

Pattern Instructions for Kansas— CRIMINAL

(Cite as PIK)

Prepared by

*Committee on Pattern Jury Instructions,
Kansas District Judges Association.*

under the sponsorship of
The Kansas Judicial Council

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Foreword

The preparation and publication of this book on Pattern Jury Instructions for use in criminal proceedings has been made possible by a committee of six District Judges, fully sponsored by the Judicial Council of Kansas. Judge Hotchkiss, a member of the Council, served as the administrative chairman of the committee. Judge Prager, chairman of the committee's work in the preparation of instructions, and the other members of the committee were and are, in their regular judicial work, among the most active and productive of that heavily burdened body of men—the trial judges in the state of Kansas. Each has taken on this extra task enthusiastically and intensively. The careful and tireless attention devoted to the work is indicated by its thoroughness and the simplicity of each instruction. Into it they have put their learning, their experience, their devotion and their meager and valuable leisure time. Let us all be thankful that such men as Judges Hotchkiss, Prager, Bryant, Fletcher, Musser, Walton, Wolesslagel and their able and learned editorial associate, Professor Earl B. Shurtz, have so valiantly responded to the call of duty.

A grant of federal assistance to the Judicial Council under the provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, through the generosity of the Governor's Committee on Criminal Administration, has made it possible to defray seventy-five percent of the cost of printing and the distribution of this useful book. For this contribution the Bench and Bar of the state of Kansas owe a debt of gratitude.

ALFRED G. SCHROEDER, *Chairman,*
The Judicial Council of the
State of Kansas.

Preface

Pattern jury instructions in civil cases have been available to the judges and lawyers of Kansas since 1964. It is hoped that the pattern criminal instructions contained in this volume will contribute to the improvement of the administration of criminal justice in this state.

Trial by Jury published by the American Bar Association recommends that instructions to jurors should be clear, concise, accurate and impartial statements of the law written in understandable language and delivered in a conversational tone which will be helpful guidance to the jurors. The reasons given for adoption of pattern jury instructions vary from state to state, but generally there are five reasons customarily suggested: accuracy, time savings, impartiality, intelligibility, uniformity.

Unquestionably pattern instructions have distinct advantages. Many instructions customarily given but actually meaningless will be eliminated. As pointed out by Judge Musser in the Preface to PIK Civil, (1968 Supp.):

“The Committee wishes to emphasize that PIK is not a substitute for thinking by court and counsel. Slavish adherence to any form will not promote the objectives sought by this work. It is necessary to analyze the issues and evidence in each case and make appropriate selections and modifications.”

In preparing these pattern criminal instructions the committee has followed the numbering system of PIK Civil, reserving Chapters 1 through 50 for civil instructions. PIK Criminal in this book begins with Chapter 51 with room to expand as later chapters are developed. Pattern civil instructions may be found in the separate volume, PIK—Civil, published in 1966.

The committee met almost monthly starting on December 12, 1969, for a total of 33 full days. We completed our task on September 11, 1971. This does not include the many hours devoted individually by the members of the committee to research and the drafting of instructions. In preparing these instructions the committee consulted the published pattern instructions of other states.

The Kansas Judicial Council financed the work of this committee and furnished excellent reporters—John Michael Jaworsky, Ira R. Kirkendoll, and Randy M. Hearrell.

The official court reporters of the committee members contributed their time and services over and beyond that required by their

official duties in making this effort possible. I want to thank particularly Jess Danner, Lela Coxen, William W. Pennington, Jay Suddreth, Evelyn Strimple, Beverly Ryan, Russell W. Walker, and Richard Hultz.

Finally I want to express my personal thanks to Judges Alex Hotchkiss, Herbert W. Walton, Albert Fletcher, Jr., B. Mack Bryant, Frederick Wolesslagel, and Don Musser for their dedication to this cause and likewise to Professor Earl B. Shurtz of the University of Kansas School of Law for his outstanding contributions.

DAVID PRAGER,
Chairman of Committee on Pattern
Criminal Jury Instructions,
Kansas District Judges Association.

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**PIK 51.01 INSTRUCTIONS BEFORE
INTRODUCTION OF EVIDENCE**

The defendant is charged with the crime of _____.
The defendant pleads not guilty.

To establish this charge, each of the following
claims must be proved:

You may consider the testimony of witnesses, an article or document marked as an exhibit, or any other matter admitted in evidence such as an admission or stipulation. You should consider only testimony and exhibits admitted into evidence.

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness testifies.

Notes on Use

The second paragraph of the above instruction relative to the elements of the crime must be supplemented by setting forth the elements in detail for the particular crime. These elements will be found by referring to that section of this book which deals with that crime.

Comment

The Committee recommends that the above basic instructions be given to the jury before the introduction of evidence. It is believed that by so doing the jury will have a better understanding of its function and this should be helpful to the jury in evaluating the evidence.

In addition to the above instructions, some courts may desire to give PIK 51.05, Rulings of the Court. It should not be objectionable to do this, but it is believed most judges would consider such an instruction out of place as an introductory instruction and consequently it is not included.

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**PIK 51.02 CONSIDERATION AND BINDING
APPLICATIONS OF INSTRUCTIONS**

It is my duty to instruct you in the law that applies to this case and it is your duty to follow all of the instructions. You must not single out one or more instructions and disregard others. You should construe each instruction in the light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence. You should decide the case by applying the law to the facts as you find them. The order in which the instructions are given is no indication of their relative importance.

Notes on Use

This instruction embodies the traditional concept that the jury is required to abide by the instructions even though they might believe the instructions are inappropriate considering the circumstances of the particular case.

For an alternate instruction, see PIK 51.03, Consideration and Guiding Application of Instructions.

Comment

K. S. A. 22-3403 (3) (1971 Supp.) provides that when a trial is to a jury, questions of law shall be decided by the court and issues of fact shall be determined by the jury. In civil cases the rule has been long established in Kansas that it is the duty of the jury to accept and follow implicitly the law as expounded to them by the court. *Dodson v. Moran*, 101 Kan. 592, 168 P. 841 (1917).

In criminal prosecutions the same rule has been recognized except in cases of libel where by statute, since repealed, the jury after having received the direction of the court, had the right to determine, at their discretion, the law and the fact. K. S. A. 21-2406 (1964). *State v. Verry*, 36 Kan. 416, 13 P. 838 (1887). K. S. A. 21-2406 (1964), was repealed by L. 1969, Ch. 180, Sec. 21-4701 so that the rule is now to be applied without the libel exception.

**PIK 51.03 CONSIDERATION AND GUIDING
APPLICATION OF INSTRUCTIONS**

It is presumed that juries are the best judges of fact. Accordingly, you are the sole judges of the facts in this case.

I think it requires no explanation, however, that judges are presumed to be the best judges of the law. Accordingly, you must accept my instructions as being correct statements of the generally accepted legal principles that apply in a case of the type you have heard.

The order in which the instructions are given is no indication of their relative importance. You should not single out one or more instructions and disregard others but should construe each one in the light of and in harmony with the others.

These principles are intended to help you in reaching a fair result in this case. You should give them due respect. Moreover, justice will ordinarily be done by applying them as a whole to the facts which you find have been proven. You should do just that if, by so doing, you can do justice in this case.

Even so, it is difficult to draft legal statements that are so exact that they are right for all conceivable circumstances. Accordingly, you are entitled to act upon your conscientious feeling about what is a fair result in this case and acquit the defendant if you believe that justice requires such a result.

Exercise your judgment without passion or prejudice, but with honesty and understanding. Give respectful regard to my statements of the law for what help they may be in arriving at a conscientious determination of justice in this case. That is your highest duty as a public body and as officers of this court.

PATTERN INSTRUCTIONS FOR KANSAS

Notes on Use

The Committee recommends that this instruction not be given over the objection of the defendant. The reason for this is that to do so could result in a defendant being convicted without the statutory elements being proven.

Maryland recognizes that in criminal trials the jury is the judge of both the facts and the law. In any state, the jury may acquit in complete disregard of the instructions. The above instruction is thus perhaps a more honest statement as to the binding effect of instructions than the conventional instruction, PIK 51.02, Consideration and Binding Application of Instructions.

Arguably, the above instruction should bring into play the underlying value of trial by jury: The application of community conscience. If extenuating circumstances make an otherwise culpable act excusable, a jury should feel empowered to so find. Community standards are more apt to be applied if the jurors are told they are free to do what, overall, seems right to them.

Comment

For extended argument in favor of this type of instruction see Van Dyke, *The Jury as a Political Institution*, Center Magazine (Center for the Study of Democratic Institutions), Vol. 3, No. 2., (March, 1970). Schefflin, *Jury Nullification: The Right to Say No*. 42 So. Cal. L. R. 168 (Winter, 1972).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 51.04 CONSIDERATION OF EVIDENCE

You may consider as evidence whatever is admitted in the trial as part of the record, whether it be the testimony of witnesses, an article or document marked as an exhibit, or other matter admitted such as an admission or stipulation. You should consider only testimony and exhibits admitted into evidence.

PIK 51.05 RULINGS OF THE COURT

At times during the trial, the Court has ruled upon the admissibility of evidence. You must not concern yourself with these rulings. I have not meant to indicate any opinion as to the facts or as to what your verdict should be by any ruling that I have made or anything that I have said or done.

Notes on Use

If a judge chooses to comment on the evidence, he should not give this instruction.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 51.06 STATEMENTS AND ARGUMENTS OF
COUNSEL**

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that you believe are not supported by evidence, they should be disregarded.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 51.07 SYMPATHY OR PREJUDICE FOR OR
AGAINST A PARTY**

You must consider this case without favoritism or sympathy for or against either party. Neither sympathy nor prejudice should influence you.

Notes on Use

The Committee recommends that unless there are very unusual circumstances the above instruction should not be given. Ordinarily PIK 52.09, Credibility of Witnesses, should be a sufficient guide for the jury. Additionally, the above instruction is objectionable in that it tells the jury what not to do rather than what to do.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 51.08 FORM OF PRONOUN—SINGULAR
AND PLURAL**

Whenever the word "he" is used in these instructions, you may consider it as applying equally to a woman or an entity such as a corporation. In like manner, the use of the singular of a word may be taken equally to mean the plural.

**PIK 51.09 IF JURY RECEIVES INSTRUCTIONS
BEFORE CLOSE OF CASE**

As you may remember, the Court gave you certain general instructions before the presentation of any evidence in this case. The Court gave you those instructions to help you follow the case and to help you understand your duties. I will repeat those instructions and give you additional instructions. All of these instructions taken together constitute the law of this case and all are equally binding upon you. All are in writing and will be available to you in the jury room.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 51.10 PENALTY NOT TO BE CONSIDERED
BY JURY**

Your only concern in this case is determining the guilt or innocence of the defendant. The disposition of the case thereafter is a matter for determination by the Court.

Notes on Use

The Committee recommends that neither in *voir dire* nor in argument should the matter of sentence or other disposition be mentioned.

CHAPTER 52.00

EVIDENCE AND GUIDES FOR ITS CONSIDERATION

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PIK 52.01 INFORMATION—INDICTMENT

The Committee recommends that no separate instruction be given.

Comment

K. S. A. 22-3414 (3) (1971 Supp.) provides in part “. . . and the judge may, in his discretion, *after the opening statements*, instruct the jury on such matters as in his opinion will assist the jury in considering the evidence as it is presented.”

Instruction on the elements for the crime charged, the burden of proof, presumption of innocence, reasonable doubt (PIK 52.02) and credibility of witnesses (PIK 52.09) could be given following opening statements.

K. S. A. 22-3414 (1971 Supp.) does not require that the instructions be in writing.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 52.02 BURDEN OF PROOF, PRESUMPTION
OF INNOCENCE, REASONABLE DOUBT**

The law places the burden upon the State to prove the defendant is guilty. The law does not require the defendant to prove his innocence. Accordingly, you must assume that the defendant is innocent unless you are convinced from all of the evidence in the case that he is guilty.

You should evaluate the evidence admitted in this case and determine the innocence or guilt of the defendant entirely in accordance with these instructions. The test you must use is this: If you have a reasonable doubt as to the truth of any of the claims made by the State, you should find the defendant not guilty. If you have no reasonable doubt as to the truth of any of them, you should find the defendant guilty.

Notes on Use

This instruction must be given in each criminal case and should follow the element instruction for the crime charged. See K. S. A. 21-3109 (1971 Supp.) Defendant presumed innocent; reasonable doubt as to guilt.

See K. S. A. 60-401 (*d*) (1964) for burden of proof.

Comment

The Committee believes that a single instruction setting forth the three primary concepts of criminal jurisprudence, burden of proof, presumption of innocence, and reasonable doubt, is more understandable to a jury than three separate lengthy unrelated instructions.

See "Notes on Use," Presumption of Innocence (PIK 52.03) and Reasonable Doubt (PIK 52.04).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.03 PRESUMPTION OF INNOCENCE

The Committee recommends that there be no separate instruction defining presumption of innocence.

Notes on Use

PIK 52.02, Burden of Proof, Presumption of Innocence, Reasonable Doubt, states the law of presumption of innocence, for statutory authority see K. S. A. 21-3109 (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.04 REASONABLE DOUBT

The Committee recommends that there be no separate instruction defining reasonable doubt.

Notes on Use

PIK 52.02, Burden of Proof, Presumption of Innocence, Reasonable Doubt, states the law as to reasonable doubt. See "Notes on Use" thereto.

For statutory authority, see K. S. A. 21-3109 (1971 Supp.).

Comment

The Committee believes that the words "reasonable doubt" are so clear in their meaning that no explanation is necessary.

The Kansas Supreme Court approved this principle in *State v. Bridges*, 29 Kan. 138, 141 (1882), by stating: "It has often been said by courts of the highest standing that perhaps no definition or explanation can make any clearer what is meant by the phrase 'reasonable doubt' than that which is imparted by the words themselves."

State v. Davis, 48 Kan. 1, 10, 28 P. 1092, (1892), states: "It is to be presumed that the jury understood what the words 'reasonable doubt' meant. The idea intended to be expressed by these words can scarcely be expressed so truly or so clearly by any other words in the English language."

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.05 STIPULATIONS AND ADMISSIONS

The following facts have been agreed to by the parties and are to be considered by you as true:

- (1) _____.
- (2) _____.
- (3) _____.

Comment

K. S. A. 22-3217 (1971 Supp.) provides for pretrial in criminal matters. The Committee suggests the use of pretrial the same as in civil cases to determine facts in controversy and questions of law which may arise during the trial. The statutory tools for disclosures and admissions in the criminal procedural code are as follows:

K. S. A. 22-3211 (1971 Supp.), Depositions.

K. S. A. 22-3212 (1971 Supp.), Discovery and Inspection.

K. S. A. 22-3213 (1971 Supp.), Production of Statements and Reports.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 52.06 PROOF OF OTHER CRIME—LIMITED
ADMISSIBILITY OF EVIDENCE**

Evidence has been admitted tending to prove that the defendant committed (crimes) (a crime) other than the present crime charged. This evidence may be considered solely for the purpose of proving the defendant's (motive) (opportunity) (intent) (preparation) (plan) (knowledge) (identity) (absence of mistake or accident).

Notes on Use

For statutory authority, see K. S. A. 60-455 (1964).

Your attention is directed to K. S. A. 60-447 (*b*) (1964), Character trait as proof of conduct, and K. S. A. 60-445 (1964), Discretion of judge to exclude admissible evidence.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 52.07 MORE THAN ONE DEFENDANT—
LIMITED ADMISSIBILITY OF
EVIDENCE**

You should give separate consideration to each defendant. Each is entitled to have his case decided on the evidence and the law which is applicable to him.

Any evidence which was limited to (name specific defendant) should not be considered by you as to any other defendant

Notes on Use

This instruction should be given only when there is more than one defendant.

See K. S. A. 22-3204 (1971 Supp.), Joinder of defendants; separate trials.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 52.08 AFFIRMATIVE DEFENSES—
BURDEN OF PROOF**

The Committee recommends that no burden of proof instruction be given relative to any asserted affirmative defense.

Comment

In cases where applicable, instruction as to the specific defense should be given, *i. e.*:

Defense of Insanity: PIK 54.10 and 54.10A

Defense of Involuntary Intoxication: PIK 54.11

Defense of Voluntary Drugged Condition: PIK 54.12

Defense of Entrapment: PIK 54.14

Defense of Justifiable Use of Force: PIK 54.17 *et seq.*

Defense of Compulsion: PIK 54.13

PIK 52.09 CREDIBILITY OF WITNESSES

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified.

Notes on Use

This instruction should be given in every criminal case.

See K. S. A. 22-3415 (1971 Supp.), Laws applicable to witnesses.

See K. S. A. 60-417, Disqualification of witness; interpreter; through K. S. A. 60-422, Further limitations on admissibility of evidence affecting credibility.

For an alternate instruction, see PIK 2.20, Credibility of witnesses and Notes on Use.

PIK 52.10 DEFENDANT AS A WITNESS

The Committee recommends that there be no separate instruction on the defendant as a witness.

Comment

If the defendant testifies, his testimony, like that of any other witness, should be considered as set forth in PIK 52.09, Credibility of Witnesses.

See PIK 52.13, Defendant's failure to testify.

See PIK 52.09, Credibility of witnesses; and Notes on Use.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.11 NUMBER OF WITNESSES

The Committee recommends that there be no separate instruction on the number of witnesses.

Comment

An instruction as to number of witnesses calls attention to a fact you are telling the jury not to consider.

If the court determines that such an instruction should be given because of special circumstances, the Committee suggests PIK 2.21, Weighing evidence—number of witnesses.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.12 TESTIMONY—DEPOSITION

During this trial, evidence was presented to you by the reading of the testimony of a witness taken under oath at another time and place. It is to be weighed by the same standards as other testimony.

Notes on Use

For statutory authority, see K. S. A. 22-3211 (1971 Supp.).

It is recommended that this instruction be given prior to the reading of the deposition.

Comment

Statutory authority for the taking and use of depositions: See K. S. A. 22-3211 (1971 Supp.). Note that under (5) of the cited statute, civil rules apply to the taking of deposition. See K. S. A. 60-266 (1964), Depositions and discovery pending actions.

See PIK 2.22, Evaluation of deposition testimony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.13 DEFENDANT'S FAILURE TO TESTIFY

You should not consider the fact that the defendant did not testify in arriving at your verdict.

Notes on Use

This instruction should not be given unless there is a specific request by the defendant.

Comment

See K. S. A. 60-439 (1971 Supp.). Reference to exercise of privilege; presumption and adverse inference not permitted.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.14 EXPERT WITNESS

The Committee recommends that there be no separate instruction given on the expert as a witness.

Comment

See PIK 2.50, Expert Witness and Notes on Use. The Committee believes that an expert should be considered as any other witness as set forth in PIK 52.09, Credibility of Witnesses.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.15 IMPEACHMENT

The Committee recommends that there be no separate instruction as to impeachment.

Comment

The Committee believes that the standard instruction in PIK 52.09, Credibility of Witnesses, provides adequate jury guides. See PIK 2.30, Impeachment.

PIK 52.16 CIRCUMSTANTIAL EVIDENCE

A portion of the evidence in this case is circumstantial or indirect evidence. Indirect evidence consists of facts or circumstances which lead to a reasonable inference of the existence or nonexistence of an element of the crime charged. Indirect evidence is to be considered as any other evidence.

You should not find the defendant guilty unless the facts and circumstances proved exclude every reasonable theory of innocence.

Notes on Use

This instruction should be given wherever evidence other than direct evidence is presented to prove the crime charged or any element thereof.

The second paragraph should be given only when the proof of guilt is *entirely* or substantially indirect.

Where the proof of the crime or the proof of the defendant's involvement in the commission of the crime is based substantially on indirect evidence, this instruction should be given.

Comment

This is the restatement of the circumstantial evidence rule.

PIK 52.17 CONFESSION

You have before you evidence that the defendant confessed to having committed certain acts. The confession must have been voluntarily made before you can consider it in your deliberations.

In determining if a confession is voluntary, you should consider the age, sex, education, and physical and mental condition of the defendant, his treatment while in custody, and all other circumstances surrounding the making of the confession.

(In addition to your consideration of the above, you must specifically find that the defendant was told and that he understood the following:

1. That he was not required to make any statement;
2. That any statement made by him could be used against him in court;
3. That he was entitled to the assistance of counsel before he made any statement; and
4. That if he requested counsel but did not have funds to retain one, a counsel would be appointed to advise and represent him.)

Notes on Use

This instruction should be given only after the court has admitted the confession into evidence.

The part of the instruction in brackets should be given where the statements are made under circumstances when the "Miranda Rule" is applicable.

Comment

Included in this instruction are the safeguards set forth in *Miranda v. Arizona*, 384 U. S. 436 (1966).

Attention is directed to *Jackson v. Denno*, 378 U. S. 368 (1964),

PATTERN INSTRUCTIONS FOR KANSAS

which requires the judge to have a hearing out of the presence of the jury to determine the admissibility of the confession. For a Kansas case see *State v. Milow*, 199 Kan. 576, 433 P. 2d 538 (1967).

For complete discussion of the voluntariness of an extra-judicial confession, see *Holt v. State*, 202 Kan. 759, 451 P. 2d 221 (1969), and *State v. Milow*, 199 Kan. 576, 433 P. 2d 538 (1967).

PIK 52.18 TESTIMONY OF AN ACCOMPLICE

An accomplice witness is one who testifies that he was involved in the commission of the crime with which the defendant is charged. You should consider with caution the uncorroborated testimony of an accomplice witness.

Notes on Use

This instruction should not be used where the testimony of the accomplice witness is corroborated, and need not be given under any circumstances unless requested.

Comment

The uncorroborated testimony of an accomplice has been held to be sufficient to convict, and that there was no duty to instruct where an instruction was not requested. When requested, the Court stated in *State v. Patterson*, 52 Kan. 335, 34 P. 784 (1893), the instruction must be given when requested.

For complete discussion, see *State v. Wood*, 196 Kan. 599, 604; 413 P. 2d 90 (1966).

For discussion of corroborated testimony of an accomplice witness, see *State v. Parrish*, 205 Kan. 178; 468 P. 2d 143 (1970).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 52.19 ALIBI

The Committee recommends that there be no separate instruction on alibi.

Comment

Alibi is not an affirmative defense, as is entrapment or insanity; it consists only of evidence showing that the defendant was not present at the time or place of the crime. This evidence should be considered as all other evidence. If an instruction is given, attention is called to the defendant's alibi, which connotes a burden not found in the law.

For statutory authority, see K. S. A. 22-3218 (1971 Supp.).

CHAPTER 53.00

DEFINITIONS AND EXPLANATIONS OF TERMS

INTRODUCTION

The definitions and explanations in this chapter are in alphabetical order. A cross reference is provided to statutes and some instructions.

There are many terms which are defined and explained in the Kansas statutes. These statutory definitions have not been repeated here but ready reference is made to the particular statute where a definition or explanation of the term may be found.

In presenting them to the jury it is suggested that the following prefatory language be used.

“As used in these instructions the term _____ (means) (includes) _____.”

Accessory: See PIK 54.05 Responsibility for Crimes of Another. The term “accessory” is not used in the Criminal Code.

Accost: To approach and speak to.

Act: K. S. A. 21-3110 (1) (1971 Supp.).

Agent of a Corporation: K. S. A. 21-3206 (2) (1971 Supp.).

Another: K. S. A. 21-3110 (2) (1971 Supp.).

Attempt: See K. S. A. 21-3301 (1) (1971 Supp.) and PIK 55.01, Attempt.

Believes: See Reasonably Believes.

Bet: K. S. A. 21-4302 (1) (1971 Supp.).

Breach of Peace: A disturbance which alarms, angers or disturbs the peace and quiet of others. See PIK 63.01, Disorderly Conduct.

Conduct: K. S. A. 21-3110 (3) (1971 Supp.).

Conduct, Wanton: K. S. A. 21-3201 (3) (1971 Supp.).

Conduct, Willful: K. S. A. 21-3201 (A2) (1971 Supp.).

Consideration: K. S. A. 21-4302 (3) (1971 Supp.). See PIK 65.07, Gambling Definitions.

Conspiracy: K. S. A. 21-3302 (1) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

- Contraband*: K. S. A. 21-3826 (1971 Supp.) pertaining to contraband in a penal institution. PIK 60.27, Traffic—Contraband in a Penal Institution.
- Conviction*: K. S. A. 21-3110 (4) (1971 Supp.).
- Copulation*: Sexual relations.
- Committed Person*: K. S. A. 21-3423 (1971 Supp.).
- Crime*: K. S. A. 21-3105 (1971 Supp.).
- Criminal Syndicalism*: K. S. A. 21-3803 (1971 Supp.).
- Culpable Negligence*: K. S. A. 21-3201 (3) (1971 Supp.).
- Deadly Weapon*: A weapon dangerous to life or likely to produce bodily injury from the use made of it or with which death may easily and readily be produced. *Parman v. Lemmon*, 119 Kan. 323, 327, 244 P. 227 (1925).
- Deception*: K. S. A. 21-3110 (5) (1971 Supp.).
- Deliberately*: PIK 56.04, Homicide Definitions.
- Deprive Permanently*: K. S. A. 21-3110 (6) (1971 Supp.).
- Dwelling*: K. S. A. 21-3110 (7) (1971 Supp.).
- Emergency*: K. S. A. 21-4211 (2) (b) (1971 Supp.).
- Entice*: K. S. A. 21-3509 (1971 Supp.).
- Escape*: K. S. A. 21-3809 (2) (1971 Supp.). PIK 60.10, Escape from Custody.
- Felony*: K. S. A. 21-3105 (1) (1971 Supp.).
- Forcible Felony*: K. S. A. 21-3110 (8) (1971 Supp.).
- Gambling*: K. S. A. 21-4303 (1971 Supp.).
- Gambling Device*: K. S. A. 21-4302 (4) (1971 Supp.). PIK 65.07, Gambling Definitions.
- Gambling Place*: K. S. A. 21-4302 (5) (1971 Supp.). PIK 65.07, Gambling Definitions.
- Gross Negligence*: K. S. A. 21-3201 (3) (1971 Supp.).
- Hearing Officer*: K. S. A. 21-3110 (19) (1971 Supp.).
- Heat of Passion*: Any intense or vehement emotional excitement which was spontaneously provoked from the circumstances. *State v. McDermott*, 202 Kan. 399, 449 P. 2d 545 (1969); *State v. Lott*, 207 Kan. 602, 485 P. 2d 1314 (1971). PIK 56.04 (e), Homicide Definitions.
- Hypnosis*: K. S. A. 21-4007 (2) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

- Intent to Defraud*: K. S. A. 21-3110 (9) (1971 Supp.).
- Intentional*: K. S. A. 21-3201 (2) (1971 Supp.).
- Intoxication or Intoxicated*: K. S. A. 21-4109 (1971 Supp.).
- Jeopardy*: K. S. A. 21-3108 (1) (c) (1971 Supp.).
- Judicial Officer*: K. S. A. 21-3110 (19) (c) (1971 Supp.).
- Knowing or Knowingly*: K. S. A. 21-3201 (2) (1971 Supp.).
- Law Enforcement Officer*: K. S. A. 21-3110 (10) (1971 Supp.).
- Lottery*: K. S. A. 21-4302 (2) (1971 Supp.).
- Maliciously*: PIK 56.04, Homicide Definitions.
- Material*: K. S. A. 21-4301 (2) (b) (1971 Supp.).
- Merchandise*: K. S. A. 21-4403 (2) (a) (1971 Supp.).
- Misdemeanor*: K. S. A. 21-3105 (1971 Supp.).
- Noxious Matter*: K. S. A. 21-3733 (2) (1971 Supp.).
- Obscene Material*: K. S. A. 21-4301 (1971 Supp.) and K. S. A. 21-4301 (a), (1971 Supp.). See PIK 65.03, Promoting Obscenity—Definitions.
- Obtain*: K. S. A. 21-3110 (11) (1971 Supp.).
- Obtains or Exerts Control*: K. S. A. 21-3110 (12) (1971 Supp.).
- Offense*: A violation of any penal statute of this state.
- Overt Act*: An act which constitutes a substantial step toward the completion of the crime. *State v. McCarthy*, 115 Kan. 583, 224 P. 44 (1924). See PIK 55.01, Attempt.
- Owner*: K. S. A. 21-3110 (13) (1971 Supp.).
- Party Line*: K. S. A. 21-4211 (2) (a) (1971 Supp.).
- Peace Officer*: See Law Enforcement Officer.
- Penal Institution*: A penitentiary, state farm, reformatory, prison, jail, house of correction, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.
- Performance*: K. S. A. 21-4301 (2) (c) (1971 Supp.).
- Person*: K. S. A. 21-3110 (14) (1971 Supp.).
- Personal Property*: K. S. A. 21-3110 (15) (1971 Supp.).
- Possession*: Having control over a place or thing with knowledge of and the intent to have such control. *State v. Metz*, 107 Kan. 593, 193 P. 177 (1920); *City of Hutchinson v. Weems*, 173 Kan. 452, 249 P. 2d 633 (1952). See comment under PIK 64.06, Unlawful Possession of a Firearm—Felony.

PATTERN INSTRUCTIONS FOR KANSAS

Pregnancy: K. S. A. 21-3407 (3) (1971 Supp.).

Premeditation: See PIK 56.04, Homicide Definitions.

Presumption: An assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action. K. S. A. 60-413 (1964).

Private Place: K. S. A. 21-4001 (2) (1971 Supp.).

Probable Cause: Reasonable grounds. *State v. Howland*, 153 Kan. 352, 110 P. 2d 801 (1941).

Property: K. S. A. 21-3110 (16) (1971 Supp.).

Prosecution: K. S. A. 21-3110 (17) (1971 Supp.).

Public Employee: K. S. A. 21-3110 (18) (1971 Supp.).

Public Officer: K. S. A. 21-3110 (19) (1971 Supp.). A list of public officers is included under this section.

Purposeful: K. S. A. 21-3201 (2) (1971 Supp.).

Real Property or Real Estate: K. S. A. 21-3110 (20) (1971 Supp.).

Reasonable Doubt: See PIK 52.04, Reasonable Doubt. The words "reasonable doubt" are so clear in their meaning that no explanation is necessary.

Reasonably Believes: The words "reasonably believes" are so clear in their meaning that no explanation is necessary.

Recklessness: K. S. A. 21-3201 (1971 Supp.).

Retailer: See K. S. A. 21-4404 (1971 Supp.), pertaining to tie-in magazine sales.

Sale: K. S. A. 21-4403 (2) (c) (1971 Supp.).

Scope of Authority: The performance of services for which an employee has been employed or which are reasonably incidental to his employment. See PIK 7.04 Agent—Issue as to Scope of Authority.

Security Agreement: An agreement which creates or provides for a security interest. K. S. A. 84-9-105 (h) (1965) Uniform Commercial Code.

Security Interest: An interest in personal property or fixtures which secures payment or performance of an obligation. K. S. A. 84-1-201 (37) (1965) Uniform Commercial Code.

Sell: K. S. A. 21-4404 (2) (c) (1971 Supp.).

Services: K. S. A. 21-3704 (2) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

- Sexual Intercourse*: K. S. A. 21-3501 (1) (1971 Supp.).
- Solicit or Solicitation*: K. S. A. 21-3110 (21) (1971 Supp.).
- Sports Contest*: K. S. A. 21-4406 (2) (a) (1971 Supp.).
- Sports Participant*: K. S. A. 21-4406 (2) (b) (1971 Supp.).
- State*: K. S. A. 21-3110 (22) (1971 Supp.).
- Stolen Property*: K. S. A. 21-3110 (23) (1971 Supp.).
- Temporarily Deprive*: To take from the owner temporarily the possession, use or benefit of his property with intent to deprive the owner of the temporary use thereof. See PIK 59.04, Unlawful Deprivation of Property.
- Threat*: K. S. A. 21-3110 (24) (1971 Supp.).
- Unlawful Sexual Act*: K. S. A. 21-3501 (2) (1971 Supp.).
- Wanton Conduct*: K. S. A. 21-3201 (3) (1971 Supp.).
- Wanton Negligence*: K. S. A. 21-3201 (3) (1971 Supp.).
- Wholesaler*: K. S. A. 21-4404 (2) (b) (1971 Supp.).
- Willful conduct*: K. S. A. 21-3201 (2) (1971 Supp.).
- Willfully*: K. S. A. 21-3102 (2) (1971 Supp.). PIK 56.04, Homicide Definitions.
- Woman*: K. S. A. 21-3501 (3) (1971 Supp.).
- Written Instrument*: K. S. A. 21-3110 (25) (1971 Supp.).

CHAPTER 54.00

PRINCIPLES OF CRIMINAL LIABILITY

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PATTERN INSTRUCTIONS FOR KANSAS

PIK 54.01 PRESUMPTION OF INTENT

There is a presumption that a person intends all the natural and probable consequences of his voluntary acts. This presumption is overcome if you are persuaded by the evidence that the contrary is true.

Notes on Use

For authority, see *State v. Donahue*, 197 Kan. 317, 416 P. 2d 287 (1966).

Comment

This instruction meets the statutory requirement of K. S. A. 21-3201 (1971 Supp.) that a criminal intent is an essential element of every crime defined by the code, except as provided by Sections K. S. A. 21-3202 (1971 Supp.) relating to certain exclusions, K. S. A. 21-3204 (1971 Supp.) relating to guilt without criminal intent, and K. S. A. 21-3405 (1971 Supp.) relating to Vehicular Homicide.

Special matters that would involve K. S. A. 21-3202 (1971 Supp.) are covered in PIK 54.10, Criminal Intent Exclusions. The effect of K. S. A. 21-3405 (1971 Supp.) and the requisite intent is covered by PIK 56.07, Vehicular Homicide.

For a review of the mental requirement of crimes, see *Morisette v. United States*, 342 U. S. 246 (1952), pointing out the general rule and the three categories of (1) general intent, (2) specific intent and (3) no intent.

