

**Pattern  
Instructions for Kansas—**

**CRIMINAL 3d**

**(Cite as PIK 3d)**

**Prepared by:**

**KANSAS JUDICIAL COUNCIL  
ADVISORY COMMITTEE ON  
CRIMINAL JURY INSTRUCTIONS**

---

---

© 1998

KANSAS JUDICIAL COUNCIL

ALL RIGHTS RESERVED

---

---

## KANSAS JUDICIAL COUNCIL

Tyler C. Lockett, Chair . . . . .	Topeka
Justice of the Supreme Court	
J. Patrick Brazil . . . . .	Topeka
Chief Judge of the Court of Appeals	
Marla J. Luckert . . . . .	Topeka
Judge, Third Judicial District	
Nelson E. Toburen . . . . .	Pittsburg
Judge, Eleventh Judicial District	
Senator Tim Emert . . . . .	Independence
Chair, Senate Judiciary Committee	
Representative Tim Carmody . . . . .	Overland Park
Chair, House Judiciary Committee	
J. Nick Badgerow . . . . .	Overland Park
Gerald L. Goodell . . . . .	Topeka
Phillip Mellor . . . . .	Wichita
Marvin E. Thompson . . . . .	Russell

## KANSAS JUDICIAL COUNCIL ADVISORY COMMITTEE ON CRIMINAL JURY INSTRUCTIONS

Hon. David S. Knudson, Chair . . . . .	Topeka
Professor Christine Arguello . . . . .	Lawrence
Hon. Robert L. Bishop . . . . .	Winfield
Hon. Thomas H. Bornholdt . . . . .	Olathe
Hon. J. Dexter Burdette . . . . .	Kansas City
Hon. Stephen D. Hill . . . . .	Paola
Hon. David W. Kennedy . . . . .	Wichita
Hon. David Prager . . . . .	Topeka
Hon. M. Kay Royse . . . . .	Topeka
Professor Raymond L. Spring . . . . .	Topeka
Hon. Philip C. Vieux . . . . .	Garden City
Hon. John W. White . . . . .	Iola

(THIS PAGE BLANK)



## TABLE OF CONTENTS

<b>Detailed Table of Contents</b> .....	9
<b>Cross Reference Table</b> .....	27
<b>Kansas Criminal Code</b> .....	33
<b>CHAPTER 51.00</b>	Introduction and Cautionary Instructions
<b>CHAPTER 52.00</b>	Evidence and Guides for Its Consideration
<b>CHAPTER 53.00</b>	Definitions and Explanations of Terms
<b>CHAPTER 54.00</b>	Principles of Criminal Liability
<b>CHAPTER 55.00</b>	Anticipatory Crimes
<b>CHAPTER 56.00</b>	Crimes Against Persons
<b>CHAPTER 57.00</b>	Sex Offenses
<b>CHAPTER 58.00</b>	Crimes Affecting Family Relationships and Children
<b>CHAPTER 59.00</b>	Crimes Against Property
<b>CHAPTER 60.00</b>	Crimes Affecting Governmental Functions
<b>CHAPTER 61.00</b>	Crimes Affecting Public Trusts
<b>CHAPTER 62.00</b>	Crimes Involving Violations of Personal Rights
<b>CHAPTER 63.00</b>	Crimes Against the Public Peace
<b>CHAPTER 64.00</b>	Crimes Against Public Safety
<b>CHAPTER 65.00</b>	Crimes Against the Public Morals
<b>CHAPTER 66.00</b>	Crimes Affecting Business
<b>CHAPTER 67.00</b>	Controlled Substances
<b>CHAPTER 68.00</b>	Concluding Instructions and Verdict Forms
<b>CHAPTER 69.00</b>	Illustrative Sets of Instructions
<b>CHAPTER 70.00</b>	Selected Misdemeanors
<b>Index</b> .....	743

(THIS PAGE BLANK)

## Detailed Table of Contents

### CHAPTER 51.00

#### INTRODUCTORY AND CAUTIONARY INSTRUCTIONS

	PIK Number
Instructions Before Introduction Of Evidence . . . . .	51.01
Consideration And Binding Application Of Instructions . . . . .	51.02
Consideration And Guiding Application Of Instructions . . . . .	51.03
Consideration Of Evidence . . . . .	51.04
Rulings Of The Court . . . . .	51.05
Statements And Arguments Of Counsel . . . . .	51.06
Sympathy Or Prejudice For Or Against A Party . . . . .	51.07
Form Of Pronoun - Singular And Plural . . . . .	51.08
If Jury Receives Instructions Before Close Of Case . . . . .	51.09
Penalty Not To Be Considered By Jury . . . . .	51.10
Cameras In The Courtroom . . . . .	51.11

### CHAPTER 52.00

#### EVIDENCE AND GUIDES FOR ITS CONSIDERATION

	PIK Number
Information - Indictment . . . . .	52.01
Burden Of Proof, Presumption Of Innocence, Reasonable Doubt . . . . .	52.02
Presumption Of Innocence . . . . .	52.03
Reasonable Doubt . . . . .	52.04
Stipulations And Admissions . . . . .	52.05
Proof Of Other Crime - Limited Admissibility Of Evidence . . . . .	52.06
More Than One Defendant - Limited Admissibility Of Evidence . . . . .	52.07
Affirmative Defenses - Burden Of Proof . . . . .	52.08
Credibility Of Witnesses . . . . .	52.09
Defendant As A Witness . . . . .	52.10
Number Of Witnesses . . . . .	52.11

Testimony Taken Before Trial . . . . .	52.12
Defendant's Failure To Testify . . . . .	52.13
Expert Witness . . . . .	52.14
Impeachment . . . . .	52.15
Circumstantial Evidence . . . . .	52.16
Confession . . . . .	52.17
Testimony Of An Accomplice . . . . .	52.18
Testimony Of An Informant - For Benefits . . . . .	52.18-A
Alibi . . . . .	52.19
Eyewitness Identification . . . . .	52.20
Child's Hearsay Evidence . . . . .	52.21

## CHAPTER 53.00

### DEFINITIONS AND EXPLANATIONS OF TERMS

## CHAPTER 54.00

### PRINCIPLES OF CRIMINAL LIABILITY

	PIK Number
Presumption Of Intent . . . . .	54.01
General Criminal Intent . . . . .	54.01-A
Statutory Presumption Of Intent To Deprive . . . . .	54.01-B
Criminal Intent - Ignorance Of Statute Or Age Of Minor Is Not A Defense . . . . .	54.02
Ignorance Or Mistake Of Fact . . . . .	54.03
Ignorance Or Mistake Of Law - Reasonable Belief . . . . .	54.04
Responsibility For Crimes Of Another . . . . .	54.05
Responsibility For Crimes Of Another - Crime Not Intended . . . . .	54.06
Responsibility For Crime Of Another - Actor Not Prosecuted . . . . .	54.07
Corporations - Criminal Responsibility For Acts Of Agents . . . . .	54.08
Individual Responsibility For Corporation Crime . . . . .	54.09
Mental Disease Or Defect (For Crimes Committed January 1, 1996 or Thereafter . . . . .	54.10
Mental Disease Or Defect - Commitment (For Crimes Committed Prior to January 1, 1996) . . . . .	54.10-A

Mental Disease Or Defect - Commitment (For Crimes Committed January 1, 1996 Or Thereafter) . . . . .	54.10-A
Intoxication - Involuntary . . . . .	54.11
Voluntary Intoxication - General Intent Crime . . . . .	54.12
Voluntary Intoxication - Specific Intent Crime . . . . .	54.12-A
Voluntary Intoxication-Particular State Of Mind . . . . .	54.12-A-1
Diminished Mental Capacity . . . . .	54.12-B
Compulsion . . . . .	54.13
Entrapment . . . . .	54.14
Procuring Agent . . . . .	54.14-A
Condonation . . . . .	54.15
Restitution . . . . .	54.16
Use Of Force In Defense Of A Person . . . . .	54.17
No Duty to Retreat . . . . .	54.17-A
Use Of Force In Defense Of A Dwelling . . . . .	54.18
Use of Force In Defense Of Property Other Than A Dwelling . . . . .	54.19
Forcible Felon Not Entitled To Use Force . . . . .	54.20
Provocation Of First Force As Excuse For Retaliation . . . . .	54.21
Initial Aggressor's Use Of Force . . . . .	54.22
Law Enforcement Officer Or Private Person Summoned To Assist - Use Of Force In Making Arrest . . . . .	54.23
Private Person's Use Of Force In Making Arrest - Not Summoned By Law Enforcement Officer . . . . .	54.24
Use Of Force In Resisting Arrest . . . . .	54.25

## CHAPTER 55.00

### ANTICIPATORY CRIMES

	PIK Number
Attempt . . . . .	55.01
Attempt - Impossibility Of Committing Offense - No Defense . . . . .	55.02
Conspiracy . . . . .	55.03
Conspiracy - Withdrawal As A Defense . . . . .	55.04
Conspiracy - Defined . . . . .	55.05
Conspiracy - Act In Furtherance Defined . . . . .	55.06
Conspiracy - Declarations . . . . .	55.07
Conspiracy - Subsequent Entry . . . . .	55.08

Criminal Solicitation . . . . .	55.09
Criminal Solicitation - Defense . . . . .	55.10

**CHAPTER 56.00**

**CRIMES AGAINST PERSONS**

	PIK Number
Capital Murder . . . . .	56.00-A
Capital Murder - Death Sentence -Sentencing Proceeding . .	56.00-B
Capital Murder - Death Sentence -Aggravating Circumstances	56.00-C
Capital Murder - Death Sentence -Mitigating Circumstances	56.00-D
Capital Murder - Death Sentence -Burden of Proof . . . . .	56.00-E
Capital Murder - Death Sentence -Aggravating And Mitigating Circumstances - Theory Of Comparison . . .	56.00-F
Capital Murder - Death Sentence -Reasonable Doubt . . . . .	56.00-G
Capital Murder - Death Sentence - Sentencing Recommendation . . . . .	56.00-H
Murder In The First Degree . . . . .	56.01
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Sentence Proceeding . . . . .	56.01-A
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Aggravating Circumstances . . . . .	56.01-B
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Mitigating Circumstances . . . . .	56.01-C
Murder In The First Degree - Mandatory Minimum 40 Year Sentence -Burden Of Proof . . . . .	56.01-D
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Aggravating And Mitigating Circumstances - Theory of Comparison . . . . .	56.01-E
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Reasonable Doubt . . . . .	56.01-F
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Sentencing Recommendation . . . . .	56.01-G
Murder In The First Degree - Felony Murder . . . . .	56.02
Murder In The First Degree And Felony Murder - Alternatives . . . . .	56.02-A
Murder In The Second Degree . . . . .	56.03
Murder In The Second Degree - Unintentional . . . . .	56.03-A
Homicide Definitions . . . . .	56.04

Voluntary Manslaughter . . . . .	56.05
Involuntary Manslaughter . . . . .	56.06
Involuntary Manslaughter - Driving Under The Influence . . . . .	56.06-A
Vehicular Homicide . . . . .	56.07
Aggravated Vehicular Homicide . . . . .	56.07-A
Vehicular Battery . . . . .	56.07-B
Assisting Suicide . . . . .	56.08
Unintended Victim - Transferred Intent . . . . .	56.09
Criminal Abortion . . . . .	56.10
Criminal Abortion - Justification . . . . .	56.11
Assault . . . . .	56.12
Assault Of A Law Enforcement Officer . . . . .	56.13
Aggravated Assault . . . . .	56.14
Aggravated Assault Of A Law Enforcement Officer . . . . .	56.15
Battery . . . . .	56.16
Domestic Battery . . . . .	56.16-A
Battery Against A School Employee . . . . .	56.16-B
Battery Against A Law Enforcement Officer . . . . .	56.17
Aggravated Battery . . . . .	56.18
Criminal Injury To Person . . . . .	56.18-A
Aggravated Battery Against A Law Enforcement Officer . . . . .	56.19
Unlawful Interference With A Firefighter . . . . .	56.20
Attempted Poisoning . . . . .	56.21
Permitting Dangerous Animal To Be At Large . . . . .	56.22
Criminal Threat . . . . .	56.23
Criminal Threat - Adulteration Or Contamination Of Food Or Drink . . . . .	56.23-A
Aggravated Criminal Threat . . . . .	56.23-B
Kidnapping . . . . .	56.24
Aggravated Kidnapping . . . . .	56.25
Interference With Parental Custody . . . . .	56.26
Aggravated Interference With Parental Custody By Parent's Hiring Another . . . . .	56.26-A
Aggravated Interference With Parental Custody By Hiree . . . . .	56.26-B
Aggravated Interference With Parental Custody - Other Circumstances . . . . .	56.26-C
Interference With The Custody Of A Committed Person . . . . .	56.27
Criminal Restraint . . . . .	56.28
Mistreatment Of A Confined Person . . . . .	56.29
Robbery . . . . .	56.30
Aggravated Robbery . . . . .	56.31
Blackmail . . . . .	56.32

Disclosing Information Obtained In Preparing Tax Returns	56.33
Defense To Disclosing Information Obtained In Preparing Tax Returns . . . . .	56.34
Aircraft Piracy . . . . .	56.35
Hazing . . . . .	56.36
Mistreatment Of A Dependent Adult . . . . .	56.37
Affirmative Defense To Mistreatment Of A Dependent Adult . . . . .	56.38
Stalking . . . . .	56.39
Unlawfully Exposing Another To A Communicable Disease . . . . .	56.40
Injuring A Pregnant Woman . . . . .	56.41
Injury To A Pregnant Woman By Vehicle . . . . .	56.42

## CHAPTER 57.00

### SEX OFFENSES

	PIK Number
Rape . . . . .	57.01
Rape - Defense Of Marriage . . . . .	57.01-A
Sexual Intercourse - Definition . . . . .	57.02
Rape, Credibility Of Prosecutrix's Testimony . . . . .	57.03
Rape, Corroboration Of Prosecutrix's Testimony Unnecessary . . . . .	57.04
Indecent Liberties With A Child . . . . .	57.05
Indecent Liberties With A Child - Sodomy . . . . .	57.05-A
Affirmative Defense To Indecent Liberties With A Child . .	57.05-B
Aggravated Indecent Liberties With A Child . . . . .	57.06
Affirmative Defense To Aggravated Indecent Liberties With A Child . . . . .	57.06-A
Criminal Sodomy . . . . .	57.07
Affirmative Defense To Criminal Sodomy . . . . .	57.07-A
Aggravated Criminal Sodomy - Nonmarital Child Under 14 . . . . .	57.08
Aggravated Criminal Sodomy - Causing Child Under Fourteen To Engage In Sodomy With A Person Or An Animal . . . . .	57.08-A
Aggravated Criminal Sodomy - No Consent . . . . .	57.08-B
Affirmative Defense To Aggravated Criminal Sodomy . . .	57.08-C
Adultery . . . . .	57.09



Lewd And Lascivious Behavior . . . . .	57.10
Enticement Of A Child . . . . .	57.11
Indecent Solicitation Of A Child . . . . .	57.12
Sexual Exploitation Of A Child . . . . .	57.12-A
Promoting Sexual Performance By A Minor . . . . .	57.12-B
Aggravated Indecent Solicitation Of A Child . . . . .	57.13
Prostitution . . . . .	57.14
Promoting Prostitution . . . . .	57.15
Promoting Prostitution - Child Under 16 . . . . .	57.15-A
Habitually Promoting Prostitution . . . . .	57.16
Patronizing A Prostitute . . . . .	57.17
Sex Offenses - Definitions . . . . .	57.18
Sexual Battery . . . . .	57.19
Aggravated Sexual Battery - Force Or Fear . . . . .	57.20
Aggravated Sexual Battery - Child Under 16 . . . . .	57.21
Aggravated Sexual Battery - Dwelling . . . . .	57.22
Aggravated Sexual Battery - Victim Unconscious Or Physically Powerless . . . . .	57.23
Aggravated Sexual Battery - Mental Deficiency Of Victim . . . . .	57.24
Aggravated Sexual Battery - Intoxication . . . . .	57.25
Unlawful Sexual Relations With Inmates, Etc. . . . .	57.26
RESERVED FOR FUTURE USE . . . . .	57.27 - 57.39
Sexual Predator/Civil Commitment . . . . .	57.40
Sexual Predator/Civil Commitment- Definitions . . . . .	57.41
Sexual Predator/Civil Commitment - Burden Of Proof . . . . .	57.42

**CHAPTER 58.00**

**CRIMES AFFECTING FAMILY  
RELATIONSHIPS AND CHILDREN**

	PIK Number
Bigamy . . . . .	58.01
Affirmative Defense To Bigamy . . . . .	58.02
Incest . . . . .	58.03
Aggravated Incest . . . . .	58.04
Abandonment Of A Child . . . . .	58.05
Aggravated Abandonment Of A Child . . . . .	58.05-A
Nonsupport Of A Child . . . . .	58.06
Nonsupport Of A Spouse . . . . .	58.07
Criminal Desertion . . . . .	58.08

Encouraging Juvenile Misconduct . . . . .	58.09
Endangering A Child . . . . .	58.10
Affirmative Defense To Endangering A Child . . . . .	58.10-A
Abuse Of A Child . . . . .	58.11
Furnishing Alcoholic Liquor To A Minor . . . . .	58.12
Furnishing Cereal Malt Beverage To A Minor . . . . .	58.12-A
Furnishing Alcoholic Beverages To A Minor For Illicit Purposes . . . . .	58.12-B
Furnishing Alcoholic Liquor To A Minor - Defense . . . . .	58.12-C
Furnishing Cereal Malt Beverage To A Minor - Defense . . . . .	58.12-D
Aggravated Juvenile Delinquency . . . . .	58.13
Contributing To A Child's Misconduct Or Deprivation . . . . .	58.14

**CHAPTER 59.00**

**CRIMES AGAINST PROPERTY**

	PIK Number
Theft . . . . .	59.01
Theft - Knowledge Property Stolen . . . . .	59.01-A
Theft - Welfare Fraud . . . . .	59.01-B
Theft Of Lost Or Mislaid Property . . . . .	59.02
Theft Of Services . . . . .	59.03
Criminal Deprivation Of Property . . . . .	59.04
Fraudulently Obtaining Execution Of A Document . . . . .	59.05
Worthless Check . . . . .	59.06
Statutory Presumption Of Intent To Defraud - Knowledge Of Insufficient Funds . . . . .	59.06-A
Worthless Check - Defenses . . . . .	59.07
Habitually Giving A Worthless Check Within Two Years . . . . .	59.08
Habitually Giving Worthless Checks - On Same Day . . . . .	59.09
Causing An Unlawful Prosecution For Worthless Check . . . . .	59.10
Forgery - Making Or Issuing A Forged Instrument . . . . .	59.11
Forgery - Possessing A Forged Instrument . . . . .	59.12
Making False Information . . . . .	59.13
Destroying A Written Instrument . . . . .	59.14
Altering A Legislative Document . . . . .	59.15
Possession Of Forgery Devices . . . . .	59.16
Burglary . . . . .	59.17
Aggravated Burglary . . . . .	59.18
Possession Of Burglary Tools . . . . .	59.19

Arson . . . . .	59.20
Arson - Defraud An Insurer Or Lienholder . . . . .	59.21
Aggravated Arson . . . . .	59.22
Criminal Damage To Property - Without Consent . . . . .	59.23
Criminal Damage To Property - With Intent To Defraud An Insurer Or Lienholder . . . . .	59.24
Criminal Trespass . . . . .	59.25
Criminal Trespass - Health Care Facility . . . . .	59.25-A
Criminal Trespass On Railroad Property . . . . .	59.25-B
Littering - Public . . . . .	59.26
Littering - Private Property . . . . .	59.27
Tampering With A Landmark . . . . .	59.28
Tampering With A Landmark - Highway Sign Or Marker . . . . .	59.29
Tampering With A Traffic Signal . . . . .	59.30
Aggravated Tampering With A Traffic Signal . . . . .	59.31
Injury To A Domestic Animal . . . . .	59.32
Criminal Hunting . . . . .	59.33
Unlawful Hunting - Posted Land . . . . .	59.33-A
Criminal Hunting - Defense . . . . .	59.33-B
Criminal Use Of Financial Card of Another . . . . .	59.34
Criminal Use Of Financial Card - Cancelled . . . . .	59.35
Criminal Use Of Financial Card - Altered Or Nonexistent . . . . .	59.36
Unlawful Manufacture Or Disposal Of False Tokens . . . . .	59.37
Criminal Use Of Explosives . . . . .	59.38
Possession Or Transportation Of Incendiary Or Explosive Device . . . . .	59.39
Criminal Use Of Noxious Matter . . . . .	59.40
Impairing A Security Interest - Concealment Or Destruction . . . . .	59.41
Impairing A Security Interest - Sale Or Exchange . . . . .	59.42
Impairing A Security Interest - Failure To Account . . . . .	59.43
Fraudulent Release Of A Security Agreement . . . . .	59.44
Warehouse Receipt Fraud - Original Receipt . . . . .	59.45
Warehouse Receipt Fraud - Duplicate Or Additional Receipt . . . . .	59.46
Unauthorized Delivery Of Stored Goods . . . . .	59.47
Automobile Master Key Violation . . . . .	59.48
Posting Of Political Pictures Or Advertisements . . . . .	59.49
Opening, Damaging Or Removing Coin-Operated Machines . . . . .	59.50
Possession Of Tools For Opening, Damaging Or Removing Coin-Operated Machines . . . . .	59.51

Casting An Object Onto A Street Or Road - Damage To Vehicle, Resulting In Bodily Injury . . . . .	59.52
Casting An Object Onto A Street Or Road - Bodily Injury . . . . .	59.53
Casting An Object Onto A Street Or Road - Vehicle Damage . . . . .	59.54
Casting An Object Onto A Street Or Road - No Damage . . .	59.55
Sale Of Recut Tires . . . . .	59.56
Theft Of Cable Television Services . . . . .	59.57
Piracy Of Recordings . . . . .	59.58
Dealing In Pirated Recordings . . . . .	59.58-A
Piracy Of Recordings - Defenses . . . . .	59.59
Non-Disclosure Of Source Of Recordings . . . . .	59.60
Defrauding An Innkeeper . . . . .	59.61
Grain Embezzlement . . . . .	59.62
Making False Public Warehouse Records And Statements . .	59.63
Making False Public Warehouse Reports . . . . .	59.63-A
Adding Dockage Or Foreign Material To Grain . . . . .	59.63-B
Computer Crime . . . . .	59.64
Computer Crime - Defense . . . . .	59.64-A
Computer Trespass . . . . .	59.64-B
Violation Of The Kansas Odometer Act - Tampering, Etc. . .	59.65-A
Violation Of The Kansas Odometer Act - Conspiring . . . . .	59.65-B
Violation Of The Kansas Odometer Act - Operating A Vehicle . . . . .	59.65-C
Violation Of The Kansas Odometer Act - Unlawful Device . . . . .	59.65-D
Violation Of The Kansas Odometer Act - Unlawful Sale . . .	59.65-E
Violation Of The Kansas Odometer Act - Unlawful Service, Repair Or Replacement . . . . .	59.65-F
Promoting a Pyramid Promotional Scheme . . . . .	59.66
RESERVED FOR FUTURE USE. . . . .	59.67-59.69
Value In Issue . . . . .	59.70

**CHAPTER 60.00**

**CRIMES AFFECTING GOVERNMENTAL FUNCTIONS**

	PIK Number
Treason . . . . .	60.01
Sedition . . . . .	60.02

Practicing Criminal Syndicalism . . . . .	60.03
Permitting Premises To Be Used For Criminal Syndicalism . . . . .	60.04
Perjury . . . . .	60.05
Corruptly Influencing A Witness . . . . .	60.06
Intimidation Of A Witness Or Victim . . . . .	60.06-A
Aggravated Intimidation Of A Witness Or Victim . . . . .	60.06-B
Unlawful Disclosure Of Authorized Interception Of Communications . . . . .	60.06-C
Compounding A Crime . . . . .	60.07
Obstructing Legal Process . . . . .	60.08
Obstructing Official Duty . . . . .	60.09
Escape From Custody . . . . .	60.10
Aggravated Escape From Custody . . . . .	60.11
Aiding Escape . . . . .	60.12
Aiding A Felon Or Person Charged As A Felon . . . . .	60.13
Aiding A Person Convicted Of Or Charged With Committing A Misdemeanor . . . . .	60.14
Failure To Appear Or Aggravated Failure To Appear . . . . .	60.15
Attempting To Influence A Judicial Officer . . . . .	60.16
Interference With The Administration Of Justice . . . . .	60.17
Corrupt Conduct By Juror . . . . .	60.18
Falsely Reporting A Crime . . . . .	60.19
Performance Of An Unauthorized Official Act . . . . .	60.20
Simulating Legal Process . . . . .	60.21
Tampering With A Public Record . . . . .	60.22
Tampering With Public Notice . . . . .	60.23
False Signing Of A Petition . . . . .	60.24
False Impersonation . . . . .	60.25
Aggravated False Impersonation . . . . .	60.26
Traffic In Contraband In A Correctional Institution . . . . .	60.27
Criminal Disclosure Of A Warrant . . . . .	60.28
Interference With The Conduct Of Public Business In A Public Building . . . . .	60.29
Dealing In False Identification Documents . . . . .	60.30
Harassment Of Court By Telefacsimile . . . . .	60.31
Aircraft Registration . . . . .	60.32
Fraudulent Registration Of Aircraft . . . . .	60.33
Fraudulent Aircraft Registration - Supplying False Information . . . . .	60.34
Aircraft Identification - Fraudulent Acts . . . . .	60.35

## 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
Unlawful Use Of State Postage .....	61.12

## 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
Unlawfully Smoking In A Public Place .....	62.11
Failure To Post Smoking Prohibited And Designated Smoking Area Signs .....	62.11-A
Unlawful Smoking - Defense Of Smoking In Designated Smoking Area .....	62.12

## 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 - Flags . . . . .	63.11
Criminal Desecration - Monuments/Cemeteries/ Places of Worship . . . . .	63.12
Criminal Desecration - Dead Bodies . . . . .	63.13
Harassment By Telephone . . . . .	63.14
Harassment Of Court By Telefacsimile . . . . .	63.14-A
Desecration Of Flags . . . . .	63.15

## CHAPTER 64.00

### CRIMES AGAINST THE PUBLIC SAFETY

	PIK Number
Criminal Use Of Weapons - Felony . . . . .	64.01
Criminal Use Of Weapons - Misdemeanor . . . . .	64.02
Criminal Discharge Of A Firearm - Misdemeanor . . . . .	64.02-A
Criminal Discharge Of A Firearm - Felony . . . . .	64.02-A-1
Criminal Discharge Of A Firearm - Affirmative Defense . . . . .	64.02-B
Aggravated Weapons Violation . . . . .	64.03
Criminal Use Of Weapons - Affirmative Defense . . . . .	64.04
Criminal Disposal Of Firearms . . . . .	64.05
Criminal Possession Of A Firearm - Felony . . . . .	64.06
Criminal Possession Of A Firearm - Misdemeanor . . . . .	64.07

Possession Of A Firearm (In)(On The Grounds Of)	
A State Building Or In A County Courthouse . . . . .	64.07-A
Criminal Possession Of A Firearm By A Juvenile . . . . .	64.07-B
Criminal Possession Of A Firearm By A Juvenile -	
Affirmative Defenses . . . . .	64.07-C
Defacing Identification Marks Of A Firearm . . . . .	64.08
Failure To Register Sale Of Explosives . . . . .	64.09
Failure To Register Receipt Of Explosives . . . . .	64.10
Explosive - Definition . . . . .	64.10-A
Criminal Disposal Of Explosives . . . . .	64.11
Criminal Possession Of Explosives . . . . .	64.11-A
Criminal Possession Of Explosives - Defense . . . . .	64.11-B
Carrying Concealed Explosives . . . . .	64.12
Refusal To Yield A Telephone Party Line . . . . .	64.13
Creating A Hazard . . . . .	64.14
Unlawful Failure To Report A Wound . . . . .	64.15
Unlawfully Obtaining Prescription-Only Drug . . . . .	64.16
Unlawfully Obtaining Prescription-Only Drug	
For Resale . . . . .	64.17
Selling Beverage Containers With Detachable Tabs . . . . .	64.18
Unlawfully Exposing Another To A Communicable	
Disease . . . . .	64.19

## CHAPTER 65.00

### CRIMES AGAINST THE PUBLIC MORALS

	PIK Number
Promoting Obscenity . . . . .	65.01
Promoting Obscenity To A Minor . . . . .	65.02
Promoting Obscenity - Definitions . . . . .	65.03
Promoting Obscenity - Presumption Of Knowledge	
And Recklessness From Promotion . . . . .	65.04
Promoting Obscenity - Affirmative Defenses . . . . .	65.05
Promoting Obscenity To A Minor - Affirmative	
Defenses . . . . .	65.05-A
Gambling . . . . .	65.06
Illegal Bingo Operation . . . . .	65.06-A
Gambling - Definitions . . . . .	65.07



Commercial Gambling . . . . .	65.08
Permitting Premises To Be Used For Commercial Gambling . . . . .	65.09
Dealing In Gambling Devices . . . . .	65.10
Dealing In Gambling Devices - Defense . . . . .	65.10-A
Dealing In Gambling Devices - Presumption From Possession . . . . .	65.11
Possession Of A Gambling Device . . . . .	65.12
Possession Of A Gambling Device - Defense . . . . .	65.12-A
Installing Communication Facilities For Gamblers . . . . .	65.13
False Membership Claim . . . . .	65.14
Cruelty To Animals . . . . .	65.15
Cruelty To Animals - Defense . . . . .	65.16
Unlawful Disposition Of Animals . . . . .	65.17
Unlawful Conduct Of Dog Fighting . . . . .	65.18
Attending An Unlawful Dog Fight . . . . .	65.19
Illegal Ownership Or Keeping Of A Dog . . . . .	65.20
RESERVED FOR FUTURE USE . . . . .	65.21 - 65.29
Conflicts Of Interest - Commission Member Or Employee . . . . .	65.30
Conflicts Of Interest - Retailer Or Contractor . . . . .	65.31
Forgery Of A Lottery Ticket . . . . .	65.32
Unlawful Sale Of A Lottery Ticket . . . . .	65.33
Unlawful Purchase Of A Lottery Ticket . . . . .	65.34
Lottery - Definitions . . . . .	65.35
Violations Of The Tribal Gaming Law . . . . .	65.36
RESERVED FOR FUTURE USE . . . . .	65.37 - 65.50
Violation Of The Kansas Parimutuel Racing Act . . . . .	65.51
Parimutuel Racing Act - Definitions . . . . .	65.52

## CHAPTER 66.00

### CRIMES AFFECTING 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
Knowingly Employing An Alien Illegally Within The United States . . . . .	66.09
Equity Skimming . . . . .	66.10

**CHAPTER 67.00**

**CONTROLLED SUBSTANCES**

	PIK Number
REPEALED . . . . .	67.01 - 67.12
Narcotic Drugs And Certain Stimulants - Possession . . . . .	67.13
Controlled Substances - Sale Defined . . . . .	67.13-A
Narcotic Drugs And Certain Stimulants - Sale, Etc. . . . .	67.13-B
Narcotic Drugs And Certain Stimulants - Possession Or Offer To Sell With Intent To Sell . . . . .	67.13-C
Stimulants, Depressants, And Hallucinogenic Drugs Or Anabolic Steroids - Possession Or Offer To Sell With Intent To Sell . . . . .	67.14
Stimulants, Depressants, And Hallucinogenic Drugs Or Anabolic Steroids - Sale, Etc. . . . .	67.15
Stimulants, Depressants, Hallucinogenic, Drugs Or Anabolic Steroids - Possession . . . . .	67.16
Simulated Controlled Substances And Drug Paraphernalia - Use Or Possession With Intent To Use . . . . .	67.17
Possession Or Manufacture Of Simulated Controlled Substance . . . . .	67.18
Possession Or Manufacture Of Drug Paraphernalia . . . . .	67.18-A
Promotion Of Simulated Controlled Substances Or Drug Paraphernalia . . . . .	67.19
Representation That A Noncontrolled Substance Is A Controlled Substance . . . . .	67.20
Unlawfully Manufacturing A Controlled Substance . . . . .	67.21
Unlawful Use Of Communication Facility To Facilitate Felony Drug Transaction . . . . .	67.22
Substances Designated Under K.S.A. 65-4113 (Medicinals With A Lower Potential For Abuse) - Selling, Offering To Sell, Possessing With Intent To Sell Or Dispensing To Person	

Under 18 Years Of Age .....	67.23
Possession By Dealer - No Tax Stamp Affixed .....	67.24
Receiving Or Acquiring Proceeds Derived From A Violation Of The Uniform Controlled Substances Act .....	67.25
Controlled Substance Analog - Possession, Sale, Etc. ....	67.26

## CHAPTER 68.00

### CONCLUDING INSTRUCTIONS AND VERDICT FORMS

	PIK Number
Concluding Instruction .....	68.01
Concluding Instruction - Capital Murder - Sentencing Proceeding .....	68.01-A
Guilty Verdict - General Form .....	68.02
Not Guilty Verdict - General Form .....	68.03
Punishment - Class A Felony .....	68.04
Verdicts - Class A Felony .....	68.05
Not Guilty Because Of Mental Disease Or Defect .....	68.06
Multiple Counts - Verdict Instruction .....	68.07
Multiple Counts - Verdict Forms .....	68.08
Lesser Included Offenses .....	68.09
Alternative Charges .....	68.09-A
Lesser Included Offenses - Verdict Forms .....	68.10
Verdict Form - Value In Issue .....	68.11
Deadlocked Jury .....	68.12
Post-Trial Communication With Jurors .....	68.13
Murder In The First Degree - Mandatory 40 Year Sentence - Verdict Form For Life Imprisonment With Parole Eligibility After 15 Years .....	68.14
Murder In The First Degree - Mandatory 40 Year Sentence - Verdict Form For Life Imprisonment With Parole Eligibility After 40 Years .....	68.14-A
Capital Murder - Verdict Form For Sentence Of Death .....	68.14-A-1
Capital Murder - Verdict Form For Sentence Of Death (Alternative Verdict) .....	68.14-B-1
Murder In The First Degree - Premeditated Murder	

