, including, but not limited to, air-
42 purifying respirators, full or half masks or self-contained breathing
43 apparatus, when necessary for underwater use or to protect against

1 exposure to any toxin, gas, smoke, inclement weather or other hazardous
2 or harmful environmental condition;

3 (D) a motorcycle helmet when worn by an officer utilizing a
4 motorcycle or other vehicle that requires a helmet for safe operation while
5 in the performance of such officer's duties; or

6 (E) eyewear necessary to protect from the use of retinal weapons,
7 including, but not limited to, lasers;

8 (2) "law enforcement agency" means any public agency that employs
9 law enforcement officers and is operating in this state; and

10 (3) "law enforcement officer" means:

11 (A) The same as defined in K.S.A. 21-5111, and amendments thereto;
12 and

13 (B) any officer or agent of a federal law enforcement agency, any law
14 enforcement agency of another state or any person acting on behalf of a
15 federal law enforcement agency or law enforcement agency of another
16 state who, as part of such person's duties, is permitted to make arrests and
17 be armed.

18 Sec. 3. (a) It shall be unlawful for a law enforcement officer to
19 knowingly wear a facial covering that conceals or obscures their facial
20 identity in the performance of such officer's duties, except as provided in
21 subsection (c).

22 (b) Violation of this section is a class A nonperson misdemeanor.

23 (c) This section does not apply to any law enforcement officer who is
24 acting in such officer's capacity as an employee of a law enforcement
25 agency and in accordance with such agency's written policy and
26 procedures adopted pursuant to section 2, and amendments thereto.

27 (d) As used in this section, "facial covering," "law enforcement
28 agency" and "law enforcement officer" mean the same as defined in
29 section 2, and amendments thereto.

30 (e) This section shall be a part of and supplemental to the Kansas
31 criminal code.

32 Sec. 4. This act shall take effect and be in force from and after its
33 publication in the Kansas register.