The Committee feels that the requirements of general intent are sufficiently covered by the above instruction. Where a specific intent is involved in any crime, such requisite intent is included as an item in the elements instruction required to be proved. This included recital, together with the above instruction, adequately covers the statutory specific intent requirements.

The above instruction should not be given when no intent is required for the crime, that is, where the doing of the act prohibited is itself sufficient to constitute the crime, as provided by K. S. A. 21-3204 (1971 Supp.). As to this situation also, the recitals in the elements instruction provide all necessary information as to the offense and proof needed.

PATTERN INSTRUCTIONS FOR KANSAS

As to those offenses of guilt without criminal intent, in *State v. Merrifield*, 180 Kan. 267, 303 P. 2d 155 (1956), it is said: "The doing of an inhibited [sic] act constitutes the crime, and the moral turpitude or purity of motive by which it is prompted, and knowledge or ignorance of its criminal character, are immaterial circumstances on the question of guilt." See also *State v. Cruitt*, 200 Kan. 372, 436 P. 2d 870 (1968), in which the Court said: "And where an act is made a crime by statute, without any express reference to intent, this court has held that it is not necessary to allege such intent, or any intent, but simply to allege the commission of the act in the language of the statute, and the intent will be presumed."

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.02 CRIMINAL INTENT—IGNORANCE OF
STATUTE OR AGE OF MINOR IS
NOT A DEFENSE**

It is not a defense that the accused did not have knowledge of (the existence or constitutionality of or the scope or meaning of the terms used in the statute under which the accused is prosecuted) (the age of a minor, even though age is a material element of the crime with which he is charged).

Notes on Use

For authority, see K. S. A. 21-3202 (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 54.03 IGNORANCE OR MISTAKE OF FACT

It is a defense in this case if by reason of ignorance or mistake the defendant did not have at the time the mental state which the statute prescribes as an element of the crime. (He may be convicted of a lesser offense if the facts were as he believed them to be and the other evidence in the case establishes such lesser offense.)

Notes on Use

For authority, see K. S. A. 21-3203 (1) (1971 Supp.).

Comment

The parenthetical material should only be given in cases where a lesser offense is included in the greater offense committed.

As provided by the authorizing statute (K. S. A. 21-3203, 1971 Supp.) this should not be given in cases where there are exclusions of requirement of proof of criminal intent. See K. S. A. 21-3202 (1971 Supp.) and PIK 54.02, Criminal Intent-Ignorance of Statute or Age of Minor Is Not a Defense.

Likewise, this instruction has no application to and should not be given in circumstances involving statutes providing for guilt without criminal intent. See comment, PIK 54.01, Presumption of Intent.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.04 IGNORANCE OR MISTAKE OF LAW—
REASONABLE BELIEF**

It is a defense to the charge made against the defendant if he reasonably believed that his conduct did not constitute a crime and

(the crime was defined by an administrative regulation or order which was not known to him and had not been published, as provided by law, and he could not have acquired such knowledge by the exercise of ordinary care.)

(he acted in reliance upon a statute which later was determined to be invalid.)

(he acted in reliance upon an order or opinion [of the Supreme Court of Kansas] or [a United States appellate court] later overruled or reversed.)

(he acted in reliance upon an official interpretation of the [statute] [regulation] or [order] defining the crime made by a [public officer] or [agency] legally authorized to interpret such statute.)

Notes on Use

For authority, see K. S. A. 21-3203 (2) (1971 Supp.).

Comment

Whether there has been a publication of the administrative regulations, a determination of the invalidity of statute, an overruling of court decisions or official interpretations by officer or agency legally authorized, are all matters of judicial notice and the existence of which can and should be determined and instructed on as a matter of law. The defendant's act in reliance thereon and the other provisions are questions of fact to be determined by the jury.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.05 RESPONSIBILITY FOR CRIMES OF
ANOTHER**

A person is responsible for the conduct of another when, either before or during the commission of a crime, and with the intent to promote or assist in the commission of the crime he, intentionally aids or advises the other to commit the crime.

Notes on Use

For authority see K. S. A. 21-3205 (1) (1971 Supp.).

Comment

All participants in a crime are equally guilty, without regard to the extent of their participation. *State v. Turner*, 193 Kan. 189, 196, 392 P. 2d 863, (1964); *State v. Jackson*, 201 Kan. 795, 799, 443 P. 2d 279 (1968).

One who watches at a distance to prevent surprise while others commit a crime is deemed in law to be a principal and punishable as such. *State v. Neil*, 203 Kan. 473, 474, 454 P. 2d 136 (1969).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.06 RESPONSIBILITY FOR CRIMES OF
ANOTHER—CRIME NOT INTENDED**

A person who intentionally (aids) (hires) another to commit a crime is responsible for any other crime committed in pursuance of the intended crime, if such other crime was reasonably foreseeable.

Notes on Use

For authority see K. S. A. 21-3205 (2) (1971 Supp.).

Comment

All participants in a crime are equally guilty, without regard to the extent of their participation. *State v. Turner*, 193 Kan. 189, 195, 392 P. 2d 863 (1964).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.07 RESPONSIBILITY FOR CRIME OF
ANOTHER—ACTOR NOT PROSECUTED**

It is not a defense that (another) (others) who participated in the commission of the wrongful act (has) (have) not been convicted of (any crime) (the particular crime).

Notes on Use

For authority see K. S. A. 21-3205 (3) (1971 Supp.). PIK 54.05, Responsibility for Crimes of Another and PIK 54.06, Responsibility for Crimes of Another—Crime Not Intended, should be used where applicable to the particular case. This instruction makes clear that a contrary rule which prevailed at common law is not the law in the State of Kansas.

Comment

An accessory before the fact may be convicted after the trial and conviction of the principal of a higher degree of offense than the principal was convicted of, *State v. Gray*, 55 Kan. 135, 144, 145, 39 P. 1050 (1895).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.08 CORPORATIONS—CRIMINAL
RESPONSIBILITY FOR ACTS
OF AGENTS**

A corporation is responsible for acts committed by any person who is authorized to act in behalf of the corporation when acting within the scope of his authority.

Notes on Use

For authority see K. S. A. 21-3206 (1) and (2) (1971 Supp.). Use PIK 7.04, Agent—Issue as to Scope of Authority, where scope of authority is an issue.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.09 INDIVIDUAL RESPONSIBILITY FOR
CORPORATION CRIME**

An individual who performs criminal acts, or causes criminal acts to be performed, in the name of or on behalf of a corporation, is responsible to the same extent as if such acts were performed in his own name or on his own behalf.

Notes on Use

For authority see K. S. A. 21-3207 (1) (1971 Supp.).

Comment

K. S. A. 21-3207 (2) (1971 Supp.) provides: "An individual who has been convicted of a crime based on conduct performed by him for and on behalf of a corporation is subject to punishment as an individual upon conviction of such crime, although a lesser or different punishment is authorized for the corporation."

PATTERN INSTRUCTIONS FOR KANSAS

PIK 54.10 INSANITY—MENTAL ILLNESS OR DEFECT

The defendant has denied criminal responsibility because of lack of mental capacity at the time the offense was committed. In law, this is called insanity. The defendant is not criminally responsible for his acts if his mental capacity was such that he did not understand the nature of his acts or did not understand that what he was doing was wrong because of his mental inability to distinguish between right and wrong.

If you have a reasonable doubt as to the mental capacity of the defendant at the time of the alleged commission of the offense, then you should find the defendant not guilty because of insanity.

Notes on Use

See K. S. A. 22-3219 (1971 Supp.) for plea of insanity, and notice and procedure required.

Comment

This instruction should be given where the defense of insanity is asserted under K. S. A. 22-3219 (1971 Supp.) and evidence has been introduced in support of such claim.

For authority see *State v. Andrews*, 187 Kan. 458, 357 P. 2d 739 (1960) in which the so-called M'Naghten rule is discussed and applied. This state has been firmly committed to the M'Naghten rule or "right or wrong" test of insanity. *State v. Latham and York*, 190 Kan. 411, 375 P. 2d 788 (1962). Even an adjudged lunatic is criminally responsible for acts committed during a lucid interval. *Fisher v. Fraser*, 171 Kan. 472, 233 P. 2d 1066 (1951). A proposed change in the rule was not adopted in the Kansas Criminal Code. See KANSAS JUDICIAL COUNCIL BULLETIN, April, 1968, page 35.

The question of defendant's insanity at the time of the alleged crime is one of fact to be tried by the jury. *State v. Andrews*, 187 Kan. 458, 357 P. 2d 739 (1960), and *State v. Coltharp*, 199 Kan. 598, 433 P. 2d 418 (1967).

PATTERN INSTRUCTIONS FOR KANSAS

An insane person cannot be required to plead to a criminal charge and cannot be tried. *State v. English*, 198 Kan. 196, 424 P. 2d 601 (1967). The test of responsibility for crime differs from that of mental competency to stand trial. These tests are stated and distinguished in *Van Dusen v. State*, 197 Kan. 718, 421 P. 2d 197 (1966). See also *Nall v. State*, 204 Kan. 636, 465 P. 2d 957 (1970). For procedure see K. S. A. 22-3302 (1971 Supp.). For verdict form see PIK 67.06, Verdict—Not Guilty Because of Insanity.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 54.10-A INSANITY—COMMITMENT

A person found not guilty because of insanity is committed to the State Security Hospital for safe-keeping and treatment. Whenever it appears to the chief medical officer of the State Security Hospital that the person committed is not dangerous to other patients, he may transfer the person to any state hospital, grant convalescent leave or discharge the person as an involuntary patient after thirty days notice has been given to the county attorney and sheriff of the county from which the person was committed.

Notes on Use

For authority see K. S. A. 22-3428 (1971 Supp.).

This instruction must be given in any case where there is reliance on the defense of insanity.

PIK 54.11 INTOXICATION—INVOLUNTARY

Intoxication involuntarily produced by another is a defense if it renders the accused substantially incapable of knowing or understanding the wrongfulness of his conduct or of conforming his conduct to the requirements of law.

Notes on Use

For authority, see K. S. A. 21-3208 (1) (1971 Supp.).

Comment

Intoxication is defined in K. S. A. 21-4109 (1971 Supp.) as being under the influence of intoxicating liquor, narcotics or other drug. Although there is no mention of a drugged condition in the statute above, it is logical that the same rule should apply to involuntary intoxication resulting from the administration of drugs.

PIK 54.12 INTOXICATION

Voluntary intoxication is not a defense to a criminal charge, but when a particular intent or other state of mind is a necessary element of the offense charged, intoxication may be taken into consideration in determining whether the accused was capable of forming the necessary intent or state of mind.

Notes on Use

For authority, see K. S. A. 21-3208 (2) (1971 Supp.).

PIK 54.13 COMPULSION

It is a defense to the charge made against the defendant if he acted under the compulsion or threat of immediate infliction of death or great bodily harm, and he reasonably believed that death or great bodily harm would have been inflicted upon him (or upon his [spouse] [parent] [child] [brother] or [sister]) had he not acted as he did.

(Such a defense is not available to one who wilfully or wantonly placed himself in a situation in which it was probable that he would have been subjected to compulsion or threat.)

Notes on Use

For authority, see K. S. A. 21-3209 (1971 Supp.).

This instruction is not to be used in cases of murder or voluntary manslaughter. K. S. A. 21-3209 (1971 Supp.).

The second paragraph should be used only where there is some evidence indicating that the defendant wilfully or wantonly placed himself in the situation indicated.

Comment

Although the statute uses the term "imminent," the Committee feels that the word "immediate" is a better understood term.

PIK 54.14 ENTRAPMENT

It is a defense to the charge made against the defendant that he was entrapped, that is, that for the purpose of obtaining evidence to prosecute the defendant, a public officer (or his agent) induced or solicited the defendant to commit a crime.

It is not a defense, however, (if the public officer [or his agent] merely afforded an opportunity or facility for committing the crime in furtherance of a criminal purpose originated by the defendant [or co-conspirator]) (if the crime was of a type which was likely to occur and recur in the course of such defendant's business, and the public officer [or his agent] in inducing or soliciting did not mislead the defendant into believing his conduct was lawful.)

Notes on Use

For authority, see K. S. A. 21-3210 (1971 Supp.).

Comment

In *State v. Visco*, 183 Kan. 562, 331 P. 2d 318 (1959) the Court said, . . .

It is no defense that the intended victim, on learning of the proposed crime, does nothing to stop its commission but allows the defendant to begin the commission of the crime so that he may be apprehended in the act. Surely, it cannot be contended that the criminal intent originated in anyone's mind other than the defendant's.

Particularly applicable to the material in the final brackets is the comment in *State v. Merklinger*, 180 Kan. 283, 303 P. 2d 152 (1956), where the Supreme Court said: "The Court has long been committed to the rule that the defense of entrapment has but limited application in cases involving surreptitious sales of liquor." The Court was referring to decisions under the prohibitory liquor law, and further stated, "We see no reason to relax the rule now that the problem is one of a regularly licensed dealer violating the law with reference to sales."

PIK 54.15 CONDONATION

It is not a defense that the (injured party) (victim) has (excused) (forgiven) (compromised and settled) (ratified) the offense committed.

Notes on Use

Use for this instruction will not ordinarily arise as evidence to support it is generally not admissible. The pretrial conference will normally provide opportunity to settle the question in advance of trial.

Comment

For authority, see *State v. Newcomer*, 59 Kan. 668, 54 P. 685 (1898), a statutory rape case in which the victim married the defendant; *State v. Craig*, 124 Kan. 340, 259 P. 802 (1927), in which a mother, owner of an undivided interest, subsequently ratified the act of arson and *State v. Dye*, 148 Kan. 421, 83 P. 2d 113 (1938), in which it was held that evidence offered to show a compromise, settlement or ratification will not constitute a bar to conviction and punishment of a crime.

PIK 54.16 RESTITUTION

It is not a defense that the defendant at the time of the trial (has restored) (intends to restore) any property taken or its value to the owner.

Comment

Our case law has principally involved cases of embezzlement. See *State v. Taylor*, 140 Kan. 663, 38 P. 2d 680 (1934), and *State v. Robinson*, 125 Kan. 365, 263 P. 1081 (1928). In the latter case, the Court said, "When one embezzles money or property, the fact that he intends to restore it, or its value, to its owner is not a defense."

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.17 USE OF FORCE IN DEFENSE
OF A PERSON**

A person is justified in the use of force to defend (himself) (another) against an aggressor's imminent use of unlawful force to the extent it appears reasonable to him under the circumstances then existing.

Notes on Use

For authority, see K. S. A. 21-3211 (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.18 USE OF FORCE IN DEFENSE OF
DWELLING**

A person is justified in the use of force to prevent another person from unlawfully entering into or damaging his dwelling to the extent it appears reasonable to him under the circumstances then existing.

Notes on Use

For authority, see K. S. A. 21-3212 (1971 Supp.).

Comment

See *State v. Countryman*, 57 Kan. 815, 827, 48 P. 137 (1897).

**PIK 54.19 USE OF FORCE IN DEFENSE OF
PROPERTY OTHER THAN A DWELLING**

A person lawfully in possession of property, other than a dwelling, is justified in (threatening to use) (using) such force to stop an unlawful interference with such property as would appear necessary to a reasonable man under the circumstances then existing.

Notes on Use

For authority see K. S. A. 21-3213 (1971 Supp.).

Comment

K. S. A. 21-3213 (1971 Supp.) is the only section of the crimes statute which makes the "reasonable man" the standard to be used as relates to force.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.20 FORCIBLE FELON NOT ENTITLED
TO USE FORCE**

A person is not justified in using force in defense of (himself) or (another) (his dwelling) if he is (attempting to commit) (committing) (escaping after the commission) of _____, a forcible felony.

Notes on Use

For authority see K. S. A. 21-3214 (1) (1971 Supp.). Insert in the blank space the blank space the particular forcible felony applicable to the particular case.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.21 PROVOCATION OF FIRST FORCE AS
EXCUSE FOR RETALIATION**

A person is not permitted to provoke an attack on (himself) or (another person) with the specific intention to use such attack as a justification for inflicting bodily harm upon the person he provoked and then claim self-defense as a justification for inflicting bodily harm upon the person he provoked.

Notes on Use

For authority see K. S. A. 21-3214 (2) (1971 Supp.). This instruction should not be confused with PIK 54.22, Initial Aggressor's Use of Force. This instruction should be used with caution and limitations.

Comment

A literal reading of the statute which is the authority for this instruction would indicate that one who provokes an attack as an excuse to inflict bodily harm upon another cannot thereafter resist with force even though his own death or serious injury is imminent.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 54.22 INITIAL AGGRESSOR'S USE OF FORCE

A person who initially provokes the use of force against (himself) (another) is not justified in the use of force to defend (himself) (another) unless:

1. He has reasonable ground to believe that he is in present danger of death or great bodily harm, and he has used every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the other person;

or

2. He has in good faith withdrawn and indicates clearly to the other person that he desires to withdraw and stop the use of force, but the other person continues or resumes the use of force.

Notes on Use

For authority, see K. S. A. 21-3214 (3) (a) and (b) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 54.23 LAW ENFORCEMENT OFFICER OR
PRIVATE PERSON SUMMONED TO
ASSIST—USE OF FORCE IN
MAKING ARREST**

A (law enforcement officer) or (private person who is summoned or directed by a law enforcement officer to assist him) need not retreat or desist from the efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to defend (himself) or (another) from bodily harm while making the arrest.

However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force:

(is necessary to prevent death or great bodily harm to [himself] or [another person]).

(is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted to commit _____, a felony or [is attempting to escape by use of a deadly weapon] or [otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay]).

(A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.)

PATTERN INSTRUCTIONS FOR KANSAS

Notes on Use

For authority, see K. S. A. 21-3215 (1971 Supp.).

The second paragraph should be used only if there is some evidence that the force was likely to cause death or great bodily harm.

The third paragraph should be used only where an invalid warrant is involved.

**PIK 54.24 PRIVATE PERSON'S USE OF FORCE
IN MAKING ARREST—NOT
SUMMONED BY LAW ENFORCEMENT
OFFICER**

A private person who (makes) or (assists another private person in making) a lawful arrest need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend (himself) or (another) from bodily harm while making the arrest.

(However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to [himself] or [another]).

(A private person who is [summoned] or [directed] by a law enforcement officer to assist in making an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful.)

Notes on Use

For authority, see K. S. A. 21-3216 (1971 Supp.). See also, PIK 54.23, Law Enforcement Officer or Private Person Summoned to Assist—Use of Force in Making Arrest.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 54.25 USE OF FORCE IN RESISTING ARREST

A person is not authorized to use force to resist an arrest which he knows is being made by a (law enforcement officer) or (private person summoned and directed by a law enforcement officer to make the arrest) even if the person believes that the arrest is unlawful and the arrest is, in fact, unlawful.

Notes on Use

For authority, see K. S. A. 21-3217 (1971 Supp.).

Comment

See comment, Judicial Council, 1968, following K. S. A. 21-3217 (1971 Supp.).

CHAPTER 55.00

ANTICIPATORY CRIMES

	PIK Number
Attempt	55.01
Attempt, Impossibility of Committing Offense, No Defense ..	55.02
Conspiracy	55.03
Conspiracy—Withdrawn as a Defense	55.04

PATTERN INSTRUCTIONS FOR KANSAS

PIK 55.01 ATTEMPT

A. (The defendant is charged with the crime of an attempt to commit the crime of _____. The defendant pleads not guilty.)

B. (If you find the defendant is not guilty of _____, you shall consider if he is guilty of an attempt to commit the crime of _____.)

To establish this charge each of the following claims must be proved:

1. That the defendant performed an act toward the commission of the crime of _____ (but failed to consummate its commission);
2. That the defendant did so with the intent to commit the crime of _____; and
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

The elements of _____ are (set forth in Instruction No. ____) (as follows: _____).

Notes on Use

For authority see K. S. A. 21-3301 (1) (1971 Supp.). An attempt to commit a class A felony is a class C felony. An attempt to commit a felony other than a class A felony is a class E felony. An attempt to commit a misdemeanor is a class C misdemeanor.

If the information charges an attempted crime, omit paragraph B and the bracketed phrase "but failed to consummate its commission." However, if the attempted crime is submitted as a lesser included offense, omit paragraph A and include such bracketed phrase. The phrase is necessary in the latter situation so that the jury can draw a clear and meaningful distinction between a completed offense on the one hand and an attempted offense on the other.

If the attempted crime is submitted as a lesser included offense, PIK 68.09, Lesser Included Offense, should be given.

The elements of the applicable substantive crime should be referred to or set forth in the concluding portion of the instruction.

PATTERN INSTRUCTIONS FOR KANSAS

Comment

A problem inherent in the law of attempts concerns the point when criminal liability attaches for the overt act. On the one hand mere acts of preparation are insufficient while, on the other, if the accused has performed the final act necessary for the completion of the crime, he could be prosecuted for the crime intended and not for an attempt. The overt act lies somewhere between these two extremes and each case must depend upon its own particular facts. For cases related to this subject see *State v. Bereman*, 177 Kan. 141, 276 P. 2d 364 (1954), *State v. McCarthy*, 115 Kan. 583, 224 P. 44 (1924), *State v. Visco*, 183 Kan. 562, 331 P. 2d 318 (1958), *State v. Borserine*, 184 Kan. 405, 337 P. 2d 697 (1959), *State v. Davis*, 199 Kan. 33, 427 P. 2d 606 (1967) and 21 Am. Jur. 2d, Attempts and Solicitations, Sections 110 and 111.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 55.02 ATTEMPT—IMPOSSIBILITY OF
COMMITTING OFFENSE, NO DEFENSE**

The Committee recommends that no separate instruction be given.

Notes on Use

K. S. A. 21-3301 (2) (1971 Supp.) provides that it shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible. The Committee believes that PIK 55.01 is sufficient without the injection of impossibility of committing the offense into the case. For a discussion of factual impossibility see *State v. Visco*, 183 Kan. 562, 331 P. 2d 318 (1958).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 55.03 CONSPIRACY

The defendant is charged with the crime of conspiracy. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant agreed with (another person) (others) to (commit) (assist in the commission of) the crime of _____;
2. That the defendant did so agree with the intent that the crime of _____ be committed;
3. That the defendant or any party to the agreement acted in furtherance of the agreement by _____; and
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

The definition of _____, the crime charged to be the subject of the conspiracy, is as follows:

Notes on Use

For authority see K. S. A. 21-3302 (1) (1971 Supp.). Conspiracy to commit a class A felony is a class C felony. Conspiracy to commit a felony other than a class A felony is a class E felony. A conspiracy to commit a misdemeanor is a class C misdemeanor.

This instruction should be given in all crimes of conspiracy along with PIK 55.04, Conspiracy—Withdrawal as a Defense, when the evidence warrants its submission. The alleged overt act should be described in the blank contained in claim number three.

The statutory definition of the applicable crime should be set forth in the concluding portion of the instruction.

Comment

In the trial of a conspiracy case a court may become involved with the conspiracy evidence rule. Under this rule statements and acts of a co-conspirator said or done outside the presence of the other are admissible in evidence as an exception to the hearsay rule.

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In *State v. Borserine*, 184 Kan. 405, 337 P. 2d 697 (1959), the conspiracy evidence rule is discussed in depth. Several cases have been decided since *Borserine* and the conspiracy evidence rule has been recognized by statutory enactment. See *State v. Trotter*, 203 Kan. 31, 453 P. 2d 93 (1969); *State v. Paxton*, 201 Kan. 353, 440 P. 2d 650 (1968); *State v. Adamson*, 197 Kan. 486, 419 P. 2d 860 (1966); *State v. Shaw*, 195 Kan. 677, 408 P. 2d 650 (1965); *State v. Turner*, 193 Kan. 189, 392 P. 2d 863 (1964); and K. S. A. 60-460 (*i*).

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**PIK 55.04 CONSPIRACY—WITHDRAWAL
AS A DEFENSE**

It is a defense to a charge of conspiracy that the defendant in good faith withdrew from the agreement and communicated the fact of such withdrawal to any party to the agreement before any party acted in furtherance of it.

Notes on Use

For authority see K. S. A. 21-3302 (2) (1971 Supp.).

CHAPTER 56.00

CRIMES AGAINST PERSONS

	PIK Number
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Murder in the First Degree—Felony Murder	56.02
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PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.01 MURDER IN THE FIRST DEGREE

The defendant is charged with the crime of murder in the first degree. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant killed _____;
2. That such killing was done maliciously;
3. That it was done wilfully;
4. That it was done deliberately and with premeditation; and
5. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3401 (1971 Supp.). Murder in the first degree is a class A felony.

This instruction should be given where perpetration of felony is not involved. For felony murder instruction, see PIK 56.02, Murder in The First Degree—Felony Murder.

Instructions on definition of terms should be given with this. See PIK 56.04, Homicide Definitions.

Comment

“The words ‘maliciously’ and ‘premeditation’ are not defined in the code, but are to be given the meaning established by the decisions of the Supreme Court of Kansas.” Judicial Council, 1968: Following K. S. A. 21-3402 (1971 Supp.).

“In a homicide case, the corpus delicti is the body or substance of the crime which consists of the killing of the decedent by some criminal agency, and is established by proof of two facts, that one person was killed, and that another person killed him.” Such may be proved by circumstantial evidence. *State v. Doyle*, 201 Kan. 469, 441 P. 2d 846 (1968).

A helpful discussion of murder and manslaughter is found in *State v. Jensen*, 197 Kan. 427, 417 P. 2d 273 (1966). There it is said, “At the common law, homicides were of two classes only;

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those done with malice aforethought, either express or implied and called murder, and those done without malice aforethought and called manslaughter." This distinction is retained in the present Kansas Criminal Code.

The Court is not required to instruct on some lesser degree of the crime charged if the evidence excludes guilt in a lesser degree. *State v. McDermott*, 202 Kan. 399, 499 P. 2d 545 (1969).

In a homicide prosecution where the evidence presents circumstances from which a lower grade of homicide might be inferred, the Court must instruct in such lower degree. *State v. Brooker*, 200 Kan. 166, 434 P. 2d 801 (1967).

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**PIK 56.02 MURDER IN THE FIRST DEGREE—
FELONY MURDER**

The defendant is charged with the crime of murder in the first degree. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant killed _____;
2. That such killing was done maliciously;
3. That it was done in (the commission of) (attempting to commit) _____, a felony; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3401 (1971 Supp.). Murder in the first degree is a class A felony. Instruction on maliciously should be given with this. See PIK 56.04, Homicide Definitions.

Comment

See Comment, PIK 56.01, Murder in the First Degree. A discussion of felony murder is found in *State v. Moffitt*, 199 Kan. 514, 431 P. 2d 879 (1967). There it is declared that the felony in perpetration must be inherently dangerous to human life. There must be a direct causal connection between the commission of a felony and the homicide.

The case also holds that the term "other felony" as used in the former law applies to new felonies created by statute, the act not previously being felonious, as well as to common law felonies; that killing in perpetration or attempt to perpetrate a felony is the statutory equivalent for the deliberation and premeditation essential to murder in the first degree and that the felony in perpetration must be some felony collateral to the homicide and not those acts toward deceased which are necessary and constitute elements of homicide itself.

In *State v. Turner*, 193 Kan. 189, 392 P. 2d 863 (1964) there is cited with approval *State v. Roselli*, 109 Kan. 33, 198 P. 195 (1921), holding that the essentials for murder in the first degree of delibera-

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tion and premeditation may be established by proof of murder committed in perpetrating a felony, without pleading the particulars, under a charge in the first degree in the common form. To the same effect is *Allen v. State*, 199 Kan. 147, 427 P. 2d 598 (1967).

Although the note to the murder statutes state that the present code makes no substantive change in the law, it appears that the statute (K. S. A. 1971 Supp. 21-3401) now makes malicious killing a separate essential element of felony murder and one not supplied by proof that the killing was committed in the perpetration or attempt to perpetrate a felony.

A felony is a crime punishable by death or by imprisonment in any state or penal institution. (K. S. A. 21-3105 (1) (1971 Supp.).

In *State v. Moffitt*, 199 Kan. 514, 431 P. 2d 879 (1967) definition by statute is recognized and our Court said:

“Whether a criminal offense is a felony under our statutes is determined by the sentence which might lawfully be imposed, and not by the sentence in a particular case.”

Under the provisions of K. S. A. 21-3205 (2) (1971 Supp.) a person who aids is also criminally responsible for any other crime committed in pursuance of the intended crime if such other crime was reasonably foreseeable as a probable consequence.

PIK 56.03 MURDER IN THE SECOND DEGREE

A. (The defendant is charged with the crime of murder in the second degree. The defendant pleads not guilty.)

B. (If you find the defendant is not guilty of murder in the first degree, you shall consider if he is guilty of murder in the second degree.)

To establish this charge each of the following claims must be proved:

1. That the defendant killed _____;
2. That such killing was done maliciously; and
3. That this act was done on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3402 (1971 Supp.). Murder in the second degree is a class B felony.

If the information charges murder in the second degree, omit paragraph B; but if the information charges murder in the first degree, omit paragraph A.

Instruction on Maliciously should be given with this. See PIK 56.04, Homicide Definitions.

Comment

See Comment PIK 56.01, Murder in the First Degree.

PIK 56.04 HOMICIDE DEFINITIONS

(a) *Maliciously*

Maliciously means wilfully doing a wrongful act without just cause or excuse.

For collection of cases dealing with definition of this term, see *State v. Jensen*, 197 Kan. 427, 417 P. 2d 273 (1966).

(b) *Deliberately and with premeditation*

Deliberately and with premeditation means to have thought over the matter beforehand.

For authority, see *State v. McGaffin*, 36 Kan. 315, 13 P. 560 (1887) in which it is said: Premeditation means "that there was a design or intent before the act; that is, that the accused planned, contrived and schemed beforehand to kill Sherman." See also *State v. Johnson*, 92 Kan. 443, 140 P. 839 (1914).

(c) *Wilfully*

Wilfully means conduct that is purposeful and intentional and not accidental.

For authority, see K. S. A. 21-3201 (2) (1971 Supp.).

(d) *Intentionally*

Intentionally means conduct that is purposeful and wilful and not accidental.

For authority, see K. S. A. 21-3201 (2) (1971 Supp.).

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(e) *Heat of passion*

“Heat of passion” means any intense or vehement emotional excitement which was spontaneously provoked from the circumstances.

For authority, see *State v. McDermott*, 202 Kan. 399, 449 P. 2d 545 (1969) and *State v. Jones*, 185 Kan. 235, 341 P. 2d 1042 (1959).

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PIK 56.05 VOLUNTARY MANSLAUGHTER

A. (The defendant is charged with the crime of voluntary manslaughter. The defendant pleads not guilty.)

B. (If you find the defendant is not guilty of murder in the second degree then you shall consider if he is guilty of voluntary manslaughter.

To establish this charge, each of the following claims must be proved:

1. That the defendant killed _____;
2. That it was done intentionally;
3. That it was done (upon a sudden quarrel) (in the heat of passion); and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3403 (1971 Supp.). Voluntary manslaughter is a class C Felony.

If the information charges Voluntary Manslaughter, omit paragraph B; but if the information charges a higher degree, omit paragraph A.

Instructions on Intentionally and Heat of Passion should be given with this. See PIK 56.04, Homicide Definitions.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.06 INVOLUNTARY MANSLAUGHTER

The defendant is charged with the crime of involuntary manslaughter. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant unintentionally killed _____;
2. That it was done while in the commission of
(a) (State name of unlawful act.)
or
(b) A lawful act in an unlawful manner in
(State facts constituting unlawful manner.)
or
(c) A lawful act in a wanton manner in
(State facts constituting wantonness.)
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3404 (1971 Supp.).

Involuntary manslaughter is a class E Felony.

In the blank space in Item 2 (a) there should be inserted the unlawful act which provides the basis for the prosecution. The statute which creates the offense defines what constitutes an "unlawful act" and includes "any act which is prohibited by a statute of the United States or the State of Kansas, or an ordinance of any city within the state which statute or ordinance is enacted for the protection of human life or safety." This would include misdemeanors such as, operating a vehicle while under the influence of intoxicating liquor, K. S. A. 8-530 (1971 Supp.), in driving a vehicle on a highway at a speed greater than reasonable and prudent under the conditions there existing, K. S. A. 8-532 (1971 Supp.) and the like. Appropriate instructions should be given as to what is essential to constitute such basic unlawful act.

PATTERN INSTRUCTIONS FOR KANSAS

Comment

In *State v. Yowell*, 184 Kan. 352, 336 P. 2d 841 (1959) it was held that where the evidence warrants it, the Court is required to also instruct on negligent homicide (now vehicular homicide, K. S. A. 21-3405 [1971 Supp.]). See PIK 56.07, Vehicular Homicide. Other cases are cited therein dealing with the obligation to instruct on the lesser included offense of driving while under the influence of intoxicating liquor, (*State v. Gibler*, 182 Kan. 578, 322 P. 2d 829 [1958], reckless driving, (*State v. Champ*, 172 Kan. 737, 242 P. 2d 1070 [1952]) and others.

In *State v. Yowell*, supra it is that "it is proper to include in the information allegations setting forth the facts, relating to penal infractions of the law regulating traffic on the highway relied on as the proximate cause of death."

The Court must determine as a matter of law whether the unlawful act relied upon involves a statute or ordinance enacted for the protection of human life or safety. *State v. Brooks*, 187 Kan. 46, 354 P. 2d 89 (1960).

The statutory definition is similar to the common law definition. *State v. Bailey*, 107 Kan. 637, 193 P. 354 (1920).

The statutory basis for items 2 (b) and (c) apparently has its origin in what was formerly G. S. 1949, 21-405, where homicides were deemed excusable in cases where death resulted "in lawfully correcting a child, apprentice, servant, or in doing any other act by lawful means, with the usual and ordinary caution and without unlawful intent."