And Felony Murder In The Alternative - Verdict Instruction . . . . .	68.15
Murder In The First Degree - Premeditated Murder : And Felony Murder In The Alternative - Verdict Form . . . . .	68.16
Capital Murder - Sentence Of Death - Verdict Form For Sentence As Provided By Law . . . . .	68.17

**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
Possession Of Marijuana With Intent To Sell - Entrapment As An Affirmative Defense . . . . .	69.03

**CHAPTER 70.00**

**SELECTED MISDEMEANORS**

	PIK Number
Traffic Offense - Driving Under The Influence Of Alcohol Or Drugs . . . . .	70.01
Traffic Offense - Alcohol Concentration Of .08 Or More B.A.T. .08 Or More Or DUI Charged In The Alternative	70.01-A 70.01-B
Driving Under The Influence - If Chemical Test Used . .	70.02
Transporting An Alcoholic Beverage In An Opened Container . . . . .	70.03
Reckless Driving . . . . .	70.04
Violation Of City Ordinance . . . . .	70.05
Operating An Aircraft While Under The Influence Of Intoxicating Liquor Or Drugs . . . . .	70.06
Operating An Aircraft While Under The Influence - If Chemical Test Is Used . . . . .	70.07
Ignition Interlock Device Violation . . . . .	70.08

## Cross Reference Table - Statutes To Instructions

Statutory Section	PIK 3d Number	Statutory Section	PIK 3d Number
3-1001 .....	70.06	21-3217 .....	54.25
3-1002 .....	70.06	21-3301 .....	55.01
3-1004 .....	70.07	21-3301 (b) .....	55.02
3-1005 .....	70.07	21-3302 .....	55.03
8-1005 ...	70.01, 70.01-A, 70.02	21-3302 (a) .....	55.05, 55.06
8-1006 .....	70.02	21-3302 (b) .....	55.04
8-1017 .....	70.08	21-3303 .....	55.09
8-1566 .....	70.04	21-3303 (c) .....	55.10
8-1567 .....	70.01, 70.01-B	21-3401 .....	56.01, 56.02, 56.02-A
8-1567 (a)(1) .....	70.01-A	21-3402 .....	56.03, 56.03-A
8-1599 .....	70.03	21-3403 .....	56.05
21-3107 (2), (3) ..	68.09, 68.09-A	21-3404 .....	56.06
21-3109 .....	52.02, 52.03, 52.04, 68.09	21-3405 .....	56.07
21-3201 (a), (b) .....	54.01-A	21-3405a .....	56.07-A
21-3201 (b), (c) .....	56.04	21-3405b .....	56.07-B
21-3202 .....	54.02	21-3406 .....	56.08
21-3203 (1) .....	54.03	21-3407 (1) .....	56.10
21-3203 (2) .....	54.04	21-3408 .....	56.12
21-3204 .....	54.01	21-3409 .....	56.13
21-3205 (1) .....	54.05	21-3410 .....	56.14
21-3205 (2) .....	54.06	21-3411 .....	56.15
21-3205 (3) .....	54.07	21-3412 .....	56.16, 56.16-A
21-3206 (1), (2) .....	54.08	21-3413 .....	56.17
21-3207 (1) .....	54.09	21-3414 .....	56.18
21-3208 (1) .....	54.11	21-3415 .....	56.19
21-3208 (2) ...	54.12, 54.12-A, 54.12-A-1	21-3416 .....	56.20
21-3209 .....	54.13	21-3417 .....	56.21
21-3210 .....	54.14	21-3418 .....	56.22
21-3211 .....	54.17	21-3419a .....	56.23-B
21-3212 .....	54.18	21-3419 .....	56.23, 56.23-A
21-3213 .....	54.19	21-3420 .....	56.24
21-3214 (1) .....	54.20	21-3421 .....	56.25
21-3214 (2) .....	54.21	21-3422 .....	56.26
21-3214 (3) (a), (b) .....	54.22	21-3422a ...	56.26-A, 56.26-B
21-3215 .....	54.23	21-3423 .....	56.27
21-3216 (1) .....	54.24	21-3424 .....	56.28
		21-3425 .....	56.29

Statutory Section	PIK 3d Number	Statutory Section	PIK 3d Number
21-3426	56.30	21-3518	57.18
21-3427	56.31	21-3518 (a) (1)	57.20
21-3428	56.32	21-3518 (a) (2)	57.23
21-3430	56.33, 56.34	21-3518 (a) (3)	57.24, 57.25
21-3431	56.18-A	21-3518 (b)	57.21
21-3433	56.35	21-3518 (c)	57.22
21-3434	56.36	21-3519	57.12-B
21-3435	56.40	21-3601 (a)	58.01
21-3436	56.37	21-3601 (b)	58.02
21-3436 (b)	56.38	21-3602	58.03
21-3437	56.37	21-3603	58.04
21-3437 (b)	56.38	21-3604	58.05
21-3438	56.39	21-3604a	58.05-A
21-3439	56.00-A	21-3605 (a) (1)	58.06
21-3440	56.41	21-3605 (b) (1)	58.07
21-3441	56.42	21-3606	58.08
21-3442	56.06-A	21-3607	58.09
21-3443	56.16-B	21-3608 (a)	58.10
21-3501	57.02	21-3608 (b)	58.10-A
21-3501 (2)	57.18	21-3609	58.11
21-3502	57.01	21-3610	58.12
21-3502 (a)(2)	57.01-A	21-3610 (d)	58.12-C
21-3503	57.05, 57.18	21-3610a (a)	58.12-A
21-3503 (b)	57.05-B	21-3610a (d)	58.12-D
21-3504	57.06, 57.18	21-3610b	58.12-B
21-3504 (b)	57.06-A	21-3612	58.14
21-3505	57.07, 57.18	21-3701	59.01, 59.01-B
21-3505 (b)	57.07-A	21-3701 (a) (4)	59.01-A
21-3506	57.08-A	21-3702	54.01-B
21-3506 (a)	57.08	21-3703	59.02
21-3506 (a) (3)	57.08-B	21-3704	59.03
21-3506 (b)	57.08-C	21-3705	59.04
21-3507	57.09	21-3706	59.05
21-3508	57.10, 57.18	21-3707	59.06
21-3509	57.11	21-3707 (b)	59.06-A
21-3510	57.12	21-3707 (c)	59.07
21-3511	57.13	21-3708	59.08, 59.09
21-3512	57.14	21-3709	59.10
21-3513	57.15, 57.15-A	21-3710 (a) (1), (2)	59.11
21-3514	57.16	21-3710 (a) (3)	59.12
21-3515	57.17	21-3711	59.13
21-3516	57.12-A	21-3712	59.14
21-3517	57.18, 57.19	21-3713	59.15

Statutory Section	PIK 3d Number	Statutory Section	PIK 3d Number
21-3714	59.16	21-3748	59.58
21-3715	59.17	21-3748 (c)	59.59
21-3716	59.18	21-3749	59.58-A
21-3717	59.19	21-3750	59.60
21-3718 (a) (1)	59.20	21-3752	59.57
21-3718 (a) (2)	59.21	21-3753	59.62
21-3719	59.22	21-3754 (a)	59.63
21-3720 (a) (1)	59.23	21-3754 (b)	59.63-A
21-3720 (a) (2)	59.24	21-3755 (b)(1)(B)	59.64
21-3721	59.25, 59.33-B	21-3755 (b)(3)	59.64-A
21-3721 (a) (2)	59.25-A	21-3755 (d)	59.64-B
21-3722 (a)	59.26	21-3756	59.63-B
21-3722 (b)	59.27	21-3757 (b)	59.65-A
21-3724 (a), (b), (c), (f)	59.28	21-3757 (c)	59.65-B
21-3724 (d), (e)	59.29	21-3757 (d)	59.65-C
21-3725	59.30	21-3757 (e)	59.65-D
21-3726	59.31	21-3757 (f)	59.65-E
21-3727	59.32	21-3757 (g)	59.65-F
21-3728	59.33, 59.33-B	21-3761	59.25-B
21-3729 (a) (1)	59.34	21-3762	59.66
21-3729 (a) (2)	59.35	21-3801 (a)	60.01
21-3729 (a) (3)	59.36	21-3802	60.02
21-3730	59.37	21-3803	60.03
21-3731	59.38	21-3804	60.04
21-3732	59.39	21-3805	60.05
21-3733	59.40	21-3806	60.06
21-3734 (a) (1)	59.41	21-3807	60.07
21-3734 (a) (2)	59.42	21-3808	60.08, 60.09
21-3734 (a) (3)	59.43	21-3809	60.10, 60.11, 60.12
21-3735	59.44	21-3810	60.11
21-3736 (a), (1), (2)	59.45	21-3811	60.12
21-3736 (a) (3)	59.46	21-3812 (a), (b)	60.13
21-3737	59.47	21-3812 (c)	60.14
21-3738	59.48	21-3813	60.15
21-3739	59.49	21-3814	60.15
21-3740	59.50	21-3815	60.16
21-3741	59.51	21-3816	60.17
21-3742 (a)	59.55	21-3817	60.18
21-3742 (b)	59.54	21-3818	60.19
21-3742 (c)	59.53	21-3819	60.20
21-3742 (d)	59.52	21-3820	60.21
21-3743	59.56	21-3821	60.22
21-3744	59.56	21-3822	60.23

Statutory Section	PIK 3d Number	Statutory Section	PIK 3d Number
21-3823	60.24	21-4106	63.06, 63.07
21-3824	60.25	21-4107	63.07
21-3825	60.26	21-4108	63.08
21-3826	60.27	21-4109	63.09
21-3827	60.28	21-4110	63.10
21-3828	60.29	21-4111	63.11, 63.12, 63.13
21-3830	60.30	21-4113	63.14
21-3832	60.06-A	21-4114	63.15
21-3833	60.06-B	21-4201 (a) (1) through (5)	64.02
21-3838	60.06-C	21-4201 (a) (6), (7), (8)	64.01
21-3839	60.31	21-4201 (a) (9)	64.02
21-3840	60.32	21-4201 (b) through (f)	64.04
21-3841	60.33, 60.34	21-4202	64.03
21-3842	60.35	21-4203	64.05
21-3901	61.01	21-4204 (a) (1), (5), (6)	64.07
21-3902	61.02	21-4204 (a) (2), (3), (4), (A), (B)	64.06
21-3903	61.03, 61.04	21-4204a	64.07-B, 64.07-C
21-3904	61.05	21-4205	64.08
21-3905	61.06	21-4207	64.09
21-3906	61.07	21-4208	64.10
21-3907	61.08	21-4209	64.11
21-3908	61.09	21-4209a	64.11-A
21-3909	61.10	21-4209a (b)	64.11-B
21-3910	61.11	21-4209b	64.10-A
21-3911	61.12	21-4210	64.12
21-4001	62.01	21-4211	64.13
21-4001 (c)	62.02	21-4212	64.14
21-4002	62.03, 62.04	21-4213	64.15
21-4003	62.05	21-4214	64.16
21-4004	62.06, 62.07	21-4215	64.17
21-4005	62.08	21-4216	64.18
21-4006	62.09	21-4217	64.02-A
21-4007	62.10	21-4218	64.07-A
21-4008	62.12	21-4219	64.02-B
21-4009	62.11, 62.11-A	21-4301	65.01, 65.05, 65.05-A
21-4010	62.11, 62.11-A	21-4301 (b)	65.04
21-4011	62.11, 62.11-A	21-4301a	65.02, 65.04, 65.05, 65.05-A
21-4012	62.11, 62.11-A	21-4302	65.07
21-4101	63.01	21-4303	65.06
21-4102	63.02	21-4303a	65.06-A
21-4103	63.03	21-4304	65.08
21-4104	63.04		
21-4105	63.05		



Statutory Section	PIK 3d Number	Statutory Section	PIK 3d Number
21-4305	65.09	22-3414 (3)	51.01, 52.01
21-4306	65.10	22-3415	52.09
21-4306 (b)	65.11	22-3421	68.01, 68.02
21-4306 (d)	65.10-A	22-3428	54.10-A
21-4307	65.12	32-1013 (a)	59.33-A
21-4308	65.13	36-206	59.61
21-4309	65.14	39-702 (d)	59.01-B
21-4310	65.15	39-720	59.01-B
21-4310 (b)	65.16	59-29a01	57.40
21-4312	65.17	59-29a02	57.41
21-4315	65.18, 65.19	59-29a07	57.42
21-4317	65.20	60-401 (d)	52.02
21-4401	66.01	60-439	52.13
21-4402	66.02	60-455	52.06
21-4403	66.03	60-460(i)(2)	55.07
21-4404	66.04	60-460(dd)	52.21
21-4405	66.05	65-4141	67.22
21-4406	66.06	65-4142	67.25
21-4407	66.07	65-4152	67.17
21-4408	66.08	65-4153	67.18, 67.18-A
21-4409	66.09	65-4154	67.19
21-4410	66.10	65-4155	67.20
21-4624 (a), (b), (c)	56.00-B, 56.01-A	65-4159	67.21
21-4624 (b)	56.01-A, 68.01-A	65-4159 (a), (b)	67.26
21-4624 (c)	56.00-D, 56.01-C	65-4160	67.13
21-4624 (e)	56.00-G, 56.00-H, 56.01-F, 56.01-G, 68.14, 68.14-A, 68.14-A-1, 68.14-B, 68.14-B-1, 68.17	65-4160 (e)	67.26
21-4625	56.00-C, 56.00-E 56.01-B, 56.01-D	65-4161	67.13-B
21-4626	56.00-D, 56.01-C	65-4161 (f)	67.26
21-4628	68.14-A, 68.14-B	65-4162	67.16
22-3204	52.07	65-4162 (c)	67.26
22-3211	52.05, 52.12	65-4163	67.14, 67.15
22-3212	52.05	65-4163 (d)	67.26
22-3213	52.05	65-4164	67.23
22-3217	52.05	74-8702	65.35
22-3218	52.19	74-8716(a)	65.30
22-3220	54.10	74-8716(b)	65.31
22-3221	68.06	74-8717	65.32
22-3403 (3)	51.02	74-8718	65.33
		74-8719	65.19, 65.34
		74-8802	65.52
		74-8810	65.51
		74-9801 <i>et seq.</i>	65.36
		79-5201 <i>et seq.</i>	67.24

(THIS PAGE BLANK)

# KANSAS CRIMINAL CODE

---

## TABLE OF SECTIONS

### PART I

#### GENERAL PROVISIONS

##### ARTICLE 31. PRELIMINARY

Section	
21-3101.	Title and Construction
21-3102.	Scope and Application
21-3103.	Civil Remedies Preserved
21-3104.	Territorial Applicability
21-3105.	Crimes Defined; Classes of Crimes
21-3106.	Time Limitations
21-3107.	Multiple Prosecutions for Same Act
21-3108.	Effect of Former Prosecution
21-3109.	Defendant Presumed Innocent; Reasonable Doubt as to Guilt
21-3110.	Definitions
21-3111.	Invalidity of Part of Act

##### ARTICLE 32. PRINCIPLES OF CRIMINAL LIABILITY

21-3201.	Criminal Intent
21-3202.	Criminal Intent; Exclusions
21-3203.	Ignorance or Mistake
21-3204.	Guilt Without Criminal Intent, When
21-3205.	Liability for Crimes of Another
21-3206.	Corporations; Criminal Responsibility
21-3207.	Individual Liability for Corporate Crime
21-3208.	Intoxication
21-3209.	Compulsion
21-3210.	Entrapment
21-3211.	Use of Force in Defense of a Person
21-3212.	Use of Force in Defense of Dwelling
21-3213.	Use of Force in Defense of Property Other Than A Dwelling

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-3214. Use of Force by an Aggressor  
21-3215. Law Enforcement Officer's Use of Force in Making Arrest  
21-3216. Private Person's Use of Force in Making Arrest  
21-3217. Use of Force in Resisting Arrest

### PART II

#### PROHIBITED CONDUCT

##### ARTICLE 33. ANTICIPATORY CRIMES

- 21-3301. Attempt  
21-3301a. Repealed  
21-3302. Conspiracy  
21-3302a. Repealed  
21-3303. Criminal Solicitation  
21-3303a. Repealed

##### ARTICLE 34. CRIMES AGAINST PERSONS

- 21-3401. Murder in the First Degree  
21-3401a. Repealed  
21-3402. Murder in the Second Degree  
21-3403. Voluntary Manslaughter  
21-3404. Involuntary Manslaughter  
21-3405. Vehicular Homicide  
21-3405a. Repealed  
21-3405b. Repealed  
21-3406. Assisting Suicide  
21-3407. Repealed  
21-3408. Assault  
21-3409. Assault of a Law Enforcement Officer  
21-3410. Aggravated Assault  
21-3411. Aggravated Assault of a Law Enforcement Officer  
21-3412. Battery  
21-3413. Battery Against a Law Enforcement Officer

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Section	
21-3414.	Aggravated Battery
21-3414a.	Repealed
21-3415.	Aggravated Battery Against a Law Enforcement Officer
21-3415a.	Repealed
21-3416.	Unlawful Interference With a Firefighter
21-3417.	Repealed
21-3418.	Permitting Dangerous Animal To Be at Large
21-3419.	Criminal Threat
21-3419a.	Aggravated Criminal Threat
21-3420.	Kidnapping
21-3421.	Aggravated Kidnapping
21-3422.	Interference With Parental Custody
21-3422a.	Aggravated Interference With Parental Custody
21-3423.	Interference With Custody of a Committed Person
21-3424.	Criminal Restraint
21-3425.	Mistreatment of a Confined Person
21-3426.	Robbery
21-3427.	Aggravated Robbery
21-3428.	Blackmail
21-3429.	Repealed
21-3430.	Income Tax Returns; Disclosure or Use for Commercial Purposes Information Obtained in Preparing
21-3431.	Repealed
21-3432.	Repealed
21-3433.	Repealed
21-3434.	Promoting or Permitting Hazing
21-3435.	Exposing Another to a Life Threatening Communicable Disease
21-3436.	Inherently Dangerous Felony; Definition
21-3437.	Mistreatment of a Dependent Adult
21-3438.	Stalking
21-3439.	Capital Murder
21-3440.	Injury to a Pregnant Woman
21-3441.	Injury to a Pregnant Woman By Vehicle

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-3442. Involuntary Manslaughter while Driving Under the  
Influence of Alcohol or Drugs  
21-3443. Battery Against a School Employee

### ARTICLE 35. SEX OFFENSES

- 21-3501. Definitions  
21-3502. Rape  
21-3503. Indecent Liberties With a Child  
21-3504. Aggravated Indecent Liberties With a Child  
21-3505. Criminal Sodomy  
21-3506. Aggravated Criminal Sodomy  
21-3507. Adultery  
21-3508. Lewd and Lascivious Behavior  
21-3509. Repealed  
21-3510. Indecent Solicitation of a Child  
21-3511. Aggravated Indecent Solicitation of a Child  
21-3512. Prostitution  
21-3513. Promoting Prostitution  
21-3514. Repealed  
21-3515. Patronizing a Prostitute  
21-3516. Sexual Exploitation of a Child  
21-3517. Sexual Battery  
21-3518. Aggravated Sexual Battery  
21-3519. Repealed  
21-3520. Unlawful Sexual Relations  
21-3521 to  
21-3524 Reserved  
21-3525. Evidence of Complaining Witness' Previous Sexual  
Conduct in Prosecutions for Sex Offenses;  
Motions; Notice

### ARTICLE 36. CRIMES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN

- 21-3601. Bigamy

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Section

- 21-3602. Incest
- 21-3603. Aggravated Incest
- 21-3604. Abandonment of a Child
- 21-3604a. Aggravated Abandonment of a Child
- 21-3605. Nonsupport of a Child or Spouse
- 21-3606. Repealed
- 21-3607. Repealed
- 21-3608. Endangering a Child
- 21-3609. Abuse of a Child
- 21-3610. Furnishing Alcoholic Liquor to a Minor
- 21-3610a. Furnishing Cereal Malt Beverage to a Minor
- 21-3610b. Furnishing Alcoholic Beverages to a Minor for Illicit  
Purposes
- 21-3611. Repealed
- 21-3612. Contributing to a Child's Misconduct or Deprivation

## ARTICLE 37. CRIMES AGAINST PROPERTY

- 21-3701. Theft
- 21-3702. Prima Facie Evidence of Intent to Permanently  
Deprive Owner or Lessor of Possession, Use or  
Benefit of Property
- 21-3703. Theft of Lost or Mislaid Property
- 21-3704. Theft of Services
- 21-3705. Criminal Deprivation of Property
- 21-3706. Repealed
- 21-3707. Giving a Worthless Check
- 21-3708. Repealed
- 21-3709. Causing an Unlawful Prosecution for Worthless  
Check
- 21-3710. Forgery
- 21-3711. Making False Information
- 21-3712. Destroying a Written Instrument
- 21-3713. Altering a Legislative Document
- 21-3714. Repealed

PATTERN INSTRUCTIONS FOR KANSAS 3d

Section

- 21-3715. Burglary
- 21-3715a. Repealed
- 21-3716. Aggravated Burglary
- 21-3717. Repealed
- 21-3718. Arson
- 21-3719. Aggravated Arson
- 21-3720. Criminal Damage to Property
- 21-3721. Criminal Trespass
- 21-3722. Littering
- 21-3723. Repealed
- 21-3724. Tampering With a Landmark
- 21-3725. Tampering With a Traffic Signal
- 21-3726. Aggravated Tampering With a Traffic Signal
- 21-3727. Injury to a Domestic Animal
- 21-3728. Criminal Hunting
- 21-3729. Criminal Use of a Financial Card
- 21-3730. Unlawful Manufacture or Disposal of False Tokens
- 21-3731. Criminal Use of Explosives
- 21-3732. Repealed
- 21-3733. Repealed
- 21-3734. Impairing a Security Interest
- 21-3735. Repealed
- 21-3736. Warehouse Receipt Fraud
- 21-3737. Unauthorized Delivery of Stored Goods
- 21-3738. Automobile Master Key Violation
- 21-3739. Posting of Political Pictures and Political  
Advertisements
- 21-3740. Repealed
- 21-3741. Repealed
- 21-3742. Throwing or Otherwise Casting Rocks or Other  
Objects onto Street, Highway or Railroad Right-  
of-way or Railroad Property
- 21-3743. Sale of Recut or Regrooved Tires
- 21-3744. Definition of Passenger Vehicle
- 21-3745. Repealed
- 21-3746. Repealed



## PATTERN INSTRUCTIONS FOR KANSAS 3d

Section	
21-3747.	Repealed
21-3748.	Piracy of Recordings
21-3749.	Dealing in Pirated Recordings
21-3750.	Nondisclosure of Source of Recordings
21-3751.	Sections 21-3748 to 21-3750 Supplemental to Criminal Code
21-3752.	Repealed
21-3753.	Repealed
21-3754.	Repealed
21-3755.	Computer Crime; Computer Password Disclosure; Computer Trespass
21-3755a.	Repealed
21-3756.	Adding Dockage or Foreign Material to Grain; Application of Section
21-3757.	Odometers; Unlawful Acts; Penalties; Definitions
21-3758.	Certificate of Titles; Failure to Show Complete Chain of Title; Penalty
21-3759.	Commercial Fossil Hunting Without Landowner's Authorization; Unlawful Acts; Penalty
21-3760.	Maintenance of a Common Nuisance
21-3761.	Trespassing on Railroad Property; Causing Derailment of Railroad Equipment
21-3762.	Establishing, Operating, Advertising or Promoting a Pyramid Promotional Scheme

### ARTICLE 38. CRIMES AFFECTING GOVERNMENTAL FUNCTIONS

21-3801.	Treason
21-3802.	Sedition
21-3803.	Repealed
21-3804.	Repealed
21-3805.	Perjury
21-3806.	Repealed
21-3807.	Compounding a Crime
21-3808.	Obstructing Legal Process or Official Duty

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Section

- 21-3809. Escape from Custody
- 21-3810. Aggravated Escape from Custody
- 21-3811. Aiding Escape
- 21-3812. Aiding a Felon or Person Charged with a Felony;  
Aiding a Person Convicted of or Charged with  
Committing a Misdemeanor
- 21-3813. Failure to Appear
- 21-3814. Aggravated Failure to Appear
- 21-3815. Attempting to Influence a Judicial Officer
- 21-3816. Interference With the Administration of Justice
- 21-3817. Corrupt Conduct by Juror
- 21-3818. Falsely Reporting a Crime
- 21-3819. Performance of an Unauthorized Official Act
- 21-3820. Simulating Legal Process
- 21-3821. Tampering With a Public Record
- 21-3822. Tampering With Public Notice
- 21-3823. False Signing of a Petition
- 21-3824. False Impersonation
- 21-3825. Aggravated False Impersonation
- 21-3826. Traffic in Contraband in a Correctional Institution
- 21-3827. Criminal Disclosure of a Warrant
- 21-3828. Interference With the Conduct of Public Business in  
Public Buildings
- 21-3829. Aggravated Interference With the Conduct of Public  
Business
- 21-3830. Dealing in False Identification Documents
- 21-3831. Witness or Victim Intimidation; Definitions
- 21-3832. Intimidation of a Witness or Victim
- 21-3833. Aggravated Intimidation of a Witness or Victim
- 21-3834. Civil Remedies; Court Orders Authorized
- 21-3835. Same; Violation of Court Orders, Penalties
- 21-3836. Same; Pretrial Release, Conditions of
- 21-3837. Same; Act Part of Criminal Code
- 21-3838. Unlawful Disclosure of Authorized Interception of  
Wire, Oral or Electronic Communications
- 21-3839. Harassment by Telefacsimile Communication

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Section

- 21-3840. Failure to Register an Aircraft
- 21-3841. Fraudulent Aircraft Registration
- 21-3842. Fraudulent Acts Relating to Aircraft Identification  
Numbers
- 21-3843. Violation of a Protective Order
- 21-3844. Kansas Medicaid Fraud Control Act; Citation
- 21-3845. Definitions
- 21-3846. Making a False Claim to the Medicaid Program
- 21-3847. Unlawful Acts Relating to the Medicaid Program
- 21-3848. Failure to Maintain Adequate Records
- 21-3849. Destruction or Concealment of Records
- 21-3850. Defense of Actions
- 21-3851. Penalties; Medicaid Fraud Reimbursement Fund;  
Medicaid Fraud Prosecution Revolving Fund
- 21-3852. Medicaid Fraud and Abuse Division in the Office of  
the Attorney General
- 21-3853. Access to Records by the Attorney General
- 21-3854. Other Remedies Available as Provided by Law
- 21-3855. Severability Clause

## ARTICLE 39. CRIMES AFFECTING PUBLIC TRUSTS

- 21-3901. Bribery
- 21-3902. Official Misconduct
- 21-3903. Compensation for Past Official Acts
- 21-3904. Presenting a False Claim
- 21-3905. Permitting a False Claim
- 21-3906. Repealed
- 21-3907. Repealed
- 21-3908. Repealed
- 21-3909. Repealed
- 21-3910. Misuse of Public Funds
- 21-3911. Unlawful Use of State Postage
- 21-3912. Same; Imprinting of Warning on Mail

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-3913. Repealed  
21-3914. Unlawful Use of Names Derived From Public  
Records

### ARTICLE 40. CRIMES INVOLVING VIOLATIONS OF PERSONAL RIGHTS

- 21-4001. Eavesdropping  
21-4002. Breach of Privacy  
21-4003. Denial of Civil Rights  
21-4004. Criminal Defamation  
21-4005. Maliciously Circulating False Rumors Concerning  
Financial Status  
21-4006. Maliciously Exposing a Paroled or Discharged Person  
21-4007. Hypnotic Exhibition  
21-4008. Repealed  
21-4009. Smoking in a Public Place; Definitions  
21-4010. Same; Smoking in Public Place Prohibited,  
Exceptions; Designated Smoking Areas  
21-4011. Same; Posting Smoking Prohibited Signs and  
Designated Smoking Area Signs; Proprietor or  
Person in Charge of Public Place Authorized to  
Establish Designated Smoking Area  
21-4012. Same; Unlawful Acts; Penalties; Action to Enjoin  
Repeated Violations  
21-4013. Same; Local Regulation of Smoking  
21-4014. Same; Severability  
21-4015. Funeral Picketing; Unlawful Acts; Penalty; Other  
Relief  
21-4016. Smoking in the State Capitol Prohibited, Exceptions  
21-4017. Smoking in a Medical Care Facility; Exceptions;  
Penalties

### ARTICLE 41. CRIMES AGAINST THE PUBLIC PEACE

- 21-4101. Disorderly Conduct

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Section

21-4102.	Unlawful Assembly
21-4103.	Remaining at an Unlawful Assembly
21-4104.	Riot
21-4105.	Incitement to Riot
21-4106.	Maintaining a Public Nuisance
21-4107.	Permitting a Public Nuisance
21-4108.	Repealed
21-4109.	Repealed
21-4110.	Giving a False Alarm
21-4111.	Criminal Desecration
21-4112.	Repealed
21-4113.	Harassment by Telephone
21-4114.	Repealed
21-4115.	Repealed

### ARTICLE 42. CRIMES AGAINST THE PUBLIC SAFETY

21-4201.	Criminal Use of Weapons
21-4202.	Aggravated Weapons Violation
21-4203.	Criminal Disposal of Firearms
21-4203a.	Repealed
21-4204.	Criminal Possession of a Firearm
21-4204a.	Criminal Possession of Firearm by a Juvenile
21-4205.	Defacing Identification Marks of a Firearm
21-4206.	Confiscation and Disposition of Weapons
21-4207.	Failure to Register Sale of Explosives
21-4208.	Failure to Register Receipt of Explosives
21-4209.	Criminal Disposal of Explosives
21-4209a.	Criminal Possession of Explosives
21-4209b.	"Explosives" Defined
21-4210.	Carrying Concealed Explosives
21-4211.	Refusal to Yield a Telephone Party Line
21-4212.	Creating a Hazard
21-4213.	Unlawful Failure to Report a Wound
21-4214.	Obtaining a Prescription-Only Drug by Fraudulent Means

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-4215. Obtaining a Prescription-Only Drug by Fraudulent Means for Resale  
21-4216. Selling Beverage Containers With Detachable Tabs  
21-4217. Criminal Discharge of a Firearm  
21-4218. Unauthorized Possession of a Firearm on the Grounds of or Within Certain State-Owned or Leased Buildings and County Courthouses  
21-4219. Criminal Discharge of a Firearm

### ARTICLE 43. CRIMES AGAINST THE PUBLIC MORALS

- 21-4301. Promoting Obscenity  
21-4301a. Promoting Obscenity to Minors  
21-4301b. Severability of 21-4301, 21-4301a  
21-4301c. Promotion to Minors of Obscenity Harmful to Minors  
21-4302. Gambling; Definitions  
21-4303. Gambling  
21-4303a. Illegal Bingo Operation  
21-4304. Commercial Gambling  
21-4305. Permitting Premises to be Used for Commercial Gambling  
21-4306. Dealing in Gambling Devices  
21-4307. Possession of a Gambling Device  
21-4308. Installing Communication Facilities for Gamblers  
21-4309. False Membership Claim  
21-4310. Cruelty to Animals  
21-4311. Cruelty to Animals; Custody of Animal; Disposition; Damages for Killing, When; Expenses of Care Assessed Owner, When; Duty of County or District Attorney  
21-4312. Unlawful Disposition of Animals  
21-4313. Definitions  
21-4314. Sections Part of Criminal Code  
21-3415. Unlawful Conduct of Dog Fighting; Attending the Unlawful Conduct of Dog Fighting

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-4316. Same; Disposition of Dogs; Assessment of Expenses  
of Care  
21-4317. Illegal Ownership or Keeping of a Dog  
21-4318. Inflicting Harm, Disability or Death to A Police Dog

### ARTICLE 44. CRIMES AFFECTING BUSINESS

- 21-4401. Racketeering  
21-4402. Debt Adjusting  
21-4403. Deceptive Commercial Practice  
21-4404. Tie-In Magazine Sale  
21-4405. Commercial Bribery  
21-4406. Sports Bribery  
21-4407. Receiving a Sports Bribe  
21-4408. Tampering With a Sports Contest  
21-4409. Knowingly Employing an Alien Illegally Within the  
Territory of the United States  
21-4410. Equity Skimming

## PART III

### CLASSIFICATION OF CRIMES AND SENTENCING

#### ARTICLE 45. CLASSIFICATION OF CRIMES AND PENALTIES

- 21-4501. Classes of Felonies and Terms of Imprisonment;  
Crimes Committed Prior to July 1, 1993  
21-4501a. Application of Certain Penalties; Review and  
Reduction of Previous Sentences; Crimes  
Committed Prior to July 1, 1993  
21-4502. Classification of Misdemeanors and Terms of  
Confinement; Possible Disposition  
21-4503. Fines; Crimes Committed Prior to July 1, 1993  
21-4503a. Fines, Crimes Committed On or After July 1, 1993

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-4504. Conviction of Second and Subsequent Felonies;  
Exceptions

