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MEMORANDUM

TO: Kansas Prosecutors and Law Enforcement

FR: Attorney General Derek Schmidt

CC: Governor, Adjutant General, KHP Superintendent, KBI Director

DT: May 28, 2020

RE: Addendum 2 to March 24, 2020, law enforcement duties and authorities memorandum regarding new state of disaster emergency proclaimed May 26, 2020

This memorandum provides assistance to state and local law enforcement in determining their duties and authorities in enforcing Executive Orders of the Governor issued under authority of the State of Disaster Emergency Proclamation issued May 26, 2020 ("Third Disaster Proclamation"). It is intended to supplement the March 24, 2020, Memorandum and April 8, 2020, Addendum 1 to that memorandum, both issued by this office.

On March 12, 2020, the Governor issued a proclamation of a state of disaster emergency ("First Disaster Proclamation") that by action of the Legislature was extended through May 1, 2020. On April 30, 2020, the Governor issued a second proclamation ("Second Disaster Proclamation") that by action of the State Finance Council was extended through May 26, 2020. Both of those proclamations now are expired, and all Executive Orders issued pursuant to their authority are now "null and void" by operation of law. *See* K.S.A. 48-925(b); *see also* Attorney General Opinion 2020-06 (discussing issues related to criminal enforcement of emergency orders issued pursuant to those proclamations).

On May 26, 2020, the governor issued a new State of Disaster Emergency Proclamation (“Third Disaster Proclamation”). The Third Disaster Proclamation differs materially from both the First Disaster Proclamation and the Second Disaster Proclamation. Importantly for Kansas law enforcement, the Third Disaster Proclamation states as follows:

“No gubernatorial executive orders issued under the authority premised on this Proclamation will be used to restrict businesses from operating or to restrict the movement or gathering of individuals. *Nor will any gubernatorial executive orders subjecting Kansans to criminal prosecution be issued under authority premised on this Proclamation.*” (emphasis added)

Thus, at this time, no Executive Orders of the Governor issued pursuant to K.S.A. 48-925 prior to May 26, 2020 (under authority of the First Disaster Proclamation or Second Disaster Proclamation) remain in effect, and no such orders issued on or after May 26 (under authority of the Third Disaster Proclamation) are subject to criminal enforcement as described by terms of that proclamation.¹

Local orders or other orders authorized by different statutes may remain in effect and subject to criminal enforcement pursuant to those statutes, and law enforcement should consult with the appropriate prosecutor and legal counsel regarding any potential enforcement of any such orders.

¹ An executive order itself, rather than the proclamation pursuant to which the order was issued, may be the more direct determinant of whether criminal enforcement is authorized. *See* K.S.A. 48-939. But the proclamation is relevant in analyzing the lawfulness of any order, *see* Attorney General Opinion 2020-6, and in any event none of the orders issued to date under authority of the Third Disaster Proclamation appear to be of a nature that invite criminal enforcement so any such distinction is largely moot.