Comment on the doing of a lawful act in a wanton or unlawful manner (with unlawful intent) is found in *State v. Brecount*, 82 Kan. 195, 107 P. 763 (1910), where a fireman participated in driving a fire wagon through congested traffic knowing that the run was on a false alarm. The Court said whether the act was lawful depended on whether it was done with a lawful intent, and under the particular facts, it was the intent which made the act unlawful.

Wanton conduct is defined elsewhere in the Criminal Code. See K. S. A. 21-3201 (3) (1971 Supp.). See also PIK 53.00, Wanton Defined.

PIK 56.07 VEHICULAR HOMICIDE

The defendant is charged with the crime of vehicular homicide.

To establish this charge, each of the following claims must be proved:

1. That _____ was killed by the operation of an (automobile) (airplane) (motorboat) (other motor vehicle);
2. That the defendant operated such vehicle in a manner which constituted a substantial deviation from the standard of care which a reasonable person would observe under the same circumstances;
3. That the defendant operated such vehicle in a manner which created an unreasonable risk of injury to the person or property of another; and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3405 (1971 Supp.).

Vehicular homicide is a class A misdemeanor.

This section shall be applicable only when death of the injured person ensues within one year after the act causing death.

The gravamen of the offense is negligence. Criminal intent, that is, wilfulness or wantonness is excluded as an essential element under K. S. A. 21-3201 (1) (1971 Supp.).

PIK 56.08 ASSISTING SUICIDE

The defendant is charged with the crime of Assisting Suicide. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally advised, encouraged or assisted _____ in the taking of his own life; and
2. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3406 (1971 Supp.).
Assisting Suicide is a class E Felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.09 UNINTENDED VICTIM

Where a homicidal act is directed against one other than the person killed, the responsibility of the actor is exactly as it would have been had the act been completed against the intended victim.

Notes on Use

For authority, see *State v. Moffitt*, 199 Kan. 514, 431 P. 2d 879 (1967).

This instruction should be given in cases where there was an unintended victim, such as in cases of mistaken identity or where a bystander is killed.

PIK 56.10 CRIMINAL ABORTION

The defendant is charged with the crime of Criminal Abortion.

The defendant pleads not guilty. To establish this charge, each of the following must be proved:

1. That the defendant terminated the pregnancy of _____;
2. That such termination was other than by a live birth;
3. That such termination was purposeful and unjustifiable; and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Pregnancy means that condition of a female from the date of conception to the birth of her child.

Notes on Use

For authority, see K. S. A. 21-3407 (1) (1971 Supp.).
Criminal Abortion is a class D felony.

**PIK 56.11 CRIMINAL ABORTION—
JUSTIFICATION**

Abortion is justified when performed by a person licensed to practice medicine and surgery and he believes there is substantial risk that a continuance of the pregnancy would impair the physical or mental health of the mother, or that the child would be born with physical or mental defect, or that the pregnancy resulted from rape, incest or other felonious intercourse; and

(three persons licensed to practice medicine and surgery one of whom may be the person performing the abortion, have certified in writing their belief in the justifying circumstances, and have filed such certificate prior to the abortion in the hospital licensed by the state board of health and accredited by the joint commission on accreditation of hospitals where it is to be performed, or in such other place as may be designated by law);

or

(an emergency exists which requires that such abortion be performed immediately in order to preserve the life of the mother.)

As used in this instruction, illicit intercourse with a female under the age of 16 years is deemed felonious.

Notes on Use

For authority, see K. S. A. 21-3407 (2) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

Comment

The word "unjustifiable" is not defined in the statute although it is included as an element of the offense.

The Committee questions whether or not there may be justification for an abortion in addition to those provisions pertaining to a person licensed to practice medicine and surgery as set out in paragraph (2).

Without a definition of the word "unjustifiable," it appears to be vague and uncertain.

PIK 56.12 ASSAULT

The defendant is charged with the crime of Assault. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (threatened) (attempted to do) bodily harm to _____;
2. That he had apparent ability to cause such bodily harm;
3. That defendant's conduct resulted in _____ being in immediate apprehension of bodily harm; and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

No bodily contact is necessary.

Notes on Use

For authority, see K. S. A. 21-3408 (1971 Supp.).
Assault is a class C misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.13 ASSAULT OF A LAW ENFORCEMENT OFFICER

The defendant is charged with the crime of Assault of a Law Enforcement Officer. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (threatened) (attempted to do) bodily harm to _____;
 2. That he had apparent ability to cause such bodily harm;
 3. That defendant's conduct resulted in _____ being in immediate apprehension of bodily harm;
 4. That _____ was a uniformed or properly identified (state) (county) (city) law enforcement officer;
 5. That _____ was engaged in the performance of his duty; and
 6. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.
- No bodily contact is necessary.

Notes on Use

For authority, see K. S. A. 21-3409 (1971 Supp.).

Assault of a law enforcement officer is a class A misdemeanor.

PIK 56.14 AGGRAVATED ASSAULT

The defendant is charged with the crime of Aggravated Assault. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (threatened) (attempted to do) bodily harm to _____;
2. That he had apparent ability to cause such bodily harm;
3. That defendant's conduct resulted in _____ being in immediate apprehension of bodily harm;
4. (a) That the defendant used a deadly weapon;
or
(b) That the defendant was disguised in any manner designed to conceal identity;
or
(c) That the defendant did so with intent to commit _____, a felony; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.
No bodily contact is necessary.

Notes on Use

For authority, see K. S. A. 21-3410 (1971 Supp.).

Assault as defined by K. S. A. 21-3408 (1971 Supp.) is a lesser included offense and where the evidence warrants it, instruction on Assault should be included. See PIK 56.12, Assault. Aggravated Assault is a Class D felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.15 AGGRAVATED ASSAULT ON A LAW ENFORCEMENT OFFICER

The defendant is charged with the crime of Aggravated Assault on a Law Enforcement Officer. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (threatened) (attempted to do) bodily harm to _____;
2. That he had apparent ability to cause such bodily harm;
3. That defendant's conduct resulted in _____ being in immediate apprehension of bodily harm;
4. That _____ was a uniformed or properly identified (state) (county) (city) law enforcement officer;
5. That _____ was engaged in the performance of his duty;
6. (a) That the defendant used a deadly weapon;
or
(b) That the defendant was disguised in any manner designed to conceal identity;
or
(c) That the defendant did so with intent to commit _____, a felony; and
7. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.
No bodily contact is necessary.

Notes on Use

For authority, see K. S. A. 21-3411 (1971 Supp.).

Assault of a Law Enforcement Officer, as defined by K. S. A. 21-

PATTERN INSTRUCTIONS FOR KANSAS

3409 (1971 Supp.) is a lesser included offense and where the evidence warrants it, PIK 56.13, Assault of a Law Enforcement Officer should be given.

Aggravated Assault on a Law Enforcement Officer is a Class C felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.16 BATTERY

The defendant is charged with the crime of Battery. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally touched or applied force to the person of _____.
2. That it was done in a rude, insolent or angry manner; and
3. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3412 (1971 Supp.).
Battery is a class B misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.17 BATTERY AGAINST A LAW
ENFORCEMENT OFFICER**

The defendant is charged with the crime of Battery Against a Law Enforcement Officer. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally touched or applied force to the person of _____.
2. That it was done in a rude, insolent or angry manner;
3. That _____ was a uniformed or properly identified (state) (county) (city) law enforcement officer;
4. That _____ was engaged in the performance of his duty; and
5. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3413 (1971 Supp.).

Battery against a law enforcement officer is a class A misdemeanor.

PIK 56.18 AGGRAVATED BATTERY

The defendant is charged with the crime of Aggravated Battery. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally touched or applied force to the person of _____;
2. That it was done with intent to injure _____ (or another) and
3. That it inflicted great bodily harm upon _____;
or
that it caused a (disfigurement to) (dismemberment of) his person;
or
that it was done with a deadly weapon;
or
that it was done in a manner whereby (great bodily harm) (disfigurement) (dismemberment) or (death) could have been inflicted; and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3414 (1971 Supp.).
Aggravated Battery is a class C felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.19 AGGRAVATED BATTERY AGAINST A
LAW ENFORCEMENT OFFICER**

The defendant is charged with the crime of Aggravated Battery Against a Law Enforcement Officer. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally touched or applied force to the person of _____;
2. That it was done with intent to injure _____ (or another); and
3. That it inflicted great bodily harm upon _____;
or
that it caused a (disfigurement to) (dismemberment of) his person;
or
that it was done with a deadly weapon;
or
that it was done in a manner whereby (great bodily harm) (disfigurement) (dismemberment) or (death) could have been inflicted;
4. That _____ was a uniformed or properly identified (state) (county) (city) law enforcement officer.
5. That _____ was engaged in the performance of his duty; and
6. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3415 (1971 Supp.).

Aggravated Battery Against a Law Enforcement Officer is a class B felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.20 UNLAWFUL INTERFERENCE WITH
A FIREMAN OR FIRE FIGHTER**

The defendant is charged with the crime of Unlawful Interference With a Fireman or Fire Fighter. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. (a) That the defendant intentionally (threatened) (attempted to do) bodily harm to _____;
(b) That he had apparent ability to cause such bodily harm;
(c) That the defendant's conduct resulted in _____ being in immediate apprehension of bodily harm;
or
that the defendant knowingly and intentionally (interfered with) _____
or
that the defendant knowingly and intentionally (obstructed) (interfered with) (impeded) the efforts of _____ to reach the location of a fire.
2. That _____ was a fireman or fire fighter engaged in the performance of his duties; and
3. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3416 (1971 Supp.).

Unlawful Interference With a Fireman or Fire Fighter is a class B misdemeanor.

PIK 56.21 ATTEMPTED POISONING

The defendant is charged with the crime of Attempted Poisoning.

The defendant pleads not guilty. To establish this charge, each of the following must be proved:

1. That the defendant mingled poison with any food, drink, or medicine;
2. That this was done with intent to kill or injure any human being; and
3. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3417 (1971 Supp.).

Attempting Poisoning is a class C felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.22 PERMITTING DANGEROUS ANIMAL
TO BE AT LARGE**

The defendant is charged with the crime of Permitting a Dangerous Animal to be at large. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was the owner or custodian of an animal of dangerous or vicious nature;
2. That the defendant knew of such nature;
3. That the defendant (permitted the animal to go at large) or (kept such animal without taking ordinary care to restrain it); and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3418 (1971 Supp.).

Permitting a dangerous animal to be at large is a class B misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.23 TERRORISTIC THREAT

The defendant is charged with the crime of terroristic threat. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant threatened to commit violence;
2. That such threat was communicated with the intent (to terrorize _____) (to cause the evacuation of a [building] [place of assembly] [facility of transportation]);

or

That such threat was communicated in wanton disregard of the risk of causing (terror to _____) (the evacuation of a [building] [place of assembly] [facility of transportation]); and

3. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3419 (1971 Supp.).

Terroristic Threat is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.24 KIDNAPPING

The defendant is charged with the crime of kidnapping. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (took) or (confined) _____ by (force) (threat) or (deception);
2. That it was done with intent to hold such person:
 - (a) for ransom or as a shield or hostage;
or
 - (b) to facilitate flight or the commission of any crime;
or
 - (c) to inflict bodily injury or to terrorize the victim, or another;
or
 - (d) to interfere with the performance of any governmental or political function; and
3. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3420 (1971 Supp.).

Kidnapping is a class B felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.25 AGGRAVATED KIDNAPPING

The defendant is charged with the crime of Aggravated Kidnapping. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (took) or (confined) _____ by (force) (threat) or (deception);
2. That it was done with intent to hold such person:
 - (a) for ransom or as a shield or hostage;
or
 - (b) to facilitate flight or the commission of any crime;
or
 - (c) to inflict bodily injury or to terrorize the victim, or another;
or
 - (d) to interfere with the performance of any governmental or political function;
3. That bodily harm was inflicted upon _____; and
4. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3421 (1971 Supp.).
Aggravated Kidnapping is a class A felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.26 INTERFERENCE WITH PARENTAL
CUSTODY**

The defendant is charged with the crime of Interference With Parental Custody. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (took) (carried away) (decoyed or enticed away) _____;
2. That _____ was under the age of 14 years;
3. That this was done with the intent to (detain) (conceal) such child from its (parents) (guardian) (person having the lawful charge of such child); and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3422 (1971 Supp.).

Interference with parental custody is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.27 INTERFERENCE WITH THE CUSTODY
OF A COMMITTED PERSON**

The defendant is charged with the crime of Interference with the Custody of a Committed Person. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was a person committed to the custody of _____;
2. That the defendant knowingly (took) (enticed) _____ away from the control of his custodian without privilege to do so; and
3. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3423 (1971 Supp.).

Interference with custody of a committed person is a class A misdemeanor.

Comment

The status of a committed person is usually a question of law to be determined by the Court.

PIK 56.28 UNLAWFUL RESTRAINT

The defendant is charged with the crime of Unlawful Restraint. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly and without legal authority restrained _____ so as to interfere substantially with his liberty; and
2. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

(A merchant, his agent or employee, who has probable cause to believe that a person has [actual possession of] [has wrongfully taken] [is about to wrongfully take] merchandise from his mercantile establishment, may detain such person [on the premises] [in the immediate vicinity thereof] in a reasonable manner and for a reasonable period of time for the purpose of investigating the circumstances of such possession).

Notes on Use

For authority, see K. S. A. 21-3424 (1971 Supp.).
Unlawful Restraint is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.29 MISTREATMENT OF A CONFINED PERSON

The defendant is charged with the crime of Mistreatment of a Confined Person. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was (a law enforcement officer) (a person in charge of or employed by the owner or operator of [a correctional institution] [a hospital] [a nursing home]);
2. That the defendant (intentionally abused) (neglected) (ill-treated) _____;
3. That _____ was (physically disabled) (mentally ill) (detained or confined involuntarily); and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3425 (1971 Supp.).

Mistreatment of a confined person is a class A misdemeanor.

PIK 56.30 ROBBERY

The defendant is charged with the crime of Robbery. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant took property from the (person) (presence) of _____;
2. That such taking was by (threat of bodily harm to _____) (force); and
3. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3426 (1971 Supp.).
Robbery is a class C felony.

Comment

In paragraph two, insert the name of the person from whom the property was taken, or the person threatened with bodily harm as shown by the Information.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.31 AGGRAVATED ROBBERY

The defendant is charged with the crime of Aggravated Robbery. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant took property from the (person) (presence) of _____;
2. That such taking was by (threat of bodily harm to _____) (force);
3. That the defendant (was armed with a deadly weapon) (inflicted bodily harm on any person in the course of such conduct); and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3427 (1971 Supp.).
Aggravated Robbery is a class B felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 56.32 BLACKMAIL

The defendant is charged with the crime of Blackmail. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant by (verbal) (written) (printed) communication
(a) (accused) (threatened to accuse) _____
(of a crime) (conduct which would tend to disgrace or degrade him);
or
(b) (exposed) (threatened to expose) any (fact) (report) (information) concerning _____, which would in any way subject him to the ridicule or contempt of society;
2. That the defendant threatened that such (accusation) (exposure) would be communicated to a third person or persons unless _____ (paid or delivered to the defendant or some other person some thing of value) (did some act against his will);
3. That the defendant did so with the intent to ([extort] [gain] some thing of value from _____) (compel _____ to do an act against his will.)
4. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3428 (1971 Supp.).
Blackmail is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.33 DISCLOSING INFORMATION
OBTAINED IN PREPARING
TAX RETURNS**

The defendant is charged with the crime of disclosing information obtained in preparing tax returns. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was a . . . (person, firm, corporation, association, partnership, joint venture or any employee therefor) . . . engaged (in the business of the preparation of federal or state income tax returns) (in the business of assisting taxpayers in preparing federal or state income tax returns).
2. That defendant disclosed or used for commercial purposes any information obtained in assisting taxpayers in the preparation of federal or state income tax returns.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction, a person is engaged in the business of preparing federal or state income tax returns or in the business of assisting taxpayers in preparing such returns if he advertises or gives publicity to the effect that he prepares or assists others in the preparation of such returns or prepares or assists others in the preparation of such returns for compensation.

Notes on Use

For authority, see K. S. A. 21-3430 (1971 Supp.). Disclosing information obtained in preparing tax returns is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

Comment

The Committee suggests that this offense would more properly have been included in chapter 62.00, Crimes Involving Violations of Personal Rights, rather than in chapter 56.00, Crimes Against Persons.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 56.34 DEFENSE TO DISCLOSING
INFORMATION OBTAINED IN
PREPARING TAX RETURNS**

It is a defense to the charge of disclosing information obtained in preparing tax returns that the defendant disclosed such information (with the separate written consent of the taxpayer) (under a state or federal tax law expressly authorizing him to do so) (as a necessary element in the preparation of the tax return) (pursuant to a court order).

Notes on Use

For authority, see K. S. A. 21-3430 (1971 Supp.). In addition to the above defense, K. S. A. 21-3430 (1971 Supp.) provides that contacting a taxpayer to obtain his written consent to disclosure does not violate this statute.

CHAPTER 57.00

SEX OFFENSES

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PATTERN INSTRUCTIONS FOR KANSAS

PIK 57.01 RAPE

The defendant is charged with the crime of rape.
The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant had sexual intercourse with _____;

2. That _____ was not the defendant's wife;

3. That the act of sexual intercourse was committed without the consent of _____ under circumstances when

her resistance was overcome by (force) (fear); and

or

she was (unconscious) (physically powerless to resist); and

or

she was incapable of giving her consent because of mental deficiency or disease, which condition was known by the defendant or was reasonably apparent to him; and

or

her resistance was prevented by the effect of any alcoholic liquor, narcotic, drug or other substance administered to her by the defendant or another for the purpose of preventing her resistance, unless she voluntarily consumed or allowed the administration of the substance with knowledge of its nature; and

4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

PATTERN INSTRUCTIONS FOR KANSAS

Notes on Use

For authority see K. S. A. 21-3502 (1971 Supp.). Rape is a class C felony.

The statute provides four categories where the woman's resistance is overcome. The appropriate category should be selected.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 57.02 SEXUAL INTERCOURSE—DEFINITION

Sexual intercourse means any penetration of the female sex organ by the male sex organ.

Notes on Use

For authority see K. S. A. 21-3501 (1) (1971 Supp.). This instruction should be given in all cases of rape.

Comment

The sufficiency of penetration is given an exhaustive treatment in *State v. Ragland*, 173 Kan. 265, 246 P. 2d 276. Your attention is further directed to *State v. Cross*, 144 Kan. 368, 59 P. 2d 35 and 44 Am. Jur., Rape, Section 3.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 57.03 RAPE, CREDIBILITY OF
PROSECUTRIX'S TESTIMONY**

The Committee recommends that no separate instruction be given.

Comment

The Committee believes the credibility of witnesses instruction or PIK 52.09. Credibility of witnesses adequately covers the testimony of a prosecutrix and that this is a matter for proper argument of counsel. Your attention is directed to *State v. Loomer*, 105 Kan. 410, 184 P. 723.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 57.04 RAPE, CORROBORATION NOT
BEING NECESSARY**

The Committee recommends that no separate instruction be given.

Comment

At common law the evidence of the prosecutrix was sufficient to sustain a conviction without corroboration. This was true even though the prosecutrix was an infant. Several states have modified the common law and require some corroboration to sustain a conviction. Kansas has not modified the common law and a conviction can be had without corroboration. The committee believes that in the absence of statutory enactment the issue of corroboration should not be injected into the case. See *State v. Tinkler*, 72 Kan. 262, 83 P. 830 and 44 Am. Jur., Rape, Section 106.

PIK 57.05 INDECENT LIBERTIES WITH A CHILD

The defendant is charged with the crime of indecent liberties with a child. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant had sexual intercourse with _____;

or

That the defendant submitted to fondling or touching of (his) (her) person by _____, with intent to arouse or to satisfy the sexual desires of either or both;

or

That the defendant fondled or touched the person of _____, with intent to arouse or to satisfy the sexual desires of either or both;

2. That _____ was then a child under the age of 16 years and not the spouse of the defendant; and

3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3503 (1971 Supp.). Indecent liberties with a child is a class C felony. This section applies to the one who submits to as well as performs the indecent misconduct with a child. If claim number one is based on sexual intercourse, PIK 57.02, Sexual Intercourse—Definition, should be given.

Comment

It is no defense that the defendant reasonably believed that the child was over the age of sixteen. This subject is covered in K. S. A. 21-3202 (2) (1971 Supp.).

PIK 57.06 INDECENT LIBERTIES WITH A WARD

The defendant is charged with the crime of indecent liberties with a ward. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant had sexual intercourse with _____;

or

That the defendant fondled or touched the person of _____, with the intent to arouse or to satisfy the sexual desires of either or both;

or

That the defendant submitted to fondling or touching of (his) (her) person by _____, with intent to arouse or to satisfy the sexual desires of either or both;

2. That _____ was then a child under the age of 16 years;
3. That defendant was the (guardian) (proprietor) (employee) of a foster home, orphanage, or other public or private institution for the care and custody of minor children, to whose charge such child was committed or entrusted by any court, probation officer, department of social welfare or other agency acting under the color of law; and
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

PATTERN INSTRUCTIONS FOR KANSAS

Notes on Use

For authority see K. S. A. 21-3504 (1971 Supp.). Indecent liberties with a ward is a class B felony. If claim number one is based on sexual intercourse, PIK 57.02, Sexual Intercourse—Definition, should be given.

PIK 57.07 SODOMY

The defendant is charged with the crime of sodomy. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant had (oral) (anal) sexual relations with _____, who was not (his wife) (her husband) or (a consenting adult of the opposite sex);

or

That the defendant had (oral) (anal) sexual relations with an animal;

or

That the defendant had sexual relations with an animal;

2. That there was actual penetration; and
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3505 (1971 Supp.). Sodomy is a class B misdemeanor. Sodomy between a husband and wife or between consenting adult members of the opposite sex is not a crime.

Comment

The words "copulation" and "coitus" were not included in the elements of sodomy for the reason that each mean sexual intercourse. Instead the term "sexual relations" was substituted to the end that the jury would not be confused. Sexual intercourse was not substituted as it has statutory reference to other sexual offenses.

PIK 57.08 AGGRAVATED SODOMY

The defendant is charged with the crime of aggravated sodomy. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant had (oral) (anal) sexual relations with _____, who was not (his wife) (her husband) (a consenting adult of the opposite sex);

or

That the defendant had (oral) (anal) sexual relations with an animal;

or

That the defendant had sexual relations with an animal;

2. That there was actual penetration;
3. That the defendant (used force or threat of force) (inflicted bodily harm upon the victim during the commission of the act); and

or

That the victim was a child under the age of 16 years; and

4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3506 (1971 Supp.). Aggravated sodomy is a class B felony.

Comment

See comment under PIK 57.07, Sodomy.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 57.09 ADULTERY

The defendant is charged with the crime of adultery. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant had sexual intercourse with _____;

2. That the defendant was then married to a person other than _____; and

or

That the defendant was not then married and knew that _____ was married; and

3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3507 (1971 Supp.). Adultery is a class C misdemeanor. PIK 57.02, Sexual Intercourse—Definition, should be given.

PIK 57.10 LEWD AND LASCIVIOUS BEHAVIOR

The defendant is charged with the crime of lewd and lascivious behavior. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant performed an act of (sexual intercourse) (sodomy) with (_____) (an animal) with knowledge or reasonable anticipation that the participants were being viewed by others; and

or

That the defendant exposed (his) (her) sex organ in the presence of a person not (his) (her) spouse and who had not consented thereto, with the intent to arouse or gratify the sexual desires of the defendant or another; and

2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3508 (1971 Supp.). Lewd and lascivious behavior is a class B misdemeanor. If the act under claim number one is sexual intercourse, PIK 57.02, Sexual Intercourse—Definition, should be given. If the act under claim number one is sodomy, PIK 57.18 (b), Sex Offenses—Definitions, should be given.

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PIK 57.11 ENTICEMENT OF A CHILD

The defendant is charged with the crime of enticement of a child. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (invited) (persuaded) (attempted to persuade) _____ to enter a (vehicle) (building) (secluded place) with the intent to commit an act of (taking indecent liberties with a child) (sodomy) (lewd and lascivious behavior) upon or with the person of _____;
2. That _____ was then a child under the age of 16 years; and
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction the act of (taking indecent liberties with a child) (sodomy) (lewd and lascivious behavior) means: _____.

Notes on Use

For authority see K. S. A. 21-3509 (1971 Supp.). Enticement of a child is a class D felony. The applicable unlawful sexual act as defined in PIK 57.18, Sex Offenses—Definitions, should be added to the concluding part of the above instruction.

Comment

See the Judicial Council comment following K. S. A. 21-3511 (1971 Supp.) which distinguishes the crimes of enticement of a child, indecent solicitation of a child and aggravated indecent solicitation of a child.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 57.12 INDECENT SOLICITATION OF
A CHILD**

The defendant is charged with the crime of indecent solicitation of a child. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (invited) (solicited) _____ to (commit) (submit to) an act of (taking indecent liberties with a child) (sodomy) (lewd and lascivious behavior);
2. That _____ was then under the age of 16 years; and
3. That this act occurred on or about the _____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction the act of (taking indecent liberties with a child) (sodomy) (lewd and lascivious behavior) means: _____.

Notes on Use

For authority see K. S. A. 21-3510 (1971 Supp.). Indecent solicitation of a child is a class A misdemeanor. The applicable unlawful sexual act as defined in PIK 57.18, Sex Offenses—Definitions, should be added to the concluding part of the above instruction.

Comment

See comment in PIK 57.11, Enticement of a Child.

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**PIK 57.13 AGGRAVATED INDECENT
SOLICITATION OF A CHILD**

The defendant is charged with the crime of aggravated indecent solicitation of a child. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (invited) (solicited) _____ to (commit) (submit to) the act of (taking indecent liberties with a child) (sodomy) (lewd and lascivious behavior);
2. That _____ was then a child under the age of 12 years; and
3. That this act occurred on or about the _____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction the act of (taking indecent liberties with a child) (sodomy) (lewd and lascivious behavior) means: _____.

Notes on Use

For authority see K. S. A. 21-3511 (1971 Supp.). Aggravated indecent solicitation of a child is a class E felony. The applicable unlawful sexual act as defined in PIK 57.18, Sex Offenses—Definitions, should be added to the concluding part of the above instruction. The only difference between the crimes of indecent solicitation of a child and aggravated indecent solicitation of a child is in the age of the child.

PIK 57.14 PROSTITUTION

The defendant is charged with the crime of prostitution. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant performed an act of sexual intercourse for hire; and

or

That the defendant (offered) (agreed) to perform an act of (sexual intercourse) (indecent liberties with a child) (sodomy) (lewd and lascivious behavior) for hire; and

2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction the act of (indecent liberties with a child) (sodomy) (lewd and lascivious behavior) means: _____.

Notes on Use

For authority see K. S. A. 21-3512 (1971 Supp.). Prostitution is a class B misdemeanor. If the act under claim number one is sexual intercourse, PIK 57.02, Sexual Intercourse—Definition, should be given and the concluding portion of the instruction should be deleted. If the act is one of the unlawful sexual acts, the applicable definition from PIK 57.18, Sex Offenses—Definitions, should be added to the concluding part of the above instruction.

PIK 57.15 PROMOTING PROSTITUTION

The defendant is charged with the crime of promoting prostitution. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant

(a) (established) (owned) (maintained) (managed) a house of prostitution; and

or

(b) participated in the (establishment) (ownership) (maintenance) (management) of a house of prostitution; and

or

(c) permitted any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution; and

or

(d) procured a prostitute for a house of prostitution; and

or

(e) induced another to become a prostitute; and

or

(f) solicited a patron for a prostitute or for a house of prostitution; and

or

(g) procured a prostitute for a patron; and

or

(h) (procured transportation for) (paid for the transportation of) (transported) a person within this state with the intention of

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assisting or promoting that person's engaging in prostitution; and

or

(*i*) was employed to perform any act of (set out applicable section of (*a*) through (*h*); and

2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3513 (1971 Supp.). Promoting prostitution is a class A misdemeanor. The appropriate category should be selected.

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**PIK 57.16 HABITUALLY PROMOTING
PROSTITUTION**

The defendant is charged with the crime of habitually promoting prostitution. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant promoted prostitution by _____;
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.
3. That prior to that date the defendant had been convicted of promoting prostitution.

Notes on Use

For authority see K. S. A. 21-3514 (1971 Supp.). Habitually promoting prostitution is a class E felony. The applicable category from PIK 57.15, Promoting Prostitution, should be included in claim number one.

PIK 57.17 PATRONIZING A PROSTITUTE

The defendant is charged with the crime of patronizing a prostitute. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly (entered) (remained) in a house of prostitution with the intent to hire a prostitute to engage in (sexual intercourse) (sodomy) (lewd and lascivious behavior); and

or

That the defendant hired a prostitute to engage in (sexual intercourse) (sodomy) (lewd and lascivious behavior) with him; and

2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction the act of (sodomy) (lewd and lascivious behavior) means: _____.

Notes on Use

For authority see K. S. A. 21-3515 (1971 Supp.). Patronizing a prostitute is a class C misdemeanor. If the act is sodomy or lewd and lascivious behavior, the applicable definition of such crime in PIK 57.18, Sex Offenses—Definitions, should be added to the concluding part of the above instruction. If the act is sexual intercourse, the concluding definition should be deleted.

PIK 57.18 SEX OFFENSES—DEFINITIONS

Unlawful sexual acts are defined as follows:

- (a) Indecent liberties with a child. “Indecent liberties with a child” means engaging in either of the following acts with a child under the age of 16: (1) the act of sexual intercourse, or (2) any fondling or touching of the person of either the child or the offender done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender or both.
- (b) Sodomy. “Sodomy” means: (1) having oral or anal sexual relations between persons who are not husband and wife or consenting adult members of the opposite sex, or (2) having oral or anal sexual relations between a person and an animal, or (3) having sexual relations with an animal.
- (c) Aggravated sodomy. “Aggravated sodomy” means sodomy committed under the following circumstances: (1) When force or threat of force is used or where bodily harm is inflicted upon the victim, or (2) when the act is committed with a child under the age of sixteen years.
- (d) Lewd and lascivious behavior. “Lewd and lascivious behavior” means: (1) the commission of the act of sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others, or (2) the exposure of a sex organ in the presence of a person who is not the spouse of the offender or who has not consented thereto with intent to arouse or gratify the sexual desires of the offender or another.

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Notes on Use

For authority see K. S. A. 21-3501 (2) (1971 Supp.), 21-3503 (1971 Supp.), 21-3505 (1971 Supp.), 21-3506 (1971 Supp.) and 21-3508 (1971 Supp.).

CHAPTER 58.00

CRIMES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN

	PIK Number
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PIK 58.01 BIGAMY

The defendant is charged with the crime of bigamy. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant entered into a marriage in Kansas while married to another; and

or

That the defendant entered into a marriage with a person in Kansas knowing that person was the spouse of another; and

or

That the defendant, after marrying in another state or country, cohabited within this state with a spouse while having another spouse living at the time of the cohabitation; and

or

That the defendant, after marrying in another state or country, cohabited within this state with a spouse while knowing such spouse was a spouse of another at the time of the cohabitation; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3601 (1) (1971 Supp.). Bigamy is a class E felony.

Comment

Bigamy, which consists of cohabitation as distinguished from marriage, is covered by K. S. A. 21-3601 (1) (c) (1971 Supp.).

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PIK 58.02 AFFIRMATIVE DEFENSES TO BIGAMY

It is a defense to the charge of bigamy that at the time of the (marriage) (cohabitation) the defendant reasonably believed that the earlier marriage had been dissolved by (death) (divorce) (annulment).

This belief must have seemed reasonable to him at the time.

Notes on Use

For authority see K. S. A. 21-3601 (2) (1971 Supp.). This instruction should be given whenever there is evidence that the defendant believed an earlier marriage was dissolved.

Comment

Difficulty arises from the statutory language "the accused reasonably believed." Arguably, if someone really believes something, it is no doubt reasonable to him. Even so, it might be quite unreasonable to most others. Since what is involved is closely related to "criminal intent," the Committee believes the test is what is reasonable for the defendant to have believed. This involves his ability to understand.

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PIK 58.03 INCEST

The defendant is charged with the crime of incest.
The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant married a person known to him to be related to him as brother or sister of the whole blood or the one-half blood, or related to him as uncle, aunt, nephew or niece; and

or

That the defendant had sexual intercourse with a person known to the defendant to be related to him as brother or sister of the whole blood, or the one-half blood, or related to him as uncle, aunt, nephew or niece; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3602 (1971 Supp.). Incest is a class E felony. It is recommended that a judge giving this instruction abbreviate the instruction by deleting the relationships that are not applicable. He should make selection between "whole blood" and "one-half blood," as well as between "brother," and "sister," and between "uncle," "aunt," "nephew" and "niece."

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PIK 58.04 AGGRAVATED INCEST

The defendant is charged with the crime of aggravated incest. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (engaged in sexual intercourse) (engaged in indecent liberties) (engaged in sodomy) (engaged in lewd and lascivious behavior) with _____, who he knew was his _____; and
2. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3603 (1971 Supp.). Aggravated incest is a class D felony. For the guidance of the court it is noted that in order to constitute the crime of aggravated incest, the defendant must be a parent, an adoptive parent, a step-parent, or a grandparent. Likewise, it is noted that a child includes an illegitimate child, a stepchild, or an adopted child. The stepchild or adopted child must be under the age of eighteen years.

Reference should be made to chapter 57.00 for a definition of the claimed sexual intercourse or unlawful sexual act.

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PIK 58.05 ABANDONMENT OF A CHILD

The defendant is charged with the crime of abandonment of a child. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was a (parent) (guardian) of _____.

or

That the defendant was a person to whom the care and custody of _____ had been entrusted.

2. That the defendant left the child in a place where it might suffer because of neglect;
3. That the defendant left the child with intent to abandon the child;
4. That the child at the time was under the age of sixteen years; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3604 (1971 Supp.). Abandonment of a child is a class E felony.