### ARTICLE 46. SENTENCING

- 21-4601. Construction  
21-4602. Definitions  
21-4603. Authorized Dispositions; Crimes Committed Prior to  
July 1, 1993  
21-4603a. Repealed  
21-4603b. House Arrest Program; Eligibility; Methods; Notice  
to Law Enforcement Officers; Administration  
21-4603c. Repealed  
21-4603d. Authorized Dispositions; Crimes Committed On or  
After July 1, 1993  
21-4603e. Repealed  
21-4604. Presentence Investigation and Report  
21-4605. Availability of Reports to Counsel; Exception  
21-4606. Criteria for Fixing Minimum Terms; Crimes  
Committed Prior to July 1, 1993  
21-4606a. Presumptive Sentence of Probation for Certain  
Class D or E Felons; Crimes Committed Prior to  
July 1, 1993  
21-4606b. Presumptive Sentence of Assignment to Community  
Correctional Services Program for Certain Class  
D or E Felons; Aggravating Circumstances to Be  
Considered; Crimes Committed Prior to July 1,  
1993  
21-4607. Criteria for Imposing Fines  
21-4608. Multiple Sentences; Defendant Subject to or Under  
Sentence in Federal Court or Court of Another  
State  
21-4609. Custody of Persons Sentenced to Confinement; Notice  
of Modification of Sentence  
21-4610. Conditions of Probation or Suspended Sentence  
21-4610a. Probation or Community Correctional Services Fee



## PATTERN INSTRUCTIONS FOR KANSAS 3d

Section	
21-4610b.	Repealed
21-4611.	Period of Suspension of Sentence, Probation or Assignment to Community Corrections; Parole of Misdemeanant; Duration of Probation in Felony Cases, Modification or Extension
21-4612.	Parole from Sentence Imposed by District Magistrate Judge
21-4613.	Transfer of Supervision of Person Paroled, on Probation, Assigned to Community Corrections or Under Suspended Sentence
21-4614.	Deduction of Time Spent in Confinement
21-4614a.	Deduction of Time Spent in Residential Facility, Conservation Camp or Community Correctional Residential Services Program
21-4615.	Rights of Imprisoned Persons; Restoration
21-4616.	Repealed
21-4617.	Repealed
21-4618.	Mandatory Imprisonment for Crimes Involving Firearms; Crimes Committed Prior to July 1, 1993
21-4619.	Expungement of Certain Convictions
21-4619a.	Repealed
21-4619b.	Expungement of Certain Convictions
21-4620.	Defendants Sentenced to Custody of Secretary of Corrections; Judgment Form and Contents; Diagnostic Reports to Accompany Defendant; Crimes Committed Prior to July 1, 1993
21-4621.	Same; Order Transferring Custody to Corrections
21-4622.	Persons Convicted of Capital Murder, Sentencing
21-4623.	Same; Persons Determined to Be Mentally Retarded
21-4624.	Same; Proceeding to Determine if Person Shall Be Sentenced to Death; Notice; Trial Judge; Jury
21-4625.	Same; Aggravating Circumstances
21-4626.	Same; Mitigating Circumstances
21-4627.	Same; Automatic Review By and Appeal to Supreme Court

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Section

- 21-4628. Repealed
- 21-4629. Same; Provisions of Act Held Unconstitutional;  
Modification of Sentence Previously Determined  
Under This Act
- 21-4630. Same; Severability
- 21-4631. Same; Provisions of K.S.A. 21-4622 through 21-4630  
Supplemental to Kansas Criminal Code;  
Application of Such Provisions
- 21-4632. Defendants Sentenced to Custody of Secretary of  
Corrections; Judgment Form, Content;  
Presentence Investigation and Other Diagnostic  
Reports to Accompany Defendant; Crimes  
Committed On or After July 1, 1993
- 21-4633. Sentencing of Certain Persons to Mandatory Term of  
Imprisonment of 40 years; Juveniles Prosecuted  
as Adults
- 21-4634. Same; Persons Determined to Be Mentally Retarded
- 21-4635. Same; Determination; Evidence Presented; Balance of  
Aggravating and Mitigating Circumstances
- 21-4636. Same; Aggravating Circumstances
- 21-4637. Same; Mitigating Circumstances
- 21-4638. Same; Imposition of Sentence of Mandatory  
Imprisonment of 40 years
- 21-4639. Same; Provisions of Act Held Unconstitutional;  
Modification of Sentence Previously Determined  
Under This Act
- 21-4640. Same; Severability
- 21-4641. Same; Provisions of K.S.A. 21-4633 through 21-4640  
Supplemental to Kansas Criminal Code;  
Application of Such Provisions

## ARTICLE 47. SENTENCING GUIDELINES

- 21-4701. Citation of Act

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-4702. Basis For Applying Sentencing Guidelines and Prosecuting Standards
- 21-4703. Definitions
- 21-4704. Sentencing Guidelines; Grid For Nondrug Crimes; Authority and Responsibility of Sentencing Court; Presumptive Disposition; Nongrid Crime
- 21-4705. Sentencing Guidelines; Grid for Drug Crimes Applied In Felony Cases Under Uniform Controlled Substances Act; Authority and Responsibility of Sentencing Court; Presumptive Disposition
- 21-4706. Sentencing; Imprisonment, Good Time; Pronouncement of Sentence in Felony Cases; Off-grid Crimes
- 21-4707. Sentencing; Crime Severity Scale for Nondrug Crimes, Application to Specific Crimes; Ranking Offenses, Provision; Unranked Offenses; Unclassified Felonies; Prior Convictions Discovered After the Plea
- 21-4708. Sentencing; Crime Severity Scale for Drug Offenses, Application; Sentencing Rules for Certain Crimes; Plea Bargain Agreements
- 21-4709. Criminal History Categories in Criminal History Scale
- 21-4710. Sentencing; Criminal History Categories, Basis; Determination of Offenders Classification; Decay Factors; Prior Convictions
- 21-4710a. Repealed
- 21-4711. Sentencing; Determination of Offender's Criminal History Classification in Presumptive Sentencing Guidelines Grid for Nondrug and Drug Crimes
- 21-4712. Repealed
- 21-4713. Actions Which Prosecutors May Take Under Agreements with Defendants for Plea; Exceptions Relating to Prior Convictions

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-4714. Presentence Investigation Report; Information Included; Part of Court Record; Confidential Information, Disclosure to Certain Parties; Report Format
- 21-4715. Offenders Criminal History; Admission in Court or Determined by Judge; Burden of Proof; Notice of Error by Offender.
- 21-4716. Imposition of Presumptive Sentence; Departure Sentencing; Finding Substantial and Compelling Reasons for Departure; Mitigating or Aggravating Factor Considered in Determining If Reasons Exist; Reason Stated on Record
- 21-4717. Departure Sentencing for Drug Crimes; Finding Substantial and Compelling Reasons For Departure; Aggravating Factors Considered in Determining If Reasons Exist
- 21-4718. Departure Sentencing; Hearing; Notice; Findings of Fact and Conclusions of Law; Order
- 21-4719. Departure Sentencing; Limitations
- 21-4720. Sentencing in Multiple Conviction Cases; Direction of Judge to Impose Concurrent or Consecutive Sentences; Requirements Applicable; Departure Sentencing Based on Aggravating Factors
- 21-4721. Departure Sentence Subject to Appeal; Confinement or Release of Defendant Pending Review; Scope of Review; Action by Court; Written Opinion, When; Summary Disposition; Correction of Arithmetic or Clerical Errors
- 21-4722. Good Time Credit; Calculation; Forfeiture; Rules and Regulations of Secretary
- 21-4723. Determination of Time When Crime Committed; Law Applicable

PATTERN INSTRUCTIONS FOR KANSAS 3d

- Section  
21-4724. Sentencing; Application of Guidelines to Persons Who Committed Crimes Prior to July 1, 1993; Modification and Conversion of Certain Sentences; Review of Sentences of Persons in Custody; Department to Determine Criminal History Classification and Prepare Sentencing Guideline Report on Inmates; Filing of Reports; Request for Hearing; Determination by Court; Crimes Committed Prior to July 1, 1993, But Sentence Imposed After Such Date
- 21-4725. Sentencing Guidelines; Changes In; Duties of Sentencing Commission and Secretary of Corrections; Submission to Legislature
- 21-4726. Invalidity of Part of Act; Presumption
- 21-4727. Costs and Expenses Associated With Post Conviction Sanctions for Felony Convictions; Consolidation of Probation, Parole and Community Corrections Services
- 21-4728. Sentencing Court to Consider Alternatives Determining Appropriate Sentence

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 52.02 BURDEN OF PROOF, PRESUMPTION OF INNOCENCE, REASONABLE DOUBT

**The State has the burden to prove the defendant is guilty. The defendant is not required to prove (he)(she) is not guilty. You must presume that (he)(she) is not guilty until you are convinced from the evidence that (he)(she) is guilty.**

**The test you must use in determining whether the defendant is guilty or not guilty is this: If you have a reasonable doubt as to the truth of any of the claims required to be proved by the State, you must find the defendant not guilty. If you have no reasonable doubt as to the truth of any of the claims required to be proved by the State, you should find the defendant guilty.**

#### Notes on Use

This instruction must be given in each criminal case and should follow the element instructions for the crime charged. See K.S.A. 21-3109 on presumption of innocence and reasonable doubt, and K.S.A. 60-401(d) on burden of proof.

This instruction does not need to be repeated for separate offenses. *State v. Peoples*, 227 Kan. 127, 135, 605 P.2d 135 (1980). The State's burden, however, should be mentioned when a rebuttable presumption is utilized. See *State v. Johnson*, 233 Kan. 981, 986, 666 P.2d 706 (1983); *State v. Marsh*, 9 Kan. App. 2d 608, 612, 684 P.2d 459 (1984).

No separate instruction should be given relating to presumption of innocence and reasonable doubt. (See Committee's recommendations under PIK 3d 52.03 and 52.04.)

#### Comment

This instruction was designed to eliminate verbose and meaningless instructions commonly given about "presumption of innocence" and about "reasonable doubt". The only issues that have arisen relate to the semantics of "innocent" as contrasted to "not guilty" and "should" as contrasted to "must". See *State v. Johnson*, 255 Kan. 252, 874 P.2d 623 (1994) and *State v. McCloud*, 257 Kan. 1, 891 P.2d 324 (1995).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

The instruction complies with *State v. Keeler*, 238 Kan. 356, 710 P.2d 1279 (1985); and *State v. Maxwell*, 10 Kan. App. 2d 62, 69, 691 P.2d 1316, *rev. denied* 236 Kan. 876 (1984). See also, *State v. Dunn*, 249 Kan. 488, 492, 820 P.2d 412 (1991).

This instruction accurately reflects the law of this State and properly advises the jury of the burden of proof, the presumption of innocence and reasonable doubt. *State v. Pierce*, 260 Kan. 859, 870, 927 P.2d 929 (1996).



PATTERN INSTRUCTIONS FOR KANSAS 3d

**52.03 PRESUMPTION OF INNOCENCE**

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

**Notes on Use**

For authority, see K.S.A. 21-3109. PIK 3d 52.02, Burden of Proof, Presumption of Innocence, Reasonable Doubt, states the law as to presumption of innocence.

**Comment**

Failure to give a detailed instruction was approved in *State v. Taylor*, 212 Kan. 780, 784, 512 P.2d 449 (1973). See Comment to PIK 3d 52.02.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 52.04 REASONABLE DOUBT

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

#### Notes on Use

For authority, see K.S.A. 21-3109. PIK 3d 52.02, Burden of Proof, Presumption of Innocence, Reasonable Doubt, states the law as to reasonable doubt. See Notes on Use therein.

#### 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 Pac. 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."

The Committee's recommendation that no separate instruction on reasonable doubt be given was approved in *State v. Mack*, 228 Kan. 83, 88, 612 P.2d 158 (1980); *State v. Dunn*, 249 Kan. 488, Syl. ¶ 4, 820 P.2d 412 (1991); *State v. Johnson*, 255 Kan. 252, 874 P.2d 623 (1994); *State v. Lumbreira*, 257 Kan. 144, 891 P.2d 1096 (1995); and *State v. Banks*, 260 Kan. 918, 927 P.2d 456 (1996).

PATTERN INSTRUCTIONS FOR KANSAS 3d

52.15 IMPEACHMENT

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

**Comment**

The Committee believes that the standard instruction in PIK 3d 52.09, Credibility of Witnesses, provides adequate jury guides.

See PIK 3d 102.30, Impeachment.

See also, Comment to PIK 3d 52.10, Defendant as a Witness.

The Committee's recommendation is noted with apparent approval in *State v. Davis*, 255 Kan. 357, 874 P.2d 1156 (1994).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**52.16 CIRCUMSTANTIAL EVIDENCE**

**The Committee recommends that there be no separate instruction given as to circumstantial evidence.**

**Comment**

In *State v. Wilkins*, 215 Kan. 145, 156, 523 P.2d 728 (1974), the Supreme Court held that an instruction on circumstantial evidence is unnecessary when a proper instruction on "reasonable doubt" is given. The Court went on to overrule all previous decisions which required such an instruction.

To give this type of instruction, however, was held to not constitute reversible error in *State v. Powell*, 220 Kan. 168, 551 P.2d 902 (1976).

In *State v. Shaffer*, 229 Kan. 310, 316, 624 P.2d 440 (1981), the Supreme Court affirmed defendant's conviction although he requested this type instruction and the request was refused. The opinion notes the recommendation of the Committee. See also, *State v. Williams*, 6 Kan. App. 2d 833, 635 P.2d 1274 (1981).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Absent such objection, an appellate court may reverse only if the trial court's failure to give [or the giving of] the instruction was clearly erroneous. The failure to give [or the giving of] an instruction is clearly erroneous only if the reviewing court reaches a firm conviction that if the trial error had not occurred there was a real possibility the jury would have returned a different verdict." *State v. DeMoss*, 244 Kan. 387, 391-92, 770 P.2d 441 (1989).

It is clearly erroneous to give an accomplice instruction when the accomplice is also a co-defendant, and the instruction is not neutral or singles out the accomplice co-defendant. *State v. Land*, 14 Kan. App. 2d 515, 794 P.2d 668 (1990) (no objection made to the instruction).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 52.18-A TESTIMONY OF AN INFORMANT - FOR BENEFITS

**You should consider with caution the testimony of an informant who, in exchange for benefits from the State, acts as an agent for the State in obtaining evidence against a defendant, if that testimony is not supported by other evidence.**

#### Notes on Use

It is error to refuse to give this instruction when requested. *State v. Fuller*, 15 Kan. App. 2d 34, 47, 802 P.2d 599 (1990).

#### Comment

Ordinarily, it is error to refuse to give a cautionary instruction on the testimony of a paid informant or agent where such testimony is substantially uncorroborated and is the main basis for defendant's conviction. Where, however, no such instruction is requested nor objection made to the court's instructions, and such testimony is substantially corroborated, the absence of a cautionary instruction is not error and is not grounds for reversal of the conviction. *State v. Novotny*, 252 Kan. 753, 760, 851 P.2d 365 (1993). Also see *State v. Brinkley*, 256 Kan. 808, 888 P.2d 819 (1995).

The cautionary instruction for paid informants is not necessary where the informant is a Drug Enforcement Agency agent on special assignment and paid a salary because the agent is not a "paid informant whose remuneration was tied to the sale of specific information, nor was he a participant in the crime with a promise of immunity." *State v. Gumbrel*, 20 Kan. App. 2d 944, 894 P.2d 235 (1995).

"An informant is an 'undisclosed person who confidentially discloses material information of a law violation, thereby supplying a lead to officers for their investigation of a crime. [Citation omitted.] This does not include persons who supply information only after being interviewed by police officers, or who give information as witnesses during the course of investigations' Black's Law Dictionary 780 (6th ed. 1990)." *State v. Abel*, 261 Kan. 331, 336, 932 P.2d 952 (1997). *State v. Noreiga*, 261 Kan. 440, 932 P.2d 940 (1997), and *State v. Bornholdt*, 261 Kan. 644, 932 P.2d 964 (1997).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

*Hearing Officer:* K.S.A. 21-3110 (19) (d).

*Heat of Passion:* Any intense or vehement emotional excitement such as rage, anger, hatred, furious resentment, fright, or terror which was spontaneously provoked from the circumstances. Such emotional state of mind must be of such a degree as would cause an ordinary person to act on impulse without reflection. *State v. Gadelkarim*, 247 Kan. 505, 802 P.2d 507 (1990); *State v. Guebara*, 236 Kan. 791, 696 P.2d 381 (1985); *State v. Jackson*, 226 Kan. 302, 597 P.2d 255 (1979); *State v. Lott*, 207 Kan. 602, 485 P.2d 1314 (1971); *State v. McDermott*, 202 Kan. 399, 449 P.2d 545 (1969); PIK 3d 56.04(e), Homicide Definitions.

*Hypnosis:* K.S.A. 21-4007 (2).

*Inherently Dangerous Felony:* K.S.A. 21-3436.

*Intent to Defraud:* K.S.A. 21-3110 (9).

*Intentional Conduct:* K.S.A. 21-3201(b).

*Intoxication or Intoxicated:* K.S.A. 65-4003(10), and 65-5201(g) & (z). See also K.S.A. 21-3208 and PIK 3d 54.11 through 54.12-A-1.

*Jeopardy:* K.S.A. 21-3108 (1) (c).

*Judicial Officer:* K.S.A. 21-3110(19)(c).

*Knowing or Knowingly:* K.S.A. 21-3201 (b).

*Law Enforcement Officer:* K.S.A. 21-3110 (10).

*Lewd Fondling or Touching:* In a prosecution for indecent liberties with a child (K.S.A. 21-3503), *lewd fondling or touching* may be defined as a fondling or touching in a manner which tends to undermine the morals of the child, which is so clearly offensive as to outrage the moral senses of a reasonable person, and which is done with the specific intent to arouse or satisfy the sexual desires of either the child or the offender or both. Lewd fondling or touching does not require contact with the sex organ of one or the other. *State v. Wells*, 223 Kan. 94, 98, 573 P.2d 580 (1977).

*Lottery:* K.S.A. 21-4302 (b). *State ex rel. Stephen v. Finney*, 254 Kan. 632, 867 P.2d 1034 (1994).

*Material:* K.S.A. 21-4301 (c) (2) (for obscenity).

*Merchandise:* K.S.A. 21-4403 (b) (1) (for deceptive commercial practice).

*Misdemeanor:* K.S.A. 21-3105.

*Necessitous Circumstances:* PIK 3d 58.06 and 58.07.

*Obscene Material:* K.S.A. 21-4301 (c); K.S.A. 21-4301a(a); PIK 3d 65.03, Promoting Obscenity - Definitions.

*Obtain:* K.S.A. 21-3110 (11).

*Obtains or Exerts Control:* K.S.A. 21-3110 (12); *State v. Lamb*, 215 Kan. 795, 530 P.2d 20 (1974).

*Offense:* A violation of any penal statute of this State. See "crime" above.

*Overt Act:* For attempt, see Comment to PIK 3d 55.01, Attempt; for conspiracy, see PIK 3d 55.06, Conspiracy-Act in Furtherance Defined.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

*Owner*: K.S.A. 21-3110 (13); *State v. Parsons*, 11 Kan. App. 2d 220, 720 P.2d 671 (1986).

*Party Line*: K.S.A. 21-4211 (2) (a).

*Passenger Vehicle*: K.S.A. 21-3744; K.S.A. 8-126(x).

*Peace Officer*: See *Law Enforcement Officer*, above.

*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. *State, ex rel., v. Owens*, 197 Kan. 212, 416 P.2d 259 (1966). See also, K.S.A. 21-3826 (traffic in contraband in a correctional institution).

*Performance*: K.S.A. 21-4301(c)(4) (for obscenity).

*Person*: K.S.A. 21-3110 (14).

*Personal Property*: K.S.A. 21-3110 (15).

*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 Pac. 177 (1920); *City of Hutchinson v. Weems*, 173 Kan. 452, 249 P.2d 633 (1952). Definition approved in *City of Overland Park v. McBride*, 253 Kan. 774, 861 P.2d 1323 (1993); *State v. Graham*, 244 Kan. 194, 768 P.2d 259 (1989); *State v. Kulper*, 12 Kan. App. 2d 301, 744 P.2d 519 (1987); *State v. Flinchpaugh*, 232 Kan. 831, 833, 659 P.2d 208 (1983); *State v. Adams*, 223 Kan. 254, 256, 573 P.2d 604 (1977); *State v. Goodseal*, 220 Kan. 487, 553 P.2d 279 (1976); and *State v. Neal*, 215 Kan. 737, 529 P.2d 114 (1974). See Comment to PIK 3d 64.06, Criminal Possession of a Firearm - Felony.

*Premeditation*: See PIK 3d 56.04, Homicide Definitions.

*Presumption, Evidentiary*: 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. But see *State v. Johnson*, 233 Kan. 981, 666 P.2d 706 (1983). (The jury must be clearly instructed as to the nature and extent of presumptions and that such does not shift the burden of proof to the defendant.)

*Private Place*: K.S.A. 21-4001 (b).

*Probable Cause*: Probable cause signifies evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the matter being sought to be proved. *State v. Starks*, 249 Kan. 516, 820 P.2d 1243 (1991).

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

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

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

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

*Purposeful*: K.S.A. 21-3201 (b).

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



## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Reasonable Belief*: A belief based on circumstances that would lead a reasonable person to that belief. *State v. Simon*, 231 Kan. 572, 646 P.2d 1119 (1982). See *Probable Cause*, above.
- Reasonable Doubt*: See PIK 3d 52.04, Reasonable Doubt.
- Reckless Conduct*: K.S.A. 21-3201 (c).
- Retailer*: See K.S.A. 21-4404(b)(1) pertaining to tie-in magazine sales.
- Sale*: K.S.A. 21-4403 (b) (3), as it relates to deceptive commercial practices. See PIK 3d 67.13-A, Controlled Substances - Sale Defined.
- Scope of Authority*: The performance of services for which an employee has been employed or which are reasonably incidental to his or her employment. See PIK-Civil 3d 107.06, Agent - Issue as to Scope of Authority.
- Security Agreement*: K.S.A. 84-9-105 (l).
- Security Interest*: K.S.A. 84-1-201(37).
- Sell*: K.S.A. 21-4404 (b) (3) for tie-in magazine sales. See PIK 3d 67.13-A, Controlled Substances - Sale Defined.
- Services*: K.S.A. 21-3704 (b).
- Sexual Intercourse*: K.S.A. 21-3501 (1).
- Solicit or Solicitation*: K.S.A. 21-3110 (21).
- Sports Contest, Participant and Official*: K.S.A. 21-4406.
- State*: K.S.A. 21-3110 (22).
- Stolen Property*: K.S.A. 21-3110 (23).
- Temporarily Deprive*: To take from the owner the possession, use, or benefit of his or her property with intent to deprive the owner of the temporary use thereof. See PIK 3d 59.04, Criminal Deprivation of Property.
- Terror and Terrorize*: The word "terror" means an extreme fear or fear that agitates body and mind; and "terrorize" means to reduce to terror by violence or threats. *State v. Gunzelman*, 210 Kan. 481, 502 P.2d 705 (1972).
- Threat*: K.S.A. 21-3110 (24).
- Unlawful Sexual Act*: K.S.A. 21-3501 (4).
- Wanton or Wantonness*: K.S.A. 21-3201 (c).
- Wanton Negligence*: K.S.A. 21-3201 (c).
- Wholesaler*: K.S.A. 21-4404 (b)(2) for tie-in magazine sales.
- Willful or Willfully*: K.S.A. 21-3201 (b).
- Written Instrument*: K.S.A. 21-3110 (25).

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

CHAPTER 54.00

PRINCIPLES OF CRIMINAL LIABILITY

	PIK Number
Presumption Of Intent . . . . .	54.01
General Criminal Intent . . . . .	54.01-A
Statutory Presumption Of Intent To Deprive . . . . .	54.01-B
Criminal Intent - Ignorance Of Statute Or Age Of Minor Is Not A Defense . . . . .	54.02
Ignorance Or Mistake Of Fact . . . . .	54.03
Ignorance Or Mistake Of Law - Reasonable Belief . . . . .	54.04
Responsibility For Crimes Of Another . . . . .	54.05
Responsibility For Crimes Of Another - Crime Not Intended . . . . .	54.06
Responsibility For Crime Of Another - Actor Not Prosecuted . . . . .	54.07
Corporations - Criminal Responsibility For Acts Of Agents . . . . .	54.08
Individual Responsibility For Corporation Crime . . . . .	54.09
Mental Disease Or Defect (For Crimes Committed January 1, 1996 or Thereafter . . . . .	54.10
Mental Disease Or Defect - Commitment (For Crimes Committed Prior to January 1, 1996) . . . . .	54.10-A
Mental Disease Or Defect - Commitment (For Crimes Committed January 1, 1996 Or Thereafter) . . . . .	54.10-A
Intoxication - Involuntary . . . . .	54.11
Voluntary Intoxication - General Intent Crime . . . . .	54.12
Voluntary Intoxication - Specific Intent Crime . . . . .	54.12-A
Voluntary Intoxication-Particular State Of Mind . . . . .	54.12-A-1
Diminished Mental Capacity . . . . .	54.12-B
Compulsion . . . . .	54.13
Entrapment . . . . .	54.14
Procuring Agent . . . . .	54.14-A
Condonation . . . . .	54.15
Restitution . . . . .	54.16
Use Of Force In Defense Of A Person . . . . .	54.17

PATTERN INSTRUCTIONS FOR KANSAS 3d

No Duty to Retreat . . . . .	54.17-A
Use Of Force In Defense Of A Dwelling . . . . .	54.18
Use of Force In Defense Of Property Other Than A Dwelling . . . . .	54.19
Forcible Felon Not Entitled To Use Force . . . . .	54.20
Provocation Of First Force As Excuse For Retaliation . .	54.21
Initial Aggressor's Use Of Force . . . . .	54.22
Law Enforcement Officer Or Private Person Summoned To Assist - Use Of Force In Making Arrest . . . . .	54.23
Private Person's Use Of Force In Making Arrest - Not Summoned By Law Enforcement Officer . . . . .	54.24
Use Of Force In Resisting Arrest . . . . .	54.25

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 54.01-A GENERAL CRIMINAL INTENT

**In order for the defendant to be guilty of the crime charged, the State must prove that (his)(her) conduct was intentional. Intentional means willful and purposeful and not accidental.**

**Intent or lack of intent is to be determined or inferred from all of the evidence in the case.**

#### Notes on Use

For authority, see K.S.A. 21-3201(a) and (b). This instruction is not recommended for general use. The PIK instruction defining the crime should cover either specific or general criminal intent as an element of the crime. This instruction should be used only where the crime requires only a general criminal intent and the state of mind of the defendant is a substantial issue in the case. See *State v. Clingerman*, 213 Kan. 525, 516 P.2d 1022 (1973); *State v. Plunkett, Jr.*, 261 Kan. 1024, 934 P.2d 113 (1997).

The above instruction should not be given where intentional conduct is not a necessary element of the offense, as set out in K.S.A. 21-3201(c), reckless conduct; 21-3204, absolute liability for misdemeanor or traffic infraction; and 21-3405, vehicular homicide.

This instruction must not be confused with PIK 3d 54.01, Presumption of Intent, which is a rule of evidence and does not purport to charge the jury to find criminal intent necessary for conviction.

#### Comment

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."

Failure to give the instruction on request of the defendant is not error where the substance of the requested instruction is present in other instructions given by the district court. See *State v. Cheeks*, 253 Kan. 93, 853 P.2d 655 (1993).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**54.01-B STATUTORY PRESUMPTION OF INTENT TO DEPRIVE**

There is a presumption that a person has an intent to permanently deprive the owner of the possession, use or benefit of the property, where:

- (a) That person gives false identification or a fictitious name, address or place of employment at the time of obtaining control over property;  
or
- (b) That person fails to return personal property within seven days after receiving a (registered) (certified) letter giving notice that the property had not been returned within 10 days of the time required by the lease or rental agreement;  
or
- (c) That person destroys, breaks or opens a lock, chain, key switch, enclosure, or other device used to secure the property in order to contain control over the property;  
or
- (d) That person destroys or substantially damages or alters the property so as to make the property unusable or unrecognizable in order to obtain control over the property;  
or
- (e) That person fails to return the book(s) or other material borrowed from a library within 30 days after receiving a (registered) (certified) letter from the library requesting its return.

This presumption may be considered by you along with all the other evidence in the case. You may accept or reject it in determining whether the State has met the burden to prove the required criminal intent of the defendant. This burden never shifts to the defendant.

(Notice will be presumed to have been given three days following deposit of the notice as registered or certified matter in the U.S. mail, addressed to the person who has

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 54.05 RESPONSIBILITY FOR CRIMES OF ANOTHER

**A person who, either before or during its commission, intentionally (aids) (abets) (advises) (hires) (counsels) (procures) another to commit a crime with intent to promote or assist in its commission is criminally responsible for the crime committed regardless of the extent of the defendant's participation, if any, in the actual commission of the crime.**

#### Notes on Use

For authority, see K.S.A. 21-3205(1). For a crime not intended, see PIK 3d 54.06, Responsibility for Crimes of Another - Crime Not Intended.

#### 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).

Mere association with the principals who actually commit the crime or mere presence in the vicinity of the crime is insufficient to establish guilt as an aider and abettor. *State v. Green*, 237 Kan. 146, 697 P.2d 1305 (1985). This language from *Green*, however, may properly be refused as an additional instruction by the trial judge, since PIK 3d 54.05 clearly informs the jury that intentional acts by a defendant are necessary to sustain a conviction for aiding and abetting. *State v. Hunter*, 241 Kan. 629, 639, 740 P.2d 559 (1987); *State v. Scott*, 250 Kan. 350, 361, 827 P.2d 733 (1992).

See *State v. Schriener*, 215 Kan. 86, 523 P.2d 703 (1974), wherein it was held "to be guilty of aiding and abetting in the commission of a crime the defendant must willfully and knowingly associate himself with the unlawful venture and willfully participate in it as he would in something he wishes to bring about or to make succeed."

Failure to specifically instruct the jury that it must find the elements of aiding and abetting beyond a reasonable doubt was not clearly erroneous where the jury was instructed that the reasonable doubt standard applied to all claims made by the state. *State v. Nash*, 261 Kan. 340, 932 P.2d 442 (1997).

In *State v. Edwards*, 250 Kan. 320, 331, 826 P.2d 1355 (1992), the Supreme Court examined the elements of aiding and abetting and solicitation and determined that, under the facts of that case, those offenses did not merge and were not multiplicitous.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Where evidence indicates defendant could only be found guilty as an aider or abettor, specific intent is an issue, and voluntary intoxication may indicate absence of required intent or state of mind and be a defense. *State v. McDaniel & Owens*, 228 Kan. 172, 612 P.2d 1231 (1980). See also, *State v. Sterling*, 235 Kan. 526, 680 P.2d 301 (1984).

Regardless of whether the State included an aiding and abetting theory in the charging document, an instruction on aiding and abetting is appropriate if, from the totality of the evidence, the jury could reasonably conclude that the defendant aided and abetted another in the commission of the crime. *State v. Pennington*, 254 Kan. 757, 869 P.2d 624 (1994).



PATTERN INSTRUCTIONS FOR KANSAS 3d

**54.08 CORPORATIONS - CRIMINAL RESPONSIBILITY  
FOR ACTS OF AGENTS**

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

**Notes on Use**

For authority, see K.S.A. 21-3206(1) and (2).

Use PIK Civil 3d 107.06, Agent - Issue as to Scope of Authority, where scope of authority is an issue.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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)(her) own name or on (his)(her) own behalf.**

Notes on Use

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

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 54.14 ENTRAPMENT

Entrapment is a defense if the defendant is (induced) (persuaded) to commit a crime which the defendant had no previous (disposition) (intention) (plan) (purpose) to commit. It is not a defense if the defendant (originated) (began) (conceived) the plan to commit the crime or when (he)(she) had shown (a predisposition) (a plan) (an intention) (a purpose) for committing the crime and was merely afforded (an)(the) opportunity to (consummate) (carry out [his][her] intention to complete) (complete [his][her] plan to commit) the crime and was assisted by law enforcement officers.

The defendant cannot rely on the defense of entrapment if you find that in the course of defendant's usual activities the sale of \_\_\_\_\_ was likely to occur and the law enforcement officer or (his)(her) agent did not mislead the defendant into believing (his)(her) conduct to be lawful.

A person's previous disposition or intention to commit a crime may be shown by evidence of the circumstances at the time of the sale, setting of the price of the \_\_\_\_\_ by the defendant, solicitation by defendant to make (his)(her) sale, prior sales by defendant, or ease of access to the \_\_\_\_\_ by defendant.

#### Notes on Use

For authority, see K.S.A. 21-3210. Insert the name of the article or substance sold in the blank spaces. If this instruction is given, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

#### Comment

In discussing when the defense of entrapment is available, the Supreme Court in *State v. Jordan*, 220 Kan. 110, 112, 551 P.2d 773 (1976), stated: "The defense of entrapment arises when a law enforcement officer, or someone acting in his behalf, generates in the mind of a person who is innocent of any criminal purpose the original intent or idea to commit a crime which he had not contemplated and

## PATTERN INSTRUCTIONS FOR KANSAS 3d

would not have committed but for the inducement of the law officer." *State v. Hamrick*, 206 Kan. 543, 479 P.2d 854 (1971). A defendant can rely on the defense of entrapment when he is induced to commit a crime which he had no previous intention of committing, but he cannot rely on the defense or obtain an instruction on entrapment when the evidence establishes he had a previous intention of committing the crime and was merely afforded an opportunity by a law officer to complete it. *State v. Wheat*, 205 Kan. 439, 469 P.2d 338 (1970). The trial court correctly refused to substitute the word "solicited" for "induced or persuaded" in an instruction based on 54.14. *State v. Carr*, 23 Kan. App. 2d 384, 931 P.2d 34 (1997).

For other cases discussing the availability of the defense of entrapment, see *State v. Amodei*, 222 Kan. 140, 145, 563 P.2d 440 (1977); *State v. Carter*, 214 Kan. 533, 521 P.2d 294 (1974); *State v. Smith*, 229 Kan. 533, 625 P.2d 1139 (1981); *State v. Nelson*, 249 Kan. 689, 697, 822 P.2d 53 (1991).

See *United States v. Russell*, 411 U.S. 423, 36 L.Ed. 2d 366, 93 S.Ct. 1637 (1973).