PIK 58.06 NONSUPPORT OF A CHILD

The defendant is charged with the crime of non-support of a child. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was a (natural parent) (adoptive parent) of _____ who was under the age of sixteen years.
2. That the defendant without just cause refused to provide for the support and maintenance of _____ who was then in necessitous circumstances; and
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

(The quality of proof necessary to establish parentage is only that you be satisfied the fact of parentage is more probably true than it is more probably not true. The higher quality of measuring proof against a "reasonable doubt" as set forth in Instruction _____ herein does not apply to the issue of parentage.)

Notes on Use

For authority see K. S. A. 21-3605 (1) (1971 Supp.). Nonsupport of a child is a class E felony. Where parentage is in issue, the bracketed instruction should be given; otherwise it is unnecessary.

Comment

Whether the legislature believed that there was a difference between "without lawful excuse" in the nonsupport of a child provision and "without just cause" in the nonsupport of a spouse provision PIK 58.07, Nonsupport of a Spouse, is not known. It is arguable that a juror might have no difficulty understanding what is meant by the term "without just cause," but would have some difficulty in understanding the term "without lawful excuse." Since

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the Committee does believe that "without just cause" is more understandable to jurors than "without lawful excuse," and since there are no statutory "lawful excuses," it has concluded "without just cause" should be used.

One who is outside the state may be chargeable with nonsupport of a child within this state even though he did not know the child was within this state. Moreover, it is no defense that the necessities of a child are relieved by acts of others. In a factual situation of the latter type, it would appear proper to instruct that "the children should be deemed to be in destitute or necessitous circumstances if they would have been in such condition had they not been provided for by someone else." *State v. Wellman*, 102 Kan. 503, 170 P. 1052 (1918).

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PIK 58.07—NONSUPPORT OF A SPOUSE

The defendant is charged with the crime of non-support of a spouse. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant failed to support his spouse who was in necessitous circumstances.
2. That the defendant had no just cause for such failure to support; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3605 (2) (1971 Supp.). Nonsupport of a spouse is a class E felony.

Comment

If the support claim is founded upon a common-law marriage, the judge should give an instruction as to the fact that common-law marriages are recognized in this state, and as to what is necessary to prove a common-law marriage. The basic elements of a common-law marriage are "(1) capacity of the parties to marry, (2) a present marriage agreement, and (3) a holding out of each other as husband and wife to the public." *Sullivan v. Sullivan, et al.*, 196 Kan. 705, 413 P. 2d 988 (1966). The statute makes no reference to this type of marriage.

It would also seem that if paternity can be established by the more believable evidence, as set forth in K. S. A. 21-3605 (1) (f) (1971 Supp.), marital status should likewise be provable by the more believable evidence. However, the nonsupport of a spouse sections are silent as to the degree of proof required in this regard.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 58.08 CRIMINAL DESERTION

The defendant is charged with the crime of criminal desertion. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (abandoned his spouse) (willfully and without just cause failed to provide for the care, protection, or support of his spouse);
2. That his spouse was then in ill health or necessitous circumstances; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3606 (1971 Supp.). Criminal desertion is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 58.09 ENCOURAGING JUVENILE
MISCONDUCT**

The defendant is charged with the crime of encouraging juvenile misconduct. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant encouraged _____ to commit _____; and

or

That the defendant knowingly caused or permitted _____ (to be or remain in any house of prostitution) (to be or remain in any room or place where intoxicating liquor is unlawfully kept, possessed, sold, or bartered) (to be or remain in any gambling place); and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3607 (1971 Supp.). Encouraging juvenile misconduct is a class B misdemeanor. When this instruction is given it will be necessary for the judge to determine as a matter of law whether or not the child victim was subject to the Kansas Juvenile Code. The acts and classifications which bring a child under the Kansas Juvenile Code may be found in K. S. A. 38-802 (1971 Supp.).

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PIK 58.10 ENDANGERING A CHILD

The defendant is charged with the crime of endangering a child. The defendant pleads not guilty. To establish this charge, each of the following claims must be proved:

1. That the defendant willfully caused or permitted a child under the age of eighteen years to suffer unjustifiable physical pain or mental distress; and

or

That the defendant willfully and unreasonably caused or permitted a child under the age of eighteen years to be placed in a situation in which his life, body or health might be injured or endangered; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3608 (1971 Supp.). Endangering a child is class A misdemeanor. It should be noted that by virtue of K. S. A. 21-3608 (1) (c) (1971 Supp.), an exception is made relative to lack of treatment or cure of disease resulting in pain, mental distress, endangerment or injury when caused by one guided by spiritual doctrines in accordance with the belief of a recognized church or religious denomination.

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PIK 58.11 ABUSE OF A CHILD

The defendant is charged with the crime of abuse of a child. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant willfully (tortured) (cruelly beat) (inflicted cruel and inhuman bodily punishment upon) a child under the age of eighteen years; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3609 (1971 Supp.). Abuse of a child is a class E felony.

Comment

The words torture, beat, abuse, cruel punishment, or inhuman punishment are not so vague or indefinite as to be unenforceable as a penal statute. *State v. Fahy*, 201 Kan. 366, 440 P. 2d 566 (1968).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 58.12 FURNISHING INTOXICANTS TO
A MINOR**

The defendant is charged with the crime of furnishing intoxicants to a minor. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant directly or indirectly (sold to) (bought for) (gave or furnished to) a person under the age of twenty-one years any intoxicating liquor; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3610 (1971 Supp.). Furnishing intoxicants to a minor is a class B misdemeanor.

Comment

K. S. A. 41-102 (1971 Supp.) may be referred to for a definition of intoxicating liquor. There is a related misdemeanor created by K. S. A. 41-2704 (1971 Supp.), which relates to permitting a person under the age of eighteen years to buy or drink any cereal malt beverage at any place of business licensed to sell such beverages.

**PIK 58.13 AGGRAVATED JUVENILE
DELINQUENCY**

The defendant is charged with the crime of aggravated juvenile delinquency. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was confined in the (State Industrial School for Boys) (State Industrial School for Girls).
2. That the defendant (willfully burned or attempted to burn) (set fire to any combustible material for the purpose of burning) any building of the (The State Industrial School for Boys) (The State Industrial School for Girls); and

or

That the defendant willfully burned or otherwise destroyed property belonging to the State of Kansas of the value of more than \$100.00; and

or

That the defendant willfully and forcibly resisted the lawful authority of any officer of (The State Industrial School for Boys (The State Industrial School for Girls); and

or

That the defendant committed an aggravated (assault) (battery) upon any (officer) (attendant) (employee) (inmate) of (The State Industrial School for Boys) (The State Industrial School for Girls); and

or

That the defendant exerted a dangerous and

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pernicious influence over other persons confined in (The State Industrial School for Boys) (The State Industrial School for Girls) by (gross) (habitual) misconduct; and

or

That the defendant escaped from (The State Industrial School for Boys) (The State Industrial School for Girls) after having previously escaped therefrom; and

3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3611 (1971 Supp.). Aggravated juvenile delinquency is a class E felony. In case the prosecution is under K. S. A. 21-3611 (1) (d) (1971 Supp.), the judge will need to instruct on the elements of aggravated assault or aggravated battery. See PIK 56.14, Aggravated Assault or PIK 56.18, Aggravated Battery.

CHAPTER 59.00

CRIMES AGAINST PROPERTY

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PIK 59.01 THEFT

The defendant is charged with the crime of theft. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was the owner of the property;
2. That the defendant (obtained) (exerted) unauthorized control over the property,

or

That the defendant obtained by deception control over the property,

or

That the defendant obtained by threat control over the property,

or

That the defendant obtained control over the property, knowing the property to have been stolen by another;

3. That the defendant intended to deprive _____ permanently of the use and benefit of the property; and
4. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3701 (1971 Supp.). Theft of property of the value of fifty dollars or more is a class D felony. Theft of property of the value of less than fifty dollars is a class A misdemeanor.

See PIK 68.11, Verdict Form—Value in Issue.

The Committee believes that no instruction should be given relating to the circumstance of possession of goods proven to have been recently stolen. The statute defining the crime of theft as compared with what was formerly larceny does not require the elements of taking and carrying away. These were elements which

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the traditional instruction permitted to be inferred against the possessor by the fact of possession.

There is doubt that the principle was ever proper as an instruction. The circumstance of possession of goods recently stolen is a rule of evidence, not a rule of law. Its only application should have been in determining whether as a matter of law there was sufficient evidence to justify submitting the case to the jury.

**PIK 59.02 THEFT OF LOST OR MISLAID
PROPERTY**

The defendant is charged with the crime of theft of lost or mislaid property. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was the owner of the property;
2. That the property was lost or mislaid;
3. That the defendant came into the possession of the property;
4. That the defendant (knew) (learned) that _____ was the owner of the property;
5. That the defendant failed to take reasonable measures to restore the property to _____;
6. That the defendant intended to deprive _____ permanently of the use or benefit of the property; and
7. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Deprive permanently as used herein means (to take from the owner the possession, use or benefit of his property, without an intent to restore the same) (to retain property without intent to restore the same, or with the intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return) (to sell, give, pledge, or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner).

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Notes on Use

For statutory authority, see K. S. A. 21-3703 (1971 Supp.). Theft of lost or mislaid property is a class A misdemeanor.

For definition of "deprive permanently," see K. S. A. 21-3110 (6) (1971 Supp.).

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PIK 59.03 THEFT OF SERVICES

The defendant is charged with the crime of theft of services. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant obtained services from _____;
2. That the defendant obtained these services by (deception) (threat) (coercion) (stealth) (mechanical tampering) (use of a false token or device); and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3704 (1971 Supp.). Theft of services of the value of fifty dollars or more is a class D felony. Theft of services of the value of less than fifty dollars is a class A misdemeanor.

See PIK 68.11, Verdict Form—Value in Issue.

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**PIK 59.04 UNLAWFUL DEPRIVATION OF
PROPERTY**

The defendant is charged with the crime of unlawful deprivation of property. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was the owner of the property in question;
2. That the defendant (obtained) (exerted) unauthorized control over the property without the owner's consent;
3. That the defendant intended to temporarily deprive the owner of the use or benefit of the property; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3705 (1971 Supp.). Unlawful deprivation of property is a class A misdemeanor.

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**PIK 59.05 FRAUDULENTLY OBTAINING
EXECUTION OF A DOCUMENT**

The defendant is charged with the crime of fraudulently obtaining execution of a document. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant caused _____ to execute a _____;
2. That the defendant did so by deception or threat;
3. That when _____ signed the _____ (he disposed of his interest in _____) or (he became indebted to pay money); and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3706 (1971 Supp.). Fraudulently obtaining execution of a document is a class A misdemeanor.

PIK 59.06 WORTHLESS CHECK

The defendant is charged with the crime of giving a worthless check. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (made) (drew) (issued) (delivered) a (check) (order) (draft) to _____,
or
That the defendant caused or directed a (check) (order) (draft) to be (made) (drawn) (issued) (delivered) to _____;
2. That the defendant knew that there were (no moneys or credits) (not sufficient funds) with the (bank) (depository) at the time of the (making) (drawing) (issuing) (delivering) of the (check) (order) (draft);
3. That the defendant intended to defraud _____; and
4. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3707 (1971 Supp.).

Giving a worthless check is a class E felony if drawn for \$50.00 or more and is a class A misdemeanor if drawn for less than \$50.00.

Defenses to the charge of giving a worthless check are set forth in PIK 59.07, Worthless Check—Defense.

The jury, in addition to its regular finding, must make a finding as to the value of the property in question. See PIK 68.11, Verdict Form, Value in Issue.

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PIK 59.07 WORTHLESS CHECK—DEFENSE

It is a defense to the charge of giving a worthless check, draft, or order (if it was postdated) (if the person receiving the check, draft, or order knew when he accepted it that there were not sufficient funds on deposit to cover it upon presentation).

Notes on Use

For statutory authority, see K. S. A. 21-3707 (3) (1971 Supp.).

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PIK 59.08 HABITUALLY GIVING A WORTHLESS CHECK—WITHIN TWO YEARS

The defendant is charged with the crime of habitually giving a worthless check. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (made) (drew) (issued) (delivered) a (check) (order) (draft) to _____,
or

That the defendant caused or directed a (check) (order) (draft) to be (made) (drawn) (issued) (delivered) to _____;

2. That the defendant knew that there were (no moneys or credits) (not sufficient funds) with the bank or depository at the time of the (making) (drawing) (issuing) (delivering) of the (check) (order) (draft);
3. That the defendant had the intent to defraud;
4. That the check was drawn for less than fifty dollars (\$50.00);
5. That the defendant has been convicted two times for giving a worthless check between the _____ day of _____, 19____ and the _____ day of _____, 19____; and
6. That this act occurred on or about the _____ day of _____, in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3708 (a) (1971 Supp.).

Habitually giving a worthless check is a class D felony.

Defenses to the charge of giving a worthless check are set forth in PIK 59.07: Worthless Check—Defense.

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The date to be placed in the first blank in element 5 should be the date of the first conviction which must be within two years immediately preceding the date of the check in question. The second date blank should be the date of the check in question. See K. S. A. 21-3708 (a) (1971 Supp.).

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PIK 59.09 HABITUALLY GIVING A WORTHLESS CHECK—ON SAME DAY

The defendant is charged with the crime of habitually giving a worthless check. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. A. That the defendant (made) (drew) (issued) (delivered) two or more (checks) (orders) (drafts) on the ____ day of _____,
or
B. That the defendant caused or directed two or more (checks) (orders) (drafts) to be (made) (drawn) (issued) (delivered) on the ____ day of _____;
2. That the defendant knew that there were (no moneys or credits) (not sufficient funds) at the time of the (making) (drawing) (issuing) (delivering) of the (checks) (orders) (drafts);
3. That the defendant had the intent to defraud;
4. That each of the checks was drawn for less than fifty dollars (\$50.00), but together they totaled fifty dollars (\$50.00) or more; and
5. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3708 (b) (1971 Supp.).

Habitually giving a worthless check is a class D felony.

Defenses to the charge of giving a worthless check are set forth in PIK 59.07, Worthless Check—Defense.

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**PIK 59.10 CAUSING AN UNLAWFUL
PROSECUTION FOR WORTHLESS
CHECK**

The defendant is charged with the crime of unlawful prosecution for worthless check.

To establish this charge, each of the following claims must be proved:

1. That the defendant

(filed a complaint before a judge upon which _____ was charged with the crime of giving a worthless check);

or

(gave information upon which _____ was charged with the crime of giving a worthless check);

2. That the defendant knew when he accepted it (That the [check] [draft] [order] was dated later than the date on which it was actually accepted);

or

(That _____ did not have [any] [sufficient] funds on deposit with the _____ to make the [check] [draft] [order] good);

and

3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3709 (1971 Supp.). Causing an unlawful prosecution is a class A misdemeanor and any person convicted of the violation of this statute shall pay the taxable cost of the prosecution.

Comment

See K. S. A. 21-3707 (1971 Supp.).

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PIK 59.11 FORGERY—MAKING OR ISSUING A FORGED INSTRUMENT

The defendant is charged with the crime of forgery. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly made or altered a _____ so that it appeared to have been made [by _____] [at another time] [with different provisions] [by the authority of _____, who did not give such authority];

or

That the defendant issued or delivered a _____ which he knew had been made or altered so that it appeared to have been made [by _____] [with different provisions] [by the authority of _____, who did not give such authority];

2. That the defendant did this act with the intent to defraud; and
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3710 (a), (b) (1971 Supp.). Forgery is a class D felony. This section should not be used for K. S. A. 21-3710 (c) (1971 Supp.).

For definition of intent to defraud, see K. S. A. 21-3110 (9) (1971 Supp.).

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**PIK 59.12 FORGERY—PASSING A FORGED
INSTRUMENT**

The defendant is charged with the crime of forgery.
The defendant pleads not guilty.

To establish this charge, each of the following
claims must be proved:

1. That the defendant possessed a _____ which he knew had been made or altered so that it appeared to have been made (by _____) (at another time) (with different provisions) (by the authority of _____, who did not give such authority);
2. That the defendant intended to issue or deliver the _____;
3. That the defendant did so with the intent to defraud; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3710 (c) (1971 Supp.)
Forgery is a class D felony. This section should not be used for
K. S. A. 21-3710 (a), (b) (1971 Supp.).

For definition of intent to defraud, see K. S. A. 21-3110 (9) (1971
Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.13 MAKING A FALSE WRITING

The defendant is charged with the crime of making a false writing. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (made) (caused to be made) a false _____;
2. That the defendant knew that such _____ (falsely stated or represented some material matter) (was not what it purported to be);
3. That the defendant intended to (defraud) (induce official action) based upon such _____; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3711 (1971 Supp.). Making a false writing is a class D felony.

Comment

See Judicial Council notes, K. S. A. 21-3710 (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.14 DESTROYING A WRITTEN
INSTRUMENT**

The defendant is charged with the crime of destroying a written instrument. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly destroyed a _____ by (tearing) (cutting) (burning) (erasing) (obliterating) in whole or in part;
2. That the defendant did so intending to defraud;
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3712 (1971 Supp.). Destroying a written instrument is a class E felony.

Comment

See Judicial Council notes, K. S. A. 21-3710 (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.15 ALTERING A LEGISLATIVE DOCUMENT

The defendant is charged with the crime of altering a legislative document. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (mutilated) (altered) (changed) _____;
2. That _____ had been introduced into the (House) (Senate) of the State of Kansas;
3. That the defendant had no legal authority to (mutilate) (alter) (change) _____;
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3713 (1971 Supp.). Altering a legislative document is a class E felony.

The document in question should be referred to specifically, *i. e.*, House Bill 1211, Senate Bill 211, House Concurrent Resolution 1074, etc.

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PIK 59.16 POSSESSION OF FORGERY DEVICES

The defendant is charged with the crime of possession of a forgery device. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (made) (possessed) a _____;
2. That the device could be used to (make) (alter) _____ in such a way that it would purport to have been made (by _____) (at another time) (with different provisions) (by authority of _____, who did not give such authority);
3. That the defendant knew of the use of the _____, and intended to (use) (aid or permit another to use) it for the purpose of (making) (altering) _____; and
4. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3714 (1971 Supp.). Possession of forgery devices is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.17 BURGLARY

The defendant is charged with the crime of burglary. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly (entered) (remained in) _____;
2. That the defendant did so without authority;
3. That the defendant had the intent to commit (theft) (_____, a felony) therein; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3715 (1971 Supp.). Burglary is a class D felony.

Comment

It should be noted that the legislature did not make "breaking" an element of this crime.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.18 AGGRAVATED BURGLARY

The defendant is charged with the crime of aggravated burglary. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly (entered) (remained in) _____;
2. That the defendant did so without authority;
3. That the defendant had the intent to commit (theft) (_____, a felony), therein;
4. That at the time there was a human being in _____; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3716 (1971 Supp.). Aggravated burglary is a class C felony.

Comment

It should be noted that the legislature did not make "breaking" an element of this crime.

PIK 59.19 POSSESSION OF BURGLARY TOOLS

The defendant is charged with the crime of possession of burglary tools. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally possessed _____, a device suitable for use in entering into (an enclosed structure) (a vehicle);
2. That the defendant did so with the intent to commit a burglary; and
3. That the defendant possessed these tools on or about the ____ day of _____ in _____ County, Kansas.

As used in this instruction, burglary means to knowingly and without authority enter into or remain within any building, mobile home, tent, or other structure, or any motor vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a theft or other felony therein.

Notes on Use

For statutory authority, see K. S. A. 21-3717 (1971 Supp.). Possession of burglary tools is a class E felony.

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PIK 59.20 ARSON

The defendant is charged with the crime of arson.
The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally damaged the building of _____ by means of (fire) (an explosive);
2. That the defendant did so without the consent of _____; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3718 (a) (1971 Supp.). Arson is a class C felony. This section should not be used for K. S. A. 21-3718 (b) (1971 Supp.).

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**PIK 59.21 ARSON—DEFRAUD AN INSURER
OR LIENHOLDER**

The defendant is charged with the crime of arson.
The defendant pleads not guilty.

To establish this charge, each of the following
claims must be proved:

1. That the defendant intentionally damaged _____
by means of (fire) (an explosive);
2. That _____ was an insurer of the building,
or
That _____ had an interest in the building
because he had a lien thereon;
3. That the defendant did so with the intent to
(injure) (defraud) _____; and
4. That this act occurred on or about the _____
day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3718 (b) (1971 Supp.).
Arson is a class C felony. This section should not be used for
K. S. A. 21-3718 (a) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.22 AGGRAVATED ARSON

The defendant is charged with the crime of aggravated arson. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally damaged the building of _____ by means of (fire) (an explosive);
2. That the defendant did so without the consent of _____;
3. That at said time there was a human being in the building; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3719 (1971 Supp.). Aggravated arson is a class B felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.23 CRIMINAL DAMAGE TO PROPERTY—
WITHOUT CONSENT**

The defendant is charged with the crime of criminal damage to property. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was (the owner of _____) (had an interest as a _____ in _____);
2. That the defendant intentionally damaged the property;
3. That the defendant did so without the consent of the _____; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3720 (a) (1971 Supp.). Criminal damage to property is a class E felony if the property is damaged to the extent of fifty dollars or more. Criminal damage to property is a class A misdemeanor if the property damaged by such acts is of the value of less than fifty dollars or is of the value of fifty dollars or more and is damaged to the extent of less than fifty dollars.

See PIK 68.11, Verdict Form—Value in Issue.

**PIK 59.24 CRIMINAL DAMAGE TO PROPERTY—
WITH INTENT TO INJURE OR
DEFRAUD AN INSURER OR
LIENHOLDER**

The defendant is charged with the crime of criminal damage to property. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (damaged) (defaced) _____;
2. That _____ was an insurer of the property,
or
That _____ had an interest in the property because he had a lien thereon;
3. That the defendant did so with the intent to (injure) (defraud) _____; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3720 (b) (1971 Supp.). Criminal damage to property is a class E felony if the property is damaged to the extent of fifty dollars or more. Criminal damage to property is a class A misdemeanor if the property damaged by such acts is of the value of less than fifty dollars or is of the value of fifty dollars or more and is damaged to the extent of less than fifty dollars.

This section should not be used for K. S. A. 21-3720 (a) (1971 Supp.).

See PIK 68.11, Verdict Form—Value in Issue.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.25 CRIMINAL TRESPASS

The defendant is charged with the crime of criminal trespass. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ (was the owner) (had authorized control) of the property;

2. That the property was (fenced) (enclosed),
or

That there was a sign informing persons not to enter the property, which sign was placed in a manner reasonably to be seen;

or

That the defendant was told (not to enter) (to leave) the property by the owner or other authorized person;

3. That the defendant intentionally, without authority (entered into) (remained on) the property; and

4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3721 (1971 Supp.). Criminal trespass is a class C misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.26 LITTERING—PUBLIC

The defendant is charged with the crime of littering. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (threw) (placed) (deposited) (left) _____ (on a public _____) (in a public _____),

or

That the defendant introduced _____ into _____, which would tend to pollute the water;

2. That the defendant was not acting with the permission of any public officer or public employee who had authority to grant such permission; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3722 (a) (1971 Supp.). Littering is a class C misdemeanor.

This section should not be used for K. S. A. 21-3722 (b), (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.27 LITTERING—PRIVATE PROPERTY

The defendant is charged with the crime of littering. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (threw) (placed) (deposited) (left) _____ on private property;
2. That the defendant was not acting with the permission of _____, (the owner) (the occupant) of the property; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3722 (b) (1971 Supp.). Littering is a class C misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.28 TAMPERING WITH A LANDMARK

The defendant is charged with the crime of tampering with a landmark. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant removed a marker designating a boundary for real estate,

or

That the defendant defaced or altered marks made for the purpose of designating a boundary for real estate,

or

That the defendant cut down or removed _____, which had marks upon it to designate a boundary for real estate;

2. That the defendant did so willfully and maliciously; and
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3724 (a), (b) and (c), (1971 Supp.). Tampering with a landmark is a class C misdemeanor.

This section should not be used for K. S. A. 21-3724 (d) or (e), (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.29 TAMPERING WITH A LANDMARK—
HIGHWAY SIGN OR MARKER**

The defendant is charged with the crime of tampering with a landmark. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (broke) (destroyed) (removed) (defaced) a (milepost) (milestone) (highway sign) (road sign),
or
That the defendant (defaced) (altered) the (words) (marking) on a _____ sign;
2. That the _____ (was) (is) on a public highway or public road;
3. That the _____ was placed there by authority of the law;
4. That the defendant did so willfully and maliciously and
5. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3724 (*d*) and (*e*) (1971 Supp.). Tampering with a landmark is a class C misdemeanor.

This section should not be used for K. S. A. 21-3724 (*a*), (*b*) or (*c*) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.30 TAMPERING WITH A TRAFFIC SIGNAL

The defendant is charged with the crime of tampering with a traffic signal. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (manipulated) (altered) (destroyed) (removed) a _____;
2. That the _____ was for the purpose of controlling or directing the movement of (motor vehicles) (railroad trains) (aircraft) (watercraft); and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3725 (1971 Supp.). Tampering with a traffic signal is a class C misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.31 AGGRAVATED TAMPERING WITH
A TRAFFIC SIGNAL**

The defendant is charged with the crime of aggravated tampering with a traffic signal. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally (manipulated) (altered) (destroyed) (removed) a _____;
2. That the _____ was for the purpose of controlling or directing the movement of (motor vehicles) (railroad trains) (aircraft) (watercraft);
3. That the act of the defendant resulted in a traffic accident (causing the death of _____) (causing great bodily injury to _____)
or

That the act of the defendant could have resulted in a traffic accident which would have caused death or great bodily injury to a human being; and

4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3726 (1971 Supp.). Aggravated tampering with a traffic signal is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.32 INJURY TO A DOMESTIC ANIMAL

The defendant is charged with the crime of injuring a domestic animal. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant willfully and maliciously administered a poison to a _____, a domestic animal,

or

That the defendant willfully and maliciously exposed a poison in such a way that it could be taken or swallowed by any domestic animal,

or

That the defendant willfully and maliciously (killed) (maimed) (wounded) a _____, a domestic animal;

2. That the owner of the domestic animal was _____ and that he did not consent to the defendant's act; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3727 (1971 Supp.). Injury to a domestic animal is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.33 UNLAWFUL HUNTING

The defendant is charged with the crime of unlawful hunting. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (hunted) (fished) (pursued a bird or animal) (upon the land of another) (from a public roadway that adjoins occupied or improved land) (from a railroad right-of-way that adjoins occupied or improved land);
2. That the defendant did not have permission of _____, (the owner) (the person in possession) of the land in question; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3728 (1971 Supp.). Unlawful hunting is a class C misdemeanor.

**PIK 59.34 UNLAWFUL USE OF CREDIT CARD
OF ANOTHER**

The defendant is charged with the crime of unlawful use of credit card(s). The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant used a _____ credit card issued in the name of _____;
2. That _____ had not consented to use the credit card by the defendant;
3. That the defendant used the credit card for the purpose of obtaining _____;
4. That the defendant did so with the intent to defraud; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3729 (a) (1971 Supp.). Unlawful use of a credit card is a class E felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of fifty dollars or more; otherwise the crime is a class A misdemeanor.

This section should not be used for K. S. A. 21-3729 (b), (c) (1971 Supp.).

See PIK 68.11, Verdict Form—Value in Issue.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.35 UNLAWFUL USE OF CREDIT CARD—
CANCELLED**

The defendant is charged with the crime of unlawful use of a credit card. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly used _____, a credit card or number which had been revoked or cancelled;
2. That the defendant had received written notice that the credit card was revoked or cancelled;
3. That the defendant used the credit card for the purpose of obtaining _____;
4. That the defendant did so with the intent to defraud; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3729 (*b*) (1971 Supp.). Unlawful use of a credit card is a class E felony if the goods or services obtained within any seven-day period are of the value of fifty dollars or more; otherwise the crime is a class A misdemeanor.

This section should not be used for K. S. A. 21-3729 (*a*), (*c*) (1971 Supp.).

See PIK 68.11, Verdict Form—Value in Issue.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.36 UNLAWFUL USE OF CREDIT CARD—
ALTERED OR NONEXISTENT**

The defendant is charged with the crime of unlawful use of credit card(s). The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant used a _____ credit card that had been (falsified) (mutilated) (altered),
or
That the defendant used a nonexistent credit card number as if the same were a valid credit card number;
2. That the defendant used the credit card for the purpose of obtaining _____;
3. That the defendant did so with the intent to defraud; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3729 (c) (1971 Supp.). Unlawful use of a credit card is a class E felony if the goods or services obtained within a seven-day period are of the value of fifty dollars or more; otherwise, the crime is a class A misdemeanor.

This section should not be used for K. S. A. 21-3729 (a) or (b) (1971 Supp.).

See PIK 68.11, Verdict Form—Value in Issue.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.37 UNLAWFUL MANUFACTURE OR
DISPOSAL OF FALSE TOKENS**

The defendant is charged with the crime of unlawful manufacture or disposal of false tokens. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (manufactured for sale) (offered for sale) (gave away) false _____ calculated to be used in a coin-operated machine or equipment;
2. That the defendant did so with the intent to cheat the operator of a coin-operated machine or equipment; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3730 (1971 Supp.). Unlawful manufacture or disposal of false tokens is a class B misdemeanor.

The use of a false token to obtain goods or services is theft (PIK 59.01) and does not fall within the purview of this section.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.38 CRIMINAL USE OF EXPLOSIVES

The defendant is charged with the crime of criminal use of explosives. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (had in his possession) (manufactured) (transported) _____ which the defendant intended to used to commit a crime,
or
That the defendant delivered _____ to _____ knowing that _____ intended to commit a crime;
2. That _____ is an (explosive) (combustible substance); and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3731 (1971 Supp.). Criminal use of explosive is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.39 POSSESSION OR TRANSPORTATION
OF INCENDIARY OR EXPLOSIVE
DEVICE**

The defendant is charged with the crime of possession or transportation of an incendiary or explosive device. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly (had in his possession) (transported) a _____ filled with _____;
2. That _____ is an (incendiary) (explosive) device equipped with a fuse, wick, or other detonating device, commonly known as a "molotov cocktail"; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3732 (1971 Supp.). Possession or transportation of incendiary or explosive device is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.50 CRIMINAL USE OF NOXIOUS MATTER

The defendant is charged with the crime of criminal use of noxious matter. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (had in his possession) (manufactured) (transported) _____ with the intent to use it for unlawful purposes;

or

That the defendant used or attempted to use _____ to injure either persons or property;

or

That the defendant placed or deposited _____ on or about the land of _____ without his consent;

2. That _____ may give off dangerous or disagreeable odors or cause distress to persons exposed thereto; and
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3733 (1971 Supp.). Criminal use of noxious matter is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.41 IMPAIRING A SECURITY INTEREST—
CONCEALMENT OR DESTRUCTION**

The defendant is charged with the crime of impairing a security interest. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (damaged) (destroyed) (concealed) _____;
2. That _____ was security for a debt owed to _____;
3. That the defendant did so with the intent to defraud the secured party; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3734 (a) (1971 Supp.). Impairing a security interest is a class E felony when the personal property subject to the security interest is of the value of fifty dollars or more and is subject to a security interest of fifty dollars or more. Impairment of a security interest is a class A misdemeanor when the property subject to the security interest is of the value of less than fifty dollars, or of the value of fifty dollars or more but subject to a security interest of less than fifty dollars.

This section is concerned only with personal property.

This section does not apply to K. S. A. 21-3734 (b) or (c) (1971 Supp.).

See PIK 68.11, Verdict Form—Value in Issue

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.42 IMPAIRING A SECURITY INTEREST—
SALE OR EXCHANGE**

The defendant is charged with the crime of impairing a security interest. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (sold) (exchanged) (disposed of) _____;
2. That _____ was security for a debt owed to _____;
3. That the security agreement did not authorize the (sale) (exchange) (disposal) of the _____;
4. That _____ did not consent in writing to the (sale) (exchange) (disposal) of the _____; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3734 (b) (1971 Supp.). Impairing a security interest is a class E felony when the personal property subject to the security interest is of the value of fifty dollars or more. Impairment of a security interest is a class A misdemeanor when the property subject to the security interest is of the value of less than fifty dollars, or of the value of fifty dollars or more but subject to a security interest of less than fifty dollars.

This section is concerned only with personal property.

This section does not apply to K. S. A. 21-3734 (a), (c) (1971 Supp.).

See PIK 68.11, Verdict Form—Value in Issue.

Comment

The Committee believes that the value of the security interest should be determined by the balance due under the security agreement.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.43 IMPAIRING A SECURITY INTEREST—
FAILURE TO ACCOUNT**

The defendant is charged with the crime of impairing a security interest. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ had a security interest in _____;
2. That the defendant (sold) (exchanged) (disposed) of the _____ and received _____;
3. That the security agreement made provision that in the event of the (sale) (exchange) (disposal) of the _____ the proceeds were to be given to _____;
4. That the defendant intentionally failed to account for the (proceeds) (collateral) (within a reasonable time) (as specified in the security agreement); and
5. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3734 (c) (1971 Supp.). Impairing a security interest is a class E felony when the personal property subject to the security interest is of the value of fifty dollars or more and is subject to a security interest of fifty dollars or more. Impairment of a security interest is a class A misdemeanor when the property subject to the security interest is of the value of less than fifty dollars, or of the value of fifty dollars or more but subject to a security interest of less than fifty dollars.

This section is concerned only with personal property.

This section does not apply to K. S. A. 21-3734 (a) or (b) (1971 Supp.).

See PIK 68.11, Verdict Form—Value in Issue.

See K. S. A. 84-1-204 (1965) which allows a reasonable time to account if no specific time is fixed in the security agreement.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.44 FRAUDULENT RELEASE OF A
SECURITY AGREEMENT**

The defendant is charged with the crime of fraudulent release of a security agreement. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was shown as the secured party in a security agreement;
2. That the defendant released the security agreement;
3. That the defendant at the time of the release was not the owner and holder of the debt secured by such security agreement;
4. That the defendant intended to defraud _____, who was the owner of the security agreement; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3735 (1971 Supp.). Fraudulent release of a security agreement is a class E felony.