In *State v. Farmer*, 212 Kan. 163, 510 P.2d 180 (1973), it was held: "The defense of entrapment is generally not available to a defendant who denies that he has committed the offense charged." See K.S.A. 21-3210.

See also, *State v. Rogers*, 234 Kan. 629, 675 P.2d 71 (1984).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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); *State v. Robinson*, 125 Kan. 365, 263 Pac. 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 3d

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

The defendant has claimed (his)(her) conduct was justified as (self-defense) (the defense of another person).

A person is justified in the use of force against an aggressor when and to the extent it appears to (him)(her) and (he)(she) reasonably believes that such conduct is necessary to defend (himself)(herself)(another) against such aggressor's imminent use of unlawful force. Such justification requires both a belief on the part of defendant and the existence of facts that would persuade a reasonable person to that belief.

Notes on Use

For authority, see K.S.A. 21-3211 and *State v. Simon*, 231 Kan. 572, 646 P.2d 1119 (1982). The instruction is not required if the force used by defendant in the claimed self-defense is excessive as a matter of law. *State v. Marks*, 226 Kan. 704, 712-13, 602 P.2d 1344 (1979); *State v. Gayden*, 259 Kan. 69, 910 P.2d 826 (1996). If this instruction is given, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

Comment

In *State v. Hundley*, 236 Kan. 461, 693 P.2d 475 (1985), the Court disapproved PIK 2d 54.17 in the use of "immediate" in lieu of the statutory "imminent". The Court held it to be reversible error to use the word "immediate" in the self-defense instruction in that it places undue emphasis on the immediate action of the aggressor whereas the nature of the buildup of terror and fear which had been going on over a period of time, particularly in battered spouse instances, may be most relevant. The word "imminent" would describe this defense more accurately, as the definition implies "impending or near at hand, rather than immediate." See also, *State v. Hodges*, 239 Kan. 63, 716 P.2d 563 (1986).

The existence of the battered woman syndrome in and of itself does not operate as a defense to murder. In order to instruct a jury on self-defense, there must be some showing of an imminent threat or a confrontational circumstance involving an overt act by an aggressor. *State v. Stewart*, 243 Kan. 639, 763 P.2d 572 (1988).

PIK 2d 54.17 properly instructs the jury on both the subjective and objective standards by which to gauge the justification of use of force. *State v. Wiggins*, 248 Kan. 526, 808 P.2d 1383 (1991).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 54.17-A NO DUTY TO RETREAT

When on (his)(her) home ground, a person is not required to retreat from an aggressor, but may stand (his)(her) ground and use such force to defend (himself)(herself) as (he)(she) believes, and a reasonable person would believe, necessary.

#### Notes on Use

The "no duty to retreat" instruction is required only in infrequent factual situations, such as that found in *State v. Scobee*, 242 Kan. 421, 748 P.2d 862 (1988), with such elements as a nonaggressor defendant being followed to and menaced on home ground. *State v. Ricks*, 257 Kan. 435, 894 P.2d 191 (1995).

PATTERN INSTRUCTIONS FOR KANSAS 3d

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

The defendant has claimed (his)(her) conduct was justified as a lawful defense of (his)(her) dwelling.

A person is justified in the use of force to the extent it appears to the person and the person reasonably believes that such conduct is necessary to prevent another from unlawfully (entering into) (remaining in) (damaging) that person's dwelling. Such justification requires both a belief on the part of defendant and the existence of facts that would persuade a reasonable person to that belief.

**Notes on Use**

For authority, see K.S.A. 21-3212. The applicable parenthetical phrase or phrases should be selected. If this instruction is used, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

**Comment**

See *State v. Countryman*, 57 Kan. 815, 827, 48 Pac. 137 (1897); *State v. Farley*, 225 Kan. 127, 133-34, 587 P.2d 337 (1978). See also, Comment to PIK 3d 54.17, Use of Force in Defense of a Person, and cases cited.



PATTERN INSTRUCTIONS FOR KANSAS 3d

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

The defendant claims (his)(her) conduct was justified as a lawful defense of (his)(her) property.

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. If this instruction is given, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

**Comment**

K.S.A. 21-3213 is the only section of the crimes statute which specifically makes the "reasonable man" the standard to be used with respect to the amount of permissible force. The concept is implicit, however, in K.S.A. 21-3211 (self-defense) and 21-3212 (defense of a dwelling). See *State v. Marks*, 226 Kan. 704, 712, 602 P.2d 1344 (1979); *State v. Gregory*, 218 Kan. 180, 542 P.2d 1051 (1975). See also, Comment to PIK 3d 54.17, Use of Force in Defense of a Person.

PATTERN INSTRUCTIONS FOR KANSAS 3d

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

A person is not justified in using force in defense of (himself)(herself)(another) ([his][her] dwelling) if (he)(she) 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). Insert in the blank space the particular forcible felony applicable to the particular case.

This instruction was cited with approval in *State v. Hartfield*, 245 Kan. 431, 445, 781 P.2d 1050 (1989).

**Comment**

In *State v. Sullivan & Sullivan*, 224 Kan. 110, 578 P.2d 1108 (1978), the Supreme Court held that, because a jury question remained as to whether the defendants committed the overt act required for an attempted burglary, the trial court erred in instructing the jury that the defendants could not claim self-defense.

PATTERN INSTRUCTIONS FOR KANSAS 3d

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

The defendant claims (his)(her) conduct was justified because (he)(she) was a (law enforcement officer) (private person who is summoned or directed by a law enforcement officer to assist [him][her]).

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

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

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

or

(is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit \_\_\_\_\_, a felony that involves great bodily harm or [is attempting to escape by use of a deadly weapon] [otherwise indicates (he)(she) 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)(she) would be justified in using if the warrant were valid, unless (he)(she) knows that the warrant is invalid).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

**(A private person who is [summoned] [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)(she) would be justified in using if the arrest were lawful).**

**Such justification requires both a belief on the part of the defendant and the existence of facts that would persuade a reasonable person to that belief.**

### Notes on Use

For authority, see K.S.A. 21-3215.

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.

The fourth paragraph should be used only where an officer has requested assistance in making an arrest which proves to be unlawful. For authority, see K.S.A. 21-3216(2).

The final paragraph, defining "reasonable belief," appears as necessary here as in PIK 3d 54.17, Use of Force in Defense of a Person, and 54.18, Use of Force in Defense of a Dwelling, where it was required to be added to the earlier instructions in *State v. Simon*, 231 Kan. 572, 646 P.2d 1119 (1982).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 54.24 PRIVATE PERSON'S USE OF FORCE IN MAKING ARREST - NOT SUMMONED BY LAW ENFORCEMENT OFFICER

The defendant claims (his)(her) conduct was justified because (he)(she) was a private person (making) (assisting another private person in making) a lawful arrest.

A private person who (makes) (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)(She) is justified in the use of any force which (he)(she) reasonably believes to be necessary to effect the arrest and of any force which (he)(she) reasonably believes to be necessary to defend (himself)(herself)(another) from bodily harm while making the arrest.

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

Such justification requires both a belief on the part of defendant and the existence of facts that would persuade a reasonable person to that belief.

#### Notes on Use

For authority, see K.S.A. 21-3216(1). See also, PIK 3d 54.23, Law Enforcement Officer or Private Person Summoned to Assist - Use of Force in Making Arrest.

#### Comment

Whether the degree of force employed in making a citizen's arrest is "reasonable" is a jury question. *State v. Johnson*, 6 Kan. App. 2d 750, 752-53, 634 P.2d 1137 (1981), *rev. denied* 230 Kan. 819 (1981).

The final paragraph, defining "reasonable belief," appears as necessary here as in PIK 3d 54.17, Use of Force in Defense of a Person, and 54.18, Use of Force in Defense of a Dwelling, where it was required to be added to the earlier instructions in *State v. Simon*, 231 Kan. 572, 646 P.2d 1119 (1982).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**54.25 USE OF FORCE IN RESISTING ARREST**

**A person is not authorized to use force to resist an arrest which (he)(she) knows is being made by a (law enforcement officer) (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.

**Comment**

See *Kansas Judicial Council Bulletin*, April 1968, p.43.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

An attempt to commit a class A person misdemeanor is a class B person misdemeanor. An attempt to commit a class A nonperson misdemeanor is a class B nonperson misdemeanor. An attempt to commit a class B or C misdemeanor is a class C misdemeanor. K.S.A. 21-3301(e), (f).

If the information charges an attempted crime, omit paragraph B. However, if the attempted crime is submitted as a lesser included offense, omit paragraph A.

If the attempted crime is submitted as a lesser offense, PIK 3d 68.09, Lesser Included Offenses, should be given.

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

### Comment

Under K.S.A. 21-3301, an attempt to commit a crime consists of three essential elements: (1) the intent to commit the crime, (2) an overt act toward the perpetration of the crime, and (3) a failure to consummate it. *State v. Collins*, 257 Kan. 408, 893 P.2d 217 (1995); *State v. Robinson*, 256 Kan. 133, 883 P.2d 764 (1994); *State v. Cory*, 211 Kan. 528, 532, 506 P.2d 1115 (1973); *State v. Gobin*, 216 Kan. 278, 280, 281, 531 P.2d 16 (1975).

An attempted crime requires specific intent as opposed to general intent. The requisite specific intent necessary for attempted murder is not satisfied by trying to prove attempted felony murder. Kansas does not recognize the crime of attempted felony murder. *State v. Robinson*, 256 Kan. 133, 883 P.2d 764 (1994). Since it is logically impossible to specifically intend to commit an unintentional crime, Kansas does not recognize the crime of attempted second-degree murder [unintentional, as defined in K.S.A. 21-3402(b)] or the crime of attempted involuntary manslaughter. *State v. Shannon*, 258 Kan. 425, 905 P.2d 649 (1995); *State v. Gayden*, 259 Kan. 69, 910 P.2d 826 (1996); *State v. Collins*, 257 Kan. 408, 893 P.2d 217 (1995).

A problem inherent in the law of attempts concerns the point when criminal liability attaches for the overt act. There is no definitive rule concerning what constitutes an overt act; each case depends on the inferences a jury may reasonably draw from the facts. The overt act necessarily must extend beyond mere preparations made by the accused and must approach sufficiently near to consummation of the offense to stand either as the first or subsequent step in a direct movement toward the completed offense. *State v. Zimmerman*, 251 Kan. 54, 833 P.2d 925 (1992); *State v. Chism*, 243 Kan. 484, 759 P.2d 105 (1988); *State v. Garner*, 237 Kan. 227, 699 P.2d 468 (1985). See also, *State v. Hill*, 252 Kan. 637, 847 P.2d 1267 (1993); *State v. Carr*, 230 Kan. 322, 327, 634 P.2d 1104 (1981); *State v. Robinson, Lloyd & Clark*, 229 Kan. 301, 305, 624 P.2d 964 (1981); *State v. Sullivan & Sullivan*, 224 Kan. 110, 122, 578 P.2d 1108 (1978); *State v. Gobin*, 216 Kan. at 280-281.

Where the crime charged is completed, there is no basis for an instruction on an attempted crime. *State v. Grauerholz*, 232 Kan. 221, 230, 654 P.2d 395 (1982).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

The trial court has a duty to instruct on lesser included offenses established by the evidence, even though the instructions have not been requested. Such an instruction must be given even though the evidence is weak and inconclusive and consists solely of the testimony of the defendant. The duty to so instruct exists only where the defendant might reasonably be convicted of the lesser offense. *State v. Dixon*, 252 Kan. 39, 843 P.2d 182 (1992).

For purposes of K.S.A. 21-3107(2), the offenses of attempted second-degree murder and attempted voluntary manslaughter are included crimes of a lesser degree of attempted first-degree murder. *State v. Dixon*, 252 Kan. 39, 843 P.2d 182 (1992).

In order to convict a defendant of an attempt to commit a crime, the State must show the commission of an overt act plus the actual intent to commit that particular crime. See *State v. Garner*, 237 Kan. 227, 699 P.2d 468 (1985). One cannot intend to commit an accidental, negligent, or reckless homicide. *State v. Robinson*, 256 Kan. 133, 883 P.2d 764 (1994). Following the premise that one cannot intend to commit an unintentional act, Kansas does not recognize an attempt to commit involuntary manslaughter. *State v. Collins*, 257 Kan. 408, 893 P.2d 217 (1995). For a discussion of whether Kansas recognizes an attempted assault, see *State v. Martinez*, 20 Kan. App. 2d 824, 893 P.2d 267 (1995).

The general principles for determining whether charges are multiplicitous or duplicitous with attempted crimes have been discussed in several cases. In *State v. Mason*, 250 Kan. 393, 827 P.2d 748 (1992), a charge of aggravated sexual battery was held not to be multiplicitous with charges of attempted aggravated sodomy or attempted rape. However, aggravated battery has been held to be multiplicitous with a charge of attempted murder. *State v. Cathey*, 241 Kan. 715, 741 P.2d 738 (1987); *State v. Turbeville*, 235 Kan. 993, 686 P.2d 138 (1984); and *State v. Garnes*, 229 Kan. 368, 372, 373, 624 P.2d 448 (1981). In *State v. Cory*, supra, the Court held that possession of burglary tools is separate and distinct from the commission of an overt act in perpetration of a burglary. They are not duplicitous, and separate convictions for both offenses arising from the same conduct are proper. Burglary with the intent to commit rape is not duplicitous with the crime of an attempt to commit rape. *State v. Lora*, 213 Kan. 184, 515 P.2d 1086 (1973).

The crime of aggravated battery was held not to be a lesser included offense of attempted murder in *State v. Daniels*, 223 Kan. 266, 573 P.2d 607 (1977).

Attempted indecent liberties is not a lesser included offense of attempted rape where there is no issue raised by defendant that victim consented to act. *State v. Cahill*, 252 Kan. 309, 845 P.2d 624 (1993).

Attempted crimes under K.S.A. 21-3301 and the crime of conspiracy under K.S.A. 21-3302 when read together do not include a crime of attempted conspiracy. See *State v. Sexton*, 232 Kan. 539, 657 P.2d 43 (1983).



## PATTERN INSTRUCTIONS FOR KANSAS 3d

concluding portion of the instruction.

### Comment

Conspiracy consists of two essential elements: (1) an agreement between two or more persons to commit or assist in committing a crime; and (2) the commission by one or more of the conspirators of an overt act in furtherance of the object of the conspiracy. Where the State failed to prove commission of an overt act the charge was properly dismissed. *State v. Hill*, 252 Kan. 637, 847 P.2d 1267 (1993). See also, *State v. Daugherty*, 221 Kan. 612, 562 P.2d 42 (1977).

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 against the defendant to the hearsay rule. The rule is based on the concept that a party to an agreement to commit a crime is an agent or partner of the other. Therefore the statement of one conspirator is admissible against another conspirator. Because the rule is founded on the existence of an agreement, the prosecution must make a prima facie showing that an agreement exists before the hearsay statement of a co-conspirator may properly be admitted into evidence. *State v. Butler*, 257 Kan. 1043, 897 P.2d 1007 (1995). 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. K.S.A. 60-460(i). See *State v. Marshall & Brown-Sidorowicz*, 2 Kan. App. 2d 182, 577 P.2d 803 (1978), *rev. denied* 224 Kan. clxxxviii. (1978); *State v. Campbell*, 210 Kan. 265, 500 P.2d 21 (1972); *State v. Nirschl*, 208 Kan. 111, 490 P.2d 917 (1971); *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).

In *Borserine*, the Supreme Court held that the order of proof in a conspiracy case is largely controlled by the trial judge. "A conspiracy may be established by direct proof, or circumstantial evidence, or both. Ordinarily when acts and declarations of one or more co-conspirators are offered in evidence against another co-conspirator by a third party witness or witnesses, the conspiracy should first be established prima facie, and to the satisfaction of the trial judge. But this cannot always be required. Where proof of the conspiracy depends on a vast amount of circumstantial evidence—a vast number of isolated and independent facts—it cannot be required. In any case where such acts and declarations are introduced in evidence, and the whole of the evidence introduced at the trial taken together shows that a conspiracy actually exists, it will be considered immaterial whether the conspiracy was established before, or after, the introduction of such acts and declarations. (*State v. Winner*, 17 Kan. 298.)" (Syl.4) *State v. Marshall & Brown-Sidorowicz*, 2 Kan. App. 2d at 198.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

In *State v. Campbell*, 217 Kan. 756, 770, 539 P.2d 329 (1975), the Court stated that a specific intent is essential to the crime of conspiracy. The Court divided the concept of intent into two elements: (1) the intent to agree or conspire, and (2) the intent to commit the offense. Quoting with approval *Wharton's Criminal Law and Procedure* § 85, the Court recognized the obvious difficulty of proving the dual intent and concluded generally that no distinction should be made between the two specific intents. The Court embraced K.S.A. 21-3201 as satisfying the intent requirement in conspiracy cases. See also, *State v. Esher*, 22 Kan. App. 2d 779, 922 P.2d 1123 (1996).

Conspiracy is not synonymous with aiding or abetting or participating. Conspiracy implies an agreement to commit a crime; whereas, to aid and abet requires an actual participation in the act constituting the offense. See *State v. Campbell*, 217 Kan. at 769; *State v. Rider, Edens & Lemons*, 229 Kan. 394, 625 P.2d 425 (1981).

Conspiracy to commit a crime and commission of the substantive crime are separate and distinct offenses. Thus, conspiracy to commit a crime is not a lesser included offense of the substantive crime. See *State v. Burnett*, 221 Kan. 40, 45, 558 P.2d 1087 (1976).

Conspiracy is not a continuing offense. *State v. Palmer*, 248 Kan. 681, 810 P.2d 734 (1991).

It is not required that a co-conspirator have a financial stake in the success of a conspiracy. It is only necessary that he be shown not to be indifferent to the outcome of the conspiracy. *State v. Daugherty*, 221 Kan. 612, 562 P.2d 42 (1977).

Conspiracy is not a lesser included offense of murder. See *State v. Adams*, 223 Kan. 254, 573 P.2d 604 (1977).

The elements of conspiracy as defined in K.S.A. 21-3302 were reviewed in *State v. McQueen & Hardyway*, 224 Kan. 420, 582 P.2d 251 (1978); *State v. Rider, Edens & Lemons*, 229 Kan. 394, 405, 625 P.2d 425 (1981); *State v. Becknell*, 5 Kan. App. 2d 269, 271, 615 P.2d 795 (1980); and *State v. Small*, 5 Kan. App. 2d 760, 762, 625 P.2d 1 (1981).

A jury may properly consider overt acts of acquitted or dismissed co-conspirators in the trial of other co-conspirators. See *State v. Marshall & Brown-Sidorowicz*, 2 Kan. App. 2d, 182, 205, 577 P.2d 803 (1978), *rev. denied* 224 Kan. clxxxviii (1978).

In *State v. Taylor*, 2 Kan. App. 2d 532, 534, 583 P.2d 1033 (1978), the Court of Appeals of Kansas held that in its proof of conspiracy, the State is not limited to the overt acts alleged in the information.

To constitute a conspiracy there must be an agreement which requires a "meeting of the minds." See *State v. Crozier*, 225 Kan. 120, 587 P.2d 331 (1978).

The conspiracy agreement may be established in any manner sufficient to show agreement. It may be oral or written, or inferred from certain acts of the persons accused that were done in pursuance of the unlawful purpose. See *State v. Small*, 5 Kan. App. 2d at 762-763.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Attempted crimes under K.S.A. 21-3301 and the crime of conspiracy under K.S.A. 21-3302 when read together do not include a crime of attempted conspiracy. See *State v. Sexton*, 232 Kan. 539, 657 P.2d 43 (1983).

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

**55.04 CONSPIRACY - WITHDRAWAL AS A DEFENSE**

**It is a defense to a charge of conspiracy that the defendant voluntarily and 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(b). If this instruction is given, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

Comment

It is a jury question whether one has withdrawn from a conspiracy when conflicting evidence as to that withdrawal is presented. *State v. Daugherty*, 221 Kan. 612, 562 P.2d 42 (1977).

Withdrawal is a defense to conspiracy, but there is no statutory defense of withdrawal to aiding and abetting other crimes. *State v. Kaiser*, 260 Kan. 235, 918 P.2d 629 (1996).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 55.05 CONSPIRACY - DEFINED

**A conspiracy is an agreement with another or other persons to commit a crime or to assist in committing a crime, followed by an act in furtherance of the agreement.**

**The agreement may be established in any manner sufficient to show understanding. It may be oral or written, or inferred from all of the facts and circumstances.**

#### Notes on Use

For authority, see K.S.A. 21-3302(a) and the *Kansas Judicial Council Bulletin*, April 1968, p.46. *State v. Campbell*, 217 Kan. 756, 539 P.2d 329 (1975); *State v. Small*, 5 Kan. App. 2d 760, 625 P.2d 1 (1981); 16 Am. Jur. 2d, Conspiracy, §§ 1, 7, and 11. This instruction should be given in all cases involving the crime of conspiracy.

#### Comment

Conspiracy consists of two essential elements: (1) an agreement between two or more persons to commit or assist in committing a crime; and (2) the commission by one or more of the conspirators of an overt act in furtherance of the object of the conspiracy. Where the State failed to prove commission of an overt act the charge was properly dismissed. *State v. Cox*, 258 Kan. 557, 908 P.2d 603 (1995); *State v. Hill*, 252 Kan. 637, 847 P.2d 1267 (1993). See also, *State v. Daughtery*, 221 Kan. 612, 562 P.2d 42 (1977).

In *Campbell*, the Supreme Court of Kansas emphasized that the essence of a conspiracy is the agreement to commit a crime, not simply to commit a particular act. The Court further held that the provisions of K.S.A. 21-3302 were not unconstitutionally vague and indefinite. 217 Kan. at 770.

The agreement may be expressed or implied from the acts of the parties. *State v. Roberts*, 223 Kan. 49, 52, 574 P.2d 164 (1977); *State v. Rider, Edens & Lemons*, 229 Kan. 394, 405, 625 P.2d 425 (1981).

The agreement requires a "meeting of the minds" of at least two persons. See *State v. Crozier*, 225 Kan. 120, 587 P.2d 331 (1978).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 55.07 CONSPIRACY - DECLARATIONS

**Declarations of one conspirator may be considered by you as evidence against all co-conspirators if the declarations were made when:**

- 1. Two or more conspirators were participating in a plan to commit a crime; and**
- 2. The plan to commit the crime was in existence; and**
- 3. The plan to commit the crime had not been completed.**

#### Notes On Use

For authority, see K.S.A. 60-460(i)(2). The co-conspirator evidence rule is discussed in the Comment to PIK 3d 55.03, Conspiracy.

#### Comment

In *State v. Bird*, 238 Kan. 160, 176, 708 P.2d 946 (1985), the Supreme Court set forth the five prerequisites for utilizing K.S.A. 60-460(l)(2). See also, *State v. Shultz*, 252 Kan. 819, 850 P.2d 818 (1993). The co-conspirator's statement need not be "in furtherance" of the conspiracy but must be "relevant" to the conspiracy. See also *State v. Marshall & Brown-Sidorowicz*, 2 Kan. App. 2d 182, 198-199, 577 P.2d 803 (1978).

The determination of whether a conspiracy exists for purpose of the hearsay exception [K.S.A. 60-460(i)(2)] rests with the judge not the jury. *State v. Butler*, 257 Kan. 1043, 897 P.2d 1007 (1995).

"In order to show a conspiracy, it is not necessary that there be any formal agreement manifested by formal words written or spoken; it is enough if the parties tacitly come to an understanding in regard to the unlawful purpose, and this may be inferred from sufficiently significant circumstances. *State v. Sherry*, 233 Kan. 920, 934, 667 P.2d 367 (1983)." *State v. Swafford*, 257 Kan. 1023, 897 P.2d 1027 (1995).

Under K.S.A. 60-460(i)(2), hearsay statements by a coparticipant that implicate the accused in a crime are admissible against the accused only if made "while the plan to commit the crime is in existence and 'before its complete execution or other termination.'" *State v. Myers*, 229 Kan. 168, 625 P.2d 1111 (1981). See also, *State v. Johnson-Howell*, 255 Kan. 928, 881 P.2d 1288 (1994).

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)



## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Comment

The crime of solicitation is separate and distinct from an attempt to commit a crime or from the crime of conspiracy. Solicitation is in the nature of preparation; whereas, an attempt involves an overt act beyond the solicitation. See *State v. Bowles*, 70 Kan. 821, 837, 79 Pac. 726 (1905); and 21 Am. Jur. 2d, Criminal Law, §§ 161 and 162. Solicitation is distinguished from the crime of conspiracy in that the latter requires an agreement between two or more persons to commit, or assist in committing, a crime along with an overt act in furtherance of the object of the conspiracy. See *State v. Garrison*, 252 Kan. 929, 850 P.2d 244 (1993); *State v. Crozier*, 225 Kan. 120, 126, 587 P.2d 331 (1978). The crime of solicitation, on the other hand, is complete when the solicitation request is made without the requirement of an agreement or an overt act. *State v. Westfahl*, 21 Kan. App. 2d 159, 898 P.2d 87 (1995).

It should be noted that subsection (b) provides that it is immaterial ". . . that the actor fails to communicate with the person solicited to commit a felony if the person's conduct was designed to effect a communication." Apparently, this subsection covers the unusual situation where one might place an offer in a newspaper or use some other form of communication or utilize the concepts of an agency to carry out the prohibited solicitation. In the event the provision becomes material, an appropriate paraphrase of the statute should be presented.

In a "loan scam" case, the defendants' convictions of criminal solicitation and aiding and abetting were held neither to have merged nor to have been multiplicitous. *State v. Edwards*, 250 Kan. 320, 826 P.2d 1355 (1992).

Solicitation to commit first-degree murder is a separate and independent criminal offense from aiding and abetting first-degree murder, and the jury need not be instructed on criminal solicitation as a lesser included offense. *State v. Webber*, 260 Kan. 263, 918 P.2d 609 (1996); *State v. DePriest*, 258 Kan. 596, 907 P.2d 868 (1995).

"Solicitation is a specific intent crime under Kansas law. A person is not guilty of solicitation unless he or she intentionally commits the actus reus of the offense, viz., he or she commands, encourages, or requests another person to commit a felony with the specific intent that the other commit the crime he or she solicited. The actus reus of the solicitation occurs under Kansas law if a person by words or actions invites, requests, commands, or encourages a second person to commit a crime. The crime is complete when the person communicates the solicitation to another with the requisite mens rea. No act in furtherance of the target crime needs to be performed by either person." *State v. DePriest*, 258 Kan. 596, 907 P.2d 868 (1995). See also, *State v. Esher*, 22 Kan. App. 2d 779, 922 P.2d 1123 (1996).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**55.10 CRIMINAL SOLICITATION - DEFENSE**

**It is a defense to a charge of criminal solicitation that the defendant, after soliciting another person to commit a felony, persuaded that person not to do so or otherwise prevented the commission of the felony, under circumstances demonstrating a complete and voluntary abandonment of the defendant's criminal plan.**

**Notes on Use**

For authority, see K.S.A. 21-3303(c). If this instruction is given, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**CHAPTER 56.00**  
**CRIMES AGAINST PERSONS**

	PIK Number
Capital Murder . . . . .	56.00-A
Capital Murder - Death Sentence - Sentencing Proceeding . .	56.00-B
Capital Murder - Death Sentence - Aggravating Circumstances	56.00-C
Capital Murder - Death Sentence - Mitigating Circumstances	56.00-D
Capital Murder - Death Sentence - Burden of Proof . . . . .	56.00-E
Capital Murder - Death Sentence - Aggravating And Mitigating Circumstances - Theory Of Comparison . . .	56.00-F
Capital Murder - Death Sentence - Reasonable Doubt . . . . .	56.00-G
Capital Murder - Death Sentence - Sentencing Recommendation . . . . .	56.00-H
Murder In The First Degree . . . . .	56.01
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Sentence Proceeding . . . . .	56.01-A
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Aggravating Circumstances . . . . .	56.01-B
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Mitigating Circumstances . . . . .	56.01-C
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Burden Of Proof . . . . .	56.01-D
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Aggravating And Mitigating Circumstances - Theory of Comparison . . . . .	56.01-E
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Reasonable Doubt . . . . .	56.01-F
Murder In The First Degree - Mandatory Minimum 40 Year Sentence - Sentencing Recommendation . . . . .	56.01-G
Murder In The First Degree - Felony Murder . . . . .	56.02
Murder In The First Degree And Felony Murder - Alternatives . . . . .	56.02-A
Murder In The Second Degree . . . . .	56.03
Murder In The Second Degree - Unintentional . . . . .	56.03-A
Homicide Definitions . . . . .	56.04
Voluntary Manslaughter . . . . .	56.05
Involuntary Manslaughter . . . . .	56.06
Involuntary Manslaughter - Driving Under The Influence . .	56.06-A

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Vehicular Homicide . . . . .	56.07
Aggravated Vehicular Homicide . . . . .	56.07-A
Vehicular Battery . . . . .	56.07-B
Assisting Suicide . . . . .	56.08
Unintended Victim - Transferred Intent . . . . .	56.09
Criminal Abortion . . . . .	56.10
Criminal Abortion - Justification . . . . .	56.11
Assault . . . . .	56.12
Assault Of A Law Enforcement Officer . . . . .	56.13
Aggravated Assault . . . . .	56.14
Aggravated Assault Of A Law Enforcement Officer . . . . .	56.15
Battery . . . . .	56.16
Domestic Battery . . . . .	56.16-A
Battery Against A School Employee . . . . .	56.16-B
Battery Against A Law Enforcement Officer . . . . .	56.17
Aggravated Battery . . . . .	56.18
Criminal Injury To Person . . . . .	56.18-A
Aggravated Battery Against A Law Enforcement Officer . . . . .	56.19
Unlawful Interference With A Firefighter . . . . .	56.20
Attempted Poisoning . . . . .	56.21
Permitting Dangerous Animal To Be At Large . . . . .	56.22
Criminal Threat . . . . .	56.23
Criminal Threat - Adulteration Or Contamination Of Food Or Drink . . . . .	56.23-A
Aggravated Criminal Threat . . . . .	56.23-B
Kidnapping . . . . .	56.24
Aggravated Kidnapping . . . . .	56.25
Interference With Parental Custody . . . . .	56.26
Aggravated Interference With Parental Custody By Parent's Hiring Another . . . . .	56.26-A
Aggravated Interference With Parental Custody By Hiree . . . . .	56.26-B
Aggravated Interference With Parental Custody - Other Circumstances . . . . .	56.26-C
Interference With The Custody Of A Committed Person . . . . .	56.27
Criminal Restraint . . . . .	56.28
Mistreatment Of A Confined Person . . . . .	56.29
Robbery . . . . .	56.30
Aggravated Robbery . . . . .	56.31
Blackmail . . . . .	56.32
Disclosing Information Obtained In Preparing Tax Returns . . . . .	56.33

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 (or another) killed \_\_\_\_\_;
2. That such killing was done while (in the commission of) (attempting to commit) (in flight from [committing] [attempting to commit]) \_\_\_\_\_; 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. 21-3401. Felony murder is an off-grid person felony.

In addition to this instruction, the elements of the underlying inherently dangerous felony should be set out. Effective July 1, 1993, an "inherently dangerous felony" is defined to include murder in the first degree under K.S.A. 21-3401(a), murder in the second degree under K.S.A. 21-3402(a), voluntary manslaughter under K.S.A. 21-3403(a), kidnapping, aggravated kidnapping, robbery, aggravated robbery, rape, aggravated criminal sodomy, abuse of a child, felony theft under K.S.A. 21-3701(a) or (c), burglary, aggravated burglary, arson, aggravated arson, treason, and any felony offense as provided in K.S.A. 65-4127a, 65-4127b, 65-4159 or 21-4219. Where one count charges premeditated murder and another count charges felony murder for the same homicide, see Comment below for authority to instruct on both theories. The elements of the applicable underlying felony should be set forth either by reference to another instruction which lists them or the elements should be set forth in the concluding portion of this instruction.

Where there is some indication that a participant in the felony, other than the defendant, may actually have caused the victim's death, the parenthetical in the first paragraph may be used.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Comment

Premeditated murder and felony murder are not separate or different offenses. The statute merely provides alternative methods of proving the deliberation and premeditation which are required for a first-degree murder conviction under K.S.A. 21-3401.

A prosecution under this rule merely changes the type of proof necessary to support a conviction. Proof that the homicide was committed in the perpetration of a felony is tantamount to premeditation which otherwise would be necessary to constitute murder in the first degree. *State v. McCowan*, 226 Kan. 752, 759, 602 P.2d 1363 (1979).

To apply the felony-murder rule, it is only necessary to establish that the accused committed a felony inherently dangerous to human life and that the killing took place during the commission of the felony. Even an accidental killing is subject to this rule if the participant in the felony could reasonably foresee or expect that a life might be taken in the perpetration of the felony. *State v. Branch and Bussey*, 223 Kan. 381, 573 P.2d 1041 (1978); *State v. Underwood*, 228 Kan. 294, 615 P.2d 153 (1980).

The State may properly allege premeditated murder and felony murder in separate counts for the commission of a single homicide, and may introduce evidence on both theories but the jury must be instructed to bring in a verdict on one alternative. Conviction on both theories is improper. *State v. Jackson*, 223 Kan. 554, 575 P.2d 536 (1978).

When the murder is committed during the commission of a felony, the general rule is that no instructions on lesser included offenses should be given. The felonious conduct is held tantamount to the elements of premeditation in first degree murder. But where the evidence of the underlying felony is inconclusive or reasonably in dispute, instructions must be given on lesser included offenses which are supported by the evidence. *State v. Foy*, 224 Kan. 558, 582 P.2d 281 (1978).

Cases defining which crimes are inherently dangerous to human life have been supplanted by K.S.A. 21-3436.

In a felony-murder case, evidence of who the triggerman is is irrelevant and all participants are principals. *State v. Myrick & Nelms*, 228 Kan. 406, 416, 616 P.2d 1066 (1980); *State v. Littlejohn*, 260 Kan. 821, 925 P.2d 839 (1996).