The name of the owner and holder of the security agreement should be placed in the appropriate blank.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.45 WAREHOUSE RECEIPT FRAUD—
ORIGINAL RECEIPT**

The defendant is charged with the crime of warehouse receipt fraud. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was a (warehouseman) ([officer] [agent] [employee] of a warehouseman);
2. That the defendant (made) (drew) (issued) (delivered) a warehouse receipt for goods,
or
That the defendant caused or directed a warehouse receipt to be (made) (drawn) (issued) (delivered) for goods;
3. That the defendant knew that the goods shown on the receipt had not been received by him at the time he issued the receipt,
or
That the defendant knew that the goods shown on the receipt were not under his actual control at the time he issued the receipt,
or
That the defendant knew that the receipt contained a false statement; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3736 (a) and (b) (1971 Supp.).

Warehouse receipt fraud is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.46 WAREHOUSE RECEIPT FRAUD—
DUPLICATE OR ADDITIONAL
RECEIPT**

The defendant is charged with the crime of warehouse receipt fraud. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was a (warehouseman) ([officer] [agent] [employee] of a warehouseman);
2. That the defendant (made) (drew) (issued) (delivered) a duplicate or additional warehouse receipt for goods without placing on its face the word "duplicate,"

or

That the defendant caused or directed a duplicate or additional warehouse receipt to be (made) (drawn) (issued) (delivered) for goods without placing on its face the word "duplicate";

3. That the defendant knew that there was an uncancelled and outstanding receipt for the same goods; and
4. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3736 (c) (1971 Supp.). Warehouse receipt fraud is a class E felony.

Paragraph 3 refers to proceedings under K. S. A. 84-7-601 (1) (1965).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.47 UNAUTHORIZED DELIVERY OF
STORED GOODS**

The defendant is charged with the crime of unauthorized delivery of stored goods. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was a (warehouseman) ([officer] [agent] [employee] of a warehouseman);
2. That the defendant delivered goods to _____;
3. That the defendant knew that there was a negotiable receipt for the goods outstanding and uncanceled;
4. That the defendant did not have possession of the receipt at the time he delivered the goods; and
5. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3737 (1971 Supp.).

Unauthorized delivery of stored goods is a class A misdemeanor.

Comment

The three exceptions contained in sub-paragraphs (a), (b) and (c) should be kept in mind. (a) In case of a lost, stolen or destroyed receipt, after proceedings as provided in K. S. A. 84-7-601 (2), or (b) In the case of delivery in good faith as provided in K. S. A. 84-7-601(2), or (c) In the case of optional termination of storage as provided in K. S. A. 84-7-206. The burden of claiming a status of exemption and introducing evidence that the defendant was exempt is upon the defendant.

In general, the accused has the burden of introducing evidence, as a matter of defense, that he is within an exception in the statute creating the offense where such exception is not a part of the

PATTERN INSTRUCTIONS FOR KANSAS

description of the offense. Accordingly, the prosecution owes no duty to prove in its case in chief that accused is not within the exception. This is a mere rule of procedure and does not relieve the state of its burden of proving guilt. 22A C. J. S., Criminal Law, Sec. 572, pages 316-317; *State v. Wilson*, 62 Kan. 621, 64 P. 23 (1901); *State v. Huff*, 75 Kan. 585, 599, 90 P. 270 (1907); *State v. Driscoll*, 134 Kan. 671, 8 P. 2d 335 (1932).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.48 AUTOMOBILE MASTER KEY
VIOLATION—SALE**

The defendant is charged with the crime of automobile master key violation. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (sold) (offered to sell) a motor vehicle master key to _____;
2. That the master key was knowingly designed to fit the ignition switch of more than one motor vehicle; and
3. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3738 (a) (1971 Supp.). Automobile master key violation is a class C misdemeanor.

Comment

The exceptions in sub-paragraph (2) should be considered. This sub-paragraph provides that it shall not be unlawful for the owner of two (2) or more vehicles to possess a motor vehicle master key for any or all of the motor vehicles so owned, nor shall sale of such master keys to such owner be unlawful. The burden of claiming a status of exemption and introducing evidence that the defendant was exempt is upon the defendant.

In general, the accused has the burden of introducing evidence, as a matter of defense, that he is within an exception in the statute creating the offense where such exception is not a part of the description of the offense. Accordingly, the prosecution owes no duty to prove in its case in chief that accused is not within the exception. This is a mere rule of procedure and does not relieve the state of its burden of proving guilt. 22A C. J. S., Criminal Law, Sec. 572, pages 316-317; *State v. Wilson*, 62 Kan. 621, 64 P. 23 (1901); *State v. Huff*, 75 Kan. 585, 599, 90 P. 279 (1907); *State v. Driscoll*, 134 Kan. 671, 8 P. 2d 335 (1932).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.49 POSTING OF POLITICAL PICTURES
OR ADVERTISEMENTS**

The defendant is charged with the crime of posting political (pictures) (advertisements).

To establish this charge, each of the following claims must be proved:

1. That the defendant attached a political (picture) (advertisement) to a (telegraph) (utility) pole; and
2. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3739 (1971 Supp.). Posting of political material is a class C misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.50 OPENING, DAMAGING, OR
REMOVING COIN-OPERATED
MACHINES**

The defendant is charged with the crime of (opening) (damaging) (removing) a coin-operated machine.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly (opened) (damaged) (removed) _____, a coin-operated machine;
2. That the defendant intended to obtain or exert unauthorized control over (the machine) (the goods in the machine) (the money in the machine); and
3. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3740 (1971 Supp.). Opening, damaging, or removing coin-operated machines is a class A misdemeanor.

A specific description of the machine should be inserted in the blank provided in 1 above.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.51 POSSESSION OF TOOLS FOR
OPENING, DAMAGING, OR, REMOVING
COIN-OPERATED MACHINES**

The defendant is charged with the crime of possessing tools for opening, damaging, or removing coin-operated machines.

To establish this charge, each of the following claims must be proved:

1. That the defendant had in his possession a (key) (tool) (instrument) (drawing) (print) (mold of a key) (explosive) specifically designed or suitable for use in opening or breaking into a _____, a coin-operated machine;
2. That the defendant intended to obtain or exert unauthorized control over (the machine) (the goods in the machine) (the money in the machine); and
3. That this act occurred on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3741 (1971 Supp.). Possession of tools for opening, damaging, or removing coin-operated machines is a class A misdemeanor.

A specific description of the machine should be inserted in the blank provided in 1 above.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.52 OBJECT FROM OVERPASS—DAMAGE
TO VEHICLE, RESULTING IN
BODILY INJURY**

The defendant is charged with the crime of casting (an object) (objects) from a bridge or overpass. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally cast an object from a bridge or an overpass onto a (street) (highway) (roadway) (railroad right-of-way);
2. That a (vehicle) (engine) was damaged and that _____ was injured as a result of the damage to the vehicle;
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3742 (*d*) (1971 Supp.). Casting an object from an overpass causing damage to a vehicle which results in bodily injury is a class C felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.53 OBJECT FROM OVERPASS—
BODILY INJURY**

The defendant is charged with the crime of casting (an object) (objects) from a bridge or overpass. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally cast an object from a bridge or overpass onto a (street) (highway) (roadway) (railroad right-of-way);
2. That _____ was injured; and
3. That the act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3742 (a) (1971 Supp.). Casting an object from an overpass causing bodily injury is a class D felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.54 OBJECT FROM OVERPASS—
VEHICLE DAMAGE**

The defendant is charged with the crime of casting (an object) (objects) from a bridge or overpass. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally cast an object from a bridge or an overpass onto a (street) (highway) (roadway) (railroad right-of-way);
2. That a (vehicle) (engine) (railroad car) was damaged; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3742 (b) (1971 Supp.). Casting an object from an overpass causing damage to a vehicle or railroad car is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 59.55 OBJECT FROM OVERPASS—
NO DAMAGE**

The defendant is charged with the crime of casting (an object) (objects) from a bridge or overpass. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant intentionally cast an object from a bridge or overpass onto a (street) (highway) (roadway) (railroad right-of-way); and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For statutory authority, see K. S. A. 21-3742 (1971 Supp.). Casting an object from an overpass is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 59.56 SALE OF RECUT TIRES

The defendant is charged with the crime of (selling) (offering to sell) recut or regrooved tires intended for use on a passenger vehicle or of (selling) (offering to sell) a passenger vehicle equipped with recut or regrooved tires. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (sold) (offered for sale) recut or regrooved tires for passenger vehicle,
or

That the defendant (sold) (offered for sale) a passenger vehicle equipped with recut or regrooved tires; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Recut or regrooved tires are unretreaded or unrecapped tires into which new grooves have been cut or burned.

“Passenger vehicle” as used herein is any vehicle which is designed primarily to carry ten or fewer passengers, and which is not used as a truck.

Notes on Use

For statutory authority, see K. S. A. 21-3743 (1971 Supp.) and K. S. A. 21-3744 (1971 Supp.).

Sale of recut tires is a class B misdemeanor.

CHAPTER 60.00

CRIMES AFFECTING GOVERNMENTAL FUNCTIONS

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PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.01 TREASON

The defendant is charged with the crime of treason.
The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant levied war against the state of Kansas; and

or

That the defendant adhered to the enemies of the state of Kansas; and

or

That the defendant gave aid and comfort to the enemies of the state of Kansas; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3801 (1) (1971 Supp.). K. S. A. 21-3801 (2) (1971 Supp.) provides that no person shall be convicted of treason unless on the evidence of two (2) witnesses to the overt act or confession in open court. Treason is a class A felony.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.02 SEDITION

The defendant is charged with the crime of sedition. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant advocated the overthrow or reformation of the existing form of government of the state of Kansas by violence or unlawful means; and

or

That the defendant knowingly (published) (sold) (distributed) a document which advocated the overthrow or reformation of the existing form of government of the state of Kansas by violence or unlawful means; and

or

That the defendant became the member of an organization knowing that the purpose of such organization was to advocate the overthrow or reformation of the existing form of government of the state of Kansas by violence or unlawful means; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3802 (1971 Supp.). Sedition is a class D felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.03 PRACTICING CRIMINAL
SYNDICALISM**

The defendant is charged with the crime of practicing criminal syndicalism. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant orally or in writing advocated or promoted criminal syndicalism; and

or

That the defendant intentionally organized or became a member of an assembly, group or organization known to advocate or promote criminal syndicalism; and

or

That the defendant for or on behalf of another person distributed, sold, published or publicly displayed any writing which was intended to and did advocate or promote criminal syndicalism; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

“Criminal syndicalism” means the use of crime, malicious damage or injury to the property of an employer, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

Notes on Use

For authority see K. S. A. 21-3803 (1971 Supp.). Practicing criminal syndicalism is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.04 PERMITTING PREMISES TO BE USED
FOR CRIMINAL SYNDICALISM**

The defendant is charged with the crime of permitting premises to be used for criminal syndicalism. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly permitted an assembly or group of persons to use premises owned or controlled by him for the purpose of advocating or promoting criminal syndicalism; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

“Criminal syndicalism” means the use of crime, malicious damage or injury to the property of an employer, violence or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

Notes on Use

For authority see K. S. A. 21-3804 (1971 Supp.). Permitting premises to be used for criminal syndicalism is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.05 PERJURY

The defendant is charged with the crime of perjury. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant wilfully, knowingly, and falsely (swore) (testified) (affirmed) (declared) (subscribed) to a material fact upon his oath or affirmation legally administered by a person authorized to administer oaths; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3805 (1971 Supp.). Perjury is a class C felony if the false statement is made upon the trial of a felony. Perjury is a class E felony if the false statement is made in a proceeding other than the trial of a felony charge.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.06 CORRUPTLY INFLUENCING A
WITNESS**

The defendant is charged with the crime of corruptly influencing a witness. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant induced or attempted to induce a witness, _____, to absent himself from the jurisdiction of a court; and

or

That the defendant induced or attempted to induce a witness, _____, to avoid the service of process; and

or

That the defendant deterred or attempted to deter a witness, _____, from giving evidence in a trial or other proceeding; and

or

That the defendant induced or attempted to induce a witness, _____, to testify falsely in a trial or other proceeding; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3806 (1971 Supp.).
Corruptly influencing a witness is a class E felony.
Insert the name of the witness in the blank space.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.07 COMPOUNDING A CRIME

The defendant is charged with the crime of compounding a crime. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knew _____ had committed a crime;
2. That the defendant (accepted) (agreed to accept) anything of value as consideration for a promise not to (initiate the prosecution of _____) (aid in the prosecution of _____);
and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3807 (1971 Supp.). Compounding a felony is a class E felony. Compounding a misdemeanor is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.08 OBSTRUCTING LEGAL PROCESS

The defendant is charged with the crime of obstructing legal process. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was authorized by law to serve _____;
2. That the defendant knowingly and wilfully (obstructed) (resisted) (opposed) _____ in the (service) (execution) of the _____; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

In the second blank in 1 and 2, the court should insert the name of the paper or instrument involved in the particular case such as writ, warrant or summons.

For authority see K. S. A. 21-3808 (1971 Supp.).

Obstructing legal process in a felony case is a class E felony.

Obstructing legal process in a misdemeanor case is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.09 OBSTRUCTING OFFICIAL DUTY

The defendant is charged with the crime of obstructing official duty. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was authorized by law to _____;
2. That the defendant knowingly and wilfully (obstructed) (resisted) (opposed) _____ in the _____ which was the official duty of _____; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

In the second blank of 1, the court should insert the act or acts the person named in the first blank was authorized to perform.

In the second blank in 2, the court should insert the act or acts the defendant obstructed, resisted or opposed.

For authority see K. S. A. 21-3808 (1971 Supp.).

Obstructing official duty in a felony case is a class E felony.

Obstructing official duty in a misdemeanor case is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.10 ESCAPE FROM CUSTODY

The defendant is charged with the crime of escaping from custody. The defendant pleads not guilty. To establish this charge, each of the following must be proved:

1. That the defendant was being held in custody lawfully (on a charge of a misdemeanor) (following his conviction of a misdemeanor);
2. That the defendant departed from custody without lawful authority;

or

That the defendant failed to return to custody (following temporary leave lawfully granted) (following a court order authorizing temporary leave); and

3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3809 (1971 Supp.).

Escape from custody is a class A misdemeanor. If the evidence is undisputed that the defendant was being held in lawful custody, the court should instruct the jury that the defendant was in lawful custody as a matter of law.

Comment

In *State v. Carreiro*, 203 Kan. 875, 878, 457 P. 2d 123 (1971), the court discusses and defines "escape" and states what constitutes "escape." The court, in this case, also states when a person is in "lawful custody."

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.11 AGGRAVATED ESCAPE FROM
CUSTODY**

The defendant is charged with the crime of aggravated escape from custody. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

- A. (1. That the defendant was being held in lawful custody [while charged with a felony] [following his conviction of a felony]);
2. That the defendant departed from custody without lawful authority; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.
- or
2. That the defendant failed to return to custody following (temporary leave authorized by law) (temporary leave granted by a court); and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.
- or
- B. (1. That the defendant was being held in lawful custody [while charged with a crime] [following his conviction of a crime]);
2. That the defendant departed from custody by the use of violence or the threat of violence against any person; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

PATTERN INSTRUCTIONS FOR KANSAS

Notes on Use

For authority see K. S. A. 21-3810 (1971 Supp.) and K. S. A. 21-3809 (1971 Supp.). Aggravated escape from custody is a class E felony. If the evidence is undisputed that the defendant was being held in lawful custody, the court should instruct the jury that the defendant was in lawful custody as a matter of law.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.12 AIDING ESCAPE

The defendant is charged with the crime of aiding escape. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was in lawful custody (charged with a crime) (after conviction of a crime);
2. That the defendant assisted _____ in his escape from custody;

or

1. That _____ was in lawful custody (charged with a crime) (after conviction of a crime);
2. That the defendant supplied to _____ an object adopted or designed for _____'s use in escaping custody;
3. That the defendant did so with intent to assist _____ in escaping custody; and

or

1. That _____ was confined in an institution (charged with a crime) (after conviction of a crime);
2. That the defendant (brought) (introduced) into the institution an object adapted or designed for _____'s use in escaping the institution;
3. That the defendant did so with intent to assist _____ in escaping the institution; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3811 (1971 Supp.).

Aiding escape is a class E felony.

If the evidence is undisputed that the defendant was being held in lawful custody, the court should instruct the jury that the defendant was in lawful custody as a matter of law.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.13 AIDING A FELON OR PERSON
CHARGED AS A FELON**

The defendant is charged with the crime of (aiding a felon) (aiding a person charged as a felon). The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knew _____ (had committed _____, a felony) (had been charged with having committed _____, a felony);
2. That the defendant knowingly harbored, concealed, or aided _____;
3. That the defendant did so with intent that _____ would avoid or escape from (arrest) (trial) (conviction) (punishment); and
4. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3812 (a) and (b) (1971 Supp.).

For venue see K. S. A. 22-2607 (1971 Supp.) and K. S. A. 22-2616 (1971 Supp.).

If an issue arises in the case being tried as to whether or not the particular crime has been committed by the person allegedly aided, an instruction should be given setting forth the elements of that offense. If the evidence is undisputed that the defendant has been charged with having committed a felony, the court should instruct the jury that the defendant has been properly charged with having committed a felony as a matter of law.

Aiding a felon or person charged as a felon is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.14 AIDING A PERSON CONVICTED OF
OR CHARGED WITH COMMITTING
A MISDEMEANOR**

The defendant is charged with the crime of aiding a person (convicted of committing a misdemeanor) (charged with committing a misdemeanor). The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knew _____ (had been convicted of committing a misdemeanor) (had been charged with committing _____, a misdemeanor);
2. That the defendant knowingly harbored, concealed, or aided _____;
3. That the defendant did so with intent that _____ would avoid or escape from (arrest) (trial) (conviction) (punishment); and
4. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3812 (c) (1971 Supp.).

If an issue arises in the case being tried as to whether or not the particular misdemeanor has been committed by the person allegedly aided, an instruction should be given setting forth the elements of that offense. If the person allegedly aided has been convicted, such an instruction is not necessary.

Aiding a person convicted of or charged with committing a misdemeanor is a class C misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.15 FAILURE TO APPEAR—
APPEARANCE BOND**

The defendant has been charged with the crime of failure to appear. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant had been released on an appearance bond to appear before a court;
2. That the defendant wilfully failed to appear before the court at the time required;
3. That defendant's appearance bond was forfeited;
4. That the defendant wilfully (failed to surrender himself within 30 days following the forfeiture of his appearance bond) (failed to surrender himself within 30 days after his conviction of a [misdemeanor] [felony] had become final); and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3813 (1971 Supp.) and K. S. A. 21-3814 (1971 Supp.).

Failure to appear is a class B misdemeanor.

Aggravated failure to appear is a class E felony.

The provisions of K. S. A. 21-3813 (1) (1971 Supp.) do not apply to any person who forfeits a cash bond supplied pursuant to law upon an arrest for a traffic offense.

For venue see K. S. A. 22-2615 (1971 Supp.).

The 30 day period following forfeiture is a question of law.

PATTERN INSTRUCTIONS FOR KANSAS

Comment

It is assumed by the Committee that a person who is released upon his own recognizance will have posted an appearance bond signed only by himself and without surety.

It is the opinion of the Committee that all the elements essential to an instruction for K. S. A. 21-3813 (1971 Supp.) and K. S. A. 21-3814 (1971 Supp.) are contained in this instruction.

**PIK 60.16 ATTEMPTING TO INFLUENCE A
JUDICIAL OFFICER**

The defendant is charged with attempting to influence a judicial officer. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That _____ was a judicial officer;
2. That the defendant knew _____ was a judicial officer;
3. That the defendant communicated with _____ relative to a matter which (was before) (might have been brought before) _____;
4. That such act was done by the defendant with intent improperly to influence _____; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3815 (1971 Supp.).

Attempting to influence a judicial officer is a class E felony.

Judicial officer is defined in K. S. A. 21-3110 (19) (c) (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.17. INTERFERENCE WITH THE
ADMINISTRATION OF JUSTICE**

The defendant is charged with the crime of interference with the administration of justice. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knew _____ was a judicial officer;
2. That the defendant (communicated a threat of violence to _____) (harassed _____ by repeated abusive and defamatory communication) (picketed, paraded, or demonstrated in or near a building housing _____) (picketed, paraded or demonstrated in or near the residence or place of abode of _____);
3. That such act was done with intent to influence, impede or obstruct the findings, decision, ruling, order, judgment or decree of _____ on any matter then pending before him; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3816 (1971 Supp.).

Interference with the administration of justice is a class A misdemeanor.

Comment

Nothing in K. S. A. 21-3816 (1971 Supp.) shall limit or prevent the exercise by any court in this state of its power to punish for contempt.

Judicial officer is defined in K. S. A. 21-3110 (19) (c) (1971 Supp.).

The Committee believes that the words "defamatory" and "abusive" are more understandable to a jury than "vituperative" as used in this section of the statutes.

PIK 69.18 CORRUPT CONDUCT BY JUROR

The defendant is charged with the crime of corrupt conduct by a juror. The defendant pleads not guilty.

To establish this charge, each of the following issues must be proved:

1. That the defendant had been (summoned) (sworn) as a juror;
2. That the defendant promised or agreed to give a verdict for or against a party in a (civil) (criminal) proceeding; and
or
1. That the defendant without authority of the court or officer received evidence or information relative to a case he (was) (would be sworn) to try;
2. That the defendant wilfully failed immediately to disclose the evidence or information to the (court) (officer); and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3817 (1971 Supp.).
Corrupt conduct by a juror is a class E felony.

Comment

See K. S. A. 22-3413 (1971 Supp.), Juror's Knowledge of Material Fact.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.19 FALSELY REPORTING A CRIME

The defendant is charged with the crime of falsely reporting a crime. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knew that _____ was a law enforcement officer;
2. That the defendant informed _____ that a crime had been committed;
3. That the defendant knew the information he gave _____ was false;
4. That the defendant intended that _____ would act on the false information given him; and
5. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3818 (1971 Supp.).

Falsely reporting a crime is a class A misdemeanor.

Law enforcement officer is defined in K. S. A. 21-3110 (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.20 PERFORMANCE OF AN
UNAUTHORIZED OFFICIAL ACT**

The defendant is charged with the crime of performing an unauthorized official act. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly and without lawful authority (conducted a marriage ceremony) (certified an acknowledgment of the execution of a document which by law might be recorded); and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3819 (1971 Supp.).

Performance of an unauthorized act is a class B misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.21 SIMULATING LEGAL PROCESS

The defendant is charged with the crime of simulating legal process. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (sent) (delivered) to _____ a document which he knew purported to be or simulated those used in courts;
 2. That the defendant knew this document was not issued by a court;
 3. That the defendant intended that this act would induce payment of a claim; and
 4. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.
- or
1. That the defendant printed, distributed or offered for sale documents which he knew purported to be or simulated those used in courts;
 2. That the defendant knew such documents would not be used by any court for any purpose; and
 3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3820 (1971 Supp.).

Simulating legal process is a class A misdemeanor.

K. S. A. 21-3820 (1971 Supp.) does not apply to the printing, distribution or sale of blank forms of legal documents intended for actual use in judicial proceedings.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.22 TAMPERING WITH A PUBLIC
RECORD**

The defendant is charged with the crime of tampering with a public record. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly and without lawful authority (altered) (destroyed) (defaced) (removed) (concealed) a public record; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3821 (1971 Supp.).

Tampering with a public record is a class A misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.23 TAMPERING WITH PUBLIC NOTICE

The defendant is charged with the crime of tampering with a public notice. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly and without lawful authority (altered) (defaced) (destroyed) (removed) (conclealed) a public notice;
2. That the notice had been legally posted;
3. That the defendant did this act during the time the notice was required or authorized to remain posted; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3822 (1971 Supp.).

Tampering with public notice is a class C misdemeanor.

PIK 60.24 FALSE SIGNING OF A PETITION

The defendant is charged with the crime of false signing of a petition. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant affixed a (fictitious) (unauthorized) signature to a (petition) (memorial) (remonstrance);
2. That it was intended that such (petition) (memorial) (remonstrance) be presented to the (legislature of the state of Kansas) (House of Representatives of the state of Kansas) (Senate of the state of Kansas) (_____, an [agency] [officer] [a political subdivision]) of the state of Kansas; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3823 (1971 Supp.).

False signing of a petition is a class C misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 60.25 FALSE IMPERSONATION

The defendant is charged with the crime of false impersonation. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant knowingly and falsely represented himself to be a (public officer) (public employee) (_____ licensed to practice in the state of Kansas); and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3824 (1971 Supp.).

False impersonation is a class B misdemeanor.

The profession or vocation which the defendant falsely represented himself to be a member of should be placed in the blank space, such as attorney, medical doctor, or certified public accountant.

Public employee and public officer are defined in K. S. A. 21-3110 (1971 Supp.).

**PIK 60.26 AGGRAVATED FALSE
IMPERSONATION**

The defendant is charged with the crime of aggravated false impersonation. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant falsely (impersonated) (represented himself to be) _____;
2. That the defendant, while falsely representing himself to be _____, (became bail or surety) (acknowledged any recognizance) (executed a bond or other instrument as bail or surety for a party in a proceeding before a court or person authorized to take bail or surety) (confessed a judgment) (acknowledged the execution of an instrument which by law may be recorded) (affected the rights or interests of _____ in a legal proceeding); and
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3825 (1971 Supp.).
Aggravated false impersonation is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.27 TRAFFIC IN CONTRABAND IN A
PENAL INSTITUTION**

The defendant is charged with the crime of traffic in contraband in a penal institution. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (took) (attempted to take) (sent) (attempted to send) _____ (into) (upon the grounds of) (from) an institution under the control of the director of penal institutions or a jail;
2. That the defendant did so without the written consent of the (warden) (superintendent) (jailer) of such institution or jail; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3826 (1971 Supp.).

Contraband is defined as any narcotic, synthetic narcotic, drug, stimulant, sleeping pill, barbiturate, nasal inhaler, alcoholic liquor, intoxicating beverage, firearm, ammunition, gun powder, weapon, hypodermic needle, hypodermic syringe, currency, coin, communication or writing.

The particular contraband involved should be designated in the space in the first element of this crime.

Traffic in contraband in a penal institution is a class E felony.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.28 UNLAWFUL DISCLOSURE OF A
WARRANT**

The defendant is charged with the crime of unlawful disclosure of a warrant. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant disclosed the fact that a (search warrant) (warrant for arrest) had been (applied for) (issued);

or

That the defendant disclosed the content of the (affidavit) (testimony) upon which a (search warrant) (warrant for arrest) had been (applied for) (issued);

2. That such disclosure was made before the execution of the warrant and was not necessary for the execution thereof; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-3827 (1971 Supp.).

Unlawful disclosure of a warrant is a class B misdemeanor.

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 60.29 INTERFERENCE WITH THE
CONDUCT OF PUBLIC BUSINESS
IN A PUBLIC BUILDING**

The defendant is charged with the crime of interference with the conduct of public business in a public building. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant willfully engaged in conduct at or in a public building so as to deny to any (public official) (public employee) (invitee) on such premises his right to enter, to use the facilities, or to leave such public building.

or

1. That the defendant willfully impeded any (public official) (public employee) in the lawful performance of duties or activities through the use of (restraint) (abduction) (coercion) (intimidation) (force and violence) or any threat thereof.

or

1. That the defendant willfully refused or failed to leave a public building upon being requested to do so by (the chief administrative officer) (one charged with maintaining order in such public building) at a time when the defendant was (committing) (threatening to commit) (inciting others to commit) any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful functions being carried on in such public building.

or

1. That defendant willfully impeded, disrupted or

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hindered the normal proceedings of any meeting conducted by any (judicial body) (legislative body) (official at any public building) by any act of intrusion into the chamber or other areas designated for the use of the body, or official conducting such meeting or session by any act designed to intimidate, coerce or hinder any member of such body, or any official engaged in the performance of duties at such meeting or session.

or

1. That the defendant willfully impeded, disrupted or hindered by any act of intrusion into the chamber or other areas designated for the use of any executive body or official, the normal proceedings of such body or official.
2. That the defendant did so when in possession of a firearm.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority in the case of interference with the Conduct of Public Business in a Public Building, see K. S. A. 21-3828 (1971 Supp.). For authority in the case of Aggravated Interference with the Conduct of Public Business in a Public Building, see K. S. A. 21-3829 (1971 Supp.).

Interference with the conduct of public business in a public building is a class A misdemeanor. Aggravated interference with the conduct of public business in a public building when in possession of any firearm is a class D felony. The last element of the instruction designated (2) should be deleted or included depending upon whether or not the state charges defendant with a misdemeanor or felony offense.

CHAPTER 61.00

CRIMES AFFECTING PUBLIC TRUSTS

	PIK Number
Bribery	61.01
Official Misconduct	61.02
Compensation for Past Official Acts	61.03
Compensation for Past Official Acts—Defense	61.04
Presenting a False Claim	61.05
Permitting a False Claim	61.06
Discounting a Public Claim	61.07
Unlawful Interest in Insurance Contract	61.08
Unlawful Procurement of Insurance Contract	61.09
Unlawful Collection by a Judicial Officer	61.10
Misuse of Public Funds	61.11

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PIK 61.01 BRIBERY

The defendant is charged with the crime of bribery. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant offered, gave, or promised to give directly or indirectly to _____ a public (officer) (employee) a benefit or consideration.
2. That _____ was not legally entitled to such benefit or consideration.
3. That defendant did so with intent to influence _____ with respect to the performance of his powers or duties.

or

1. That the defendant was a public (officer) (employee).
2. That the defendant requested, received, or agreed to receive from _____ directly or indirectly a benefit or consideration.
3. That the benefit or consideration was (requested) (received) (agreed upon) with the intent that the defendant be influenced with respect to the performance of his powers or duties.
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3901 (1971 Supp.). The first part of the instruction is applicable when the crime charged is that of offering or giving a bribe. The name of the officer or employee sought to be influenced should be inserted in the blanks. The sec-

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ond part of the instruction is applicable when the crime charged is soliciting a bribe. Bribery is a class D felony. If the defendant is a public officer or employee he shall forfeit his office or employment in addition to the other penalties prescribed by law. For sports bribery, see PIK 66.06, Sports Bribery. Where the breach of official duty has already occurred, see PIK 61.03, Compensation for Past Official Acts.

Comment

The crime of bribery has been enlarged to apply to all public officers and employees, including jurors, and also reaches those who solicit a bribe.

PIK 61.02 OFFICIAL MISCONDUCT

The defendant is charged with the crime of official misconduct. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That defendant was a public (officer) (employee).
2. That defendant committed an act of misconduct as follows: _____.
3. That defendant acted or appeared to act under authority of his (office) (employment).
4. That defendant did so willfully and maliciously.

or

1. That the defendant was a public (officer) (employee).
2. That defendant demanded or received a fee or reward (for the execution of any official act) (for the performance of a duty imposed by law or the terms of his employment).
3. That defendant knew that his act was contrary to law.
4. That defendant willfully acted or appeared to act under authority of his (office) (employment).
5. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3902 (1971 Supp.). Official misconduct is a class A misdemeanor. In addition to the other penalty prescribed by law, a public officer or employee shall forfeit his office or employment upon conviction of official misconduct.

In element number (2) of the first part of the instruction, designate the act alleged to constitute "oppression, partiality, misconduct, or abuse of authority."

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**PIK 61.03 COMPENSATION FOR PAST
OFFICIAL ACTS**

The defendant is charged with the crime of compensation for past official acts. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That _____ was a public (officer) (employee).
2. That _____ gave a (decision) (opinion) (recommendation) (vote) favorable to defendant.

or

That _____ performed an act of official misconduct.

3. That defendant gave or offered to give to _____ any benefit or consideration for such act.
4. That this act occurred on or about the _____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3903 (1971 Supp.). Compensation for past official acts is a class B misdemeanor. See PIK 61.04, Compensation for Past Official Acts—Defense.

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**PIK 61.04 COMPENSATION FOR PAST OFFICIAL
ACTS—DEFENSE**

It is a defense to the charge of compensation for past official acts that any gifts or other benefits to a public (officer) (employee) were conferred on account of kinship or other personal, professional, or business relationships independent of the official status of the receiver.

or

It is a defense to the charge of compensation for past official acts that any gifts or other benefits to a public (officer) (employee) were trivial benefits incidental to personal, professional, or business contacts and involved no substantial risk of undermining official impartiality.

Notes on Use

For authority, see K. S. A. 21-3903 (1971 Supp.).

PIK 61.05 PRESENTING A FALSE CLAIM

The defendant is charged with the crime of presenting a false claim. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That _____ was a (public officer) (public body) authorized to allow or pay a claim.
2. That defendant knowingly presented to _____ a claim which was false in whole or in part.
3. That defendant did so with intent to defraud.
4. That this act occurred on or about the _____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction, "intent to defraud" means an intention to induce another by deception to assume, create, transfer, alter, or terminate a right or obligation with reference to property.

Notes on Use

For authority, see K. S. A. 21-3904 (1971 Supp.). Presenting a false claim for fifty dollars or more is a class E felony. Presenting a false claim for less than fifty dollars is a class A misdemeanor.

If there is a question of fact as to the amount of the alleged false claim, the jury must make a finding of the amount of the claim. For verdict forms depending on values see PIK 68.11, Verdict Form—Value in Issue.

Where a claim is presented part of which is valid and part of which is false, the false part of the claim governs as to whether the offense is a felony or misdemeanor.

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PIK 61.06 PERMITTING A FALSE CLAIM

The defendant is charged with the crime of permitting a false claim. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That defendant was a public (officer) (employee).
2. That the defendant (approved by audit) (allowed or paid) a claim made upon _____.
3. That defendant knew such claim was false or fraudulent in whole or in part.
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3905 (1971 Supp.). Permitting a false claim for fifty dollars or more is a class E felony. Permitting a false claim for less than fifty dollars is a class A misdemeanor. Upon conviction of presenting a false claim, defendant forfeits his public office or employment.

If there is a question of fact as to the amount of the alleged false claim, the jury must make a finding of the amount of the claim. For verdict forms depending on values see PIK 68.11, Verdict Form—Value in Issue.

In element number (2) designate the state, subdivision, or governmental instrumentality against whom the claim is made.

Where a claim is presented part of which is valid and part of which is false, the false part of the claim governs as to whether the offense is a felony or misdemeanor.

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PIK 61.07 DISCOUNTING A PUBLIC CLAIM

The defendant is charged with the crime of discounting a public claim. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant was a public (officer) (employee).
2. That defendant in his private capacity either directly or indirectly purchased for less than full value a claim held by another against _____.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3906 (1971 Supp.). Discounting a public claim is a class A misdemeanor.

In element number (2) designate the municipality, state, or subdivision against whom the claim is made.

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**PIK 61.08 UNLAWFUL INTEREST IN
INSURANCE CONTRACT**

The defendant is charged with the crime of unlawful interest in an insurance contract. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant was a public (officer) (employee).
2. That defendant (represented) (divided commissions with) any surety company or other writer of a surety bond in the writing of a (bond) (contract) subject to his approval.

or

1. That the defendant was a public (officer) (employee).
2. That defendant (represented) (divided commissions with) an insurance company or other insurer in the writing of a policy of (fire) (casualty) (workmen's compensation) or (other) insurance which was paid for from the public fund of the political unit served by him.
3. That this act occurred on or about the ____ day of _____, 19 ____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3907 (1971 Supp.). Unlawful interest in an insurance contract is a class B misdemeanor. In addition to the other penalties provided by law, a person convicted of an unlawful interest in an insurance contract shall forfeit his office or public employment.

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**PIK 61.09 UNLAWFUL PROCUREMENT OF
INSURANCE CONTRACT**

The defendant is charged with the crime of unlawful procurement of insurance contract. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant was a (surety company) (writer of surety bonds) (insurance company) (other insurer).
2. That defendant employed or contracted with public (officer) (employee) (to represent [it] [him] in any capacity) (to share commissions on any [surety bond] [contract] [policy of insurance] which is paid for from the public funds of the political unit served by such [officer] [employee]).
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3908 (1971 Supp.). Unlawful procurement of insurance contract is a class B misdemeanor. The defendant charged with this crime may be either a corporation or an individual.

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**PIK 61.10 UNLAWFUL COLLECTION BY A
JUDICIAL OFFICER**

The defendant is charged with the crime of unlawful collection by a judicial officer. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant is a judicial officer.
2. That defendant was employed to collect a claim.
3. That defendant caused or permitted an action to enforce collection of the claim to be filed in a court over which he presides.
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-3909 (1971 Supp.). Unlawful collection by a judicial officer is a class B misdemeanor. Upon conviction of unlawful collection the judicial officer shall forfeit his office.

PIK 61.11 MISUSE OF PUBLIC FUNDS

The defendant is charged with the crime of misuse of public funds. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant was a (custodian) (person having control) of public money by virtue of his official position.
2. That defendant (used) (lent) (permitted another to use) public money in a manner not authorized by law.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction, "public money" means any money or negotiable instrument which belongs to the state or any political subdivision.

Notes on Use

For authority, see K. S. A. 21-3910 (1971 Supp.). Misuse of public funds is a class D felony.

CHAPTER 62.00
CRIMES INVOLVING
VIOLATIONS OF PERSONAL RIGHTS

	PIK Number
Eavesdropping	62.01
Eavesdropping—Defense of Public Utility Employee	62.02
Breach of Privacy—Intercepting Message	62.03
Breach of Privacy—Divulging Message	62.04
Denial of Civil Rights	62.05
Criminal Defamation	62.06
Criminal Defamation—Truth as a Defense	62.07
Circulating False Rumors Concerning Financial Status	62.08
Exposing a Paroled or Discharged Person	62.09
Hypnotic Exhibition	62.10

PIK 62.01 EAVESDROPPING

The defendant is charged with the crime of eavesdropping. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly and without lawful authority

(a) entered into a private place with intent to listen secretly to private conversations or to observe the personal conduct of any other person.

or

(b) installed or used a device for hearing, recording, amplifying or broadcasting sounds originating in a private place which would not ordinarily be audible or comprehensible outside, without the consent of the person entitled to privacy therein.

or

(c) installed or used a device for the interception of a (telephone) (telegraph) communication without the consent of the person in possession or control of the facilities for such communication.

2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction, "private place" means a place where one may reasonably expect to be safe from uninvited intrusion or surveillance, but does not include a public place.

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Notes on Use

For authority, see K. S. A. 21-4001 (1971 Supp.). Eavesdropping is a class A misdemeanor.

Comment

For extensive comment, see 1968 Judicial Council notes following K. S. A. 21-4001 (1971 Supp.).

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**PIK 62.02 EAVESDROPPING—DEFENSE OF
PUBLIC UTILITY EMPLOYEE**

It is a defense to the charge of eavesdropping that the defendant was (the operator of a switchboard) (an officer) (an employee) of a public utility providing telephone communication service and that he intercepted, disclosed, or used a communication in the performance of his legitimate duties.

Notes on Use

For authority, see K. S. A. 21-4001 (3) (1971 Supp.).

**PIK 62.03 BREACH OF PRIVACY—
INTERCEPTING MESSAGE**

The defendant is charged with the crime of breach of privacy. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly and without lawful authority intercepted a message by (telephone) (telegraph) (letter) (or other means of private communication).
2. That defendant did so without the consent of the sender or receiver.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4002 (1971 Supp.). Breach of privacy is a class A misdemeanor.

This offense does not apply to telephone party lines or telephone extensions.

Comment

K. S. A. 21-4002 (1971 Supp.) seeks to protect private communications. It prohibits wiretapping except where authorized by court order. Tampering with private mail is prohibited, as well as unauthorized disclosures.

**PIK 62.04 BREACH OF PRIVACY—
DIVULGING MESSAGE**

The defendant is charged with the crime of breach of privacy. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly and without lawful authority made known to a third person the existence or contents of a message by (telephone) (telegraph) (letter) (or other means of private communication).
2. That defendant did so without the consent of the sender or receiver.
3. That defendant (knew the message had been illegally intercepted by another) (illegally learned of the message in the course of his employment with the transmitting agency).
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4002 (1971 Supp.). Breach of privacy is a class A misdemeanor.

The Committee is unaware of what the legislature intended by use of the terms "illegally intercepted" or "illegally learned" as contained in K. S. A. 21-4002 (1971 Supp.). The instruction should be modified to specifically identify the claimed illegality.

This offense does not apply to telephone party lines or telephone extensions.

Comment

K. S. A. 21-4002 (1971 Supp.) seeks to protect private communications. It prohibits wiretapping except where authorized by court order. Tampering with private mail is prohibited, as well as unauthorized disclosures.

PIK 62.05 DENIAL OF CIVIL RIGHTS

The defendant is charged with the crime of denial of civil rights. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant denied to _____ on account of the (race) (color) (ancestry) (national origin) (religion) of _____

(a) the full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the (state) (any political subdivision of the state) (any municipality).

or

(b) the full and equal use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of (any establishment which provides lodging to transient guests for hire).

or

(any establishment which is engaged in selling food or beverages to the public for consumption upon the premises).

or

(any place of recreation, amusement, exhibition or entertainment which is open to the public).

or

(c) the full and equal use and enjoyment of services, privileges and advantages of any facilities for the public transportation of persons or goods.

or

(d) the full and equal use and enjoyment of

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the services, facilities, privileges and advantages of any establishment which offers personal or professional services to members of the public.

or

(e) the full and equal exercise of the right to vote in any election held pursuant to Kansas law.

2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4003 (1971 Supp.). Denial of civil rights is a class A misdemeanor.

Comment

For comment, see 1968 Judicial Council notes to K. S. A. 21-4003 (1971 Supp.). See annotation, Participation of Student in Demonstration on or near Campus as Warranting Expulsion or Suspension from School or College, 32 A. L. R. 3d 864.

PIK 62.06 CRIMINAL DEFAMATION

The defendant is charged with the crime of criminal defamation. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant communicated to another person false information tending to expose (_____) to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social acceptance.

or

That the defendant communicated to another person false information tending to degrade and vilify the memory of _____, a deceased person, and to scandalize or provoke his surviving relatives and friends.

2. That such acts were done maliciously.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4004 (1971 Supp.). Criminal defamation is a class A misdemeanor. For the instruction concerning truth as a defense to a charge of defamation, see PIK 62.07, Criminal Defamation—Truth as a Defense.

PIK 56.04, Homicide Definitions, defining maliciously should be given with this instruction.

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**PIK 62.07 CRIMINAL DEFAMATION—TRUTH
AS A DEFENSE**

It is a defense to the charge of criminal defamation that the alleged defamatory information communicated was true.

Notes on Use

For authority, see K. S. A. 21-4004 (1971 Supp.). For the instruction concerning the elements of a charge of defamation, see PIK 62.06, Criminal Defamation.

**PIK 62.08 CIRCULATING FALSE RUMORS
CONCERNING FINANCIAL STATUS**

The defendant is charged with the crime of maliciously circulating false rumors. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant circulated or caused to be circulated a false statement as follows: _____.
2. That defendant did so maliciously and without reasonable grounds for believing the false statement.
3. That defendant did so with the intent to injure the financial standing or reputation of _____.
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4005 (1971 Supp.). Circulating false rumors concerning financial status is a class A misdemeanor.

In the blank in element (1) specify the alleged false statement. In element (3) name the bank, financial or business institution, or individual alleged to be injured.

Comment

The Committee believes that the phrase "without reasonable grounds to believe" is synonymous with "without probable cause" and is more understandable to jurors. See *State v. Howland*, 153 Kan. 352, 110 P. 2d 801 (1941).

**PIK 62.09 EXPOSING A PAROLED OR
DISCHARGED PERSON**

The defendant is charged with the crime of exposing a paroled or discharged person. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant maliciously and willfully communicated (or threatened to communicate) to another an oral or written statement that (_____) has been charged with or convicted of a felony.
2. That defendant did so with intent to interfere with the employment or business of (_____).
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4006 (1971 Supp.). Exposing a paroled or discharged person is a class B misdemeanor.

This offense does not apply to a person or organization furnishing such information at the request of another person or organization.

PIK 62.10 HYPNOTIC EXHIBITION

The defendant is charged with the crime of hypnotic exhibition. The defendant pleads not guilty.

To establish this charge the following claim must be proved:

1. That the defendant used or attempted to use a hypnotic exhibition, demonstration or performance for entertainment.

or

1. That the defendant permitted himself to be exhibited while in a state of hypnosis.
2. That this act occurred on or about the ____ day of _____, 19 ____, in _____ County, Kansas.

As used in this instruction, "hypnosis" means a condition of altered attention brought about by an individual through the use of certain physical or psychological manipulations of one person by another.

Notes on Use

For authority, see K. S. A. 21-4007 (1971 Supp.). Hypnotic exhibition is a class C misdemeanor.

CHAPTER 63.00

CRIMES AGAINST THE PUBLIC PEACE

	PIK Number
Disorderly Conduct	63.01
Unlawful Assembly	63.02
Remaining at an Unlawful Assembly	63.03
Riot	63.04
Incitement to Riot	63.05
Maintaining a Public Nuisance	63.06
Permitting a Public Nuisance	63.07
Vagrancy	63.08
Public Intoxication	63.09
Giving a False Alarm	63.10
Criminal Desecration	63.11
Desecrating a Cemetery	63.12
Desecrating a Dead Body	63.13
Harassment by Telephone	63.14
Desecration of Flags	63.15

PIK 63.01 DISORDERLY CONDUCT

The defendant is charged with the crime of disorderly conduct. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant
 - (a) engaged in brawling or fighting.
or
 - (b) disturbed an assembly, meeting, or procession, not unlawful in its character.
or
 - (c) used offensive, obscene, or abusive language or engaged in noisy conduct.
2. That the defendant acted with knowledge or reasonable cause to believe that his acts would alarm, anger, or disturb others or provoke an assault or other breach of the peace.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4101 (1971 Supp.). Disorderly conduct is a class C misdemeanor. This offense covers conduct formerly called disturbing the peace. The instruction should be modified by selecting the specific conduct alleged to constitute the offense.

Comment

“Disturbance of the peace” is defined in *State v. Cleveland*, 205 Kan. 426, 469 P. 2d 251 (1970). The use of loud and indecent language may be sufficient to constitute disturbing the peace when public tranquility is disturbed.

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PIK 63.02 UNLAWFUL ASSEMBLY

The defendant is charged with the crime of unlawful assembly. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant met in a group of not less than five persons for the purpose of engaging in conduct constituting either (disorderly conduct) (a riot).

or

1. That the defendant in a lawfully assembled group of not less than five persons agreed to engage in (disorderly conduct) (a riot).
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4102 (1971 Supp.). Unlawful assembly is a class B misdemeanor. A definition of disorderly conduct or riot must be given with this instruction, see PIK 63.01, Disorderly Conduct or PIK 63.04, Riot. For instruction involving conspiracy, see PIK 55.03, Conspiracy.

Comment

According to the 1968 Judicial Council notes, the gist of the offense is the assembly for an unlawful purpose. Proof of the crime does not require proof of acts to carry out the agreement.

The Committee is of the opinion that K. S. A. 21-4102 (1971 Supp.) is of questionable constitutional validity because no overt act is required to constitute the offense. Traditionally, a person is punished for criminal acts he commits not what he is thinking of committing.

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PIK 63.03 REMAINING AT AN UNLAWFUL ASSEMBLY

The defendant is charged with the crime of remaining at an unlawful assembly. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant willfully failed to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction, an unlawful assembly is a meeting of five or more persons for the purpose of engaging in conduct constituting (disorderly conduct) (a riot) or a meeting of five or more persons agreeing to engage in such conduct.

Notes on Use

For authority, see K. S. A. 21-4103 (1971 Supp.). Remaining at an unlawful assembly is a class A misdemeanor. See PIK 63.01, Disorderly Conduct and PIK 63.04, Riot for definitions of those offenses.

Comment

See comment to PIK 63.02, Unlawful Assembly. This instruction applies not only to participants in the unlawful assembly but to bystanders.

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PIK 63.04 RIOT

The defendant is charged with the crime of riot. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant used force or violence which resulted in a breach of the public peace.
2. That defendant acted in a group of five or more persons.
3. That defendant acted without authority of law.
or
1. That defendant threatened to use force or violence to produce a breach of the public peace against any person or property.
2. That such threat was accompanied by power or apparent power of immediate execution.
3. That defendant acted in a group of five or more persons.
4. That defendant acted without authority of law.
- 4 or 5. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4104 (1971 Supp.). Riot is a class A misdemeanor. For definition of breach of the public peace, see Chapter 53.00, Definitions.

Comment

PIK 63.03 through 63.05 define crimes deemed inimical to the public peace. See 1968 Judicial Council notes for differentiation between unlawful assembly, riot and incitement to riot.

PIK 63.05 INCITEMENT TO RIOT

The defendant is charged with the crime of incitement to riot. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant as a member of a group of five or more persons by words or conduct urged others to engage in a riot under circumstances which produced a clear and present danger of injury to persons or property or a breach of the public peace.
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4105 (1971 Supp.). Incitement to riot is a class D felony. If further definition of riot is necessary see K. S. A. 21-4104 (1971 Supp.) or PIK 63.04, Riot.

Comment

See Comment to PIK 63.04, Riot.

PIK 63.06 MAINTAINING A PUBLIC NUISANCE

The defendant is charged with the crime of maintaining a public nuisance. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant intentionally _____.
2. That this act or omission injured or endangered the public health, safety or welfare.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4106 (1971 Supp.). Maintaining a public nuisance is a class C misdemeanor.

Claim (1) should be completed by specifying the act or omission alleged to constitute the nuisance.

Comment

For examples of public nuisances, see 1968 Judicial Council notes to K. S. A. 21-4106 (1971 Supp.).

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PIK 63.07 PERMITTING A PUBLIC NUISANCE

The defendant is charged with the crime of permitting a public nuisance. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly permitted _____.
2. That this act or omission endangered the public health, safety or welfare.
3. That this condition was knowingly permitted on property under control of the defendant.
4. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4107 (1971 Supp.) and K. S. A. 21-4106 (1971 Supp.). Permitting a public nuisance is a class C misdemeanor.

Claim (1) should be completed by specifying the act or omission alleged to constitute the nuisance.

Comment

For examples of public nuisances, see 1968 Judicial Council notes to K. S. A. 21-4106 (1971 Supp.).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 63.08 VAGRANCY

The defendant is charged with the crime of vagrancy. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant

(a) engaged in _____.

or

(b) was eighteen years of age or over and able to work and without lawful means of support and failed or refused to seek employment.

or

(c) loitered in any community without visible means of support.

or

(d) loitered on the streets or in a place open to the public with intent to solicit for immoral purposes.

or

(e) derived support in whole or in part from begging.

2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4108 (1971 Supp.). Vagrancy is a class C misdemeanor. Claim (a) should be completed by specifying the alleged unlawful occupation.

Comment

The Committee is unanimous in its opinion that K. S. A. 21-4108 (1971 Supp.) has serious constitutional deficiencies for the reasons set forth in the 1968 Judicial Council comment.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 63.09 PUBLIC INTOXICATION

The defendant is charged with the crime of public intoxication. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant was in a public place while under the influence of (intoxicating liquor) (narcotics or other drug) to the degree that he might endanger himself or other persons or property, or annoy persons in his vicinity.
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4109 (1971 Supp.). Public intoxication is a class C misdemeanor.

If a defense that intoxication was involuntarily produced is asserted, see K. S. A. 21-3208 (1971 Supp.), and PIK 54.11, Intoxication—Involuntary.

The term "public place" includes streets, highways or public buildings.

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PIK 63.10 GIVING A FALSE ALARM

The defendant is charged with the crime of giving a false alarm. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant initiated or circulated a report or warning of an impending bombing or other crime or catastrophe.
2. That the defendant knew that the report was baseless and likely to cause the evacuation of a building, place of assembly, or facility of public transportation or to cause public inconvenience or alarm.

or

1. That the defendant transmitted in any manner to the fire department of any municipality or township a false alarm of fire.
2. That the defendant knew at the time of such transmission that there was no reasonable ground for believing that such fire existed.
3. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4110 (1971 Supp.). Giving a false alarm is a class A misdemeanor. In connection with this offense, see PIK 56.23, Terroristic Threats, which provides felony penalties for persons who threaten to terrorize with intent to cause evacuation of buildings or transportation facilities.

PIK 63.11 CRIMINAL DESECRATION

The defendant is charged with the crime of criminal desecration. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant purposely desecrated a (public monument or structure) (any place of worship).

or

1. That the defendant purposely and publicly desecrated the (national flag) (state flag) (____).
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

As used in this instruction, "desecrate" means to deface, damage, pollute or otherwise physically mistreat in a way that will outrage the sensibilities of persons likely to observe or discover the action.

Notes on Use

For authority, see K. S. A. 21-4111 (1971 Supp.). Criminal desecration is a class C misdemeanor. See also PIK 59.28, Tampering with Landmark. If the charge is based upon desecration of an object venerated by the public, specify the object in the appropriate blank.

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PIK 63.12 DESECRATING A CEMETERY

The defendant is charged with the crime of desecrating a cemetery. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly and without authority of law
 - (a) destroyed, cut, mutilated or otherwise injured, tore down or removed any (tomb) (monument) (memorial) (marker) in a cemetery or any gate, door, fence, wall, post, railing or enclosure for the protection of cemetery property.

or
 - (b) obliterated any (grave) (vault) (niche) (crypt).

or
 - (c) destroyed, cut, broke or injured any (building) (statue) (ornament) (tree, shrub or plant) within a cemetery.
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4115 (1971 Supp.). Desecrating a cemetery is a class C misdemeanor.

PIK 63.13 DESECRATING A DEAD BODY

The defendant is charged with the crime of desecrating a dead body. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly and without authorization of law
 - (a) opened a grave or other place of interment with intent to remove the dead body or remains of a human being or any coffin, vestment or other article interred with such body.

or
 - (b) removed the dead body or remains of a human being, or the coffin, vestment or other article interred with such body, from the grave or other place of interment.

or
 - (c) received the dead body or remains of a human being, knowing the same to have been disinterred unlawfully.
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4112 (1971 Supp.). Desecrating a dead body is a class B misdemeanor.

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PIK 63.14 HARASSMENT BY TELEPHONE

The defendant is charged with the crime of harassment by telephone. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (used a telephone to) (knowingly permitted a telephone under his control to be used to)
 - (a) make any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent.
or
 - (b) to annoy, abuse, threaten or harass any person, whether or not conversation ensues, without disclosing or identifying the caller.
or
 - (c) cause the telephone of another to ring repeatedly with intent to harass any person at the called number.
or
 - (d) make repeated telephone calls, during which conversation ensued, solely to harass any person at the called number.
or
 - (e) play any recording on a telephone, except recordings such as weather information or sports information, when the number thereof is dialed, unless the person or group playing the recording shall identify itself or himself and state that it is a recording.
2. That this act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

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Notes on Use

For authority, see K. S. A. 21-4113 (1971 Supp.). Harassment by telephone is a class A misdemeanor. For a charge of refusal to yield a party line, see PIK 64.13, Refusal to Yield a Telephone Party Line. For Terroristic Threat, see PIK 56.23.

Comment

Identification of the voice of defendant over the telephone was mentioned in *State v. Visco*, 183 Kan. 562, 331 P. 2d 318 (1958).

PIK 63.15 DESECRATION OF FLAGS

The defendant is charged with the crime of desecration of flags. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant

(a) for exhibition or display placed or caused to appear upon a flag of the (United States) (State of Kansas) any (word) (figure) (mark) (picture) (design) (drawing) (advertisement).

or

(b) exposed to public view a flag of the (United States) (State of Kansas) upon which was (printed, painted or placed) (attached or appended) a (word) (figure) (mark) (picture) (design) (drawing) (advertisement) of any nature.

or

(c) ([exposed to public view] [manufactured] [sold] [exposed for sale] [gave away]) (had in his possession [for sale] [to give away] [for use for any purpose]) any article of merchandise (receptacle of merchandise) upon which is (printed) (painted) (attached) (placed) a representation of the flag of the (United States) (State of Kansas) to (advertise) (call attention to) (decorate) (mark or distinguish) such flag.

or

(d) publicly (mutilated) (defaced) (defiled) (trampled) the flag of the (United States) (State of Kansas).

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2. This act occurred on or about the ____ day of _____, 19____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 21-4114 (1971 Supp.). Desecration of flags is a class A misdemeanor.

Comment

A New York conviction of malicious mischief for burning a flag was reversed by the United States Supreme Court in *Street v. New York*, 394 U. S. 576, 22 L. Ed. 2d. 572, 89 S. Ct. 1354 (1969). The case is annotated at 22 L. Ed. 2d. 972, under the subject "Constitutionality of Statutes, Ordinances, or Administrative Provisions Prohibiting Defiance, Disrespect, Mutilation, or Misuse of American Flag—Federal Cases."

CHAPTER 64.00

CRIMES AGAINST THE PUBLIC SAFETY

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**PIK 64.01 UNLAWFUL USE OF WEAPONS—
FELONY**

The defendant is charged with the crime of unlawful use of weapons. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That defendant knowingly, (sold) (manufactured) (purchased) (possessed) (carried) a firearm (designed to discharge) (capable of discharging) automatically more than once by a single function of the trigger; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4201 (g) (1971 Supp.).

Unlawful use of weapons under these circumstances is a class E felony. It should be noted this offense applies to machine guns.

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**PIK 64.02 UNLAWFUL USE OF WEAPONS—
MISDEMEANOR**

The defendant is charged with the crime of unlawful use of weapons. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That defendant knowingly (sold) (manufactured) (purchased) (possessed) (carried) a (bludgeon) (sand-club) (shotgun with a barrel less than eighteen [18] inches in length) (metal knuckles) (switchblade knife) (knife which has a blade that opens automatically by hand pressure applied to a [button] [spring] [other device] in the handle of the knife) (knife having a blade that [opens] [falls] [is ejected] into position by [the force of gravity] [an outward thrust] [a downward thrust] [centrifugal thrust or movement]); and

or

That the defendant knowingly, (carried concealed on his person) (possessed with the intention to use the same unlawfully against another) a (dagger) (dirk) (billy) (blackjack) (slung shot) (dangerous knife) (straightedged razor) (stiletto) (any dangerous or deadly weapon or instrument); and

or

That the defendant knowingly, carried (on his person) (in a [land] [water] [air] vehicle, a _____) with the intent to use the same unlawfully, a (tear gas bomb) (smoke bomb)

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(projector or object containing a noxious [liquid] [gas] [substance]); and

or

That the defendant knowingly carried a (pistol) (revolver) (other firearm) concealed on his person when not on his own land or in his abode or fixed place of business; and

or

That the defendant knowingly set a spring gun; and

or

That the defendant knowingly possessed a device or attachment designed or intended for use in silencing the report of any firearm; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4201 (a) through (f) (1971 Supp.). The instruction presents six alternative situations. The appropriate one should be used. Unlawful use of weapons under any of these circumstances is a class B misdemeanor. It should be noted that under (1) (b) an ordinary pocket knife with no blade more than four (4) inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument.

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PIK 64.03 AGGRAVATED WEAPONS VIOLATION

The defendant is charged with the crime of aggravated weapons violation. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (allege any of the seven violations listed in 64.01 and 64.02).
2. That the defendant was (convicted of _____, a felony) (released from imprisonment for _____, a felony) within five years prior to the commission of such act; and
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4202 (1971 Supp.).
Aggravated weapons violation is a class E felony.

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**PIK 64.04 UNLAWFUL USE OF WEAPONS—
AFFIRMATIVE DEFENSE**

It is a defense to the charge of (unlawful use of weapons) (aggravated weapons violation) that at the time of the commission of the act the defendant was a _____.

Notes on Use

For authority see K. S. A. 21-4201 (2) (1971 Supp.) which lists persons exempt from the application of the act. There should be inserted in the blank space of the instruction a description of an exempt person under the statute.

Comment

The burden of claiming a status of an exempt person and introducing evidence that the defendant was an exempt person is upon the defendant.

In general, the accused has the burden of introducing evidence, as a matter of defense, that he is within an exception in the statute creating the offense where such exception is not a part of the description of the offense. Accordingly, the prosecution owes no duty to prove on its case in chief that accused is not within the exception. This is a mere rule of procedure and does not relieve the state of its burden of proving guilt. 22A C. J. S., Criminal Law, Sec. 572, page 316-317; *State v. Wilson*, 62 Kan. 621, 64 P. 23 (1901); *State v. Huff*, 75 Kan. 585, 599, 90 P. 2d 279 (1907); *State v. Driscoll*, 134 Kan. 671, 8 P. 2d 335 (1932).

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PIK 64.05 UNLAWFUL DISPOSAL OF FIREARMS

The defendant is charged with the crime of unlawful disposal of firearms. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly (sold) (gave) (transferred) a firearm with a barrel less than twelve (12) inches long to _____.
2. That _____ was a person under eighteen (18) years of age; and

or

1. That the defendant knowingly (sold) (gave) (transferred) a firearm to _____.
2. That _____ was (an habitual drunkard) (a narcotic addict); and

or

1. That the defendant knowingly (sold) (gave) (transferred) a firearm with a barrel less than twelve (12) inches long to _____.
2. That _____ was a person convicted of _____, a felony, (within five years after his release from the penitentiary) (within five years after his conviction of _____, a felony); and
3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4203 (1971 Supp.). The appropriate alternative situation should be used. Unlawful disposal of firearms is a class A misdemeanor.

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**PIK 64.06 UNLAWFUL POSSESSION OF A
FIREARM—FELONY**

The defendant is charged with the crime of unlawful possession of a firearm. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly had possession of a firearm with a barrel less than twelve inches long;
2. That the defendant within five years preceding such possession had been (convicted of _____, a felony) (released from imprisonment for _____, a felony); and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4204 (1971 Supp.). Unlawful possession of a firearm under these circumstances is a class D felony.

Comment

K. S. A. 21-4204 (1971 Supp.) makes "possession" of a firearm by a convicted felon an offense. The word "knowingly" is not used in the statute. The Committee in preparing this instruction has added the requirement that the possession of the firearm be "knowingly." This construction of the word "possession" is consistent with many Kansas cases which recognize that the elements of possession require a mental attitude that the possessor intended to possess the property in question and to appropriate it to himself. For example, see *State v. Metz*, 107 Kan. 593, 193 P. 177, (1920), and *City of Hutchinson v. Weems*, 173 Kan. 452, 249 P. 2d 633, (1952). In reaching this conclusion the committee considered K. S. A. 21-3201 (1971 Supp.) which provides that a criminal intent is an essential element of every crime defined by the code. Willful conduct is conduct that is purposeful and intentional and not accidental. An

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exception is made in K. S. A. 21-3204 (1971 Supp.) which provides for an absolute criminal liability without criminal intent if the crime is a misdemeanor and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described. In view of the case law set forth above and the statutes just cited, it seems clear that in order to establish the offense of unlawful possession of a firearm, it must be proved that the possession was knowingly and intentional.

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**PIK 64.07 UNLAWFUL POSSESSION OF A
FIREARM—MISDEMEANOR**

The defendant is charged with the crime of unlawful possession of a firearm. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant was (an habitual drunkard) (a narcotic addict);
2. That the defendant knowingly had possession of a firearm; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4204 (1971 Supp.). Unlawful possession of a firearm under these circumstances is a class B misdemeanor.

Comment

See comment under PIK 64.06, Unlawful Possession of a Firearm—Felony.

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**PIK 64.08 DEFACING IDENTIFICATION MARKS
OF A FIREARM**

The defendant is charged with the crime of defacing identification marks of a firearm. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant intentionally (changed) (altered) (removed) (obliterated) the (name of the maker) (model) (manufacturer's number) (mark of identification) of a firearm; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4205 (1971 Supp.). Defacing identification marks of a firearm is a class B misdemeanor.

Comment

It should be noted that under K. S. A. 21-4205 (2) (1971 Supp.) possession of any firearm upon which an identification mark shall have been intentionally altered is *prima facie* evidence that the possessor altered the same. This section does not create a presumption but only a rule to be applied in determining the sufficiency of the evidence; hence an instruction covering this is not required.

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**PIK 64.09 FAILURE TO REGISTER SALE OF
EXPLOSIVES**

The defendant is charged with the crime of failure to register sale of explosives. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant was the seller of an explosive or detonating substance;
2. That defendant failed to register the sale or disposition of such explosive; and
3. That this act or omission occurred on or about the ____ day of _____ in _____ County, Kansas.

The register of sales must obtain the date of the sale or other disposition; the name, address, age, and occupation of the person to whom the explosive is sold or delivered; the kind and amount of explosive delivered; the place at which it is to be used; and for what purpose it is to be used.

Notes on Use

For authority see K. S. A. 21-4207 (1971 Supp.). Failure to register sale of explosives is a class B misdemeanor.

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**PIK 64.10 FAILURE TO REGISTER RECEIPT
OF EXPLOSIVES**

The defendant is charged with the crime of failure to register receipt of explosives. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That a quantity of explosives or detonating substance was delivered to the defendant;
2. That the defendant failed to sign his name in the register of sales of explosives on the page where the record of such delivery is entered; and
3. That this act or omission occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4208 (1971 Supp.). Failure to register receipt of explosives is a class C misdemeanor.

For form of register of sales see K. S. A. 21-4207 (1971 Supp.) and PIK 64.09, Failure to Register Sales of Explosives.

**PIK 64.11 UNLAWFUL DISPOSAL OF
EXPLOSIVES**

The defendant is charged with the crime of unlawful disposal of explosives. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly (sold) (gave) (transferred) an (explosive substance) (detonating substance) to _____.
2. That _____ was (a person under 18 years of age) (an habitual drunkard) (a narcotic addict) (a person who was [convicted of _____, a felony] [released from a penal institution] within five years prior to such act); and
3. That this act occurred on the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4209 (1971 Supp.). Unlawful disposal of explosives is a class A misdemeanor.

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PIK 64.12 CARRYING CONCEALED EXPLOSIVES

The defendant is charged with the crime of carrying concealed explosives. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant carried (an explosive substance) (a detonating substance) on his person in a wholly or partly concealed manner; and
2. That this act occurred on the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4210 (1971 Supp.). Carrying concealed explosives is a class C misdemeanor.

PIK 64.13 REFUSAL TO YIELD A TELEPHONE PARTY LINE

The defendant is charged with the crime of refusal to yield a telephone party line. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant willfully refused to surrender immediately the use of a party line when informed that the line was needed for (an emergency call to a [fire department] [police department]) (medical aid or ambulance); and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

“Party line” means a subscriber’s line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

“Emergency” means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

Notes on Use

For authority see K. S. A. 21-4211 (1971 Supp.). Refusal to yield a telephone party line is a class C misdemeanor.

Harassment by telephone is covered by PIK 63.14, Harassment by Telephone.

PIK 64.14 CREATING A HAZARD

The defendant is charged with the crime of creating a hazard. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (stored) (abandoned) in a place accessible to children a container having a compartment of more than 1 and ½ cubic feet capacity and a (door) (lid) which (locks) (fastens) automatically when closed and which cannot be easily opened from the inside, and did fail to remove the (door) (lock) (lid) (fastening device) on such container; and

or

That the defendant (was the owner) (had in his possession) property upon which a (cistern) (well) (cesspool) was located, and knowingly failed to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; and

or

That defendant (exposed) (abandoned) (left) an (explosive substance) (dangerous substance), in a place accessible to children; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4212 (1971 Supp.). Creating a hazard is a class B misdemeanor. The appropriate alternative situation should be used. For a similar offense see maintaining a public nuisance covered by K. S. A. 21-4106 (1971 Supp.) and PIK 63.06, Maintaining a Public Nuisance.