In *State v. Robinson*, 256 Kan. 133, 883 P.2d 764 (1994), the court ruled that Kansas does not recognize the crime of attempted felony murder.

In determining whether a killing occurs in the commission of the underlying felony, factors to be considered are time, distance, and the causal relationship between the underlying felony and the killing. *State v. Kaesontae*, 260 Kan. 386, 920 P.2d 959 (1996).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

In *State v. Grissom*, 251 Kan. 851, 840 P.2d 1142 (1992), the Court quoted with approval its holding in *State v. Pioletti*, 246 Kan. 49, 785 P.2d 963 (1990), that "[w]hen an accused is charged in one count of an information with both premeditated murder and felony murder it matters not whether some members of the jury arrive at a verdict of guilt based on proof of premeditation while others arrive at a verdict of guilt by reason of the killer's malignant purpose." To the same effect, see *State v. Davis*, 247 Kan. 566, 802 P.2d 541 (1990); *State v. Hartfield*, 245 Kan. 431, 781 P.2d 1050 (1989).

Before the mandatory minimum 40 year sentence is imposed, however, the jury must have unanimously found that premeditated murder occurred. In *State v. Kingsley*, 252 Kan. 761, 851 P.2d 370 (1993), the Court upheld the use of this instruction in a "Hard 40" case where separate verdict forms for premeditated murder and felony murder were used.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 do not agree that the defendant is guilty of murder in the first degree, you should then consider the lesser included offense of murder in the second degree.)**

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

- 1. That the defendant intentionally killed \_\_\_\_\_; and
  - [2. That it was not done (upon a sudden quarrel) (in the heat of passion) (upon an unreasonable but honest belief that circumstances existed that justified deadly force in defense of [a person] [a dwelling] [property]); and]
2. or [3.] That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Notes on Use

For authority, see K.S.A. 21-3402. Murder in the second degree is an off-grid person felony, if intentional. If unintentional, see PIK 3d 56.03-A, Murder in the Second Degree - Unintentional.

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. See PIK 3d 68.09, Lesser Included Offenses, and 69.01, Murder in the First Degree with Lesser Included Offenses, for lead-in instructions on lesser included offenses.

Bracketed element 2 should be added where there is evidence which requires an instruction on voluntary manslaughter. *State v. Jackson*, 262 Kan. 119, 936 P.2d 761 (1997).

The elements of this crime were modified effective July 1, 1993. For instructions under prior law, see PIK 2d 56.03.



## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Comment

See Comment to PIK 3d 56.01, Murder in the First Degree, on the duty of the trial court to instruct on lesser included offenses in homicide cases.

Intentional second degree murder requires proof of a specific intent to kill. *State v. Pope*, 23 Kan. App. 2d 69, 927 P.2d 503 (1996).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**56.03-A MURDER IN THE SECOND DEGREE - UNINTENTIONAL**

- A. (The defendant is charged with the crime of murder in the second degree. The defendant pleads not guilty.)
- B. (If you do not agree that the defendant is guilty of murder in the first degree, you should then consider the lesser included offense of murder in the second degree.)

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

1. That the defendant killed \_\_\_\_\_ unintentionally but recklessly under circumstances showing extreme indifference to the value of human life; 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. 21-3402. Murder in the second degree is a severity level 2, person felony, if unintentional but reckless.

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. See PIK 3d 68.01, Concluding Instruction, and 69.01, Murder in the First Degree with Lesser Included Offenses, for lead-in instructions on lesser included offenses.

The elements of this crime were modified effective July 1, 1993. For instructions under prior law, see PIK 2d 56.03.

**Comment**

See Comment to PIK 3d 56.01, Murder in the First Degree, on the duty of the trial court to instruct on lesser included offenses in homicide cases.

In *State v. Robinson*, 261 Kan. 865, 934 P.2d 38 (1997), the Supreme Court examined the difference between unintentional second degree murder (depraved heart murder) and reckless involuntary manslaughter. Depraved heart second degree murder requires a conscious disregard of the risk, sufficient under the

## PATTERN INSTRUCTIONS FOR KANSAS 3d

circumstances to manifest extreme indifference to the value of human life. Recklessness that can be assimilated to purpose or knowledge is treated as depraved heart second degree murder, and less extreme recklessness is punished as manslaughter. Although indifference to the value of human life in general is often present in crimes prosecuted as depraved heart murder, extreme indifference to the value of one specific human life is enough to satisfy the elements of depraved heart second degree murder.

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

56.05 VOLUNTARY MANSLAUGHTER

- A. (The defendant is charged with the crime of voluntary manslaughter. The defendant pleads not guilty.)
- B. (In considering whether the defendant is guilty of murder in the second degree, you should also consider the lesser offense of voluntary manslaughter. If there is a reasonable doubt as to which of these two offenses the defendant is guilty, the defendant may be convicted of voluntary manslaughter only.)

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

- 1. That the defendant intentionally killed \_\_\_\_\_;
- 2. That it was done (upon a sudden quarrel) (in the heat of passion) (upon an unreasonable but honest belief that circumstances existed that justified deadly force in defense of [a person] [a dwelling] [property]); 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. 21-3403. Voluntary manslaughter is a severity level 3, person felony.

If the information charges voluntary manslaughter, omit paragraph B; but if the information charges a higher degree, omit paragraph A. See PIK 3d 68.09, Lesser Included Offenses, and 69.01, Murder in the First Degree with Lesser Included Offenses, for lead-in instructions on lesser included offenses. See PIK 3d 56.04, Homicide Definitions, for definition of "heat of passion".

Comment

See Comment to PIK 3d 56.01, Murder in the First Degree, and *State v. Seelke*, 221 Kan. 672, 561 P.2d 869 (1977), on the duty of the trial judge to instruct on lesser included offenses in homicide cases.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

An intentional homicide is reduced from murder to voluntary manslaughter if it is committed upon a sudden quarrel or in the heat of passion or upon an unreasonable but honest belief that circumstances existed that justified deadly force under K.S.A. 21-3211, 21-3212 or 21-3213. Where the homicide is intentional and committed under the mitigating circumstances contained in K.S.A. 21-3403, the voluntary manslaughter statute is concurrent with and controls the statute on intentional murder in the second degree, K.S.A. 21-3402(a).

In *State v. Wilson*, 240 Kan. 606, 609, 610, 731 P.2d 306 (1987), the trial judge used a modified version of this instruction. The Supreme Court admonished trial judges to use the pattern jury instructions when appropriate unless there is some compelling and articulated reason not to do so.

"Heat of passion" is subject to an objective test. It requires an emotional state of mind of such degree as to cause an ordinary person to act on impulse without reflection. Moreover, the emotional state must arise from circumstances constituting "sufficient provocation." "Sufficient provocation" is also subject to an objective test. The provocation must be sufficient to cause an ordinary person to lose control of actions and reason. *State v. Dixon*, 252 Kan. 39, 843 P.2d 182 (1992).

The unreasonable but honest belief required under K.S.A. 21-3403(b) must be based on the reality of the circumstances surrounding the killing and not on a psychotic delusion. *State v. Ordway*, 261 Kan. 776, 934 P.2d 94 (1997).

PATTERN INSTRUCTIONS FOR KANSAS 3d

56.06 INVOLUNTARY MANSLAUGHTER

- A. (The defendant is charged with the crime of involuntary manslaughter. The defendant pleads not guilty.)
- B. (If you do not agree that the defendant is guilty of voluntary manslaughter, you should then consider the lesser included offense of involuntary manslaughter.)

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

- 1. That the defendant unintentionally killed \_\_\_\_\_;
- 2. That it was done:
  - (a) recklessly;
  - or
  - (b) (while in the commission of) (while attempting to commit) (in flight from [committing] [attempting to commit]) \_\_\_\_\_;
  - or
  - (c) during the commission of a lawful act in an unlawful manner; 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. 21-3404. Involuntary manslaughter is a severity level 5, person felony.

If the information charges involuntary manslaughter, omit paragraph B; but if the information charges a higher degree, omit paragraph A. See PIK 3d 68.09, Lesser Included Offenses, and 69.01, Murder in the First Degree With Lesser Included Offenses, for lead-in instructions on lesser included offenses. K.S.A. 21-3404(b) provides that a felony or a misdemeanor can serve as the basis for an involuntary manslaughter charge if the statute was enacted for the protection of

## PATTERN INSTRUCTIONS FOR KANSAS 3d

human life or safety and is not an inherently dangerous felony as defined in K.S.A. 21-3436. K.S.A. 8-1566 and 8-1568 are specifically cited as misdemeanors which were enacted for the protection of human life or safety.

The elements of this crime were modified effective July 1, 1993. For instructions under prior law, see PIK 2d 56.06, Involuntary Manslaughter.

### Comment

See Comment to PIK 3d 56.01, Murder in the First Degree, on the duty of the trial court to instruct on lesser included offenses in homicide cases.

The use of excessive force may be found to be an "unlawful manner" of committing the "lawful act" of self-defense, and thereby supply an element of involuntary manslaughter. *State v. Gregory*, 218 Kan. 180, 542 P.2d 1051 (1975). *State v. Warren*, 5 Kan. App. 2d 754, 624 P.2d 476, rev. denied 229 Kan. 671 (April 29, 1981).

In *State v. Collins*, 257 Kan. 408, 893 P.2d 217 (1995), the court ruled that Kansas does not recognize the crime of attempted involuntary manslaughter.

In *State v. Robinson*, 261 Kan. 865, 934 P.2d 38 (1997), the Supreme Court examined the difference between unintentional second degree murder (depraved heart murder) and reckless involuntary manslaughter. Depraved heart second degree murder requires a conscious disregard of the risk, sufficient under the circumstances to manifest extreme indifference to the value of human life. Recklessness that can be assimilated to purpose or knowledge is treated as depraved heart second degree murder, and less extreme recklessness is punished as manslaughter. Although indifference to the value of human life in general is often present in crimes prosecuted as depraved heart murder, extreme indifference to the value of one specific human life is enough to satisfy the elements of depraved heart second degree murder.



PATTERN INSTRUCTIONS FOR KANSAS 3d

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

Notes on Use

For authority, see K.S.A. 21-3413. Battery against a state, county or city law enforcement officer is a class A, person misdemeanor. Battery against a state, city or county correctional officer or employee, a juvenile correctional facility officer or employee, or a juvenile detention facility officer or employee is a severity level 6, person felony. Battery as defined by K.S.A. 21-3412 is a lesser included offense and where the evidence warrants it, PIK 3d 56.16, Battery, should be given.

The statute defines "state correctional officer or employee" as "any officer or employee of the Kansas Department of Corrections, or any independent contractor, or any employee of such contractor, working at a correctional institution." "Juvenile correctional facility officer or employee" means any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility. "Juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility. "City or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility.

The elements of this crime were modified, effective July 1, 1996.

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

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. (a) That the defendant intentionally caused (great bodily harm to) (disfigurement of) another person;  
or
  - (b) That the defendant intentionally caused bodily harm to another person (with a deadly weapon) (in any manner whereby great bodily harm, disfigurement or death can be inflicted);  
or
  - (c) That the defendant intentionally caused physical contact with another person in a rude, insulting or angry manner (with a deadly weapon) (in any manner whereby great bodily harm, disfigurement or death can be inflicted);  
or
  - (d) That the defendant recklessly caused (great bodily harm to) (disfigurement of) another person;  
or
  - (e) That the defendant recklessly caused bodily harm to another person (with a deadly weapon) (in any manner whereby great bodily harm, disfigurement or death can be inflicted); 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. 21-3414. Aggravated battery as described in 1(a) is a severity level 4, person felony; as described in 1(b) or 1(c), a severity level 7, person felony; as described in 1(d), a severity level 5, person felony; and as

## PATTERN INSTRUCTIONS FOR KANSAS 3d

described in 1(e), a severity level 8, person felony. Battery as defined by K.S.A. 21-3412 is a lesser included offense and where the evidence warrants it, PIK 3d 56.16, Battery, should be given.

The elements of this crime were modified, effective July 1, 1993.

### Comment

The crime of aggravated assault is not a lesser included offense of aggravated battery. *State v. Bailey*, 223 Kan. 178, 573 P.2d 590 (1977).

In *State v. Colbert*, 244 Kan. 422, 769 P.2d 1168 (1989), the Court held the definition of "deadly weapon" for purposes of the aggravated battery statute is an instrument which, from the manner it is used, is calculated or likely to produce death or serious bodily injury. The determination of whether the object was a deadly weapon is made on an objective basis rather than subjectively from the victim's point of view. Ordinarily, whether a gun used as a club is a deadly weapon for purposes of the aggravated battery statute is a jury question. Thus, in *Colbert*, it was error to instruct the jury that "a firearm is a deadly weapon as a matter of law" in connection with a charge of aggravated battery.

Aggravated battery under K.S.A. 21-3414(a)(1)(c), intentionally causing physical contact with another person, incorporates the general intent required by K.S.A. 21-3201. Aggravated battery under this subsection is not a specific intent crime. *State v. Esher*, 22 Kan. App. 2d 779, 922 P.2d 1123 (1996).

In *State v. Valentine*, 260 Kan. 431, 921 P.2d 770 (1996), the Supreme Court contrasted level 4 aggravated battery (great bodily harm) and level 7 aggravated battery (bodily harm). The court determined that when an assailant shoots a victim, severing the spinal cord and causing paralysis, the resulting injury qualifies as level 4 "great bodily harm" as a matter of law. Similarly, a "through and through" bullet wound in the abdomen is great bodily harm as a matter of law. Thus, in these circumstances the district court did not err by failing to instruct the jury on level 7 aggravated battery as a lesser included offense of level 4 aggravated battery.

The fact that the defendant and his victim are married does not change the standards for probable cause to bind the defendant over on a charge of aggravated battery. *State v. Whittington*, 260 Kan. 873, 926 P.2d 237 (1996).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 56.23-A CRIMINAL THREAT - ADULTERATION OR CONTAMINATION OF FOOD OR DRINK

The defendant is charged with criminal threat. The defendant pleads not guilty.

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

1. That the defendant threatened to adulterate or contaminate a (food) (beverage) (public water supply); and
2. That this act occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

[Under this instruction, a statement that defendant has already committed the act described in Claim No. 1 is the same as a threat to commit the act.]

#### Notes on Use

For authority, see K.S.A. 21-3419. Criminal threat is a severity level 9, person felony.

The last paragraph reflects the 1984 amendment to K.S.A. 21-3419, and should be used only where the defendant communicated a statement of past conduct rather than a threat of future conduct.

#### Comment

The 1984 Legislature added the crime defined by this instruction to former K.S.A. 21-3419. Note that unlike a threat to commit violence, this crime requires no specific intent.

The Committee has grave reservations about the validity of the amendment because of the lack of any required intent to affect other persons, and also because of the potential ambiguity in the term "adulterate".

PATTERN INSTRUCTIONS FOR KANSAS 3d

56.23-B AGGRAVATED CRIMINAL THREAT

The defendant is charged with the crime of aggravated criminal 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]); and  
or  
That such threat was communicated in reckless disregard of the risk of causing (terror to \_\_\_\_\_) (evacuation of a [building][place of assembly][facility of transportation]); and
3. That a ([public][commercial][industrial] building) (place of assembly)(facility of transportation) was evacuated as a result of the threat; and
4. That the loss of productivity measured by the total wages and salaries of all persons evacuated as a result of the threat was (\$25,000 or more) (at least \$500 but less than \$25,000) (less than \$500); and
5. That this act occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Notes on Use

For authority, see K.S.A. 21-3419a. Aggravated criminal threat is a severity level 6 person felony when the loss of productivity measured by the total wages and salaries of all persons evacuated as a result of the threat is less than \$500; a severity level 5 person felony when the loss of productivity is at least \$500 but less than \$25,000; a severity level 4 person felony when the loss of productivity equals or exceeds \$25,000.

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 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) (confined) \_\_\_\_\_  
by (force) (threat) (deception);
2. That it was done with the 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  
\_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_  
County, Kansas.

#### Notes on Use

For authority, see K.S.A. 21-3420. Kidnapping is a severity level 3, person felony.

#### Comment

This instruction was approved in *State v. Glymph*, 222 Kan. 73, 75, 563 P.2d 422 (1977); and in *State v. Nelson*, 223 Kan. 572, 575 P.2d 547 (1978). *State v. McKessor*, 246 Kan. 1, 11, 785 P.2d 1332 (1990).

The "taking or confinement" requires no particular distance or removal, nor any particular time or place of confinement. It is the taking or confinement that supplies the necessary element of kidnapping. The word "facilitate" means something more than just to make more convenient. "To facilitate" must have



PATTERN INSTRUCTIONS FOR KANSAS 3d

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 intentionally took property from  
the (person) (presence) of \_\_\_\_\_;
2. That the taking was by (threat of bodily harm to  
\_\_\_\_\_) (force); 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. 21-3426. Robbery is a severity level 5, person  
felony.

Comment

In *State v. Clingerman*, 213 Kan. 525, 516 P.2d 1022 (1973), the Court, in  
granting a new trial, relied on the failure of the trial court to include felonious  
intent, "one of the necessary elements of robbery." In tracing the history of  
robbery, the Court noted three ingredients as essential: the use of force and  
violence, the taking from a person of another money or other personal property,  
and an intent to rob or steal. (Modified in *State v. Lucas*, infra.)

In *State v. Rueckert*, 221 Kan. 727, 561 P.2d 850 (1977), the Court stated that  
specific intent is not an element of the crime of aggravated robbery, (therefore)  
voluntary intoxication would not be a defense to a general intent crime, although  
it may be used to demonstrate the inability to form a particular state of mind  
necessary for a specific intent crime. *State v. Rueckert* at 732-733.

*State v. McDaniel & Owens*, 228 Kan. 172, 612 P.2d 1231 (1980), holds that  
aggravated robbery is not a specific intent crime; it requires only general criminal  
intent. See also, *State v. Knoxsah*, 229 Kan. 36, 622 P.2d 140 (1981). The  
Committee is of the opinion that alleging an "intention to take property" should  
suffice for establishing criminal intent under K.S.A. 21-3201.

In *State v. Lucas*, 221 Kan. 88, 557 P.2d 1296 (1976), the trial court failed to  
instruct on the intent requirement. In refusing to hold error, the Court found that

## PATTERN INSTRUCTIONS FOR KANSAS 3d

the defendant's use of a deadly weapon established clear proof of intent.

The ownership of property taken is not an element of robbery; thus, failure to allege ownership is not defective. The State is not required to allege that the property taken was not that of the defendant. Therefore, the Committee has revised the above instruction to exclude "of another." See *State v. Lucas*, supra.

Presence means a possession or control so immediate that violence or intimidation is essential to sever it. "A thing is in the presence of a person with respect to robbery, which is so within his control that he could, if not overcome by violence or prevented by fear, retain his possession of it." *State v. Glymph*, 222 Kan. 73, 563 P.2d 422 (1977).

Theft is a lesser included crime of robbery as a "lesser degree of the same crime" under K.S.A. 21-3107(2). *State v. Long*, 234 Kan. 580, 675 P.2d 832 (1984).

The definitions of bodily harm used in aggravated kidnapping cases are appropriate for use in differentiating between aggravated robbery and robbery. Some trivial injuries can happen in the course of a robbery, but bodily harm that leaves permanent scarring or unnecessary acts of violence committed upon a victim transform the robbery into aggravated robbery. *State v. Bryant*, 22 Kan. App. 2d 732, 922 P.2d 1118 (1996).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 intentionally took property from the (person) (presence) of \_\_\_\_\_;
2. That the taking was by (threat of bodily harm to \_\_\_\_\_) (force);
3. That the defendant (was armed with a dangerous 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 \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

[An object can be a dangerous weapon if intended by the user to convince the victim that it is a dangerous weapon and which the victim reasonably believed to be a dangerous weapon.]

Notes on Use

For authority, see K.S.A. 21-3427. Aggravated robbery is a severity level 3, person felony. Robbery as defined by K.S.A. 21-3426 is a lesser included offense and where the evidence warrants it PIK 3d 56.30, Robbery, should be given.

When there is an issue as to whether the defendant was "armed with a dangerous weapon," the bracketed definition should be used. *State v. Colbert*, 244 Kan. 422, 769 P.2d 1168 (1989). In *Colbert*, the Court held in Syl. ¶ 3: "Whether or not a robber is "armed with a dangerous weapon" for aggravated robbery purposes is determined from the victim's point of view (K.S.A. 21-3427). An object can be a dangerous weapon if intended by the user to convince the victim that it is a dangerous weapon and the victim reasonably believes it is a dangerous weapon. Hence, an unloaded gun or a gun with a defective firing mechanism may be a dangerous weapon within the purview of the aggravated robbery statute."

Comment

See Comment to PIK 3d 56.30, Robbery.

In *State v. Mitchell*, 234 Kan. 185, 190, 672 P.2d 1 (1983), the Court approved the use of "deadly weapon" as being synonymous with the statutory use of "dangerous weapon." See also, *State v. Davis*, 227 Kan. 174, 605 P.2d 572 (1980).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

The definitions of bodily harm used in aggravated kidnapping cases are appropriate for use in differentiating between aggravated robbery and robbery. Some trivial injuries can happen in the course of a robbery, but bodily harm that leaves permanent scarring or unnecessary acts of violence committed upon a victim transform the robbery into aggravated robbery. *State v. Bryant*, 22 Kan. App. 2d 732, 922 P.2d 1118 (1996).

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

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 threatened to communicate (accusations) (statements) about \_\_\_\_\_ that would subject \_\_\_\_\_ to public (ridicule) (contempt) (degradation);
2. That the defendant did so to ([gain] [attempt to gain] something of value from \_\_\_\_\_) (compel \_\_\_\_\_ to act against [his][her] will); 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. 21-3428. Blackmail is a severity level 7, nonperson felony.

The elements of this crime were modified effective July 1, 1993.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

In *State v. Cantrell*, 234 Kan. 426, 434, 673 P.2d 1147 (1983), the Kansas Supreme Court held that the crime of rape under K.S.A. 21-3502 did not require a specific intent to commit rape. Language to the contrary in *State v. Hampton*, 215 Kan. 907, 529 P.2d 127 (1974), and in *State v. Carr*, 230 Kan. 322, 634 P.2d 1104 (1981) was overruled. Since rape is a general intent crime and PIK 3d 57.01 follows the language of the statute, the lack of the word "intentionally" in the instruction is proper. *State v. Plunkett, Jr.*, 261 Kan. 1024, 934 P.2d 113 (1997).

For a discussion about some fundamental changes made by the Kansas Legislature to the rape statute see 52 J.B.A.K. 99, 104 (1983).

In *State v. Dorsey*, 224 Kan. 152, 578 P.2d 261 (1978), the Supreme Court held that additional convictions for attempted rape and aggravated sodomy were multiple convictions for the same offense when the defendant had already been convicted on one count for both offenses.

Unless the defense is consent and the expert presenting the testimony has special training in psychiatry, evidence of the rape trauma syndrome is inadmissible. Even if the evidence is admissible, the expert is not permitted to express an opinion as to whether the victim was raped. See *State v. Bressman*, 236 Kan. 296, 303, 304, 689 P.2d 901 (1984).

Lewd and lascivious behavior consists of elements separate and distinct from the crime of rape. The trial court committed no error when it failed to give an instruction on lewd and lascivious behavior when the defendant was charged with rape. *State v. Davis*, 236 Kan. 538, 542, 694 P.2d 418 (1985).

Two acts of rape perpetrated by the same accused against the same victim on the same afternoon may support two separate rape convictions. *State v. Wood*, 235 Kan. 915, 920, 686 P.2d 128 (1984). The result in this case is distinguished from *State v. Dorsey*, 224 Kan. at 152. See also, *State v. Richmond*, 250 Kan. 375, 379, 827 P.2d 743 (1992).

In *Keim v. State*, 13 Kan. App. 2d 604, 608, 777 P.2d 278 (1989), the Court held that legislation prohibiting intercourse with a victim incapable of giving consent because of mental deficiency or disease was not unconstitutionally vague.

Adultery is not a lesser included offense of forcible rape because it is a crime of consenting parties and would require that at least one of the parties be married. *State v. Platz*, 214 Kan. 74, 77, 519 P.2d 1097 (1974).

Rape is not a lesser included offense of aggravated kidnapping. *State v. Schriner*, 215 Kan. 86, 90, 523 P.2d 703 (1974); *Wisner v. State*, 216 Kan. 523, 532 P.2d 1051 (1975). However, rape constitutes "bodily harm" to make a kidnapping aggravated kidnapping. *State v. Barry*, 216 Kan. 609, 618, 533 P.2d 1308 (1974); *State v. Ponds and Garrett*, 218 Kan. 416, 420-421, 543 P.2d 967 (1975); *State v. Adams*, 218 Kan. 495, 504, 545 P.2d 1134 (1976).

Battery is not a lesser included offense of attempted rape. *State v. Arnold*, 223 Kan. 715, 576 P.2d 651 (1978).

Patronizing a prostitute is not a lesser included offense of rape or aggravated sodomy. See *State v. Blue*, 225 Kan. 576, 580, 592 P.2d 897 (1979).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

The crime of indecent liberties with a child is a lesser included offense of rape where the evidence establishes that the defendant forcibly raped a female under 16 years of age. *State v. Lilley*, 231 Kan. 694, 696, 647 P.2d 1323 (1982); and *State v. Coberly*, 233 Kan. 100, 661 P.2d 383 (1983).

Evidence of similar crimes with proper limiting instructions under K.S.A. 60-455 may be relevant and admissible in prosecutions for rape. See Comment to PIK 3d 52.06, Proof of Other Crime - Limited Admissibility of Evidence.



PATTERN INSTRUCTIONS FOR KANSAS 3d

**57.01-A RAPE - DEFENSE OF MARRIAGE**

**It is a defense to the charge of rape of a child under 14 years of age that at the time of the offense the child was married to the accused.**

**Notes on Use**

For authority, see K.S.A. 21-3502(a)(2). This instruction should be given only with respect to a prosecution of rape of a child under 14 years of age pursuant to 21-3502(a)(2) and not in cases of nonconsensual sexual intercourse.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 57.02 SEXUAL INTERCOURSE - DEFINITION

**Sexual intercourse means any penetration of the female sex organ by (a finger) (the male sex organ) (any object). Any penetration, however slight, is sufficient to constitute sexual intercourse.**

**(Sexual intercourse does not include penetration of the female sex organ by a finger or object in the course of the performance of:**

- (a) Generally recognized health care practices; or**
- (b) a body cavity search conducted in accordance with the law.)**

#### Notes on Use

For authority, see K.S.A. 21-3501. This instruction should be given in all rape prosecutions. The applicable parenthetical reference should be selected.

#### Comment

The Kansas Legislature amended the definition of sexual intercourse in 1983 to include rape by an object or a finger. The sufficiency of penetration is discussed in *State v. Ragland*, 173 Kan. 265, 246 P.2d 276 (1952). See also, *State v. Cross*, 144 Kan. 368, 59 P.2d 35 (1936), and 65 Am. Jur. 2d, Rape, § 3.

The trial court's failure to give a definition of sexual intercourse was not reversible error when no objection was raised at trial and the instruction given was complete. *State v. James*, 217 Kan. 96, 100, 535 P.2d 991 (1975).

See also, Wason, *Survey of Kansas Law: Criminal Law*, 32 Kan. L. Rev. 395 (1984).

A charge of attempted rape may be proven without evidence of attempted penetration if the surrounding circumstances provide sufficient evidence from which a rational factfinder could conclude that the attacker intended to rape the victim. *State v. Hanks*, 236 Kan. 524, 694 P.2d 407 (1985).

Actual penetration of the vagina or rupturing of the hymen is not required; penetration of the vulva or labia is sufficient to constitute sexual intercourse. *State v. Borthwick*, 255 Kan. 899, 880 P.2d 1261 (1994).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Notes on Use

For authority, see K.S.A. 21-3506(a)(3). The crime of aggravated criminal sodomy is a severity level 2, person felony.

If the crime involves sexual intercourse with an animal, PIK 3d 57.02, Sexual Intercourse - Definition, should be given.

### Comment

Lewd and lascivious behavior is not a lesser included offense of aggravated sodomy. *State v. Davis*, 236 Kan. 538, 694 P.2d 418 (1985).

The provisions of K.S.A. 21-4619(c) provide that there shall be no expungement of convictions for the offense of aggravated criminal sodomy. In addition, the provisions of K.S.A. 21-3106 provide that a prosecution for the crime of aggravated criminal sodomy must be commenced within five years after its commission.

Use of an instruction that differed from PIK 3d 57.08-B was held erroneous in *State v. Castoreno*, 255 Kan. 401, 874 P.2d 1173 (1994).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**57.08-C AFFIRMATIVE DEFENSE TO AGGRAVATED  
CRIMINAL SODOMY**

**It is a defense to the charge of aggravated criminal sodomy that at the time of the offense the child was married to the accused.**

**Notes on Use**

For authority, see K.S.A. 21-3506(b). This instruction should be given only with respect to a prosecution of aggravated criminal sodomy in which the defendant is charged with engaging in sodomy with a child under 14 years of age (PIK 3d 57.08, Aggravated Criminal Sodomy - Nonmarital Child Under 14, first alternative to paragraph 1). Pursuant to K.S.A. 21-3506(b), this defense is not applicable to prosecutions in which the defendant is charged with causing a child under 14 years of age to engage in sodomy with any person or animal or is charged with nonconsensual sodomy under K.S.A. 21-3506(a)(3).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**57.40 SEXUAL PREDATOR/CIVIL COMMITMENT**

The State alleges the respondent is a sexually violent predator. The respondent denies the allegation.

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

1. That the defendant has been (convicted of) (charged with) \_\_\_\_\_, a sexually violent offense; and
2. That the defendant suffers from a (mental abnormality) (personality disorder) which makes the defendant likely to engage in predatory acts of sexual violence.

OR

1. That the defendant has been convicted of \_\_\_\_\_; and
2. That in that proceeding it was determined beyond a reasonable doubt the crime was sexually motivated.  
or  
That the defendant suffers from a (mental abnormality) (personality disorder) which makes the defendant likely to engage in predatory acts of sexual violence.

Notes on Use

For authority, see K.S.A. 59-29a01.

Comment

While designated a civil commitment, the burden of proof in this type of case is beyond a reasonable doubt. The matter may be tried to a jury of 12 pursuant to K.S.A. 22-3403, and the defendant is entitled to appointed counsel if indigent.

This legislation borrowed extensively from Washington State's Community Protection Act of 1990, codified at RCW 71.09. The Supreme Court of Washington upheld the constitutionality of the act in *In Re Young*, 122 Wash. 2d 1, 857 P.2d 989 (1993). However, in *Young*, the court held inter alia that if the proceeding is brought against a person living in the community immediately prior to the initiation of proceedings, due process requires that the State plead and prove the existence of

## PATTERN INSTRUCTIONS FOR KANSAS 3d

a recent overt act to support a "dangerousness" showing, citing the United States Supreme Court's holding in *Foucha v. Louisiana*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed. 2d 437 (1992). [Syl. 8, pp.1006-07; 1008-09] The Kansas Act, like the Washington legislation, does not require proof of a recent overt act.

In *Kansas v. Hendricks*, 521 U.S. \_\_\_\_, 138 L.Ed. 2d 501, 117 S.Ct. 2072 (1997), the United States Supreme Court reversed the Kansas Supreme Court and held that the Kansas sexually violent predator act's definition of mental abnormality satisfied substantive due process requirements and the act did not violate either the double jeopardy clause or the ex post facto clause of the Federal Constitution.

PATTERN INSTRUCTIONS FOR KANSAS 3d

CHAPTER 59.00

CRIMES AGAINST PROPERTY

	PIK Number
Theft . . . . .	59.01
Theft - Knowledge Property Stolen . . . . .	59.01-A
Theft - Welfare Fraud . . . . .	59.01-B
Theft Of Lost Or Mislaid Property . . . . .	59.02
Theft Of Services . . . . .	59.03
Criminal Deprivation Of Property . . . . .	59.04
Fraudulently Obtaining Execution Of A Document . . . . .	59.05
Worthless Check . . . . .	59.06
Statutory Presumption Of Intent To Defraud - Knowledge Of Insufficient Funds . . . . .	59.06-A
Worthless Check - Defenses . . . . .	59.07
Habitually Giving A Worthless Check Within Two Years . . . . .	59.08
Habitually Giving Worthless Checks - On Same Day . . . . .	59.09
Causing An Unlawful Prosecution For Worthless Check . . . . .	59.10
Forgery - Making Or Issuing A Forged Instrument . . . . .	59.11
Forgery - Possessing A Forged Instrument . . . . .	59.12
Making False Information . . . . .	59.13
Destroying A Written Instrument . . . . .	59.14
Altering A Legislative Document . . . . .	59.15
Possession Of Forgery Devices . . . . .	59.16
Burglary . . . . .	59.17
Aggravated Burglary . . . . .	59.18
Possession Of Burglary Tools . . . . .	59.19
Arson . . . . .	59.20
Arson - Defraud An Insurer Or Lienholder . . . . .	59.21
Aggravated Arson . . . . .	59.22
Criminal Damage To Property - Without Consent . . . . .	59.23
Criminal Damage To Property - With Intent To Defraud An Insurer Or Lienholder . . . . .	59.24
Criminal Trespass . . . . .	59.25
Criminal Trespass - Health Care Facility . . . . .	59.25-A
Criminal Trespass On Railroad Property . . . . .	59.25-B
Littering - Public . . . . .	59.26
Littering - Private Property . . . . .	59.27

PATTERN INSTRUCTIONS FOR KANSAS 3d

Tampering With A Landmark . . . . .	59.28
Tampering With A Landmark - Highway Sign Or Marker . .	59.29
Tampering With A Traffic Signal . . . . .	59.30
Aggravated Tampering With A Traffic Signal . . . . .	59.31
Injury To A Domestic Animal . . . . .	59.32
Criminal Hunting . . . . .	59.33
Unlawful Hunting - Posted Land . . . . .	59.33-A
Criminal Hunting - Defense . . . . .	59.33-B
Criminal Use Of Financial Card of Another . . . . .	59.34
Criminal Use Of Financial Card - Cancelled . . . . .	59.35
Criminal Use Of Financial Card - Altered Or Nonexistent . .	59.36
Unlawful Manufacture Or Disposal Of False Tokens . . . . .	59.37
Criminal Use Of Explosives . . . . .	59.38
Possession Or Transportation Of Incendiary Or Explosive Device . . . . .	59.39
Criminal Use Of Noxious Matter . . . . .	59.40
Impairing A Security Interest - Concealment Or Destruction . . . . .	59.41
Impairing A Security Interest - Sale Or Exchange . . . . .	59.42
Impairing A Security Interest - Failure To Account . . . . .	59.43
Fraudulent Release Of A Security Agreement . . . . .	59.44
Warehouse Receipt Fraud - Original Receipt . . . . .	59.45
Warehouse Receipt Fraud - Duplicate Or Additional Receipt . . . . .	59.46
Unauthorized Delivery Of Stored Goods . . . . .	59.47
Automobile Master Key Violation . . . . .	59.48
Posting Of Political Pictures Or Advertisements . . . . .	59.49
Opening, Damaging Or Removing Coin-Operated Machines . . . . .	59.50
Possession Of Tools For Opening, Damaging Or Removing Coin-Operated Machines . . . . .	59.51
Casting An Object Unto A Street Or Road - Damage To Vehicle, Resulting In Bodily Injury . . . . .	59.52
Casting An Object Onto A Street Or Road - Bodily Injury . . . . .	59.53
Casting An Object Onto A Street Or Road - Vehicle Damage . . . . .	59.54
Casting An Object Onto A Street Or Road - No Damage . . .	59.55
Sale Of Recut Tires . . . . .	59.56
Theft Of Cable Television Services . . . . .	59.57



PATTERN INSTRUCTIONS FOR KANSAS 3d

Piracy Of Recordings . . . . . 59.58  
 Dealing In Pirated Recordings . . . . . 59.58-A  
 Piracy of Recordings - Defenses . . . . . 59.59  
 Non-Disclosure Of Source Of Recordings . . . . . 59.60  
 Defrauding An Innkeeper . . . . . 59.61  
 Grain Embezzlement . . . . . 59.62  
 Making False Public Warehouse Records And Statements . . . 59.63  
 Making False Public Warehouse Reports . . . . . 59.63-A  
 Adding Dockage Or Foreign Material To Grain . . . . . 59.63-B  
 Computer Crime . . . . . 59.64  
 Computer Crime - Defense . . . . . 59.64-A  
 Computer Trespass . . . . . 59.64-B  
 Violation Of The Kansas Odometer Act - Tampering, Etc. . . 59.65-A  
 Violation Of The Kansas Odometer Act - Conspiring . . . . . 59.65-B  
 Violation Of The Kansas Odometer Act - Operating  
     A Vehicle . . . . . 59.65-C  
 Violation Of The Kansas Odometer Act - Unlawful  
     Device . . . . . 59.65-D  
 Violation Of The Kansas Odometer Act - Unlawful Sale . . . 59.65-E  
 Violation Of The Kansas Odometer Act - Unlawful  
     Service, Repair Or Replacement . . . . . 59.65-F  
 Promoting a Pyramid Promotional Scheme . . . . . 59.66  
 RESERVED FOR FUTURE USE. . . . . 59.67-59.69  
 Value In Issue . . . . . 59.70

PATTERN INSTRUCTIONS FOR KANSAS 3d

59.01 THEFT

The defendant is charged with the crime of theft of property of the value of (\$25,000 or more) (at least \$500 but less than \$25,000) (less than \$500). 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 control over the property by means of a false statement or representation which deceived \_\_\_\_\_ who had relied in whole or in part upon the false representation or statement of the defendant;

or

That the defendant obtained by threat control over property;

or

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

3. That the defendant intended to deprive \_\_\_\_\_ permanently of the use or benefit of the property;

4. That the value of the property was (\$25,000 or more) (at least \$500 but less than \$25,000) (less than \$500); and

5. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Notes on Use

For authority, see K.S.A. 21-3701. Theft of property of the value of \$25,000 or more is a severity level 7, nonperson felony. Theft of property of the value of at least \$500 but less than \$25,000 is a severity level 9, nonperson felony. Theft

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 59.13 MAKING FALSE INFORMATION

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

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

1. That the defendant (made) (generated) (distributed) (drew) (caused to be [made] [generated] [distributed] [drawn]) (a written instrument) (an electronic data) (an entry in a book of account);
2. That the defendant knew that such information falsely stated or misrepresented some material matter which was not what it purported to be;
3. That the defendant intended to (defraud) (obstruct the detection of a [theft] [\_\_\_\_\_], a felony offense) (induce official action); 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. 21-3711. Making false information is a severity level 8, nonperson felony. The optional words and phrases should be used depending on the facts in the particular case. K.S.A. 21-3711 was amended in 1996 and 1997 to change the crime from making a false writing to making false information. The term "false information" was expanded to include electronic data in addition to a written instrument or an entry in a book of account.

#### Comment

See *Kansas Judicial Council Bulletin*, April 1968, p.71.

In *State v. Montgomery*, 14 Kan. App. 2d 577, 796 P.2d 559 (1990), the Court held that K.S.A. 21-3711, Making a false writing, is a general statute under which charges may range from falsifying bank statements to making false statements under the Campaign Finance Act. K.S.A. 21-3707, Giving a worthless check, is a specific statute covering the making, drawing, issuing and delivering of any check, order or draft on a financial institution with intent to defraud and knowing that the maker has no deposit in or credits with the drawee for the payment of such check, order or draft in full upon its presentment. Under the facts of the case, the specific statute of Giving a worthless check under K.S.A. 21-3707, rather than the

## PATTERN INSTRUCTIONS FOR KANSAS 3d

general statute of Making a false writing under K.S.A. 21-3711, must be the basis for the crimes charged.

In a welfare fraud case, prosecution should be pursuant to the specific welfare fraud statute, K.S.A. 39-720, rather than the general statute for the crime of Making a false writing, K.S.A. 21-3711. *State v. Wilcox*, 245 Kan. 76, 775 P.2d 177 (1989). The implications of *Wilcox* were considered in *State v. Jones*, 246 Kan. 180, 787 P.2d 738 (1990), and the Court held that K.S.A. 39-720 had no application to a situation involving theft (K.S.A. 21-3701) from a program or agency not administered by the Department of Social and Rehabilitation Services.

Making a false writing, K.S.A. 21-3711, as opposed to Forgery, K.S.A. 21-3710, involves a person making a false representation, or causing it to be made, while acting within his or her own identity. Forgery involves making an instrument which appears to have been made by another. *State v. Rios*, 246 Kan. 517, 792 P.2d 1065 (1990).

Knowledge is an essential element of the offense of making a false writing under K.S.A. 21-3711. Knowledge means actual information that the writing falsely states or represents to some material matter and is intended to defraud or induce some official action. Information is considered material under K.S.A. 21-3711 if a reasonable person would attach importance to the information in choosing a course of action in the transaction in question. *State v. Edwards*, 250 Kan. 320, 826 P.2d 1355 (1992).

Intent to defraud, as set forth in K.S.A. 21-3711 and defined by K.S.A. 21-3110(9), requires that the maker of the false writing intended to deceive another person and to induce such person, in reliance upon the deception, to assume, create, transfer, alter, or terminate a right, obligation, or power with reference to property. The making of an instrument to cover up a theft, which crime is unknown to the victim, does not come within the statutory definition of "intent to defraud". *State v. Rios*, 246 Kan. 517, 792 P.2d 1065 (1990).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 with the intent to defraud; 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. 21-3712. Destroying a written instrument is a severity level 9, nonperson felony.

See *Kansas Judicial Council Bulletin*, April 1968, p.71.

PATTERN INSTRUCTIONS FOR KANSAS 3d

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) \_\_\_\_\_; 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. 21-3713. Altering a legislative document is a severity level 9, nonperson felony.

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

PATTERN INSTRUCTIONS FOR KANSAS 3d

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) (property) of \_\_\_\_\_ by means of (fire) (an explosion);

or

That the defendant intentionally damaged a (building) (property) in which \_\_\_\_\_ had an interest, and that defendant did so by means of (fire) (explosion);

2. That the defendant did so without the consent of \_\_\_\_\_;

OR

1. That the defendant intentionally damaged \_\_\_\_\_ by means of (fire) (an explosion);
2. That \_\_\_\_\_ was an insurer of the (building) (property);

or

That \_\_\_\_\_ had an interest in the (building) (property) because (he)(she) had a lien thereon;

3. That the defendant did so with the intent to (injure) (defraud) \_\_\_\_\_;
- (3.) or (4.) That at the time there was a human being in the (building) (property); and
- (4.) or (5.) That the [(fire) (explosion)] [(resulted) (did not result)] in a substantial risk of bodily harm; and
- (5.) or (6.) That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Notes on Use

For authority, see K.S.A. 21-3719. Aggravated arson resulting in a substantial risk of bodily harm is a severity level 3, person felony. Aggravated arson not

## PATTERN INSTRUCTIONS FOR KANSAS 3d

resulting in substantial risk of bodily harm is a severity level 6, person felony.

When defendant has been charged with aggravated arson resulting in a substantial risk of bodily harm and there is an issue as to the seriousness of the risk, PIK 3d 68.09, Lesser Included Offenses, should also be given together with PIK 3d 68.10, Verdict Form.

### Comment

A definition of damage is not necessary as the word is "in common usage" and understandable by "lay and professional people alike." *State v. McVeigh*, 213 Kan. 432, 516 P.2d 918 (1973).

A dead person is not a "human being" within the meaning of K.S.A. 21-3719. *State v. Kingsley*, 252 Kan. 761, 851 P.2d 370 (1993).

In *State v. Johnson*, 12 Kan. App. 2d 239, 738 P.2d 872 rev. denied 242 Kan. 905 (1987), the Court held that "any interest" in K.S.A. 21-3718(a)(1) includes a leasehold interest in real property.

In *State v. Walker*, 21 Kan. App. 2d 950, 910 P.2d 871 (1996), the Court construed the word "explosive" as used in the statute defining the crime of arson (K.S.A. 1993 Supp. 21-3718) to mean "explosion."



PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.23 CRIMINAL DAMAGE TO PROPERTY - WITHOUT CONSENT**

The defendant is charged with 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 property described as \_\_\_\_\_) (had an interest as a \_\_\_\_\_ in property described as \_\_\_\_\_);
2. That the defendant intentionally (damaged) (injured) (mutilated) (defaced) (destroyed) (substantially impaired the use of) the property by means other than by fire or explosion;
3. That the defendant did so without the consent of \_\_\_\_\_;
4. That the property was damaged to the extent of (\$25,000 or more) (at least \$500 but less than \$25,000) (less than \$500); and
5. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Notes on Use

For authority, see K.S.A. 21-3720(a)(1). Criminal damage to property is a severity level 7, nonperson felony if the property is damaged to the extent of \$25,000 or more. Criminal damage to property is a severity level 9, nonperson felony if the property is damaged to the extent of at least \$500 but less than \$25,000. Criminal damage to property is a class B, nonperson misdemeanor if the property damaged is of the value of less than \$500 or is of the value of \$500 or more and is damaged to the extent of less than \$500.

Where the extent of damage is in issue, PIK 3d 68.11, Verdict Form - Value in Issue, and PIK 3d 59.70, Value in Issue, should be used and modified accordingly.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

See PIK Civil 3d, Chapter 171 for instructions as to property damage and value.

### Comment

Under the statute, property cannot be damaged more than the value of the property at the time the damage occurred. If the value of the property at the time it is damaged is less than \$500, then the defendant cannot be convicted of a felony. The preceding two sentences may be made the basis for an instruction, if needed.

Where a defendant is convicted of criminal damage to property and where the jury did not determine the amount of the damage and there was an issue as to whether the damage was more or less than \$50, the conviction was set aside and the trial court was directed to sentence the defendant for a misdemeanor. *State v. Smith*, 215 Kan. 865, 528 P.2d 1195 (1974); *State v. Piland*, 217 Kan. 689, 538 P.2d 666 (1975).

Criminal damage to property is not a lesser included offense of theft. *State v. Shoemaker*, 228 Kan. 572, 618 P.2d 1201 (1980).

It is doubtful if a charge under K.S.A. 21-3720(a)(1) is a lesser included offense of arson. Where the cause of damage is in issue, a charge in the alternative may be appropriate. Cases supporting this view are: *State v. Saylor*, 228 Kan. 498, 618 P.2d 1166 (1980); *State v. Lamb*, 215 Kan. 795, 530 P.2d 20 (1974); *State v. Jackson*, 223 Kan. 554, 575 P.2d 536 (1978).

Voluntary intoxication is not a defense to a general intent crime, and a jury instruction thereon would not ordinarily be appropriate or required. In *State v. Sterling*, 235 Kan. 526, 680 P.2d 301 (1984), the Court found that K.S.A. 21-3720(a)(1) is a general intent crime whereas K.S.A. 21-3720(a)(2) is a specific intent crime. Therefore, an instruction on voluntary intoxication would not ordinarily be appropriate under K.S.A. 21-3720(a)(1). However, it might be a defense where the evidence shows that defendant did not participate as a principal but only as an aider and abettor. Under those circumstances, a specific intent of a defendant may be a proper issue in the case. *State v. McDaniel & Owens*, 228 Kan. 172, 612 P.2d 1231 (1980).

The sole distinction between Criminal damage to property, K.S.A. 21-3720 and Arson, K.S.A. 21-3718, is that arson proscribes knowingly damaging another person's property by means of fire or explosive and criminal damage to property proscribes willfully damaging another person's property by means other than by fire or explosive. That the damages to property of another was brought about by means other than by fire or explosive is an essential element of Criminal damage to property K.S.A. 21-3720. *Zapata v. State*, 14 Kan. App. 2d 94, 782 P.2d 1251 (1989).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

In *State v. Jones*, 247 Kan. 537, 802 P.2d 533 (1990), the criminal damage to property involved the breaking of windows in a 1977 Dodge car. The Supreme Court held that, for purposes of determining if the offense was a felony or misdemeanor, the value of damage was the cost of replacement plus installation, not to exceed the total value of the car. Since the State failed to present evidence to establish the value of the car, the Supreme Court reversed the felony convictions of criminal damage to property.

In *State v. Walker*, 21 Kan. App. 2d 950, 910 P.2d 871 (1996), the Court construed the word "explosive" as used in the statute defining the crime of arson (K.S.A. 1993 Supp. 21-3718) to mean "explosion."

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.24 CRIMINAL DAMAGE TO PROPERTY - WITH INTENT TO FRAUD AN INSURER OR LIENHOLDER**

The defendant is charged with 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) \_\_\_\_\_ by means other than by fire or explosion;
2. That \_\_\_\_\_ was an insurer of the property;

or

That \_\_\_\_\_ had an interest in the property because (he)(she) had a lien thereon;

3. That the defendant did so with the intent to (injure) (defraud) \_\_\_\_\_;
4. That the property was damaged to the extent of (\$25,000 or more) (at least \$500 but less than \$25,000) (less than \$500); and
5. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Notes on Use

For authority, see K.S.A. 21-3720(a)(2). Criminal damage to property is a severity level 7, nonperson felony if the property is damaged to the extent of \$25,000 or more. Criminal damage to property is a severity level 9, nonperson felony if the property is damaged to the extent of at least \$500 but less than \$25,000. Criminal damage to property is a class B, nonperson misdemeanor if the property damaged is of the value of less than \$500 or is of the value of \$500 or more and is damaged to the extent of less than \$500.

Where the extent of damage is in issue, PIK 3d 68.11, Verdict Form - Value in Issue, and PIK 3d 59.70, Value in Issue, should be used and modified accordingly.

This instruction should not be used for K.S.A. 21-3720(a)(1).

See PIK Civil 3d, Chapter 171 for instructions as to property damage and value.

Voluntary intoxication is not a defense to a general intent crime, and a jury instruction thereon would not ordinarily be appropriate nor required. In *State v. Sterling*, 235 Kan. 526, 680 P.2d 301 (1984), the Court found that K.S.A. 21-

## PATTERN INSTRUCTIONS FOR KANSAS 3d

3720(a)(1) is a general intent crime whereas K.S.A. 21-3720(a)(2) is a specific intent crime. Therefore, an instruction on voluntary intoxication would not ordinarily be appropriate under K.S.A. 21-3720(a)(1). However, it might be a defense where the evidence shows that defendant did not participate as a principal but only as an aider and abettor. Under those circumstances, a specific intent of a defendant may be a proper issue in the case. *State v. McDaniel & Owens*, 228 Kan. 172, 612 P.2d 1231 (1980).

### Comment

Under the statute, property cannot be damaged more than the value of the property at the time the damage occurred. If the value of the property at the time it is damaged is less than \$500, then the defendant cannot be convicted of a felony. The preceding two sentences may be the basis for an instruction, if needed.

In *State v. Walker*, 21 Kan. App. 2d 950, 910 P.2d 871 (1996), the Court construed the word "explosive" as used in the statute defining the crime of arson (K.S.A. 1993 Supp. 21-3718) to mean "explosion."

PATTERN INSTRUCTIONS FOR KANSAS 3d

59.25 CRIMINAL TRESPASS

The defendant is charged with criminal trespass. The defendant pleads not guilty.

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

1. That the property was (locked) (fenced) (enclosed) (shut) (secured against passage or entry);

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;

or

That the defendant had been personally served with a restraining order prohibiting defendant from (entering into) (remaining on) the property;

2. That the defendant intentionally, without authority, (entered into) (remained on) the property; 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. 21-3721. Criminal trespass is a class B, nonperson misdemeanor. Property under this section can be any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft other than railroad property. Criminal trespass on railroad property is a separate offense covered by K.S.A. 21-3761 and PIK 3d 59.25-B, Criminal Trespass on Railroad Property.

Comment

"Criminal trespass is not a lesser included offense of burglary under K.S.A. 21-3701(2)(d) because criminal trespass requires a proof of something more than a knowing and unauthorized entry or remaining within property; criminal trespass also requires proof of actual or constructive notice. The Legislature's 1980 amendment

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.25-A CRIMINAL TRESPASS - HEALTH CARE FACILITY**

The defendant is charged with criminal trespass involving a health care facility. The defendant pleads not guilty.

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

1. That the defendant entered or remained (upon) (in) (identify the public or private land or structure involved) in a manner that interfered with access to or from a health care facility;
2. That the defendant knew (he)(she) was not (authorized) (privileged) to do so;
3. That the defendant entered or remained (upon) (in) such (land) (structure) in defiance of an order (not to enter) (to leave) the (land) (structure) personally communicated to defendant by (the owner of the health care facility) (an authorized person); 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. 21-3721(a)(2). Criminal trespass involving a health care facility is a class B, nonperson misdemeanor.

"Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients. K.S.A. 21-3721(b)(1).

"Health care provider" means any person: (A) licensed to practice a branch of the healing arts; (B) licensed to practice psychology; (C) licensed to practice professional or practical nursing; (D) licensed to practice dentistry; (E) licensed to practice optometry; (F) licensed to practice pharmacy; (G) registered to practice podiatry; (H) licensed as a social worker; or (I) registered to practice physical therapy. K.S.A. 21-3721(b)(2).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.25-B CRIMINAL TRESPASS ON RAILROAD PROPERTY**

The defendant is charged with criminal trespass on railroad property. The defendant pleads not guilty.

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

1. That the defendant without the consent of the owner or its agent intentionally (entered) (remained) on railroad property;
2. That defendant knew the property was railroad property; and
3. That this act occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, in \_\_\_\_\_ County, Kansas.]

As used in this instruction, "railroad property" includes any (train) (locomotive) (railroad car) (caboose) (rail mounted work equipment) (rolling stock) (safety device) (switch) (electronic signal) (microwave communication equipment) (connection) (railroad track) (rail) (bridge) (trestle) (right of way) (property owned, leased or possessed by a railroad company).

or

1. That the defendant caused a derailment of a (train) (railroad car) (rail mounted work equipment);
2. That the defendant did so (maliciously) (wantonly); 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. 21-3761.

Violation of this section is a class A nonperson misdemeanor, except that, if the violation results in damage or loss in excess of \$1,500, the offense is a severity level 8, nonperson felony.

Subsection (c) of the statute provides that the statute shall not interfere with the lawful use of a private or public crossing.



## PATTERN INSTRUCTIONS FOR KANSAS 3d

The Secretary has provided a definition for dockage or foreign material for each of several types of grain. See 7 C.F.R. § 810 *et seq.* Official United States Standards for Grain (1988).

Subpart B barley	dockage	7 C.F.R. § 810.202(e)
	foreign material	7 C.F.R. § 810.202(f)
Subpart C corn	dockage	none
	foreign material	7 C.F.R. § 810.402(e)
Subpart D flaxseed	dockage	7 C.F.R. § 810.602(b)
	foreign material	none
Subpart F oats	dockage	none
	foreign material	7 C.F.R. § 810.1002(b)
Subpart G rye	dockage	7 C.F.R. § 810.1202(b)
	foreign material	7 C.F.R. § 810.1202(c)
Subpart H sorghum	dockage	7 C.F.R. § 810.1402(e)
	foreign material	7 C.F.R. § 810.1402(f)
Subpart I soybeans	dockage	none
	foreign material	7 C.F.R. § 810.1602(c)
Subpart J sunflower seed	dockage	none
	foreign material	7 C.F.R. § 810.1802(d)
Subpart K triticale	dockage	7 C.F.R. § 810.2002(c)
	foreign material	7 C.F.R. § 810.2002(d)
Subpart L wheat	dockage	7 C.F.R. § 810.2202(e)
	foreign material	7 C.F.R. § 810.2202(f)

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.64 COMPUTER CRIME**

The defendant is charged with computer crime. The defendant pleads not guilty.

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

1. That the defendant intentionally and without authority gained access to and (damaged) (modified) (altered) (destroyed) (copied) (disclosed) (took possession of) a (computer) (computer system) (computer network) ( \_\_\_\_\_ ), which is computer related property);  
or
1. That the defendant used a (computer) (computer system) (computer network) ( \_\_\_\_\_ ), which is computer related property) for the purpose of (devising) (executing) a (scheme) (artifice) with the intent to defraud or for the purpose of obtaining (money) (property) (services) or any other thing of value by means of false or fraudulent pretense or representation;  
or
1. That defendant intentionally exceeded the limits of authorization and (damaged) (modified) (altered) (destroyed) (copied) (disclosed) (took possession of) a (computer) (computer system) (computer network) ( \_\_\_\_\_ ), which is computer related property); 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. 21-3755(b)(1)(B). Computer crime is now a severity level 8, nonperson felony, without regard to the amount of loss suffered by the victim.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

The optional words and phrases should be used as required in the particular case.

If warranted, PIK 3d 59.64-A, Computer Crime - Defense, should be given.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.64-A COMPUTER CRIME - DEFENSE**

**It is a defense if the defendant appropriated the property or services openly and under a claim of title made in good faith.**

Notes on Use

For authority, see K.S.A. 21-3755(b)(3). If this instruction is given, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.64-B COMPUTER TRESPASS**

The defendant is charged with computer trespass. The defendant pleads not guilty.

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

1. That the defendant (accessed) (attempted to access) a (computer) (computer system) (computer network) (computer software) (computer program) (computer documentation) (computer data) (computer property contained in a computer, computer system or computer network);
2. That the defendant did so intentionally and without authorization; 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. 21-3755(d). Computer trespass is a class A, nonperson misdemeanor. Prior to 1997, this crime was called Criminal Computer Access.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.65-A VIOLATION OF THE KANSAS ODOMETER ACT  
- TAMPERING, ETC.**

The defendant is charged with the crime of violation of the Kansas Odometer Act. The defendant pleads not guilty.

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

1. That the defendant knowingly (tampered with) (adjusted) (altered) (changed) (set back) (disconnected) (failed to connect) the odometer of a motor vehicle so as to reflect a lower mileage than the true mileage the motor vehicle had been driven; and  
or

That the defendant knowingly caused the odometer of a motor vehicle to (be tampered with) (be adjusted) (be altered) (be changed) (be set back) (be disconnected) (remain disconnected) by another so as to reflect a lower mileage than the true mileage driven by the motor vehicle; 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. 21-3757(b). Violation of the Act is a severity level 9, nonperson felony.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.65-F VIOLATION OF THE KANSAS ODOMETER ACT  
- UNLAWFUL SERVICE, REPAIR OR  
REPLACEMENT**

The defendant is charged with the crime of violation of the Kansas Odometer Act. The defendant pleads not guilty.

The Kansas Odometer Act provides that, if in the service, repair, or replacement of an odometer, the odometer is (made) (found) incapable of registering the same mileage as before the service, repair, or replacement of the odometer, it shall be adjusted to read zero and a notice shall be attached permanently to the left door frame of the vehicle specifying the mileage prior to repair or replacement of the odometer, the date on which it was repaired or replaced, and the vehicle identification number.

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

1. That the defendant failed to (adjust) (affix a notice regarding the adjustment of) the odometer of a motor vehicle; and

or

That the defendant (removed) (altered) the notice affixed to a motor vehicle as required by the Kansas Odometer Act; 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. 21-3757(g). Violation of the Act is a severity level 9, nonperson felony.

**59.66 PROMOTING A PYRAMID PROMOTIONAL SCHEME**

The defendant is charged with the crime of promoting a pyramid promotional scheme. The defendant pleads not guilty.

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

1. That the defendant (established) (operated) (advertised) (promoted) a pyramid promotional scheme.
2. That the defendant did so intentionally; and
3. That this act occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

As used in this instruction, "pyramid promotional scheme" means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

[(A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme) (It is not a defense that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation).]

**Notes on Use**

For authority, see K.S.A. 21-3762, enacted in 1997.

Violation of the Act is a severity level 9, nonperson felony.

The bracketed paragraph should be used only if the issue is raised.



PATTERN INSTRUCTIONS FOR KANSAS 3d

**59.67 - 59.69 RESERVED FOR FUTURE USE.**

PATTERN INSTRUCTIONS FOR KANSAS 3d

59.70 VALUE IN ISSUE

The State has the burden of proof as to the (value of) (damage to) (amount of) the (property) (services) (money or its equivalent) (communication services) (check[s]) (order[s]) (draft[s]) (which the defendant allegedly [obtained] [damaged] [impaired] [gave]) (over which the defendant allegedly [obtained] [exerted] unauthorized control).

The State claims that the (value of) (damage to) (amount of) the (property) (services) (money or its equivalent) (communication services) (check[s]) (order[s]) (draft[s]) involved herein was in the amount of

---

It is for you to determine the amount and enter it on the verdict form furnished.

Notes on Use

It is necessary to use this instruction with PIK 3d 68.11, Verdict Form - Value in Issue, when an issue exists. The appropriate alternative should be used and dollar amount inserted in the blanks.

For authority, see *State v. Piland*, 217 Kan. 689, 538 P.2d 666 (1975); *State v. Green*, 222 Kan. 729, 567 P.2d 893 (1977); *State v. Smith*, 215 Kan. 865, 528 P.2d 1195 (1974).

PATTERN INSTRUCTIONS FOR KANSAS 3d

CHAPTER 60.00

CRIMES AFFECTING GOVERNMENTAL FUNCTIONS

	PIK Number
Treason . . . . .	60.01
Sedition . . . . .	60.02
Practicing Criminal Syndicalism . . . . .	60.03
Permitting Premises To Be Used For Criminal Syndicalism . . . . .	60.04
Perjury . . . . .	60.05
Corruptly Influencing A Witness . . . . .	60.06
Intimidation Of A Witness Or Victim . . . . .	60.06-A
Aggravated Intimidation Of A Witness Or Victim . . . . .	60.06-B
Unlawful Disclosure Of Authorized Interception Of Communications . . . . .	60.06-C
Compounding A Crime . . . . .	60.07
Obstructing Legal Process . . . . .	60.08
Obstructing Official Duty . . . . .	60.09
Escape From Custody . . . . .	60.10
Aggravated Escape From Custody . . . . .	60.11
Aiding Escape . . . . .	60.12
Aiding A Felon Or Person Charged As A Felon . . . . .	60.13
Aiding A Person Convicted Of Or Charged With Committing A Misdemeanor . . . . .	60.14
Failure To Appear Or Aggravated Failure To Appear . . . . .	60.15
Attempting To Influence A Judicial Officer . . . . .	60.16
Interference With The Administration Of Justice . . . . .	60.17
Corrupt Conduct By Juror . . . . .	60.18
Falsely Reporting A Crime . . . . .	60.19
Performance Of An Unauthorized Official Act . . . . .	60.20
Simulating Legal Process . . . . .	60.21
Tampering With A Public Record . . . . .	60.22
Tampering With Public Notice . . . . .	60.23
False Signing Of A Petition . . . . .	60.24
False Impersonation . . . . .	60.25
Aggravated False Impersonation . . . . .	60.26

PATTERN INSTRUCTIONS FOR KANSAS 3d

Traffic In Contraband In A Correctional Institution . . . . .	60.27
Criminal Disclosure Of A Warrant . . . . .	60.28
Interference With The Conduct Of Public Business	
In A Public Building . . . . .	60.29
Dealing In False Identification Documents . . . . .	60.30
Harassment Of Court By Telefacsimile . . . . .	60.31
Aircraft Registration . . . . .	60.32
Fraudulent Registration Of Aircraft . . . . .	60.33
Fraudulent Aircraft Registration - Supplying False	
Information . . . . .	60.34
Aircraft Identification - Fraudulent Acts . . . . .	60.35

**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 intentionally, knowingly and falsely (swore) (testified) (affirmed) (declared) (subscribed) to a material fact upon (his)(her) oath or affirmation legally administered by a person authorized to administer oaths; and

or

That the defendant intentionally, knowingly and falsely subscribed as true and correct under penalty of perjury a material matter in a (declaration) (verification) (certificate) (statement); 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. 21-3805. Perjury is a severity level 7, nonperson felony if the false statement is made upon the trial of a felony charge. Perjury is a severity level 9, nonperson felony if the false statement is made in a cause, matter or proceeding other than the trial of a felony charge or is made under penalty of perjury in any declaration, verification, certificate or statement as provided in K.S.A. 53-601 and K.S.A. 75-5743.

Comment

In *State v. Bingham*, 124 Kan. 61, 257 Pac. 951 (1927), it was held that the question of whether false testimony is material in a perjury case is to be determined as a question of law by the trial court and not as a question of fact by the jury. In order to constitute perjury under the statute, it is essential that the false testimony be on a material matter. The false statements relied upon, however, need not bear directly on the ultimate issue to be determined; it is sufficient if they relate to collateral matters upon which evidence would have been admissible. For cases related to this subject, see *State v. Elder*, 199 Kan.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

607, 433 P.2d 462 (1967); *State v. Frames*, 213 Kan. 113, 119, 515 P.2d 751 (1973); *State v. Edgington*, 223 Kan. 413, 573 P.2d 1059 (1978).

However, in *United States v. Gaudin*, 515 U.S. 506, 132 L.Ed.2d 444, 115 S.Ct. 2310 (1995), the Court held the element of materiality in a perjury prosecution under 18 U.S.C. § 1001 must be resolved by a jury and the trial judge's refusal to submit the question of materiality to the jury was violative of the defendant's Fifth and Sixth Amendment rights. It was also noted in *Gaudin* that the parties agreed upon the following definition of "materiality":

"the statement must have a natural tendency to influence, or be capable of influencing, the decision of the decision making body to which it was addressed."

PATTERN INSTRUCTIONS FOR KANSAS 3d

**60.27 TRAFFIC IN CONTRABAND IN A CORRECTIONAL INSTITUTION**

The defendant is charged with the crime of traffic in contraband in a correctional institution. The defendant pleads not guilty.

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

1. That the defendant intentionally  
[(took) (attempted to take) (sent) (attempted to send)] [name of (contraband) (firearms) (ammunition) (explosives) (controlled substance)]  
[(into) (upon the grounds of) (from)]  
or  
[possessed name of (contraband) (firearms) (ammunition) (explosives) (controlled substance) in]  
or  
[distributed name of (contraband) (firearms) (ammunition) (explosives) (name of controlled substance) within]  
a correctional institution;
  2. That the defendant did so without the consent of the administrator of the correctional institution;  
[and]
  - [3. That the defendant was an employee of a correctional institution; and]
- [3.] or [4.] That this act occurred on or about the \_\_\_ day of \_\_\_\_\_, 19 \_\_, in \_\_\_\_\_ County, Kansas.

“Correctional institution” means any (state correctional institution or facility) (conservation camp) (state security hospital) (juvenile correctional facility) (community correction center or facility used for detention or confinement) (juvenile detention facility) (jail).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Notes on Use

For authority, see K.S.A. 21-3826. Under this statute, any item may be considered contraband. The particular item(s) should be designated in the instruction. Traffic in any contraband in a correctional institution is a severity level 6, nonperson felony, unless the offense is committed by an employee of a correctional institution, in which case it is a severity level 5, nonperson felony. In addition, if the contraband is firearms, ammunition, explosives, or a controlled substance, as defined in subsection (e) of K.S.A. 65-4101, it is a severity level 5, nonperson felony.

Optional paragraph 3 should be used when the state has charged a severity level 5, nonperson felony based solely on the defendant's status as an employee of a correctional institution at the time of commission of the charged act.

In cases where the state has charged a severity level 5, nonperson felony and there is an issue of fact regarding the type of contraband involved or the defendant's status as an employee of the correctional institution, an alternative verdict form should be used.



PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

**60.28 CRIMINAL DISCLOSURE OF A WARRANT**

The defendant is charged with criminal 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 intentionally disclosed the fact that a (search warrant) (warrant for arrest) had been (applied for) (issued);  
or  
That the defendant intentionally 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 made at the request of a law enforcement officer for the purpose of assisting in the execution thereof; 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. 21-3827. Criminal disclosure of a warrant is a class B, nonperson misdemeanor.