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**PIK 64.15 UNLAWFUL FAILURE TO REPORT
A WOUND**

The defendant is charged with the crime of unlawful failure to report a wound. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant treated _____ for a (bullet wound) (gunshot wound) (powder burn) caused by the discharge of a firearm;
or
That the defendant treated _____ for a wound likely to result in death and apparently inflicted by a (knife) (ice pick) (sharp or pointed instrument);
2. That the defendant failed to report the treatment of the wound to the office of the chief of police of _____ or to the office of the sheriff of _____ County, Kansas; and
3. That this act or omission occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4213 (1971 Supp.). Unlawful failure to report a wound is a class C misdemeanor. The appropriate alternative situation should be used.

CHAPTER 65.00

CRIMES AGAINST THE PUBLIC MORALS

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PIK 65.01 PROMOTING OBSCENITY

The defendant is charged with the crime of promoting obscenity. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly or recklessly (manufactured) (issued) (sold) (gave) (provided) (lent) (mailed) (delivered) (transmitted) (published) (distributed) (circulated) (disseminated) (presented) (exhibited) (advertised) obscene material; and

or

That the defendant knowingly or recklessly possessed obscene material with intent to (issue) (sell) (give) (provide) (lend) (mail) (deliver) (transfer) (transmit) (publish) (distribute) (circulate) (disseminate) (present) (exhibit) or (advertise) the same; and

or

That the defendant knowingly or recklessly (offered) (agreed) to (manufacture) (issue) (sell) (give) (provide) (lend) (mail) (deliver) (transfer) (transmit) (publish) (distribute) (circulate) (disseminate) (present) (exhibit) (advertise) obscene material; and

or

That the defendant knowingly or recklessly (produced) (presented) (directed) an obscene performance or participated in a portion thereof which is obscene or which contributed to its obscenity; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

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Notes on Use

For authority see K. S. A. 21-4301 (1971 Supp.). Promoting obscenity is a class A misdemeanor for the first and second offenses. For the third and subsequent offenses committed within two years after a previous conviction, this offense is a class E felony.

Comment

For definition of "recklessness" see K. S. A. 21-3201 (3) (1971 Supp.).

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PIK 65.02 PROMOTING OBSCENITY TO A MINOR

The defendant is charged with the crime of promoting obscenity to a minor. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly and recklessly (allege any of the four violations listed in PIK 65.01, Promoting Obscenity).
2. That _____ (the recipient of the obscene material) (a member of the audience of such obscene performance) was a minor child under the age of 18 years; and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4301a (1971 Supp.). Promoting obscenity to minors was added by the 1970 Legislature. The first offense is a class A misdemeanor; second offense within two years is a class E felony; third or subsequent offense within two years is a class D felony.

**PIK 65.03 PROMOTING OBSCENITY—
DEFINITIONS**

Certain terms used in the preceding instruction are defined as follows:

- (a) (Any material or performance is “obscene” if, considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and the material is patently offensive and utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be intended for distribution to children or other especially susceptible audience.)
- (b) (Any material or performance is “obscene” if, considered as a whole, its predominant appeal is to prurient, shameful or morbid interest of minors in nudity, sex, excretion, sadism or masochism, and the material is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and the material is utterly without redeeming social value for minors.)

“Material” means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.

“Performance” means any play, motion picture, dance or other exhibition performed before an audience.

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Notes on Use

For authority see K. S. A. 21-4301 (1971 Supp.) and 21-4301a (1971 Supp.). It should be noted that an aggravated offense, promoting obscenity to minors, was added after the enactment of the 1969 criminal code. The definition of obscenity is different as applied to adults and as applied to minors.

In defining "obscenity" use form (a) where adults are involved and form (b) where minors are involved.

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**PIK 65.04 PROMOTING OBSCENITY—
PRESUMPTION OF KNOWLEDGE AND
RECKLESSNESS FROM PROMOTION**

If you find that defendant promoted materials to emphasize their sexually provocative aspects, you may find that defendant did so knowingly or recklessly, but you are not required to do so if you are persuaded by the evidence that the contrary is true.

Notes on Use

For authority see K. S. A. 21-4301 (1971 Supp.) and 21-4301a (1971 Supp.).

In the statute the words "prurient appeal or sexually provocative aspects" is used. In this instruction only the words "sexually provocative aspects" is used since they are more understandable and include prurient appeal.

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**PIK 65.05 PROMOTING OBSCENITY—
AFFIRMATIVE DEFENSES**

(a) (It is a defense to the charge of promoting obscenity that the persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same.)

or

(b) (It is a defense to the charge of promoting obscenity that the defendant was a projectionist, or assistant projectionist, having no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and the motion picture was shown commercially to the general public.)

or

(c) It is a defense to the charge of promoting obscenity to minors that the defendant had reasonable cause to believe that the minor involved was 18 years old or over and such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that such minor was eighteen [18] years old or more.)

or

(d) (It is a defense to the charge of promoting obscenity to minors that the allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial

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school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.)

Notes on Use

For authority see K. S. A. 21-4301 (1971 Supp.) and 21-4301a (1971 Supp.).

The 1969 criminal code was amended to create an aggravated offense of promoting obscenity to minors. As applied to minors the amendment provides two additional affirmative defenses which are incorporated in the instruction above.

In a particular case an appropriate instruction should be given pertaining to the applicable affirmative defenses.

Paragraphs (*c*) and (*d*) may apply only where minors are involved. Paragraphs (*a*) and (*b*) may apply in any obscenity case.

PIK 65.06 GAMBLING

The defendant is charged with the crime of gambling. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (made a bet) (entered or remained in a gambling place with intent [to make a bet] [to participate in a lottery] [to play a gambling device]); and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4303 (1971 Supp.). Gambling is a class B misdemeanor. PIK 65.07, Gambling Definitions, should be given with this instruction.

PIK 65.07 GAMBLING—DEFINITIONS

Certain terms used in the preceding instruction are defined as follows:

(A “bet” is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement.)

(A “lottery” is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance.)

(“Consideration” means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.)

(A “gambling device” is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.)

(A “gambling place” is any place, room, building, vehicle, tent or location which is used for any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers

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to bet; conducting lotteries; or playing gambling devices.)

Notes on Use

For authority see K. S. A. 21-4302 (1971 Supp.).

This instruction contains the statutory definitions applicable to gambling offenses. All statutory definitions are provided, any of which may be used in an appropriate case.

K. S. A. 21-4302 (1) (a) (b) (c) (d) (1971 Supp.) sets forth what a bet does not include. A bet does not include bona fide business transactions which are valid under the law of contracts; offers of purses, prizes or premiums to actual contestants in any bona fide contest or to bona fide owners of animals or vehicles entered in contests; a lottery; nor does it include any bingo game or game of chance with comparable characteristics conducted by an organization exempt from tax under the internal revenue code. K. S. A. 21-4302 (3) (1971 Supp.) excludes from the definition of consideration sums of money paid by or for participants in any bingo game or a game of chance with comparable characteristics operated by exempt organizations. Where such excluded transactions are involved in the particular case, they usually raise pure questions of law to be determined by the Court. Hence, the matters excluded have not been set forth directly in the instruction containing gambling definitions. If issues of fact should arise on these matters, an additional appropriate instruction could be given.

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PIK 65.08 COMMERCIAL GAMBLING

The defendant is charged with the crime of commercial gambling. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That defendant (operated) (received all or part of the earnings of) a gambling place; and

or

That the defendant (received, recorded, or forwarded bets or offers to bet) (possessed facilities with intent to receive, record, or forward bets); and

or

That the defendant for gain, became a custodian of any thing of value bet or offered to be bet; and

or

That the defendant (conducted a lottery) (possessed facilities with intent to conduct a lottery); and

or

That the defendant (set up for use) (collected the proceeds of) a gambling device; and

2. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4304 (1971 Supp.).

Commercial gambling is a class E felony. PIK 65.07, Gambling Definitions, should be given with this instruction.

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**PIK 65.09 PERMITTING PREMISES TO BE USED
FOR COMMERCIAL GAMBLING**

The defendant is charged with the crime of permitting premises to be used for commercial gambling. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant intentionally granted the use or allowed the continued use of a place as a gambling place; and

or

That the defendant intentionally permitted another to set up a gambling device for use in a place under the defendant's control; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4305 (1971 Supp.).

Permitting premises to be used for commercial gambling is a class B misdemeanor. PIK 65.07, Gambling Definitions, should be given with this instruction.

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PIK 65.10 DEALING IN GAMBLING DEVICES

The defendant is charged with the crime of dealing in gambling devices. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (manufactured) (transferred) (possessed with intent to transfer) a gambling device or sub-assembly or essential part thereof; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4306 (1971 Supp.).

Dealing in gambling devices is a class E felony. PIK 65.07, Gambling Definitions, should be given with this instruction.

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**PIK 65.11 DEALING IN GAMBLING DEVICES—
PRESUMPTION FROM POSSESSION**

If you find that defendant had possession of any device designed exclusively for gambling purposes, which was not set up for use or which was not in a gambling place, you may find that defendant had possession with intent to transfer the same, but you are not required to do so if you are persuaded by the evidence that the contrary is true.

Notes on Use

For authority see K. S. A. 21-4306 (2) (1971 Supp.).

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**PIK 65.12 POSSESSION OF A GAMBLING
DEVICE**

The defendant is charged with the crime of possession of a gambling device. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant knowingly possessed or had custody or control as (owner) (lessee) (agent) (employee) (bailee) of a gambling device; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4307 (1971 Supp.).

Possession of a gambling device is a class B misdemeanor. PIK 65.07, Gambling Definitions, should be given with this instruction.

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**PIK 65.13 INSTALLING COMMUNICATION
FACILITIES FOR GAMBLERS**

The defendant is charged with the crime of installing communication facilities for gamblers. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant installed communication facilities in a place which he knew was a gambling place; and

or

That the defendant installed communication facilities knowing that they would be used principally for the purpose of transmitting information to be used in making or settling bets; and

or

That the defendant knowing that communication facilities were being used principally for the purpose of transmitting information to be used in making or settling bets, allowed their continued use; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4308 (1971 Supp.).

Installing communication facilities for gamblers is a class E felony. PIK 65.07, Gambling Definitions, should be given with this instruction.

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PIK 65.14 FALSE MEMBERSHIP CLAIM

The defendant is charged with the crime of false membership claim. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant falsely represented himself to be a member of a (fraternal) (veteran's) organization; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4309 (1971 Supp.).
False membership claim is a class C misdemeanor.

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PIK 65.15 CRUELTY TO ANIMALS

The defendant is charged with the crime of cruelty to animals. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant subjected an animal to cruel mistreatment; and

or

That the defendant having custody of an animal subjected such animal to cruel neglect; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4310 (1971 Supp.). Cruelty to animals is a class B misdemeanor.

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PIK 65.16 CRUELTY TO ANIMALS—DEFENSE

The statute making cruelty to animals a criminal offense is not applicable (to accepted veterinary practices or activities carried on for scientific research) (to a police officer or public health officer or any officer or agent of a humane society who takes charge of an animal found abandoned that may appear to be diseased or disabled beyond recovery for any useful purpose and such officer or agent causes such animal to be killed in a humane manner).

Notes on Use

For authority see K. S. A. 21-4310 (2) (1971 Supp.).

The statute is made inapplicable under the circumstances listed in the above instruction.

CHAPTER 66.00

CRIMES AGAINST BUSINESS

	PIK Number
Racketeering	66.01
Debt Adjusting	66.02
Deceptive Commercial Practices	66.03
Tie-in Magazine Sale	66.04
Commercial Bribery	66.05
Sports Bribery	66.06
Receiving a Sports Bribe	66.07
Tampering With a Sports Contest	66.08

PIK 66.01 RACKETEERING

The defendant is charged with the crime of racketeering. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That _____ was (the owner of) (the proprietor of) (a person having a financial interest in) a business;
2. That the defendant (demanded) (solicited) (received) from _____ a thing of value by means of a (threat) (promise) that the defendant would
(cause the competition of _____ to be diminished or eliminated); and
or
(cause the price of goods or services sold in the business of _____ to be increased, decreased, or maintained at a stated level); and
or
(protect [the property used in the business of _____] [the person of _____] [the family of _____] from injury or violence); and
3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4401 (1971 Supp.).

Racketeering is a class D felony. The name of the victim should be placed in the blank spaces in paragraphs (1) and (2).

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PIK 66.02 DEBT ADJUSTING

The defendant is charged with the crime of debt adjusting. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant engaged in the business of making contracts with a debtor whereby said debtor agreed to pay defendant a certain amount of money periodically and defendant agreed for a consideration to distribute such such money among his creditors; and
2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4402 (1971 Supp.).

Debt adjusting is a class B misdemeanor.

It should be noted that the provisions of this statute do not apply to debt adjusting incidental to the lawful practice of law in Kansas.

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PIK 66.03 DECEPTIVE COMMERCIAL PRACTICES

The defendant is charged with the crime of deceptive commercial practices. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (used deception) (knowingly misrepresented a material fact) in connection with the sale of merchandise as follows:

_____;

2. That the defendant intended that _____ should rely on such false representations whether or not such person was misled, deceived or damaged thereby; and

3. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

As used in this instruction certain terms are defined as follows:

“Merchandise” means any objects, wares, goods, commodities, intangibles, real estate or services.

“Sale” means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

Notes on Use

For authority see K. S. A. 21-4403 (1971 Supp.).

Deceptive commercial practices is a class B misdemeanor.

The term “person” is defined in section 2 (b) of the act and has not been included in the instruction since the status of the person deceived would normally be a question of law. It should be noted that the section excludes application of the act to owners or publishers of newspapers, magazines, or other printed matter or owners or operators of radio or television stations where they had no knowl-

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edge of the intent, design or purpose of the advertisement.

In paragraph (1) the deceptive commercial practice should be described with particularity.

In paragraph (2) the name of the victim should be placed in the blank space.

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PIK 66.04 TIE-IN MAGAZINE SALE

The defendant is charged with the crime of tie-in magazine sale. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That defendant was a wholesaler of magazines or other periodicals;
2. That the defendant (sold) (delivered) on consignment for sale magazines or other periodicals to a retailer;
3. That such (sale) (delivery) was conditioned on the requirement that such retailer agree to purchase or receive on consignment for sale magazines or periodicals of another kind or name; and
4. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

As used in this instruction certain terms are defined as follows:

“Retailer” means a person who sells magazines or periodicals at retail.

“Wholesaler” means a person who sells or distributes or delivers on consignment for sale or who offers to sell or distribute or deliver on consignment for sale magazines or other periodicals to a retailer.

“Sell” in addition to its ordinary meaning, means offer to sell, distribute, deliver or sell on consignment.

Notes on Use

For authority see K. S. A. 21-4404 (1971 Supp.).

Tie-in magazine sale is a class B misdemeanor.

PIK 66.05 COMMERCIAL BRIBERY

The defendant is charged with the crime of commercial bribery. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That _____ was (an agent or employee of _____) or (a person acting in a fiduciary capacity as _____);

or

([a lawyer] [a physician] [an accountant] [an appraiser] [a professional adviser] employed by _____);

or

(an [officer] [director] [partner] [manager] of _____, a [corporation] [partnership] [unincorporated association]);

or

(an [arbitrator] [adjudicator] [referee]);

2. That defendant (conferred) (offered or agreed to offer) (solicited) (accepted or agreed to accept) a benefit as consideration for (knowingly violating) (agreeing to violate) a duty of fidelity or trust; and

3. That this act occurred on or about the _____ day of _____ in _____ County, Kansas.

Notes on Use

For authority see K. S. A. 21-4405 (1971 Supp.).

Commercial bribery is a class E felony.

The instruction presents alternative situations, the appropriate one of which should be used in the instruction in a particular case.

PIK 66.06 SPORTS BRIBERY

The defendant is charged with the crime of sports bribery. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That _____ was a (sports participant) (sports official);
2. That the defendant (conferred) (offered or agreed to confer) a benefit upon _____ with the intent to influence him not to give his best best efforts as a sports participant in a sports contest; and
or
That the defendant (conferred) (offered or agreed to confer) a benefit upon _____ with the intent to influence him to perform his duties improperly as a sports official; and
3. That this act occurred on the ____ day of ____ in _____ County, Kansas.

As used in this instruction certain terms are defined as follows:

“Sports contest” means any professional or amateur sports or athletic game or contest viewed by the public.

“Sports participant” means any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team.

“Sports official” means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.

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Notes on Use

For authority see K. S. A. 21-4406 (1971 Supp.). Sports bribery is a class E felony.

PIK 66.07 RECEIVING A SPORTS BRIBE

The defendant is charged with the crime of receiving a sports bribe. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant, a sports participant, (accepted) (agreed to accept) (solicited) a benefit from _____ upon an understanding that defendant would thereby be influenced not to give his best efforts in a sports contest; and

or

That the defendant, a sports official, (accepted) (agreed to accept) (solicited) a benefit from _____ upon an understanding that defendant would perform his duties improperly as a sports official; and

2. That this act occurred on or about the ____ day of _____ in _____ County, Kansas.

As used in this instruction certain terms are defined as follows:

“Sports contest” means any professional or amateur sports or athletic game or contest viewed by the public.

“Sports participant” means any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team.

“Sports official” means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.

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Notes on Use

For authority see K. S. A. 21-4407 (1971 Supp.). Receiving a sports bribe is a class A misdemeanor. The definitions contained in the instruction are the same as those in K. S. A. 21-4406 as set forth in PIK 66.06, Sports Bribery.

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**PIK 66.08 TAMPERING WITH A SPORTS
CONTEST**

The defendant is charged with the crime of tampering with a sports contest. The defendant pleads not guilty.

To establish this charge each of the following claims must be proved:

1. That the defendant (sought to influence _____, a [sports participant] [sports official]) (tampered with an animal or equipment involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages governing such contest);
2. That the defendant had the intent to influence the outcome of such contest; and
3. That this act occurred on the ____ day of _____ in _____ County, Kansas.

As used in this instruction certain terms are defined as follows:

“Sports contest” means any professional or amateur sports or athletic game or contest viewed by the public.

“Sports participant” means any person who participates or expects to participate in a sports contest as a player, contestant or member of a team, or as a coach, manager, trainer or other person directly associated with a player, contestant or team.

“Sports official” means any person who acts or expects to act in a sports contest as an umpire, referee, judge or otherwise to officiate at a sports contest.

Notes on Use

For authority see K. S. A. 21-4408 (1971 Supp.). Tampering with a sports contest is a class E felony.

CHAPTER 67.00

NARCOTIC DRUGS

	PIK Number
Narcotics, Generally—Except Marijuana	67.01
Possession of Marijuana With Intent to Sell	67.02
Dispensing Marijuana	67.03
Possession of Marijuana	67.04
Unauthorized Possession of Narcotics Lawfully Prescribed for Person	67.05
Unauthorized Possession of Narcotics Lawfully Prescribed for Animal	67.06
Narcotics Fraud, Deceit, Forgery, Concealment	67.07
False Narcotics Order	67.08
Obtaining Narcotics by False Representation	67.09
False or Forged Prescription	67.10
False or Forged Label	67.11
Hypnotic, Somnifacient, or Stimulating Drugs	67.12

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PIK 67.01 NARCOTICS, GENERALLY—EXCEPT MARIJUANA

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (manufactured) (possessed) (had under his control) (sold) (prescribed) (administered) (dispensed) (compounded) a narcotic drug known as _____;
2. That he did so (willfully) (knowingly) (intentionally); and
3. That he did so on or about the ____ day of ____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2502 (1971 Supp.).

This instruction should not be used with respect to marijuana. Because of the distinctions found in K. S. A. 65-2502 (1971 Supp.), K. S. A. 65-2519 (1971 Supp.), and K. S. A. 65-2519a (1971 Supp.), relative to the treatment of marijuana, on the one hand, and other narcotic drugs, on the other, the Committee saw fit to draft separate pattern instructions for the different subjects.

According to K. S. A. 65-2519a (b) (1971 Supp.), any person who violates any of the provisions of K. S. A. 65-2502 (1971 Supp.) as they relate to narcotic drugs other than marijuana shall be deemed guilty of a class D felony.

K. S. A. 21-3201 (1971 Supp.) provides that as used in the Kansas Criminal Code, "the terms 'knowing,' 'intentional,' 'purposeful,' and 'on purpose' are included within the term 'willful.'" The most meaningful term should be used under claim number (2) as circumstances require.

K. S. A. 65-2501 (1964) defines "Narcotic drugs" and the various specific narcotic drugs included within the meaning of "Narcotic

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drugs." Further, K. S. A. 65-2501 (10) (1964) defines "Sale" and K. S. A. 65-2501 (21) (1964) defines "Dispense." When appropriate, the definitions should be given.

Comment

Although K. S. A. 65-2502 (1971 Supp.), which makes the described acts unlawful, does not use the term "willfully," K. S. A. 21-3201 (1971 Supp.) states that, except for certain limited exceptions, a criminal intent is an essential element of every crime defined by the Kansas Criminal Code. Further, it provides that criminal intent may be established by proof of willful or wanton conduct. In addition it states that proof of willful conduct shall be required to establish criminal intent, unless the statute defining the crime expressly requires wanton conduct. (Also see the Notes on the above as they apply to "willful.") K. S. A. 21-3204 (1971 Supp.) states that no criminal intent is necessary if the crime is a misdemeanor "and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described." Most of the crimes embraced in K. S. A. 65-2502 (1971 Supp.) are class D felonies and as such do not fall within the exception to the requirement of criminal intent. Although the uniform narcotic drug act is not set out as a part of the Kansas Criminal Code in Chapter 21 of K. S. A., K. S. A. 21-3102 (2) (1971 Supp.) states, "Unless expressly stated otherwise, or the context otherwise requires, the provisions of this code apply to crimes created by statute other than in this code."

After stating that certain specified acts are unlawful, K. S. A. 65-2502 (1971 Supp.) states, "except as authorized in this act." K. S. A. 65-2517 (1964) provides that in any complaint, information, or indictment, and in any action brought for the enforcement of any provision of the uniform narcotic drug act, it is unnecessary to negative any exception, excuse, proviso, or exemption contained in the act. The section further provides that the burden of proof of any exception, excuse, proviso, or exemption shall rest with the defendant.

The act sets out numerous sections under which narcotic drugs may be manufactured, sold, and otherwise produced, transported, dispensed, and used. For example, K. S. A. 65-2503 (1964) deals with manufacturers and wholesalers and their licensure by the board of pharmacy. K. S. A. 65-2504 (1964) deals with the requirements

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for the lawful selling and dispensing of narcotic drugs to such persons as pharmacists, physicians, dentists, hospitals, and the like. K. S. A. 65-2505 (1964) relates to the sale of narcotic drugs by pharmacists. K. S. A. 65-2506 (1964) covers professional use of narcotic drugs by physicians, dentists, and veterinarians. K. S. A. 65-2507 (1964) deals with the exemption of certain preparations. K. S. A. 65-2510 (1964) treats the exemptions and limitations concerning the possession of narcotic drugs by persons for whom they have been lawfully prescribed. K. S. A. 65-2511 (1964) specifies circumstances under which certain persons and corporations, such as common carriers and warehousemen, may possess and control narcotic drugs. K. S. A. 65-2513 (1964) deals with the possession of forfeited narcotic drugs.

The Committee believes that it would be neither practical nor worthwhile to attempt to draft and publish pattern instructions dealing with all of the possible affirmative defenses that a defendant might raise when he is being prosecuted under K. S. A. 65-2502 (1971 Supp.). For an example of an affirmative defense instruction, together with an appropriate comment relative to a similar procedural setting, see PIK 64.04, Unlawful Use of Weapons—Affirmative defense.

Attention is called, however, to K. S. A. 65-2503 (1964). It provides as follows:

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without first having obtained a license from the board of pharmacy.

The acts apparently not covered in K. S. A. 65-2502 (1971 Supp.) that are included in the statute quoted above are the acts of cultivating and growing narcotic drugs and the act of a person as a wholesaler of supplying those drugs without first having obtained a license from the board of pharmacy. It is likely that a successful prosecution under the quoted statute, and possibly that a successful prosecution under K. S. A. 65-2502 (1971 Supp.), will require the establishment of an additional element. That element might be as follows:

(2a) That he did so without first having obtained a license from the board of pharmacy of the State of Kansas.

For reference to *Cannabis sativa* L., see the Comment under PIK 67.02, Possession of Marijuana With Intent to Sell.

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**PIK 67.02 POSSESSION OF MARIJUANA WITH
INTENT TO SELL**

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to marijuana (*Cannabis sativa L.*). The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant possessed marijuana (*Cannabis sativa L.*);
2. That he did so with the intent to sell it; and
3. That he possessed it on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2502 (1971 Supp.). According to K. S. A. 65-2519a (1971 Supp.), any person possessing marijuana with the intent to sell shall be deemed guilty of a class D felony.

Because of the distinctions found in K. S. A. 65-2502 (1971 Supp.), K. S. A. 65-2519 (1971 Supp.), and K. S. A. 65-2519a (1971 Supp.), relative to the treatment of marijuana, on the one hand, and other narcotic drugs, on the other, the Committee saw fit to draft separate pattern instructions for the different subjects.

K. S. A. 65-2501 (13) (1964) defines "Cannabis" and K. S. A. 65-2501 (10) defines "Sale." When appropriate, the definitions should be given.

Comment

See the Comment following PIK 67.01, Narcotics, Generally—Except Marijuana.

Both K. S. A. 65-2519 (*b*) (1971 Supp.) and K. S. A. 65-2519a (1971 Supp.) refer, parenthetically, to marijuana as *Cannabis sativa L.* In accordance with our scientific binomial system, the term "Cannabis" refers to the genus of the organism and the term "sativa" refers to its species. The "L." refers to the great Swedish scientist and founder of modern taxonomy, Dr. Carolus Linnaeus

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Carl von Linné). In accordance with our system, he who first publishes the name of a genus or species is considered the author of that group. Accordingly, his name or its abbreviation follows the name of the group. See Strausbaugh and Weimer, *Elements of Biology*, 285 (1944).

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PIK 67.03 DISPENSING MARIJUANA

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to marijuana (*Cannabis sativa L.*). The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (sold) (prescribed) (administered) (dispensed) (compounded) marijuana (*Cannabis sativa L.*);
2. That he did so (willfully) (knowingly) (intentionally); and
3. That he did so on or about the ____ day of ____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2502 (1971 Supp.). According to K. S. A. 65-2519a (b) (1971 Supp.), any person who violates any of the provisions of the uniform narcotic drug act, and its amendments, except as otherwise provided in K. S. A. 65-2519 (1971 Supp.), shall be deemed guilty of a class D felony. According to K. S. A. 65-2519a (a) (1971 Supp.), any person possessing marijuana with the intent to sell and "any subsequent conviction for possession of marijuana" under K. S. A. 65-2519 (1971 Supp.), shall also be deemed guilty of a class D felony. Further, K. S. A. 65-2519 (1971 Supp.) states that, except as otherwise provided in K. S. A. 65-2519a (1971 Supp.), any person possessing marijuana in violation of the uniform narcotic drug act, as amended, as well as other persons violating certain other parts of the act, shall be guilty of a class A misdemeanor. It makes no further reference to marijuana beyond "possessing" it. Consequently, a person who sells, prescribes, administers, dispenses, or compounds marijuana, except as specifically authorized, must be deemed to have committed a class D felony. Although technically a person having marijuana "under his control" would appear to be guilty of a class D felony, the Committee is unable to draw a meaningful distinction between a

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person "possessing" marijuana and a person "having" marijuana "under his control."

Because of the distinctions found in K. S. A. 65-2502 (1971 Supp.), K. S. A. 65-2519 (1971 Supp.), and K. S. A. 65-2519a (1971 Supp.), relative to the treatment of marijuana, on the one hand, and other narcotic drugs, on the other, the Committee saw fit to draft separate pattern instructions for the different subjects.

K. S. A. 65-2501 (13) (1964) defines "Cannabis," K. S. A. 65-2501 (10) (1964) defines "Sale," and K. S. A. 65-2501 (21) (1964) defines "Dispense." When appropriate the definitions should be given.

Comment

See the Comment following PIK 67.01, Narcotics, Generally—Except Marijuana.

The Committee finds that a part of K. S. A. 65-2519 a (a) (1971 Supp.) is most confusing. The subsection provides as follows:

Any person possessing marijuana (*Cannabis sativa* L.) with the intent to sell the same and any subsequent conviction for the possession of marijuana (*Cannabis sativa* L.), under the provisions of subsection (b) of K. S. A. 1970 Supp. 65-2519, shall be deemed guilty of a class D felony.

"Any person" and "any subsequent conviction" are hardly meaningful or parallel subjects of the verb used in the sentence. Also, "Any person possessing . . . any subsequent conviction . . ." is an unacceptable construction. Obviously the intent was not that "to sell" should be construed to relate to "the same" and "any subsequent conviction" as parallel objects. The Committee is unable to assign any precise meaning to the sentence as it relates to "subsequent conviction for the possession of marijuana."

Moreover, the meaning of "subsequent conviction . . ." is unclear. Conceivably it might mean "any second conviction" and might, therefore, relate to a conviction for the possession of marijuana after a previous conviction for the possession of marijuana.

But if the word is given its usual meaning of "following" or "succeeding," as the context suggests, it would mean "any following conviction for the possession of marijuana." But following what? The "following conviction" might well mean "following a conviction for possessing marijuana with the intent to sell it." The draftsmen may have been attempting to say, then, that, after a person has been once convicted of the felony of possessing marijuana with

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the intent to sell, a following conviction for the possession of marijuana would constitute a conviction of a class D felony. Intent to sell would not be necessary. This interpretation focuses on the "pusher" rather than on the "user."

The last interpretation avoids the anomaly of requiring a finding of a class D felony if a person is convicted of the mere possession of marijuana after a previous possession conviction and of only a class A misdemeanor if he is convicted of mere possession of marijuana after having been convicted previously of the much more serious crime of "possession of marijuana with intent to sell."

The rule requiring strict construction of criminal statutes magnifies the difficulties that will follow either construction.

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PIK 67.04 POSSESSION OF MARIJUANA

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to marijuana (*Cannabis sativa L.*). The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant possessed marijuana (*Cannabis sativa L.*);
2. That he did so (willfully) (knowingly); and
3. That he did so on or about the ____ day of ____ in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2502 (1971 Supp.). According to K. S. A. 65-2519 (*b*) (1971 Supp.), any person possessing marijuana in violation of the uniform narcotic drug act shall be guilty of a class A misdemeanor.

Because of the distinctions found in K. S. A. 65-2502 (1971 Supp.), K. S. A. 65-2519 (1971 Supp.), and K. S. A. 65-2519a (1971 Supp.), relative to the treatment of marijuana, on the one hand, and other narcotic drugs, on the other, the Committee saw fit to draft separate pattern instructions for the different subjects.

K. S. A. 65-2501 (13) (1964) defines "Cannabis." When appropriate the definition should be given.

Comment

See Comment following PIK 67.01, Narcotics, Generally—Except Marijuana.

As discussed in the Comment cited above, K. S. A. 21-3204 (1971 Supp.) provides that no criminal intent is necessary if the crime is a misdemeanor "and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described." Although the unlawful possession of marijuana is a class A misdemeanor, the Committee does not find that the statute defining the offense "clearly indicates a legislative purpose to impose absolute liability for the conduct described." It is true

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that the statute uses the term "possess with intent to sell" and does not use the term "with intent" to modify any of the other acts named. It is further true that the penalty statutes, K. S. A. 65-2519 (1971 Supp.) and K. S. A. 65-2519a (1971 Supp.), show all of the acts in the defining statute to be class D felonies except the act of unlawfully possessing marijuana. It may be argued, therefore, that by making the possession of marijuana "with intent to sell" a class D felony and by making the unlawful possession of marijuana a class A misdemeanor, the statutes show a purpose to impose absolute liability for the unlawful possession of marijuana. It must be recognized, however, that one must go beyond the "statute defining the offense" to the statutes setting forth the penalties for the crimes defined to support the argument. The Committee concludes, therefore, that a strict construction of K. S. A. 21-3204 (1971 Supp.), which is appropriate and necessary, requires that the phrase "the statute defining the offense" should not be construed as one that "clearly indicates a legislative purpose to impose absolute liability for the conduct described" so far as the unlawful possession of marijuana is concerned.

The Committee finds that a part of K. S. A. 65-2519a (a) (1971 Supp.) is most confusing. The subsection provides as follows:

Any person possessing marijuana (*Cannabis sativa* L.) with the intent to sell the same and any subsequent conviction for the possession of marijuana (*Cannabis sativa* L.), under the provisions of subsection (b) of K. S. A. 1971 Supp. 65-2519, shall be deemed guilty of a class D felony.

"Any person" and "any subsequent conviction" are hardly meaningful or parallel subjects of the verb used in the sentence. Also, "Any person possessing . . . any subsequent conviction . . ." is an unacceptable construction. Obviously the intent was not that "to sell" should be construed to relate to "the same" and "any subsequent conviction" as parallel objects. The Committee is unable to assign any precise meaning to the sentence as it relates to "subsequent conviction for the possession of marijuana."

Moreover, the meaning of "subsequent conviction . . ." is unclear. Conceivably it might mean "any second conviction" and might, therefore, relate to a conviction for the possession of marijuana after a previous conviction for the possession of marijuana.