Comment

Criminal sanctions of this section may not be imposed for publishing information obtained from public records. *State v. Stauffer Communications, Inc.*, 225 Kan. 540, 541, 543, 545, 548, 592 P.2d 891 (1979).

Disclosure by personnel of a law enforcement agency for the purpose of encouraging the person named in the warrant to voluntarily surrender is not prohibited by this statute.

A 1986 legislative amendment excepted warrants issued in child abduction cases from the application of this statute, unless the Court issuing such warrant specifically prohibited such disclosure.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Comment

For extensive comment, see *Kansas Judicial Council Bulletin*, April 1968, p. 94.

Installation or use of an electronic device to record communications transmitted by telephone with consent of the person in possession or control of the facilities for such communication is not unlawful, and a recorded telephone conversation under these circumstances is admissible in evidence. *State v. Wigley*, 210 Kan. 472, 502 P.2d 819 (1972).

Possession and control are discussed and defined. *State v. Bowman National Security Agency, Inc.*, 231 Kan. 631, 647 P.2d 1288 (1982).

A telephone company, having reasonable grounds to suspect its billing procedures are being bypassed by electronic device, may monitor any telephone from which it reasonably believes illegal calls are being placed. *State v. Hruska*, 219 Kan. 233, 547 P.2d 732 (1976).

In *State v. Martin*, 232 Kan. 778, 658 P.2d 1024 (1983), on appeal from a trial court judgment of acquittal on the ground that the statute did not clearly proscribe defendant's actions, it was held that defendant's acts in inviting women to his attic studio to be photographed while modeling clothes and photographing them through a one-way mirror while they were changing clothes violated (1)(a) of the statute. Entry and observe are defined.

In *State v. Roudybush*, 235 Kan. 834, 686 P.2d 100 (1984), defendant sought to suppress evidence obtained by a search warrant based on information received through use of a transmitting device concealed on the person of a police informant who entered defendant's home. It was held the use of the concealed transmitter did not violate K.S.A. 21-4001(1)(a) and (b) or 21-4002(1)(a) and (b). Any party to a private conversation may waive the right of privacy and a non-consenting party has no Fourth Amendment or statutory right to challenge that waiver. Interception of a private message requires the consent of either sender or receiver, not both.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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)(she) intercepted, disclosed, or used a communication in the performance of (his)(her) legitimate duties.

Notes on Use

For authority, see K.S.A. 21-4001(c). If this instruction is used, PIK 3d 52.08, Affirmative Defenses - Burden of Proof, should be given.

**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 intentionally 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); and

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) (any establishment which is engaged in selling food or beverages to the public for consumption upon the premises) (any place of recreation, amusement, exhibition or entertainment which is open to the public); and

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; and

or

- (d) the full and equal use and enjoyment of the services, facilities, privileges and advantages of any establishment which offers personal or professional services to members of the public; and

or

PATTERN INSTRUCTIONS FOR KANSAS 3d

- (e) the full and equal exercise of the right to vote in any election held pursuant to Kansas law; 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. 21-4003. Denial of civil rights is a class A, nonperson misdemeanor.

Comment

For comment, see *Kansas Judicial Council Bulletin*, April 1968, p. 97. See annotation, Participation of Student in Demonstration on or near Campus as Warranting Expulsion or Suspension from School or College, 32 A.L.R. 864.

It was held in *State v. Barclay*, 238 Kan. 148, 708 P.2d 972 (1985) that the portion of the statute quoted in paragraph 1(d) of the instruction was not applicable under the facts to an ordained minister operating a wedding chapel who refused on grounds of his religious beliefs to perform a marriage ceremony for a black person and a white person.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Comment

In *State v. Huffman*, 228 Kan. 186, 612 P.2d 630 (1980), the Court found the statute as applied to conduct involving only speech was facially overbroad. It upheld the statute by authoritatively construing it to prohibit only speech amounting to "fighting words." In *Chaplinsky v. New Hampshire*, 315 U.S. 568, 86 L.Ed. 1031, 62 S.Ct. 766 (1942), the Court upheld a state statute which, as authoritatively construed by the state court, prohibited only words "plainly likely to cause a breach of the peace by the addressee." See also, *State v. Heiskell*, 8 Kan. App. 2d 667, 666 P.2d 207 (1983), disapproving former PIK 2d 63.01 as applied to speech.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 (disorderly conduct) (a riot); and  
or  
That the defendant in a lawfully assembled group of not less than five persons agreed to engage in (disorderly conduct) (a riot); 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. 21-4102. Unlawful assembly is a class B, nonperson misdemeanor. A definition of disorderly conduct or riot must be given with this instruction. See PIK 3d 63.01, Disorderly Conduct or PIK 3d 63.04, Riot. For instruction involving conspiracy, see PIK 3d 55.03, Conspiracy.

**Comment**

See *Kansas Judicial Council Bulletin*, April 1968, p.100. 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.

K.S.A. 21-4102 is of questionable constitutional validity because no overt act is required to constitute the offense. Traditionally, a person is punished for criminal acts which he or she commits not what he or she is thinking of committing. If an overt act is committed, the crime becomes conspiracy, K.S.A. 21-3302, PIK 3d 55.03, Conspiracy.



PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 intentionally failed to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer; and
2. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Unlawful assembly means 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. Remaining at an unlawful assembly is a class A, nonperson misdemeanor. See PIK 3d 63.01, Disorderly Conduct and PIK 3d 63.04, Riot, for definitions of those offenses.

Comment

See Comment to PIK 3d 63.02, Unlawful Assembly. This instruction applies not only to participants in the unlawful assembly but to bystanders.

PATTERN INSTRUCTIONS FOR KANSAS 3d

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:

- A. 1. That the defendant used force or violence which resulted in a breach of the public peace;
- 2. That the defendant acted in a group of five or more persons;
- 3. That the defendant acted without authority of law; and

OR

- B. 1. That the 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 the defendant acted in a group of five or more persons;
- 4. That the defendant acted without authority of law; and

[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. Riot is a class A person misdemeanor. For definition of breach of the public peace, see Chapter 53.00, Definitions and Explanations of Terms.

Comment

PIK 3d 63.03 through 63.05 define crimes deemed inimical to the public peace. See *Kansas Judicial Council Bulletin*, April 1968, p.100 for differentiation between unlawful assembly, riot and incitement to riot. The distinction between riot and incitement to riot was noted in *State v. Dargatz*, 228 Kan. 322, 326-327, 614 P.2d 430 (1980), where the Court approved the substance of PIK 2d 63.04, Riot and 63.05, Incitement to Riot.

PATTERN INSTRUCTIONS FOR KANSAS 3d

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 intentionally 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; 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. 21-4105. Incitement to riot is a severity level 8, person felony. If further definition of riot is necessary, see K.S.A. 21-4104 or PIK 3d 63.04, Riot.

Comment

See Comment to PIK 3d 63.04, Riot. Incitement to riot is a specific intent crime. *State v. Dargatz*, 228 Kan. 322, 331, 614 P.2d 430 (1980). Hence, in a proper case, an instruction on voluntary intoxication may be appropriate. See PIK 3d 54.12, Intoxication.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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; 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. 21-4106. Maintaining a public nuisance is a class C misdemeanor.

Claim No. 1 should be completed by specifying the act or omission alleged to constitute the nuisance.

**Comment**

For examples of public nuisances, see *Kansas Judicial Council Bulletin*, April 1968, p.100.

PATTERN INSTRUCTIONS FOR KANSAS 3d

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 some person or persons intentionally \_\_\_\_\_  
\_\_\_\_\_;
2. That this act or omission endangered the public health, safety or welfare;
3. That the defendant knowingly permitted this condition on property under (his)(her) control; 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. 21-4107 and 21-4106. Permitting a public nuisance is a class C misdemeanor.

Claim No. 1 should be completed by specifying the act or omission alleged to constitute the nuisance. If the defendant committed the act or omission constituting the nuisance, the crime is Maintaining a Public Nuisance, PIK 3d 63.06.

Comment

For examples of public nuisances, see *Kansas Judicial Council Bulletin*, April 1968, p.100.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**63.08 VAGRANCY**

**The statute upon which this instruction was based (K.S.A. 21-4108) was repealed, effective July 1, 1993.**

PATTERN INSTRUCTIONS FOR KANSAS 3d

**63.09 PUBLIC INTOXICATION**

The statute upon which this instruction was based  
(K.S.A. 21-4109) was repealed in 1977.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 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 transmitted in any manner to the fire department of any (city) (township) (other municipality) an alarm of fire;  
or  
That the defendant made a call in any manner for (police) (fire) (medical) (specify other emergency service from K.S.A. 12-5301 et seq.) emergency service assistance;
2. That the defendant did so knowing that there was no reasonable ground to believe (a fire existed) (emergency service assistance was needed); 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. 21-4110. Giving a false alarm is a class A, nonperson misdemeanor. See PIK 3d 56.23, Criminal Threat, and 56.23-B, Aggravated Criminal Threat, which concern threats of violence communicated with the intent to terrorize or to cause evacuation of buildings or transportation facilities.

#### Comment

*State v. Long*, 234 Kan. 580, 675 P.2d 832 (1984) distinguishes a lesser included offense from a lesser degree of the same crime. The Committee does not believe that giving a false alarm is either a lesser included offense or a lesser degree of the crime of criminal threat.



PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

**63.11 CRIMINAL DESECRATION - FLAGS**

**The defendant is charged with criminal desecration.  
The defendant pleads not guilty.**

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

- 1. That the defendant, by means other than by fire or explosive, intentionally (damaged) (defaced) (destroyed) the (flag) (ensign) ( \_\_\_\_\_, a symbol) of (the United States) (Kansas) in which another, \_\_\_\_\_, had a property interest without the consent of such other person; 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. 21-4111. Criminal desecration as used herein is a class A nonperson misdemeanor. The Committee ventures no opinion as to the significance of "ensign" or "symbol". For other kinds of criminal desecration, see PIK 3d 63.12, Criminal Desecration - Monuments/Cemeteries/Places of Worship, and 63.13, Criminal Desecration - Dead Bodies.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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) (knowingly permitted a [telephone] [telefacsimile communication machine] under [his][her] control to be used) (knowingly transmitted a telefacsimile communication) to:
  - (a) (make) (transmit) any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent with the intent to harass; and  
or
  - (b) intentionally abuse, threaten or harass any person at the called number, whether or not conversation ensues; and  
or
  - (c) cause the telephone of another to ring repeatedly with intent to harass any person at the called number; and  
or
  - (d) make repeated (telephone calls during which conversation ensued) (transmissions of telefacsimile communications), solely to harass any person at the (called) (receiving) number; and  
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 be identified and state that it is a recording; and
2. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, in \_\_\_\_\_ County, Kansas.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Notes on Use

For authority, see K.S.A. 21-4113. Harassment by telephone is a class A nonperson misdemeanor. The statute provides that "telephone communication" includes telefacsimile communication. For a criminal charge of refusal to yield a party line, see PIK 3d 64.13. For criminal threat, see PIK 3d 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).

In *State v. Thompson*, 237 Kan. 562, 701 P.2d 694 (1985), intent to harass was determined to be an element of the crime of harassment by telephone under K.S.A. 21-4113(1)(a).

PATTERN INSTRUCTIONS FOR KANSAS 3d

2. That the defendant knew \_\_\_\_\_ had been convicted of a felony and had been found to be in possession of a firearm at the time of the commission of the offense; 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. 21-4203. Criminal disposal of firearms is a class A, nonperson misdemeanor. The appropriate alternative situation should be used.

Alternative C concerns the transfer or sale of a firearm to anyone convicted of a specified felony or released from imprisonment for such a felony within five years of the act charged. For the purposes of this alternative, the specified felony conviction is defined as any felony except a felony as defined by K.S.A. 21-3401; 21-3402; 21-3403; 21-3404; 21-3410; 21-3411; 21-3414; 21-3415; 21-3419; 21-3420; 21-3421; 21-3427; 21-3442; 21-3502; 21-3506; 21-3518; 21-3716; 65-4127a or 65-4127b; or K.S.A. 65-4160 through 65-4165, and amendments thereto, or a crime under the law of another jurisdiction which is substantially the same as such felony. It is important to note that there is no longer any barrel length specification.

Alternative D concerns the transfer or sale of a firearm to anyone convicted of a specified felony or released from imprisonment for such a felony within 10 years of the act. The specified felony conviction for this alternative is any felony defined by K.S.A. 21-3401; 21-3402; 21-3403; 21-3404; 21-3410; 21-3411; 21-3414; 21-3415; 21-3419; 21-3420; 21-3421; 21-3427; 21-3442; 21-3502; 21-3506; 21-3518; 21-3716; 65-4127a, 65-4127b; or K.S.A. 65-4160 through 65-4164, and amendments thereto, or a crime under the law of another jurisdiction which is substantially the same as such felony.

Alternative C has the proviso that the transferee "was found not to have been in possession of a firearm at the time of the commission of the offense." The specified crimes for alternative D have the proviso that the transferee "was not found to have been in the possession of a firearm at the time of the commission of the offense." The Committee believed it improbable that a court would make those specific findings unless by implication as to alternative D by the fact of conviction of a crime that did not involve the use of a firearm as an element of the charge. It would be hard to imagine a situation in which a court made the specific finding that one was not in possession of a firearm at the time of the commission of the crime. Similarly, in alternative E it presumed that the finding of possession of a firearm at the time of the commission of the offense would be derived from the elements of the charge.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Note that while K.S.A. 21-4203 refers to K.S.A. 65-4127a and 65-4127b, the history of the referenced statutes indicates that they were repealed in 1993. However, the Revisor's notes in K.S.A. 1996 Supp. indicate that the provisions of K.S.A. 65-4127a are contained in K.S.A. 65-4160 and 65-4161 and the provisions of K.S.A. 65-4127b are contained in K.S.A. 65-4162, 65-4163 and 65-4164 which are also referred to in K.S.A. 21-4203.

<u>Alternative</u>	<u>Status of Transferee</u>	<u>Barrel Length</u>	<u>Prior Crime</u>	<u>Prior Crime Time Limit</u>
A.	Less than 18 Years	Less than 12"	N/A	N/A
B.	Addict and User	N/A	N/A	N/A
C.	Felon	N/A	Specified felony without firearm	Five years
D.	Felon	N/A	Specified felony without firearm	Ten years
E.	Felon	N/A	Any felony with firearm	No time limit

### Comment

When a prior conviction is an element of the crime charged it is error to refuse to give a limiting instruction as to evidence of the prior conviction. *State v. Denney*, 258 Kan. 437, 905 P.2d 657 (1995).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**64.16 UNLAWFULLY OBTAINING PRESCRIPTION-ONLY DRUG**

The defendant is charged with the crime of obtaining a prescription-only drug by fraudulent means. The defendant pleads not guilty.

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

1. That the defendant intentionally made, altered or signed a prescription order and the defendant was not a practitioner at the time of the commission of the act;

or

That the defendant delivered a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner;

or

That the defendant possessed a prescription order with intent to deliver it and knowing it to have been made, altered or signed by a person other than a practitioner;

or

That the defendant possessed a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner;

or

That the defendant provided false information to a practitioner for the purpose of obtaining a prescription-only drug; and

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

Pharmacist means any natural person registered to practice pharmacy.

Practitioner means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, scientific investigator, or other person licensed, registered

## PATTERN INSTRUCTIONS FOR KANSAS 3d

or otherwise authorized by law to administer, prescribe and use prescription-only drugs in the course of professional practice or research.

**Prescription-only drug means any drug required by the federal or state food, drug and cosmetic act to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription."**

**Prescription order means a written, oral or telephonic order for a prescription-only drug to be filled by a pharmacist. Prescription order does not mean a drug dispensed pursuant to such an order.**

### Notes on Use

For authority, see K.S.A. 21-4214. Obtaining a prescription-only drug by fraudulent means is a class A, nonperson misdemeanor for the first offense and a severity level 9, nonperson felony for a second or subsequent offense.

K.S.A. 21-4214 specifically provides that if a prosecution for unlawfully obtaining prescription-only drugs may be brought under the provisions of K.S.A. 65-4127a, 65-4127b, or 65-4160 through 65-4164 prosecutions may not be brought under this section.

Note that while K.S.A. 21-4214 refers to K.S.A. 65-4127a and 65-4127b, the history of the referenced statutes indicate that they were repealed in 1993. However, the Revisor's notes in K.S.A. 1996 Supp. indicate that the provisions of K.S.A. 65-4127a are contained in K.S.A. 65-4160 and 65-4161 and the provisions of K.S.A. 65-4127b are contained in K.S.A. 65-4162, 65-4163 and 65-4164 which are also referred to in K.S.A. 21-4203.



PATTERN INSTRUCTIONS FOR KANSAS 3d

**64.17 UNLAWFULLY OBTAINING PRESCRIPTION-ONLY DRUG FOR RESALE**

The defendant is charged with the crime of obtaining a prescription-only drug by fraudulent means for resale. The defendant pleads not guilty.

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

1. That the defendant intentionally obtained a prescription-only drug by (making) (altering) (signing) a prescription order at a time when defendant was not a practitioner;

or

That the defendant intentionally obtained a prescription-only drug by delivering a prescription order, knowing it to have been (made) (altered) (signed) by a person other than a practitioner;

or

That the defendant intentionally obtained a prescription-only drug by providing false information to a practitioner;

2. That the defendant (intentionally sold the prescription-only drug so obtained) (intentionally offered for sale the prescription-only drug so obtained) (intentionally possessed with intent to sell the prescription-only drug so obtained); and
3. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

Pharmacist means any natural person registered to practice pharmacy.

Practitioner means a person licensed to practice medicine and surgery, dentist, podiatrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise authorized by law to administer, prescribe and use prescription-only drugs in the course of professional practice or research.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

**Prescription-only drug means any drug required by the federal or state food, drug and cosmetic act to bear on its label the legend "Caution: Federal law prohibits dispensing without prescription."**

**Prescription order means a written, oral or telephonic order for a prescription-only drug to be filled by a pharmacist. Prescription order does not mean a drug dispensed pursuant to such an order.**

### Notes on Use

For authority, see K.S.A. 21-4215. Obtaining a prescription-only drug by fraudulent means for resale is a severity level 6, nonperson felony. The appropriate alternative situation should be used.

The provisions of this section are not applicable to prosecutions involving prescription-only drugs which could be brought under the Uniform Controlled Substances Act and to which the provisions of K.S.A. 65-4127a, 65-4127b, or 65-4160 through 65-4164 and amendments thereto, would be applicable. See PIK 3d 67.13-67.16.

Note that while K.S.A. 21-4215 refers to K.S.A. 65-4127a and 65-4127b, the history of the referenced statutes indicate that they were repealed in 1993. However, the Revisor's notes in K.S.A. 1996 Supp. indicate that the provisions of K.S.A. 65-4127a are contained in K.S.A. 65-4160 and 65-4161 and the provisions of K.S.A. 65-4127b are contained in K.S.A. 65-4162, 65-4163 and 65-4164, which are also referred to in K.S.A. 21-4203.

PATTERN INSTRUCTIONS FOR KANSAS 3d

CHAPTER 66.00

CRIMES AFFECTING 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
Knowingly Employing An Alien Illegally Within The United States . . . . .	66.09
Equity Skimming . . . . .	66.10

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 an express or implied (threat) (promise) that the defendant would (cause the competition of \_\_\_\_\_ to be diminished or eliminated) (cause the price of goods or services [purchased] [sold] in the business of \_\_\_\_\_ to be increased, decreased, or maintained at a stated level) (protect the [property used in the business of \_\_\_\_\_] [person of \_\_\_\_\_] [family of \_\_\_\_\_] from injury by violence or other unlawful means); 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. 21-4401. Racketeering is a severity level 7, nonperson felony. The name of the victim should be placed in the blank spaces in paragraphs (1) and (2). Where there is an issue as to the making of a "threat" or "promise" the jury should be informed that the threat or promise may be express or implied.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 express or implied contracts with a debtor whereby said debtor agreed to pay defendant a certain amount of money periodically; and
2. That the defendant agreed for a consideration to distribute such money among certain creditors of the debtor; 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. 21-4402. Debt adjusting is a class B, nonperson misdemeanor.

The statute does not apply to debt adjusting incidental to the practice of law in the State of Kansas.

**Comment**

For cases discussing constitutionality of statute, see *Blue v. McBride*, 252 Kan. 894, 850 P.2d 852 (1993); *State ex rel. v. Koscot Interplanetary, Inc.*, 212 Kan. 668, 512 P.2d 416 (1973).

PATTERN INSTRUCTIONS FOR KANSAS 3d

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 \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_  
County, Kansas.

Merchandise means any object, 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. Deceptive commercial practices is a class B nonperson misdemeanor.

The term "person" is defined in section (b)(2) of the statute and has not been included in the instruction since the status of the person deceived would normally be a question of law. 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 knowledge 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.

PATTERN INSTRUCTIONS FOR KANSAS 3d

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)(her) 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 the defendant would improperly perform (his)(her) duties as a sports official; and
2. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

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. 21-4407. Receiving a sports bribe is a class A, nonperson misdemeanor. The definitions contained in the instruction are the same as those in K.S.A. 21-4406 and as set forth in PIK 3d 66.06, Sports Bribery.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 did so with the intent to influence the outcome of such contest; and
3. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

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. Tampering with a sports contest is a severity level 9, nonperson felony.



PATTERN INSTRUCTIONS FOR KANSAS 3d

**66.09 KNOWINGLY EMPLOYING AN ALIEN ILLEGALLY  
WITHIN THE UNITED STATES**

The defendant is charged with the crime of knowingly employing an alien illegally within the United States. The defendant pleads not guilty.

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

1. That the defendant employed \_\_\_\_\_ who performed work for the defendant within the State of Kansas;
2. That during the time \_\_\_\_\_ was so employed (he)(she) was an alien illegally within the United States;
3. That during the time of the employment the defendant knew \_\_\_\_\_ was illegally within the United States; and
4. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Kansas.

(The statute making the employment of an alien illegally within the United States an offense is not applicable to aliens who have entered the United States illegally and thereafter have been permitted to remain within the United States, temporarily or permanently, pursuant to federal law.)

Notes on Use

For authority, see K.S.A. 21-4409. Knowingly employing an alien illegally within the United States is a class C misdemeanor.

If it becomes applicable under the evidence, the last paragraph may be given.

The statute does not state what constitutes permission to remain within the United States. The Committee is of the opinion that the statute should be liberally construed to include cases where an alien has been permitted to remain within the United States by inaction of federal immigration authorities in addition to cases where the immigration authorities have affirmatively acted to permit the alien to remain in the United States.

PATTERN INSTRUCTIONS FOR KANSAS 3d

**66.10 EQUITY SKIMMING**

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

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

1. That the defendant engaged in (a pattern) (the practice) of (purchasing) (acquiring an interest in) one family to four family dwellings (including condominiums and cooperatives) which are subject to a loan secured by a mortgage;
2. That the loan was (in default at the time of purchase) (in default within one year subsequent to the purchase);
3. That the defendant failed to deliver to the (holder of the mortgage) (holder of the certificate of purchase) all rent proceeds received from rental of the property not to exceed the monthly payment of principal and interest required by the note and mortgage;
4. That the defendant (applied) (authorized the application of) rents from such dwellings for the defendant's own use; and
5. That the defendant did so with the intent to defraud; and
6. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ in \_\_\_\_\_ County, Kansas.

Notes on Use

For authority, see K.S.A. 21-4410. Equity skimming is a class A, nonperon misdemeanor.

The statute requires that the rent proceeds be delivered to the holder of the mortgage before sheriff's sale or, after sheriff's sale during the period of redemption, to the holder of a certificate of purchase.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

K.S.A. 65-4101 defines the terms "administer" in paragraph (a), "deliver" or "delivery" in paragraph (g), "dispense" in paragraph (h), "distribute" in paragraph (j), and "person" in paragraph (s).

A sale under the Uniform Controlled Substances Act has a broader meaning than "sale" usually has. Sale under the Act means selling for money, and also includes barter, exchange, or gift, or any offer to do any of these things. It is not necessary that the prohibited substance be the property of the defendant or in his or her physical possession. *State v. Griffin*, 221 Kan. 83, 558 P.2d 90 (1976); *State v. Nix*, 215 Kan. 880, 529 P.2d 147 (1974).

The Uniform Controlled Substances Act, which in 1972 replaced the Uniform Narcotic Drug Act, specifically defines the term "narcotic drug" in K.S.A. 65-4101(p). The section includes "opium and opiate" under the definition and K.S.A. 65-4101(q) presents a detailed definition of "opiate". The Committee believes that for convenience a Court should refer to the substance in question under the generic term "narcotic drug" and insert the name of the specific drug in the appropriate blank. There will be occasions when a Court should include the definitions, either in the same or in additional instructions.

### Comment

Possession is not a lesser included offense of sale. *State v. Woods*, 214 Kan. 739, 522 P.2d 967 (1974).

Sale is a lesser included offense of sale within 1,000 feet of a school. *State v. Josenberger*, 17 Kan. App. 2d 167, 836 P.2d 11 (1992).

K.S.A. 65-4161 qualifies the acts specified as unlawful with the premise, "Except as authorized by the uniform controlled substances act." The Uniform Controlled Substances Act contains a number of provisions under which narcotic drugs, as well as other controlled substances (which term is defined in K.S.A. 65-4101(e)), may be manufactured, sold, or otherwise produced, transported, dispensed, and used. See, for example, K.S.A. 65-4116, 65-4117, 65-4122, 65-4123, and 65-4138.

Defendant has the burden of introducing evidence as a matter of defense that brings defendant within an exception or exemption in the statute creating the offense if such exception or exemption is not part of the description of the offense. *State v. Carter*, 214 Kan. 533, 521 P.2d 294 (1974).

A defendant's knowledge of the proximity of a school is not an essential element of the crime of selling cocaine within 1,000 feet of a school. *State v. Swafford*, 20 Kan. App. 2d 563, 890 P.2d 368, *pet. rev. den.* 257 Kan. 1095 (1995); *State v. Penny*, 22 Kan. App. 2d 212, 914 P.2d 962 (1996).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**67.13-C NARCOTIC DRUGS AND CERTAIN STIMULANTS -  
POSSESSION OR OFFER TO SELL WITH INTENT TO  
SELL**

The defendant is charged with the crime of violation of the Uniform Controlled Substances Act of the State of Kansas as it pertains to a (narcotic drug) (stimulant) known as \_\_\_\_\_. The defendant pleads not guilty.

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

1. That the defendant (possessed) (offered to sell) a (narcotic drug) (stimulant) known as \_\_\_\_\_;
2. That the defendant did so with the intent to (sell) (sell, deliver or distribute) it;
- [3. That the defendant did so in, on or within 1,000 feet of school property upon which was located a school;
4. That the defendant was 18 years of age or over;] and [3.] or [5.] That the defendant did so on or about the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_, in \_\_\_\_\_ County, Kansas.

[School means a structure used by a unified school district or an accredited nonpublic school for student instruction, attendance or extracurricular activities of pupils enrolled in kindergarten or any of grades 1 through 12.]

Notes on Use

For authority, see K.S.A. 65-4161 which was enacted in 1994. The previous statute, K.S.A. 65-4127a(b), was repealed. A first conviction under K.S.A. 65-4161 is a drug severity level 3 felony. Upon conviction for a second offense, such person shall be guilty of a drug severity level 2 felony, and upon conviction for a third or subsequent offense, such person shall be guilty of a drug severity level 1 felony. Prior convictions for substantially similar offenses from other jurisdictions may be used to increase an offender's punishment.

Upon conviction of a first offense, the defendant is guilty of a drug severity level 2 felony if the defendant was 18 years of age or over and the substances involved were possessed with intent to sell, deliver or distribute or offered for sale in, on or within 1,000 feet of any school property upon which was located a school structure. If the defendant is charged with such a violation, the bracketed elements and definition of "school" should be included in the instruction.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

The statute specifically relates to "any opiates, opium, or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3), or (f)(1) of K.S.A. 65-4107 and amendments thereto." Such stimulants are amphetamine, methamphetamine and their immediate precursors.

If a controlled substance analog is involved, see PIK 3d 67.26.

K.S.A. 65-4101 defines the terms "deliver" or "delivery" in paragraph (g) and "distribute" in paragraph (j).

A sale under the Uniform Controlled Substances Act has a broader meaning than "sale" usually has. Sale under the Act means selling for money, and also includes barter, exchange, or gift, or any offer to do any of these things. It is not necessary that the prohibited substance be the property of the defendant or in his or her physical possession. *State v. Griffin*, 221 Kan. 83, 558 P.2d 90 (1976); *State v. Nix*, 215 Kan. 880, 529 P.2d 147 (1974).

The Uniform Controlled Substances Act, which in 1972 replaced the Uniform Narcotic Drug Act, specifically defines the term "narcotic drug" in K.S.A. 65-4101(p). The section includes "opium and opiate" under the definition and K.S.A. 65-4101(q) presents a detailed definition of "opiate". The Committee believes that for convenience a Court should refer to the substance in question under the generic term "narcotic drug" and insert the name of the specific drug in the appropriate blank. There will be occasions when a Court should include the definitions, either in the same or in additional instructions.

### Comment

The crime of offering to sell a controlled substance requires proof of the specific intent to sell and not just proof of an intentional offer. *State v. Werner*, 8 Kan. App. 2d 364, 657 P.2d 1136 (1983).

Sale is a lesser included offense of sale within 1,000 feet of a school. *State v. Josenberger*, 17 Kan. App. 2d 167, 836 P.2d 11 (1992).

K.S.A. 65-4161 qualifies the acts specified as unlawful with the premise, "Except as authorized by the uniform controlled substances act." The Uniform Controlled Substances Act contains a number of provisions under which narcotic drugs, as well as other controlled substances (which term is defined in K.S.A. 65-4101(e)), may be manufactured, sold, or otherwise produced, transported, dispensed, and used. See, for example, K.S.A. 65-4116, 65-4117, 65-4122, 65-4123, and 65-4138.

Defendant has the burden of introducing evidence as a matter of defense that brings defendant within an exception or exemption in the statute creating the offense if such exception or exemption is not part of the description of the offense. *State v. Carter*, 214 Kan. 533, 521 P.2d 294 (1974).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

In *State v. Tucker*, 253 Kan. 38, 43, 853 P.2d 17 (1993), it was held that possession and intent to sell are separate elements of the crime of possession with intent to sell cocaine. A finding of guilty of possession with the intent to sell requires proof of possession. Conversely, proof of possession without proof of intent to sell is still sufficient proof of a crime. Possession of cocaine is not a lesser degree of possession with intent to sell because both are class C felonies. It is, however, an included crime as defined in K.S.A. 21-3107(2)(d).

A defendant's knowledge of the proximity of a school is not an essential element of the crime of selling cocaine within 1,000 feet of a school. *State v. Swafford*, 20 Kan. App. 2d 563, 890 P.2d 368, *pet. rev. den.* 257 Kan. 1095 (1995); *State v. Penny*, 22 Kan. App. 2d 212, 914 P.2d 962 (1996).

PATTERN INSTRUCTIONS FOR KANSAS 3d

CHAPTER 68.00  
CONCLUDING INSTRUCTIONS AND VERDICT FORMS

	PIK Number
Concluding Instruction .....	68.01
Concluding Instruction - Capital Murder - Sentencing Proceeding .....	68.01-A
Guilty Verdict - General Form .....	68.02
Not Guilty Verdict - General Form .....	68.03
Punishment - Class A Felony .....	68.04
Verdicts - Class A Felony .....	68.05
Not Guilty Because Of Mental Disease Or Defect .....	68.06
Multiple Counts - Verdict Instruction .....	68.07
Multiple Counts - Verdict Forms .....	68.08
Lesser Included Offenses .....	68.09
Alternative Charges .....	68.09-A
Lesser Included Offenses - Verdict Forms .....	68.10
Verdict Form - Value In Issue .....	68.11
Deadlocked Jury .....	68.12
Post-Trial Communication With Jurors .....	68.13
Murder In The First Degree - Mandatory 40 Year Sentence - Verdict Form For Life Imprisonment With Parole Eligibility After 15 Years .....	68.14
Murder In The First Degree - Mandatory 40 Year Sentence - Verdict Form For Life Imprisonment With Parole Eligibility After 40 Years .....	68.14-A
Capital Murder - Verdict Form For Sentence Of Death .....	68.14-A-1
Capital Murder - Verdict Form For Sentence Of Death (Alternative Verdict) .....	68.14-B-1
Murder In The First Degree - Premeditated Murder And Felony Murder In The Alternative - Verdict Instruction .....	68.15
Murder In The First Degree - Premeditated Murder And Felony Murder In The Alternative - Verdict Form .....	68.16
Capital Murder - Sentence Of Death - Verdict Form For Sentence As Provided By Law .....	68.17

PATTERN INSTRUCTIONS FOR KANSAS 3d

**68.01 CONCLUDING INSTRUCTION**

**When you retire to the jury room you will first select one of your members as Presiding Juror. The person selected 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\_\_\_\_

**Notes on Use**

For authority, see K.S.A. 22-3421. Absent special circumstances, this concluding instruction should be used in every criminal trial.

**Comment**

"The authority for this instruction is based on the fundamental right of any accused to a trial by jury, §§ 5 and 10 of the Kansas Constitution Bill of Rights, and K.S.A. 22-3403, together with our statute requiring a unanimous verdict under K.S.A. 22-3421." *State v. Cheek*, 262 Kan. 91, 108, 936 P.2d 749 (1997).



PATTERN INSTRUCTIONS FOR KANSAS 3d

**68.06 NOT GUILTY BECAUSE OF MENTAL DISEASE OR DEFECT**

We, the jury, find the defendant not guilty solely because the defendant, at the time of the crime, was suffering from a mental disease or defect which rendered the defendant incapable of possessing the intent required as an element of the crime.