But if the word is given its usual meaning of "following" or "succeeding," as the context suggests, it would mean "any follow-

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ing conviction for the possession of marijuana." But following what? The "following conviction" might well mean "following a conviction for possessing marijuana with the intent to sell it." The draftsmen may have been attempting to say, then, that, after a person has been once convicted of the felony of possessing marijuana with the intent to sell, a following conviction for the possession of marijuana would constitute a conviction of a class D felony. Intent to sell would not be necessary. This interpretation focuses on the "pusher" rather than on the "user."

The last interpretation avoids the anomaly of requiring a finding of a class D felony if a person is convicted of the mere possession of marijuana after a previous possession conviction and of only a class A misdemeanor if he is convicted of mere possession of marijuana after having been convicted previously of the much more serious crime of "possession of marijuana with intent to sell."

The rule requiring strict construction of criminal statutes magnifies the difficulties that will follow either construction.

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**PIK 67.05 UNAUTHORIZED POSSESSION OF
NARCOTICS LAWFULLY PRESCRIBED
FOR PERSON**

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant is a person (to whom) (for whose use) a narcotic drug known as _____ was (prescribed) (sold) (dispensed);
2. That the narcotic drug was (prescribed) (sold) (dispensed) by a (physician) (dentist) (pharmacist) (manufacturer licensed to do so by the board of pharmacy of the State of Kansas) (wholesaler licensed to do so by the board of pharmacy of the State of Kansas);
3. That the defendant possessed the narcotic drug other than in the container in which it was delivered to him by the person who (sold) (dispensed) it;
4. That he did so (willfully) (knowingly) (intentionally); and
5. That he did so on or about the ____ day of _____, in _____, County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2510 (1964). Under K. S. A. 65-2519a (b) (1971 Supp.), a violation would constitute a class D felony with one probable exception. K. S. A. 65-2519 (b) (1971 Supp.), which qualifies K. S. A. 65-2519a (b) (1971 Supp.), provides that any person possessing marijuana (*Cannabis sativa* L.) in violation of the uniform narcotic drug act shall be guilty of a class A misdemeanor.

K. S. A. 65-2501 (1964) defines a number of terms relating to the

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above instruction. Paragraph (18) defines "Narcotic drugs" and several other paragraphs define the specific narcotic drugs included within the meaning of "Narcotic drugs." Also, paragraph (2) defines "Physician"; (3), "Dentist"; (4), "Veterinarian"; (5), "Manufacturer"; (6), "Wholesaler"; (7), "Pharmacist"; (10), "Sale"; and (21), "Dispense." When appropriate the definitions should be given.

Comment

See the Comment following PIK 67.01, Narcotics, Generally—
Except Marijuana.

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**PIK 67.06 UNAUTHORIZED POSSESSION OF
NARCOTICS LAWFULLY PRESCRIBED
FOR ANIMAL**

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant was the owner of an animal for which a narcotic drug known as _____ was (prescribed) (sold) (dispensed);
2. That the narcotic drug was (prescribed) (sold) (dispensed) by a veterinarian;
3. That the defendant possessed the narcotic drug other than in the container in which it was delivered to him by the person who (sold) (dispensed) it;
4. That he did so (willfully) (knowingly) (intentionally); and
5. That he did so on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2510 (1964). Under K. S. A. 65-2519a (b) (1971 Supp.), violation would constitute a class D felony with one probable exception. K. S. A. 65-2519 (b) (1971 Supp.), which qualifies K. S. A. 65-2519a (b) (1971 Supp.), provides that any person possessing marijuana (*Cannabis sativa* L.) in violation of the uniform narcotic drug act shall be guilty of a class A misdemeanor.

K. S. A. 65-2501 (1964) defines a number of terms relating to the above instruction. Paragraph (18) defines "Narcotic drugs" and several other paragraphs define the specific narcotic drugs included within the meaning of "Narcotic drugs." Also, paragraph (2) defines "Physician"; (3), "Dentist"; (4), "Veterinarian"; (5), "Manufac-

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turer"; (6), "Wholesaler"; (7), "Pharmacist"; (10), "Sale"; and (21), "Dispense." When appropriate the definitions should be given.

Comment

See the Comment following PIK 67.01, Narcotics, Generally—
Except Marijuana.

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**PIK 67.07 NARCOTICS FRAUD, DECEIT,
FORGERY, CONCEALMENT**

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (obtained) (attempted to obtain) (procured the administration of) (attempted to procure the administration of) a narcotic drug known as _____;

2. That he did so by the use of (fraud) (deceit) (misrepresentation) (subterfuge);

or

That he did so by the (forgery) (alteration) of a (prescription) (written order);

or

That he did so by the concealment of a material fact;

or

That he did so by (using a false name) (giving a false address);

3. That he did so (willfully) (knowingly) (intentionally); and

4. That he did so on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2516 (1) (1964). Under K. S. A. 65-2519a (b) (1971 Supp.), violation would constitute a class D felony.

K. S. A. 65-2501 (1964) defines "Narcotic drugs" and the various specific narcotic drugs included within the meaning of "Narcotic drugs."

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Comment

See the Comment following PIK 67.01, Narcotics, Generally—
Except Marijuana.

Under K. S. A. 65-2516 (2) (1964), the physician-patient relationship does not make information communicated to a physician for the purpose of attempting to obtain unlawfully a narcotic drug, or the administration of a narcotic drug, a privileged communication.

PIK 67.08 FALSE NARCOTICS ORDER

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant made the following statement _____;
2. That the statement was false;
3. That the defendant willfully made the statement knowing that it was false;
4. That he made the statement in _____; and
5. That he did so on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2516 (3). Under K. S. A. 65-2519a (b) (1971 Supp.), violation would constitute a class D felony.

K. S. A. 65-2501 (1964) defines "Narcotic drugs" and the various specific narcotic drugs included within the meaning of "Narcotic drugs."

The blank in claim (4) should be filed with a description of the "prescription, order, report, or record" that is required by the uniform narcotic drug act. Whether a particular prescription, order, report, or record is required by the act would seem to be a question of law. A court might wish to instruct that the document in question was required by the act.

Comment

See the Comment following PIK 67.01, Narcotics, Generally—Except Marijuana.

For a successful prosecution under this provision, the act requires the state to prove that the defendant "willfully" made a false statement. The subsection applicable specifically uses the word "willfully."

PIK 67.09 OBTAINING NARCOTICS BY FALSE REPRESENTATION

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant falsely (assumed the title of) (represented himself to be) a (manufacturer) (wholesaler) (pharmacist) (physician) (dentist) (veterinarian) (person authorized by law);
2. That he willfully did so for the purpose of obtaining the narcotic drug known as _____.
3. That he did so on or about the ____ day of ____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2516 (4) (1964). Under K. S. A. 65-2519a (b) (1971 Supp.), violation would constitute a class D felony.

K. S. A. 65-2501 (1964) defines a number of terms relating to the above instruction. Paragraph (18) defines "Narcotic drugs" and several other paragraphs define the specific narcotic drugs included within the meaning of "Narcotic drugs." Also, paragraph (2) defines "Physician;" (3), "Dentist;" (4), "Veterinarian;" (5), "Manufacturer;" (6), "Wholesaler;" (7), "Pharmacist;" (10), "Sale;" and (21) "Dispense." When appropriate the definitions should be given.

Comment

See the Comment following PIK 67.01, Narcotics, Generally—Except Marijuana.

PIK 67.10 FALSE OR FORGED PRESCRIPTION

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant (made) (uttered) (issued) a (false prescription) (forged prescription) (false written order) (forged written order).
2. That the (prescription) (written order) pertained to a narcotic drug known as _____.
3. That the defendant (willfully) (intentionally) (knowingly) performed the act of (making) (uttering) (issuing) the (false prescription) (forged prescription) (false written order) (forged written order); and
4. That he did so on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2516 (5) (1964). K. S. A. 65-2519a (b) (1971 Supp.) provides that violation constitutes a class D felony.

K. S. A. 65-2501 (1964) defines "Narcotic drugs" and the various specific narcotic drugs included within the meaning of "Narcotic drugs."

Comment

See the Comment following PIK 67.01, Narcotic, Generally—Except Marijuana.

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PIK 67.11 FALSE OR FORGED LABEL

The defendant is charged with the crime of violation of the uniform narcotic drug act as it pertains to a narcotic drug known as _____. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant affixed a (false) (forged) label to a (package) (receptacle) that contained a narcotic drug known as _____;
2. That he did so (willfully) (intentionally) (knowingly);
3. That he did so on or about the ____ day of _____, in _____ County, Kansas.

Notes on Use

For authority, see K. S. A. 65-2516 (6) (1964). Under K. S. A. 65-2519a (b) (1971 Supp.), violation would constitute a class D felony.

K. S. A. 65-2501 (1964) defines "Narcotic drugs" and the various specific narcotic drugs included within the meaning of "Narcotic drugs."

Comment

See the Comment following PIK 67.01, Narcotics, Generally—Except Marijuana.

**PIK 67.12 HYPNOTIC, SOMNIFACIENT, OR
STIMULATING DRUGS**

Comment

Article 26 of Chapter 65 of the Kansas Statutes Annotated deals with the possession, delivery, sale, record-keeping, and the like, of a number of "drugs" that fall outside the scope of the narcotic drug laws of the state. There is, of course, great similarity between the two sets of statutes. The Committee believed, therefore, that its offered instructions for narcotic drug cases could readily be adapted for use in non-narcotic drug cases and that its further efforts in the "drug" area would be unnecessary. It should be well-remembered, however, that Article 26 of Chapter 65 is not, and should not be treated as, a part of the uniform narcotic drug act.

CHAPTER 68.00

CONCLUDING INSTRUCTIONS AND VERDICT FORMS

	PIK Number
Concluding Instruction	68.01
Guilty Verdict—General Form	68.02
Not Guilty Verdict—General Form	68.03
Punishment—Class A Felony	68.04
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Lesser Included Offenses	68.09
Lesser Included Offenses—Verdict Forms	68.10
Verdict Form—Value in Issue	68.11
Deadlocked Jury	68.12

PIK 68.01 CONCLUDING INSTRUCTION

When you retire to the jury room you will first select one of your members as foreman. He will preside over your deliberations, will speak for the jury in Court, and will sign the verdict upon which you agree.

Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

Your agreement upon a verdict must be unanimous.

District Judge

_____, 19____.

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PIK 68.02 GUILTY VERDICT—GENERAL FORM

We, the jury, find defendant guilty of _____.

Foreman

Notes on Use

The form should be completed by specifying the particular offense with which defendant is charged. If two or more defendants are tried jointly, separate verdict forms must be provided by adding the name of each defendant to the form. For forms for separate counts see PIK 68.08, Multiple Counts—Verdict Forms. For forms for lesser included offenses see PIK 68.10, Lesser Included Offenses—Verdict Forms.

K. S. A. 22-3421 (1971 Supp.) provides that the verdict shall be written, signed by the foreman, and read by the clerk to the jury, and inquiry made as to whether it is their verdict. If the verdict is defective in form only it may be corrected by the court with the assent of the jury.

Comment

A typewritten verdict form which merely requires that it be signed and dated by the foreman must conform to the evidence and the offense charged. *State v. Cox*, 188 Kan. 500, 363 P. 2d 528 (1961).

If a verdict is not in proper form when returned by the jury, the Court may direct the jury to correct the verdict and may send them back to the jury room for that purpose. *State v. Carrithers*, 79 Kan. 401, 99 P. 614 (1909).

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**PIK 68.03 NOT GUILTY VERDICT—
GENERAL FORM**

We, the jury, find the defendant not guilty of _____.

Foreman

Notes on Use

See notes on use and comment to PIK 68.02, Guilty Verdict—
General Form.

PIK 68.04 PUNISHMENT—CLASS A FELONY

The law of Kansas provides that persons convicted of _____ shall be punished by death or imprisonment for life. The jury shall determine which punishment shall be inflicted.

If you find the defendant guilty of _____, the appropriate verdict form specifying punishment by death or life imprisonment must be signed by your foreman. If you find defendant not guilty, your foreman must sign the not guilty verdict form.

Notes on Use

The form should be completed by specifying the particular Class A felony with which the defendant is charged.

K. S. A. 21-4501 (a) (1971 Supp.) provides for jury determination of the penalty of death or imprisonment for life upon a jury trial of a Class A felony.

For forms of verdict in a Class A felony case see PIK 68.05, Verdicts—Class A Felony.

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PIK 68.05 VERDICTS—CLASS A FELONY

1. We, the jury, find the defendant guilty of
(. . . Class A Felony charged . . .)
and direct that the defendant be punished by
death.

Foreman

2. We, the jury, find the defendant guilty of
(. . . Class A Felony charged . . .)
and direct that the defendant be punished by
imprisonment for life.

Foreman

3. We, the jury, find the defendant not guilty.

Foreman

Notes on Use

See notes on use to PIK 68.04, Punishment—Class A Felony.

PIK 68.06 NOT GUILTY BECAUSE OF INSANITY

We, the jury, find defendant not guilty because of insanity.

Foreman

Notes on Use

See K. S. A. 22-3428 (1971 Supp.) in regard to acquittal on the ground of insanity at the time of the commission of the alleged crime.

See K. S. A. 22-3302 (1) (1971 Supp.) concerning proceedings to determine competency. Under K. S. A. 22-3302 (2) and (3) (1971 Supp.) when the issue of competency of a defendant charged with crime to stand trial is raised prior to indictment or information, the magistrate shall certify the case to district Court to determine defendant's competency. The district Court shall determine the issue of competency and may impanel a jury of six persons to assist in making such determination. See also, PIK 54.10, Insanity—Mental Illness or Defect and PIK 54.10-A, Insanity—Commitment.

Comment

Mental competency at the time of the commission of an offense—if raised—is to be determined by the trier of facts upon a trial. Mental competency to stand trial—if raised—is another matter and is to be determined by the Court under K. S. A. 22-3302 (1971 Supp.). *Nall v. State*, 204 Kan. 636, 465 P. 2d 957 (1970).

**PIK 68.07 MULTIPLE COUNTS—VERDICT
INSTRUCTION**

Each crime charged against the defendant is a separate and distinct offense. You must decide each charge separately on the evidence and law applicable to it, uninfluenced by your decision as to any other charge. The defendant may be convicted or acquitted on any or all of the offenses charged. Your finding as to each crime charged must be stated in a verdict form signed by the jury foreman.

Notes on Use

This instruction should be given when separate offenses are charged in more than one count and defendant can be convicted of any one or all.

See PIK 68.08, Multiple Counts—Verdict Forms.

PATTERN INSTRUCTIONS FOR KANSAS

PIK 68.08 MULTIPLE COUNTS—VERDICT FORMS

1. We, the jury, find defendant guilty of
(. . . crime charged count 1 . . .).

Foreman

We, the jury, find defendant not guilty of
(. . . crime charged count 1 . . .).

Foreman

2. We, the jury, find defendant guilty of
(. . . crime charged count 2 . . .).

Foreman

We, the jury, find defendant not guilty of
(. . . crime charged count 2 . . .).

Foreman

Notes on Use

This form is suggested in event defendant is charged with multiple counts in the same information. The verdict form may be expanded for additional counts and should be completed by specifying the crime charged in each count. The Committee recommends that the verdicts as to each count be submitted on a separate form.

Comment

Each count of an indictment is a separate offense, hence consistency in the verdicts is not necessary. *Speers v. United States*, 387 F. 2d 698 (10th Cir. 1967).

PATTERN INSTRUCTIONS FOR KANSAS

PIK 68.09 LESSER INCLUDED OFFENSES

The offense of (. . . principal offense charged . . .) with which defendant is charged includes the lesser offense(s) of (. . . lesser included offense or offenses . . .).

You may find defendant guilty of
(. . . principal offense charged . . .)
or (. . . first lesser included offense . . .)
or (. . . second lesser included offense . . .)
or not guilty.

Your foreman should sign the appropriate verdict form. The other verdict forms are to be left unsigned.

Notes on Use

This instruction should be given when the evidence presents circumstances from which a lesser included offense or offenses may be inferred. The instruction should be completed by specifying the principal offense and each lesser included offense.

See PIK 67.10 Lesser Included Offenses—Verdict Forms.

Some deviation from this form may be used as a lead-in for the elements instruction for the lesser included offenses. For example, see PIK 69.01 Illustrative Sets of Instructions, instruction numbers three, four and five.

Comment

Failure to instruct the jury on some lesser degree of the crime charged is not ground for reversal if the evidence at the trial excludes a theory of guilty on a lesser offense. *State v. Lott*, 207 Kan. 602, 485 P. 2d 1314 (1971).

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 68.10 LESSER INCLUDED OFFENSES—
VERDICT FORMS**

We, the jury, find defendant guilty of
(. . . principal offense charged . . .).

Foreman

We, the jury, find defendant guilty of
(. . . lesser included offense . . .).

Foreman

We, the jury, find defendant not guilty.

Foreman

Notes on Use

The guilty verdict forms should be completed by specifying the main charge and the lesser included offense. The court should submit one verdict form of guilty of the main charge, guilty of each lesser included offense, and one form of verdict of not guilty in event the jury fails to find defendant guilty of either the principal charge or of a lesser included offense.

The Committee recommends that each verdict be submitted on a separate form.

Comment

The submission of a verdict form of guilty and not guilty for the main charge and each lesser included offense is misleading to the jury and error. *State v. Schaefer*, 190 Kan. 479, 375 P. 2d 638 (1962).

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PIK 68.11 VERDICT FORM—VALUE IN ISSUE

We, the jury, find the (value of the property taken)
(amount of the false claim) to be

fifty dollars (\$50.00) or more

less than fifty dollars (\$50.00)

If you find the defendant guilty of (. . . of-
fense charged . . .) complete the verdict form by
placing an "X" in the appropriate square.

Foreman

Notes on Use

Complete the form by selecting the applicable parenthetical ex-
pression and specifying the particular crime charged in the blank.

PIK 68.12 DEADLOCKED JURY

This is an important case. If you should fail to reach a decision, the case is left open and undecided. Like all cases, it must be decided sometime. Another trial would be a heavy burden on both sides.

There is no reason to believe that the case can be tried again any better or more exhaustively than it has been. There is no reason to believe that more evidence or clearer evidence would be produced on behalf of either side.

Also, there is no reason to believe that the case would ever be submitted to twelve people more intelligent or more impartial or more reasonable than you. Any future jury must be selected in the same manner that you were.

These matters are mentioned now because some of them may not have been in your thoughts.

This does not mean that those favoring any particular position should surrender their honest convictions as to the weight or effect of any evidence solely because of the opinion of other jurors or because of the importance of arriving at a decision.

This does mean that you should give respectful consideration to each other's views and talk over any differences of opinion in a spirit of fairness and candor. If at all possible, you should resolve any differences and come to a common conclusion so that this case may be completed.

You may be as leisurely in your deliberations as the occasion may require and take all the time you feel necessary.

The giving of this instruction at this time in no way means it is more important than any other instruction. On the contrary, you should consider this

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instruction together with and as a part of the instructions which I previously gave you.

You may now retire and continue your deliberations in such manner as may be determined by your good judgment as reasonable people.

Notes on Use

This instruction is a modification of PIK 10.20 suggested for use in civil cases when there is apparent failure of a jury to reach a verdict. The instruction can be given in substance with the other instructions at the conclusion of the case. If it is used after the jury has commenced deliberations, it should be done so with caution. The Committee recommendation that PIK 10.20 not be given in criminal cases in the 1968 Supplement to PIK is modified in conformity to these notes and comment.

Comment

It was held there was no error in giving PIK 10.20 in *State v. Oswald*, 197 Kan. 251, 417 P. 2d 261 (1966). "However," said the Court, "as a word of caution, this instruction quite properly could have been given at the time of the original charge." The practice of lecturing a jury in a criminal case after reported disagreement was not commended. Oral comments accompanying this instruction were held to be coercive and prejudicial error in *State v. Earsery*, 199 Kan. 208, 428 P. 2d 794 (1967), but their effect, standing alone in that case, was not determined. A belated instruction was criticized, but, under attending circumstances indicating that the judge's remarks had no immediate coercive effect, the instruction was held not to be reversible error in *State v. Basker*, 198 Kan. 242, 424 P. 2d 535 (1967).

In *Bush v. State*, 203 Kan. 494, 454 P. 2d 429 (1969) PIK 10.20 was submitted to the jury after it had deliberated for some time and failed to reach a verdict. The holding in *State v. Earsery*, supra, to the effect that PIK 10.20 standing alone would not constitute prejudicial error is discussed.

In *State v. Boyd*, 206 Kan. 597, 481 P. 2d 1015 (1971) the Supreme Court reiterated this warning: "The practice of submitting a forcing type instruction after the jury has reported its failure to agree on

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a verdict is not commended and may well lead to prejudicial error. If such an instruction is to be given, trial courts would be well advised to submit the same before the jury retires, not afterward."

For a discussion of the Allen charge in Kansas in criminal cases, see "Criminal Law—Jury Instructions—The Allen Charge" 6 Washburn L. J. 517 (1967).

CHAPTER 69.00

ILLUSTRATIVE SETS OF INSTRUCTIONS

	PIK Number
Murder in the First Degree With Lesser Included Offenses . . .	69.01
Theft With Two Participants	69.02

PATTERN INSTRUCTIONS FOR KANSAS

**PIK 69.01 MURDER IN THE FIRST DEGREE
WITH LESSER INCLUDED OFFENSES**

Summary of the Facts and Issues

Wilbur Smith was married to Winnie Smith. Winnie was having an affair with John Green. On a number of occasions Wilbur Smith and John Green engaged in fist fights and there was "bad blood" between them. On the evening of June 1, 1971, Wilbur Smith shot and killed John Green with a .22 caliber revolver while the two were at the Deluxe Tavern in Lawrence, Kansas. Both of the men had been drinking. Some of the witnesses testified that Wilbur Smith took deliberate aim and shot John Green between the eyes. Wilbur Smith testified that the shooting had been accidental and that he accidentally struck the gun against the side of a booth and the gun was discharged unintentionally and just happened to strike John Green. Wilbur Smith testified that he had had the gun only to frighten John Green and he thought the trouble could be avoided if he exhibited a gun. There was no evidence in the case that John Green had a weapon in his possession or that he had made any threats against Wilbur Smith.

An Outline of Suggested Instructions in Sequence Follows:

- Instruction 1. PIK 51.02, Consideration and Binding Application of Instructions.
- Instruction 2. PIK 56.01, Murder in the First Degree.
- Instruction 3. PIK 56.03, Murder in the Second Degree.
- Instruction 4. PIK 56.05, Voluntary Manslaughter.
- Instruction 5. PIK 56.06, Involuntary Manslaughter.
- Instruction 6. PIK 68.09, Lesser Included Offenses.
- Instruction 7. PIK 56.04, Homicide Definitions.
- Instruction 8. PIK 52.02, Burden of Proof, Presumption of Innocence, Reasonable Doubt.
- Instruction 9. PIK 54.01, Presumption of Intent.
- Instruction 10. PIK 51.05, Rulings of the Court.
- Instruction 11. PIK 51.06, Statements and Arguments of Counsel.
- Instruction 12. PIK 52.09, Credibility of Witnesses.
- Instruction 13. PIK 68.04, Punishment—Class A Felony.

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Instruction 14. PIK 68.09, Lesser Included Offenses.

Instruction 15. PIK 68.01, Concluding Instruction.

TEXT OF SUGGESTED INSTRUCTIONS

Instruction No. 1

MEMBERS OF THE JURY: It is my duty to instruct you in the law that applies to this case and it is your duty to follow all of the instructions. You must not single out one or more instructions and disregard others. You should construe each instruction in the light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence. You should decide the case by applying the law to the facts as you find them. The order in which the instructions are given is no indication of their relative importance.

(PIK—Criminal 51.02)

Instruction No. 2

The defendant is charged with the crime of murder in the first degree. The defendant pleads not guilty.

To establish this charge, each of the following claims must be proved:

1. That the defendant killed John Green;
2. That such killing was done maliciously;
3. That it was done willfully;
4. That it was done deliberately and with premeditation;
5. That such killing occurred on or about the 1st day of June, 1971, in Douglas County, Kansas.

(PIK—Criminal 56.01)

Instruction No. 3

The offense of murder in the first degree with which the defendant is charged includes the lesser offenses of murder in the second degree, voluntary manslaughter, and involuntary manslaughter. If you do not find the defendant guilty of murder in the first degree, then you should consider such offenses in that order.

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If you find the defendant is not guilty of murder in the first degree, you shall consider if he is guilty of murder in the second degree.

To establish the charge of murder in the second degree each of the following claims must be proved:

1. That the defendant killed John Green;
2. That such killing was done maliciously;
3. That this act was done on or about the 1st day of June, 1971, in Douglas County, Kansas.

(PIK—Criminal 56.03)

Instruction No. 4

If you find the defendant is not guilty of murder in the second degree, then you shall consider if he is guilty of voluntary manslaughter.

To establish the charge of voluntary manslaughter each of the following claims must be proved:

1. That the defendant killed John Green;
2. That such killing was done intentionally;
3. That it was done in the heat of passion;
4. That this act occurred on or about the 1st day of June, 1971, in Douglas County, Kansas.

(PIK—Criminal 56.05)

Instruction No. 5

If you find the defendant is not guilty of voluntary manslaughter, then you shall consider if he is guilty of involuntary manslaughter.

To establish the charge of involuntary manslaughter each of the following claims must be proved:

1. That the defendant unintentionally killed John Green;
2. That it was done while in the commission of the unlawful act of shooting a firearm within the city of Lawrence, Kansas, under circumstances that evidenced a realization of the imminence of danger to the person of another coupled with a reckless disregard for the probable consequences of such conduct;
3. That such killing occurred on or about the 1st day of June, 1971, in Douglas County, Kansas.

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The act of shooting a firearm in the city of Lawrence, Kansas, is against the ordinances of such city and is unlawful.

(PIK—Criminal 56.06)

Instruction No. 6

If you find the defendant is not guilty of murder in the first degree, or of murder in the second degree, or of voluntary manslaughter, or of involuntary manslaughter, then you must find the defendant not guilty.

(PIK—Criminal 68.09)

Instruction No. 7

As used in these instructions the following words and phrases are defined as indicated:

“Maliciously” means willfully doing a wrongful act without just cause or excuse.

“Deliberately and with premeditation” means to have thought over the matter beforehand.

“Willfully” means conduct that is purposeful and intentional and not accidental.

“Intentionally” means conduct that is purposeful and willful and not accidental.

“Heat of passion” means any intense or vehement emotional excitement which was spontaneously provoked from the circumstances.

(PIK—Criminal 56.04)

Instruction No. 8

The law places the burden upon the state to prove the defendant is guilty. The law does not require the defendant to prove his innocence. Accordingly, you must assume that the defendant is innocent unless you are convinced from all of the evidence in the case that he is guilty.

You should evaluate the evidence admitted in this case and determine the innocence or guilt of the defendant entirely in accordance with these instructions. The test you must use is this: If you

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have a reasonable doubt as to the truth of any of the claims made by the state, you should find the defendant not guilty. If you have no reasonable doubt as to the truth of any of them, you should find the defendant guilty.

(PIK—Criminal 52.02)

Instruction No. 9

There is a presumption that a person intends all the natural and probable consequences of his voluntary acts. This presumption is overcome if you are persuaded by the evidence that the contrary is true.

(PIK—Criminal 54.01)

Instruction No. 10

At times during the trial the Court has ruled upon the admissibility of evidence. You must not concern yourself with these rulings. I have not meant to indicate any opinion as to the facts or as to what your verdict should be by any ruling that I have made or anything that I have said or done.

(PIK—Criminal 51.05)

Instruction No. 11

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that you believe are not supported by evidence, they should be disregarded.

(PIK—Criminal 51.06)

Instruction No. 12

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified.

(PIK—Criminal 52.09)

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Instruction No. 13

The law of Kansas provides that persons convicted of murder in the first degree shall be punished by death or imprisonment for life. The jury shall determine which punishment shall be inflicted.

If you find the defendant guilty of murder in the first degree the appropriate verdict form specifying punishment by death or life imprisonment must be signed by your foreman.

(PIK—Criminal 68.04)

Instruction No. 14

You will be submitted forms for all possible verdicts in this case.

1. Guilty of murder in the first degree with the death penalty.
2. Guilty of murder in the first degree with life imprisonment assessed.
3. Guilty of murder in the second degree.
4. Guilty of voluntary manslaughter.
5. Guilty of involuntary manslaughter.
6. Not guilty.

Your foreman should sign the appropriate verdict form. The other verdict forms are to be left unsigned.

(PIK—Criminal 68.09)

Instruction No. 15

When you retire to the jury room you will first select one of your members as foreman. He will preside over your deliberations, will speak for the jury in Court, and will sign the verdict upon which you agree.

Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

Your agreement upon a verdict must be unanimous.

District Judge

_____, 19____.

(PIK—Criminal 68.01)

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PIK 69.02 THEFT WITH TWO PARTICIPANTS

Summary of the Facts and Issues

Acme Department Store is located in Wichita, Kansas. On July 1, 1971, two men entered the store together. The defendant Wilbur Smith had a green paper shopping bag under his arm. The other man was John Green. After entering the store Smith and Green proceeded to the Men's Department. The security officer of the store observed Smith remove a blue suit from the clothes rack and then walk with the suit to the fitting room. Smith was there for about two minutes and returned from the fitting room without the suit or green shopping bag. Five minutes later John Green was apprehended leaving the store with a green shopping bag containing the blue suit. Green has disappeared and cannot be found. Smith was charged with theft of the suit.

The State contends Smith participated in the theft by placing the suit in the fitting room so Green could pick it up and remove it from the store. The defendant Smith denies that he was a party to the crime. He contends he tried on the suit and found that it did not fit. Hence, he left the suit in the fitting room and then left the store. He admits that he knows Green casually and they just happened to enter the store at the same time.

There is a dispute as to the value of the suit which makes it necessary for the jury to determine value.

An Outline of Suggested Instructions in Sequence Follows:

- Instruction 1. PIK 51.02, Consideration and Binding Application of Instructions.
PIK 52.09, Credibility of Witnesses.
PIK 51.05, Rulings of the Court.
PIK 51.06, Statements and Arguments of Counsel.
- Instruction 2. PIK 59.01, Theft.
- Instruction 3. PIK 54.05, Responsibility for Crimes of Another.
- Instruction 4. PIK 52.02, Burden of Proof, Presumption of Innocence, Reasonable Doubt.
- Instruction 5. PIK 52.16, Circumstantial Evidence.

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- Instruction 6. PIK 68.01, Concluding Instruction.
PIK 68.02 and 68.11, Verdict of Guilty and Finding
of Value of Property.
PIK 68.03, Not Guilty Verdict.
-

TEXT OF SUGGESTED INSTRUCTIONS

Instruction No. 1

MEMBERS OF THE JURY: It is my duty to instruct you in the law that applies to this case and it is your duty to follow all of the instructions. You must not single out one or more instructions and disregard others. You should construe each instruction in the light of and in harmony with the other instructions, and you should apply the instructions as a whole to the evidence. You should decide the case by applying the law to the facts as you find them. The order in which the instructions are given is no indication of their relative importance.

(PIK—Criminal 51.02)

At times during the trial the Court has ruled upon the admissibility of evidence. You must not concern yourself with these rulings. I have not meant to indicate any opinion as to the facts or as to what your verdict should be by any ruling that I have made or anything that I have said or done.

(PIK—Criminal 51.05)

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law, but they are not evidence. If any statements are made that you believe are not supported by evidence, they should be disregarded.

(PIK—Criminal 51.06)

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified.

(PIK—Criminal 52.09)

Instruction No. 2

The defendant is charged with the crime of theft. The defendant pleads not guilty.

PATTERN INSTRUCTIONS FOR KANSAS

To establish this charge each of the following claims must be proved:

1. That Acme Department Store was the owner of a man's suit;
2. That the defendant exerted unauthorized control over the man's suit;
3. That the defendant intended to deprive Acme Department Store permanently of the use and benefit of the man's suit;
4. That this act occurred on or about the 1st day of July, 1971, in Sedgwick County, Kansas.

(PIK—Criminal 59.02)

Instruction No. 3

Two or more persons may participate in the commission of a crime. A person is responsible for the conduct of another when either before or during the commission of a crime, and with the intent to promote or assist in the commission of the crime, he intentionally aids or advises the other to commit the crime. All participants in a crime are equally guilty, without regard to the extent of their participation.

(PIK—Criminal 54.05 as modified)

Instruction No. 4

The law places the burden upon the State to prove the defendant is guilty. The law does not require the defendant to prove his innocence. Accordingly, you must assume that the defendant is innocent unless you are convinced from all of the evidence in the case that he is guilty.

You should evaluate the evidence admitted in this case and determine the innocence or guilt of the defendant entirely in accordance with these instructions. The test you must use is this: If you have a reasonable doubt as to the truth of any of the claims made by the State, you should find the defendant not guilty. If you have no reasonable doubt as to the truth of any of them, you should find the defendant guilty.

(PIK—Criminal 52.02)

Instruction No. 5

A portion of the evidence in this case is circumstantial or indirect

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evidence. Indirect evidence consists of facts or circumstances which lead to a reasonable inference of the existence or nonexistence of an element of the crime charged. Indirect evidence is to be considered as any other evidence.

You should not find the defendant guilty unless the facts and circumstances proved exclude every reasonable theory of innocence. (PIK—Criminal 52.16)

Instruction No. 6

When you retire to the jury room you will first select one of your members as foreman. He will preside over your deliberations, will speak for the jury in Court, and will sign the verdict upon which you agree.

Your verdict must be founded entirely upon the evidence admitted and the law as given in these instructions.

Your agreement upon a verdict must be unanimous.

District Judge

_____, 19____.
(PIK—Criminal 68.01)

VERDICT FORMS

1. We, the jury, find the defendant guilty of theft and find the value of the property to be:

Fifty dollars (\$50.00) or more

Less than fifty dollars (\$50.00)

(Place an X in the appropriate square to indicate value.)

Foreman

(PIK—Criminal 68.02 and 68.11)

2. We, the jury, find the defendant not guilty.

Foreman

(PIK—Criminal 68.03)

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