---

**Presiding Juror**

**Notes on Use**

For authority, see K.S.A. 22-3221.

**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. *Nall v. State*, 204 Kan. 636, 638, 465 P.2d 957 (1970).

A jury instruction on diminished capacity is not required. See *State v. Wilburn*, 249 Kan. 678, 822 P.2d 609 (1991).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 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 Presiding Juror.

#### 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 3d 68.08, Multiple Counts - Verdict Forms.

Cited with approval in *State v. Cameron & Bentley*, 216 Kan. 644, 533 P.2d 1255 (1975).

#### Comment

The trial court erred in failing to give this pattern in *State v. Macomber*, 244 Kan. 396, 405-6, 769 P.2d 621, cert. denied 493 U.S. 842 (1989), overruled on other grounds *State v. Rinck*, 260 Kan. 634, 923 P.2d 67 (1996). However, the failure was not reversible error under the circumstances of the case because it did not prejudicially affect the substantial rights of the defendant.

In *Macomber*, the Court stated that "[a] trial court does not have the time to give the thought and do the research which has been put into the preparation of the pattern Criminal Jury Instructions by the Advisory Committee on Criminal Jury Instructions to the Kansas Judicial Council. Therefore, where pattern jury instructions are appropriate, a trial court should use them unless there is some compelling and articulable reason not to do so." *State v. Macomber*, 244 Kan. at 405. See also, *State v. Wilson*, 240 Kan. 606, 610, 731 P.2d 306 (1987).

The trial court's failure to give PIK Crim. 3d 68.07 was not clearly erroneous where there was no real possibility that the jury would have reached a different result had the instruction been given. *State v. Kelly*, 262 Kan. 755, 765, 942 P.2d 579 (1997). See also, *State v. Mitchell*, 262 Kan. 687, 696-7, 942 P.2d 1 (1997).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**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 the defendant guilty of ( principal offense charged ) ( first lesser included offense ) ( second lesser included offense ) or not guilty.

When there is a reasonable doubt as to which of two or more offenses defendant is guilty, (he)(she) may be convicted of the lesser offense only.

Your Presiding Juror should sign the appropriate verdict form. The other verdict forms are to be left unsigned.

Notes on Use

For authority, see K.S.A. 21-3107(2), (3) and 21-3109. A trial judge has a statutory duty to instruct on all lesser offenses of a crime charged regardless of whether requested to do so by a party. However, a defendant's objection to the giving of a lesser constitutes a waiver of objection and the trial court's failure to give a lesser included instruction shall not be a basis for reversal on appeal.

A lesser crime may be an included crime under one of two tests: (1) the statutory elements test or (2) the information/evidence test. *State v. Fike*, 243 Kan. 365, 757 P.2d 724 (1988).

K.S.A. 21-3107(2) is a codification of the rule against multiplicity and provides that an individual may be convicted of either the charged crime or an included crime, but not both.

This instruction should not be used when the crime is first degree murder under the alternative theories of premeditated murder and felony murder. Instead, use PIK 3d 68.15 and 68.16.

Comment

The trial court has a statutory duty to instruct the jury on lesser included offenses under K.S.A. 21-3107(3). This duty arises regardless of whether a party requests the giving of any lesser included instructions. *State v. Moncla*, 262 Kan. 58, 73-74, 936 P.2d 727 (1997). However, in *State v. Coffman*, 260 Kan. 811, 813, 925 P.2d 419 (1996), the Supreme Court noted that under K.S.A. 21-3107(3) a defendant who objects to the giving of a lesser included instruction waives any objection to the failure to instruct.

## PATTERN INSTRUCTIONS FOR KANSAS 3d

In *State v. Fike*, 243 Kan. 365, 757 P.2d 724 (1988), the Supreme Court adopted two tests to determine whether a lesser crime is a lesser included crime under K.S.A. 21-3107(2)(d). The first test is the statutory elements test. If all the statutory elements of the alleged lesser crime are among the statutory elements required to prove the crime charged, then it is a lesser included crime. If this test is not met, then the second test is applied. The second test is to examine the allegations of the information and the evidence to determine whether the crime as charged would necessarily prove the lesser crime. If so, the latter is an included crime upon which the jury must be instructed.

"[A defendant] has a right to an instruction on all lesser included offenses supported by the evidence at trial so long as (1) the evidence when viewed in the light most favorable to the defendant's theory, would justify a jury verdict in accord with the defendant's theory and (2) the evidence at trial does not exclude a theory of guilt on the lesser offense." *State v. Harris*, 259 Kan. 689, 702, 915 P.2d 758 (1996).

The instructions on lesser included offenses should be given in the order of severity, beginning with the offense with the most severe penalties. When instructions on lesser included offenses are given, the jury should be instructed that if there is reasonable doubt as to which of two or more degrees of an offense the defendant is guilty, he may be convicted of the lesser offense only. *State v. Trujillo*, 225 Kan. 320, 590 P.2d 1027 (1979). However, in *State v. Massey*, 242 Kan. 252, 262, 747 P.2d 802 (1987), the Supreme Court held it was not reversible error to fail to give such an instruction.

Conspiracy is not a lesser included offense of a completed or attempted crime under the statutory test of *Fike* because a conspiracy requires an agreement between two or more persons. See *State v. Antwine*, 4 Kan. App. 2d 389, 397-98, 607 P.2d 519 (1980).

Solicitation was not held to be a lesser included offense of aiding and abetting first degree murder. *State v. DePriest*, 258 Kan. 596, 604, 907 P.2d 868 (1995). See also, *State v. Webber*, 260 Kan. 263, 280-2, 918 P.2d 609 (1996), *cert. denied* \_\_\_ U.S. \_\_\_, 136 L.Ed 2d 711, 117 S.Ct. 764 (1997), holding no error by the trial court in failing to instruct on criminal solicitation as a lesser included offense of either conspiracy to commit first degree murder or aiding and abetting first degree murder.

Examples of lesser included offenses are:

1. **Premeditated Murder** - The Court's duty to instruct on the lesser offenses of second degree murder, voluntary and involuntary manslaughter depends on whether the evidence support instructions on any or all of the lesser included offenses. Generally, second degree murder is included where the issue of premeditation may be in doubt. *State v. Yarrington*, 238 Kan. 141, 708 P.2d 524 (1985). Unless there is some evidence of arguments, heat of passion or an unintentional killing, generally voluntary and involuntary manslaughter are not given as lesser included offenses. Reckless second degree murder, also called depraved heart murder, is a lesser included crime

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- of first degree murder. However, absent evidence to support recklessness, there is no duty to instruct. *State v. Pierce*, 260 Kan. 859, 865, 927 P.2d 929 (1996).
2. **Felony Murder** - Ordinarily, there is no lesser included offense where the killing was done in the commission of a felony. *State v. Masqua*, 210 Kan. 419, 502 P.2d 728 (1972), *cert. denied* 411 U.S. 951 (1973); *State v. Nguyen*, 251 Kan. 69, 833 P.2d 937 (1992); *State v. Tyler*, 251 Kan. 616, 840 P.2d 413 (1992); but where there is an issue as to the felony itself, then an instruction on second-degree murder or voluntary manslaughter may be required. *State v. Bradford*, 219 Kan. 336, 548 P.2d 812 (1976); *State v. Strauch*, 239 Kan. 203, 718 P.2d 613 (1986). *State v. Arteaya*, 257 Kan. 874, 896 P.2d 1035 (1995). The instructions concerning lesser included offenses for the charge of felony murder should only be given if the proof of the underlying felony is inconclusive or questionable. *State v. Strauch*, 239 Kan. 203, 218, 718 P.2d 613 (1986).
  3. **Second Degree Murder** - The trial court erred in refusing to instruct on the lesser included offenses of voluntary manslaughter and involuntary manslaughter for the crime of murder in the second degree. *State v. Hill*, 242 Kan. 68, 744 P.2d 1228 (1987). The trial court committed error by failing to instruct on the lesser included offense of involuntary manslaughter for the crime of second degree murder where there was sufficient evidence of self-defense. *State v. Cummings*, 242 Kan. 84, 93, 744 P.2d 858 (1987).
  4. **Voluntary Manslaughter** - Includes involuntary manslaughter, *State v. Williams*, 6 Kan. App. 2d 833, 635 P.2d 1274 (1981).
  5. **Involuntary Manslaughter** - Where an unintentional homicide results from operation of a motor vehicle, vehicular homicide is a lesser included offense. *State v. Choens*, 224 Kan. 402, 580 P.2d 1298 (1978). \* DUI is a lesser included offense where the underlying misdemeanor to the involuntary manslaughter complaint is DUI and all the elements of DUI are required to establish the greater offense. *State v. Adams*, 242 Kan. 20, 26, 744 P.2d 833 (1987). Because an attempt requires a specific intent to commit the crime charged, there is no such crime as attempted involuntary manslaughter, an unintentional killing. *State v. Collins*, 257 Kan. 408, 418, 893 P.2d 217 (1995).
  6. **Attempted Murder** - Aggravated battery is not a lesser included offense of attempted murder. *State v. Daniels*, 223 Kan. 266, 573 P.2d 607 (1977). The offenses of attempted second degree murder and attempted voluntary manslaughter are lesser included crimes of attempted first degree murder. *State v. Dixon*, 252 Kan. 39, 843 P.2d 182 (1992). There is no such crime as attempted felony murder. *State v. Robinson*, 256 Kan. 133, 136, 883 P.2d 764 (1994).
  7. **Aggravated Kidnapping** - Kidnapping may be a lesser included offense where there is an issue as to whether harm resulted. *State v. Corn*, 223 Kan. 583, 575 P.2d 1308 (1978); *State v. Hammond*, 251 Kan. 501, 837

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- P.2d 816 (1992). Rape is not a lesser included offense. *Wisner v. State*, 216 Kan. 523, 532 P.2d 1051 (1975). Assault is not a lesser included offense. *State v. Schriener*, 215 Kan. 86, 523 P.2d 703 (1974).
8. **Kidnapping** - Includes attempted kidnapping. *State v. Mahlandt*, 231 Kan. 665, 647 P.2d 1307 (1982). Unlawful restraint is a lesser included offense. *State v. Carter*, 232 Kan. 124, 652 P.2d 694 (1982). Assault is not a lesser included offense. *State v. Schriener*, 215 Kan. 86, 523 P.2d 703 (1974).
  9. **Aggravated Robbery** - Robbery is a lesser included offense only where there is in issue whether a weapon was used. *State v. Johnson & Underwood*, 230 Kan. 309, 634 P.2d 1095 (1981). It is not includable where the only issue is identification. *State v. Huff*, 220 Kan. 162, 551 P.2d 880 (1976). Under the second prong of the *Fike* test, aggravated battery may be a lesser included offense of aggravated robbery. *State v. Warren*, 252 Kan. 169, 181, 843 P.2d 224 (1992); *State v. Hill*, 16 Kan. App. 2d 432, 825 P.2d 1141 (1991). In *State v. Clardy*, 252 Kan. 541, 847 P.2d 694 (1993), the second prong of the *Fike* test was applied in holding that an instruction on battery as a lesser included offense of aggravated robbery was required. Theft by threat, or extortion, is not a lesser included offense of aggravated robbery. *State v. McCloud*, 257 Kan. 1, 15, 891 P.2d 324 (1995).
  10. **Robbery** - Theft is now considered a lesser included offense. *State v. Keeler*, 238 Kan. 356, 710 P.2d 1279 (1985); *State v. Hollaman*, 214 Kan. 636, 522 P.2d 364 (1974). However, theft by threat, or extortion, is not a lesser included offense of robbery. *State v. Blockman*, 255 Kan. 953, 881 P.2d 561 (1994).
  11. **Aggravated Assault** - Assault generally is a lesser included offense but if there is no issue as to use of weapon it would not be. *State v. Buckner*, 221 Kan. 117, 558 P.2d 1102 (1976); *State v. Cameron & Beniley*, 216 Kan. 644, 651, 533 P.2d 1255 (1975).
  12. **Aggravated Battery** - Battery generally is a lesser included offense unless there is no issue as to use of weapon. *State v. Gander*, 220 Kan. 88, 551 P.2d 797 (1976). Aggravated assault is not a lesser included offense. *State v. Bailey*, 223 Kan. 178, 573 P.2d 590 (1977). Aggravated battery classified as a severity level 4 felony includes the lesser offenses of the same crime classified as severity level 5, 7 or 8 felonies. *State v. Ochoa*, 20 Kan. App. 2d 1014, 895 P.2d 198 (1995). Under evidence that the victim had suffered bodily harm which was either the result of intentional or reckless conduct, the court held it was not error to give a lesser included instruction for a level 8 aggravated battery when the defendant is charged in the information with committing a level 7 aggravated battery. *State v. Jackson*, 262 Kan. 119, 142-43, 936 P.2d 761 (1997).
  13. **Aggravated Assault on Law Enforcement Officer** - Assault on law enforcement officer is a lesser included offense. *State v. Hollaway*, 214 Kan. 636, 522 P.2d 364 (1974).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

14. **Aggravated Battery on Law Enforcement Officer** - Battery is a lesser included offense. *State v. Gunzelman*, 210 Kan. 481, 502 P.2d 705 (1972).
15. **Aggravated Burglary** - Criminal trespass is not a lesser included offense of burglary because criminal trespass requires proof of something more than a knowing and unauthorized entry or remaining within property; criminal trespass also requires proof of actual or constructive notice. *State v. Rush*, 255 Kan. 672, Syl. ¶ 3, 877 P.2d 386 (1994).
16. **Burglary** - Criminal damage to property is not a lesser included offense. *State v. Harper*, 235 Kan. 825, 685 P.2d 850 (1984). Criminal trespass is not a lesser included offense of burglary because criminal trespass requires proof of something more than a knowing and unauthorized entry or remaining within property; criminal trespass also requires proof of actual or constructive notice. *State v. Rush*, 255 Kan. 672, Syl. ¶ 3, 877 P.2d 386 (1994).
17. **Theft** - Unlawful deprivation of property is a lesser included offense. *State v. Keeler*, 238 Kan. 356, 710 P.2d 1279 (1985), reversing *State v. Burnett*, 4 Kan. App. 2d 412, 607 P.2d 88 (1980). Theft of lost or mislaid property (K.S.A. 21-3703) and theft (K.S.A. 21-3701) are forms of the same crime of larceny and the former is a lesser included offense of the latter (assuming, of course, that the property is of a value of at least \$500.) *State v. Getz*, 250 Kan. 560, 830 P.2d 5 (1992).
18. **Theft by Deception** - Delivery of a forged check may or may not be a lesser included offense of theft by deception depending on the charging document and the evidence produced at trial. *State v. Perry*, 16 Kan. App. 2d 150, 823 P.2d 804 (1991).
19. **Sale of Narcotics** - "Delivery" is not a lesser included offense. *State v. Griffin*, 221 Kan. 83, 558 P.2d 90 (1976). "Possession" is not a lesser included offense. *State v. Woods*, 214 Kan. 739, 522 P.2d 967 (1974). Overruled on other grounds, *State v. Wilbanks*, 224 Kan. 66, 579 P.2d 132 (1978). *State v. Collins, infra*.
20. **Possession With Intent to Sell** - "Possession" is a lesser included offense. *State v. Collins*, 217 Kan. 418, 536 P.2d 1382 (1975); *State v. Newell*, 226 Kan. 295, 597 P.2d 1104 (1979).
21. **Rape** - Indecent liberties with a minor is a lesser included offense. *State v. Coberly*, 233 Kan. 100, 661 P.2d 383 (1983). Aggravated sexual battery. *State v. Schriener*, 215 Kan. 86, 523 P.2d 703 (1974). Aggravated incest is not a lesser included offense. *State v. Moore*, 242 Kan. 1, 7, 748 P.2d 833 (1987). In *State v. Mason*, 250 Kan. 393, 827 P.2d 748 (1992), aggravated sexual battery was held not to be a lesser included offense of aggravated kidnapping, attempted aggravated sodomy or attempted aggravated rape because of the additional elements of a nonspousal relationship and intent to arouse or satisfy sexual desires. The dissent argued the rationale that single act of force cannot provide the basis for multiple convictions, which was the basis of the findings that aggravated battery and aggravated robbery were

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- multiplicitous in *State v. Warren*, 252 Kan. 159, 843 P.2d 244 (1992). Aggravated indecent liberties with a child is a lesser included offense of rape under the information/evidence prong of the *Fike* test. *State v. Burns*, 23 Kan. App. 2d 352, 358-60, 931 P.2d 1258 (1997).
22. **Attempted Rape - Battery** is not a lesser included offense. *State v. Arnold*, 223 Kan. 715, 576 P.2d 651 (1978).
23. **Indecent Liberties With a Child** - Aggravated sexual battery is not a lesser included offense. *State v. Fike*, 243 Kan. 365, 367, 757 P.2d 724 (1988); *State v. Moppin*, 245 Kan. 639, 783 P.2d 878 (1989).
24. **Aggravated Sodomy** - Lewd and lascivious behavior is not a lesser included offense. *State v. Gregg*, 226 Kan. 481, 602 P.2d 85 (1979).
25. **Unlawful Possession of Firearm** - Carrying a concealed weapon and aggravated weapons violation are not lesser included offenses. *State v. Hoskins*, 222 Kan. 436, 565 P.2d 608 (1977).
26. **DUI** - Reckless driving is not a lesser included offense. *State v. Mourning*, 233 Kan. 678, 664 P.2d 857 (1983).



## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 68.09-A ALTERNATIVE CHARGES

\_\_\_\_\_ is charged in the alternative with committing an act, or acts, which constitute either the crime of \_\_\_\_\_ or the crime of \_\_\_\_\_. If you find (he)(she) committed such act or acts, it is your duty to determine which crime was committed. (He)(She) cannot be found guilty of more than one crime alternatively charged, so a finding of guilty of one requires a finding of not guilty as to the other one.

#### Notes on Use

This instruction must be given whenever otherwise multiplicitous charges are made in the alternative. If a lesser included offenses instruction is required by K.S.A. 21-3107(3), clear identification should be made in the instruction as to which crime it may apply.

#### Comment

In an alternative charges case, *State v. Dixon*, 252 Kan. 39, 843 P.2d 182 (1992), the defendant waited until his appeal to claim the instruction given constituted reversible error in that the jury was instructed to consider an alternative offense as though it was a lesser included offense of attempted first degree murder: to "first consider" if guilty of that, it "need not consider" if guilty of aggravated battery (which is not a lesser included offense).

The Court adopted the "not clearly erroneous" standard to find the instruction did not constitute reversible error, but we believe an instruction is needed so that error may not be found even if it is claimed at the time of trial.

#### "Commission Of A Crime In Different Ways"

The Committee would also note to meet the exigencies of proof, the State may charge the commission of the same offense in different ways. The conviction can be upheld on only one count, the function of the added counts being to anticipate and obviate fatal variance between allegations and proof. By charging several counts in the information to provide for every possible contingency in the evidence, the jury may be properly instructed on the elements necessary to establish the crime under any of the statutorily-defined ways of committing the crime. *State v. Saylor*, 228 Kan. 498, 618 P.2d 1166 (1980). Two different means of commission of a crime are properly charged as alternative counts. This separates the elements

## PATTERN INSTRUCTIONS FOR KANSAS 3d

instruction and the verdict forms and enables a reviewing court to determine precisely what the jury found. Further, it prevents the jury from hybridizing two means into some means of commission not specified in the statute defining the crime. *State v. Prouse*, 244 Kan. 292, 767 P.2d 1308 (1989).

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

**68.10 LESSER INCLUDED OFFENSES - VERDICT FORMS**

We, the jury, find the defendant guilty of ( principal offense charged ).

---

Presiding Juror

We, the jury, find the defendant guilty of ( lesser included offense ).

---

Presiding Juror

We, the jury, find the defendant not guilty.

---

Presiding Juror

**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, one verdict form of guilty of each lesser included offense, and one form of verdict of not guilty in the 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).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### Notes on Use

This instruction is a modification of PIK Civil 2d 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 Civil 10.20 not be given in criminal cases in the 1968 Supplement is modified in conformity to these notes and comment.

If the instruction is given with the other instructions before jury deliberations begin, the material in brackets should be deleted.

### Comment

It was held there was no error in giving PIK Civil 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 Civil 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 Civil 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 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."

In *State v. Roadenbaugh*, 234 Kan. 474, 483, 673 P.2d 1166 (1983), the Court held it is not error to give the Allen charge before the jury retires.

In *State v. Poole*, 252 Kan. 108, 843 P.2d 689 (1992), the Kansas Supreme Court emphasized the need to exercise caution in giving the Allen-type instruction. The Court stressed that ". . . timing can be very important in determining prejudicial error." It observed that the defendant had failed to furnish a record that affirmatively reflected prejudicial error as to when the deliberations began, when the Allen-type instruction was given, if the trial judge

## PATTERN INSTRUCTIONS FOR KANSAS 3d

made additional remarks, and when the jury reached its verdict. In the absence of such record, the Court acknowledged that there is a presumption that the actions of the trial court were proper.

For discussion of the Allen charge in Kansas in criminal cases, see "Criminal Law - Jury Instructions - The Allen Charge," 6 Washburn L.J. 517 (1967).

In *State v. Noriega*, 261 Kan. 440, 452-56, 932 P.2d 940 (1997), without objection of the defendant, a modified *Allen* instruction was given to the jury before retiring to deliberate. On appeal, the defendant complained that the instruction was coercive. The Supreme Court noted that although there was no compelling reason to have departed from PIK Crim. 68.12, the defendant failed to show his right to a fair trial or a unanimous verdict was prejudiced.

PATTERN INSTRUCTIONS FOR KANSAS 3d

CHAPTER 70.00

SELECTED MISDEMEANORS

	PIK Number
Traffic Offense - Driving Under The Influence Of Alcohol Or Drugs . . . . .	70.01
Traffic Offense - Alcohol Concentration Of .08 Or More B.A.T. .08 Or More Or DUI Charged In The Alternative	70.01-A 70.01-B
Driving Under The Influence - If Chemical Test Used . .	70.02
Transporting An Alcoholic Beverage In An Opened Container . . . . .	70.03
Reckless Driving . . . . .	70.04
Violation Of City Ordinance . . . . .	70.05
Operating An Aircraft While Under The Influence Of Intoxicating Liquor Or Drugs . . . . .	70.06
Operating An Aircraft While Under The Influence - If Chemical Test Is Used . . . . .	70.07
Ignition Interlock Device Violation . . . . .	70.08

PATTERN INSTRUCTIONS FOR KANSAS 3d

**70.01 TRAFFIC OFFENSE - DRIVING UNDER THE  
INFLUENCE OF ALCOHOL OR DRUGS**

**The defendant is charged with the crime of (operating) (attempting to operate) a vehicle while under the influence of (alcohol) (drugs) (a combination of alcohol and drugs). The defendant pleads not guilty.**

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

- 1. That the defendant (drove) (attempted to drive) a vehicle;**
- 2. That the defendant, while (driving) (attempting to drive), was under the influence of (alcohol) (a drug) (a combination of drugs) (a combination of alcohol and any drug[s]) to a degree that rendered (him) (her) incapable of safely driving a vehicle; 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. 8-1567(a)(3), (4), and (5), and K.S.A. 8-1005. If the evidence is limited to either alcohol, a drug, a combination of drugs or a combination of alcohol and any drugs, reference to the inapplicable category or categories should be deleted from the instruction.

For the definition of attempt, see PIK 3d 55.01.

**Comment**

As to what is a vehicle under similar statutes, see 66 A.L.R. 2d 1146.

It is no defense to this charge that the defendant is or has been entitled to use the drug involved and, when applicable, the jury should be so instructed. K.S.A. 8-1567(c).

The word "operate" as used in K.S.A. 8-1567(a) has been construed to require either direct or circumstantial evidence that the defendant was driving the vehicle while intoxicated. *State v. Fish*, 228 Kan. 204, 210, 612 P.2d 180 (1980).

Reckless driving is not a lesser included offense of DUI. *State v. Mourning*, 233 Kan. 678, 682, 664 P.2d 857 (1983).

The phrase "driving under the influence" is not unconstitutionally vague. *State v. Campbell*, 9 Kan. App. 2d 474, 475, 681 P.2d 679 (1984).



## PATTERN INSTRUCTIONS FOR KANSAS 3d

K.S.A. 8-1567(a)(1) is not unconstitutionally vague. *State v. Larson*, 12 Kan. App. 2d 198, 201, 737 P.2d 880 (1987).

Under K.S.A. 8-1567(a)(1), "the fact of driving with an alcohol concentration of .10 or above is now a crime, even in a case . . . where the State cannot prove the driver was under the influence of alcohol to the extent he or she is incapable of driving safely." *State v. Larson*, 12 Kan. App. 2d 198, 200, 737 P.2d 880 (1987); *State v. Zito*, 11 Kan. App. 2d 432, 434, 724 P.2d 149 (1986).

In *City of Wichita v. Hull*, 11 Kan. App. 2d 441, 445, 724 P.2d 699 (1986), it was held that by omission of the element of intent in K.S.A. 8-1567, the Legislature intended driving while under the influence of alcohol or drugs to be an absolute liability *malum prohibitum* offense.

Driving while under the influence of alcohol is a lesser included offense of aggravated vehicular homicide. *State v. Woodman*, 12 Kan. App. 2d 110, 119, 735 P.2d 1102 (1987).

Driving while under the influence of alcohol under certain circumstances is a lesser included offense of involuntary manslaughter where: (1) Driving under the influence is alleged as the underlying misdemeanor in the information or complaint; and (2) all of the elements of driving under the influence are alleged in the information or complaint and are necessarily proved to establish the greater offense of involuntary manslaughter. *State v. Adams*, 242 Kan. 20, Syl. ¶ 2, 744 P.2d 833 (1987).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**70.01-A TRAFFIC OFFENSE - ALCOHOL  
CONCENTRATION .08 OR MORE**

The defendant is charged with the crime of (operating) (attempting to operate) a vehicle while the alcohol concentration in (his)(her) blood or breath is .08 or more [as measured within two hours of the time of operating or attempting to operate the vehicle]. The defendant pleads not guilty.

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

1. That the defendant (drove) (attempted to drive) a vehicle;
2. That the defendant, while (driving) (attempting to drive) had an alcohol concentration in (his)(her) blood or breath of .08 or more [as measured within two hours of the time of operating or attempting to operate the vehicle]; and
3. That this act occurred on or about the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, in \_\_\_\_\_ County, Kansas.

The phrase "alcohol concentration" means the number of grams of alcohol per (100 milliliters of blood) (210 liters of breath).

Notes on Use

For authority, see K.S.A. 8-1567(a)(1) and (2), and K.S.A. 8-1005.

Comment

The Committee is of the opinion the alcohol concentration in the defendant's blood or breath must result from alcohol consumed before or while operating or attempting to operate a vehicle.

Definition of alcohol concentration in K.S.A. 8-1005 is applicable to a city ordinance. *City of Ottawa v. Brown*, 11 Kan. App. 2d 581, 584-585, 730 P.2d 364 (1986), *rev. denied* 241 Kan. 838 (1987).

To obtain a conviction for a per se violation under K.S.A. 8-1567(a)(2), the State must show the alcohol concentration was tested *within* two hours of the last time a defendant operated or attempted to operate a motor vehicle. *State v. Pendleton*, 18 Kan. App. 2d 179, 849 P.2d 143 (1993).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### 70.01-B B.A.T. .08 OR MORE OR DUI CHARGED IN THE ALTERNATIVE

The defendant is charged in the alternative with (operating) (attempting to operate) a vehicle while having a blood alcohol concentration of .08 or more or (operating) (attempting to operate) a vehicle while under the influence of alcohol. You are instructed that the alternative charges constitute one crime.

You should consider if the defendant is guilty of (operating) (attempting to operate) a vehicle while having a blood alcohol concentration of .08 or more and sign the verdict upon which you agree.

You should further consider if the defendant is guilty of (operating) (attempting to operate) a vehicle while under the influence of alcohol and sign the verdict upon which you agree.

#### Notes on Use

The Committee believes that K.S.A. 8-1567 defines a single offense. The State may, however, charge the offense in the alternative. See PIK 3d 70.01, Traffic Offense - Driving Under the Influence of Alcohol or Drugs, and PIK 3d 70.01-A, Traffic Offense - Alcohol Concentration .08 or more.

Authority for instructions in the alternative are found in *State v. Jackson*, 223 Kan. 554, 575 P.2d 536 (1978), and *State v. McCowan*, 226 Kan. 752, 764, 602 P.2d 1363 (1979), *cert. denied* 449 U.S. 844 (1980).

PATTERN INSTRUCTIONS FOR KANSAS 3d

**70.02 DRIVING UNDER THE INFLUENCE - IF CHEMICAL TEST USED**

The law of the State of Kansas provides that a chemical analysis of the defendant's (blood) (breath) (urine) (other body substance) may be taken in order to determine the amount of the alcohol in the defendant's blood at the time the alleged offense occurred. [If a test shows there was .08 percent or more by weight of alcohol in the defendant's blood, you may assume the defendant was under the influence of alcohol to a degree that (he)(she) was rendered incapable of driving safely. The test result is not conclusive, but it should be considered by you along with all other evidence in this case.] [If a test shows there was less than .08 percent by weight of alcohol in the defendant's blood, that fact may be considered with other competent evidence to determine if the defendant was under the influence of (alcohol) (drugs) (a combination of alcohol and drugs).]

You are further instructed that evidence derived from a (blood) (breath) (urine) (other body substance) test does not reduce the weight of any other evidence on the question of whether the defendant was under the influence of (alcohol) (drugs) (a combination of alcohol and drugs).

**Notes on Use**

For authority, see K.S.A. 8-1005 and K.S.A. 8-1006. This instruction is to be used in conjunction with PIK 3d 70.01 when chemical tests have been administered. If the result of only one test is in evidence, only the applicable bracketed paragraph should be used. This instruction is not applicable to a charge or alternative charge of a per se violation of K.S.A. 8-1567(a)(1).

**Comment**

The constitutionality of a presumption is described in the Comment to PIK 3d 54.01 and 54.01-B.

The Committee believes that "prima facie" evidence as used in K.S.A. 8-1005 creates a presumption, and the suggested instruction is worded accordingly. *State v. Haremza*, 213 Kan. 201, 515 P.2d 1217 (1973).

## PATTERN INSTRUCTIONS FOR KANSAS 3d

The above instruction has been approved in dicta in *State v. Price*, 233 Kan. 706, 711, 664 P.2d 869 (1983).

PATTERN INSTRUCTIONS FOR KANSAS 3d

(THIS PAGE BLANK)

PATTERN INSTRUCTIONS FOR KANSAS 3d

**PIK CRIMINAL INDEX**

**ABANDONMENT OF A CHILD,**

Aggravated, 58.05-A

Elements instruction, 58.05

**ABORTION,**

Criminal, 56.10

Justification, 56.11

**ABUSE OF A CHILD,**

Elements instruction, 58.11

**ACCESSORY, 54.05**

**ACCOMPLICE,**

Testimony, 52.18

Aiding and abetting, 54.05

**ADDING DOCKAGE OR FOREIGN MATERIAL TO GRAIN,**

Elements Instruction, 59.63-B

**ADJUSTING DEBTS, 66.02**

**ADMINISTRATION OF JUSTICE,**

Interference, 60.17

**ADMISSIONS,**

Guiding instruction, 52.05

**ADULTERATION OR CONTAMINATION OF FOOD OR DRINK,**

Criminal threat, 56.23-A

**ADULTERY,**

Elements instruction, 57.09

**AFFIRMATIVE DEFENSES,**

Bigamy, 58.01

Burden of proof, 52.08

Criminal discharge of a firearm, 64.02-B

Criminal use of weapons, 64.04

Endangering a child, 58.10

Indecent liberties with a child, 57.05-B

Mistreatment of dependant adult, 56.38

Promoting obscenity, 65.05

Promoting obscenity to a minor, 65.05-A

Transporting an Alcoholic Beverage in an Opened  
Container, 70.03

PATTERN INSTRUCTIONS FOR KANSAS 3d

- AGGRAVATED ABANDONMENT OF A CHILD,**  
Elements instruction, 58.05-A
- AGGRAVATED ARSON,**  
Elements instruction, 59.22
- AGGRAVATED ASSAULT,**  
Elements instruction, 56.14
- AGGRAVATED ASSAULT ON LAW ENFORCEMENT OFFICER**  
Elements instruction, 56.15
- AGGRAVATED BATTERY,**  
Elements instruction, 56.18
- AGGRAVATED BATTERY AGAINST LAW ENFORCEMENT OFFICER,**  
Elements instruction, 56.19
- AGGRAVATED BURGLARY,**  
Elements instruction, 59.18
- AGGRAVATED CRIMINAL SODOMY,**  
Causing child under 14 to engage, 57.08-A  
Elements instruction, 57.08, 57.08-A, 57.08-B  
No consent, 57.08-B  
Nonmarital child under 16, 57.08
- AGGRAVATED CRIMINAL THREAT,**  
Elements instruction, 56.23-B
- AGGRAVATED ESCAPE FROM CUSTODY,**  
Elements instruction, 60.11
- AGGRAVATED FAILURE TO APPEAR,**  
Elements instruction, 60.15
- AGGRAVATED FALSE IMPERSONATION,**  
Elements instruction, 60.26
- AGGRAVATED INCEST,**  
Elements instruction, 58.04
- AGGRAVATED INDECENT LIBERTIES WITH A CHILD,**  
Elements instruction, 57.06
- AGGRAVATED INDECENT SOLICITATION OF A CHILD,**  
Elements instruction, 57.13
- AGGRAVATED INTERFERENCE WITH PARENTAL CUSTODY,**  
By hiree, 56.26-B  
By parents hiring another, 56.26-A  
Other circumstances, 56.26-C



PATTERN INSTRUCTIONS FOR KANSAS 3d

- AGGRAVATED INTIMIDATION OF A WITNESS OR VICTIM,**  
Elements instruction, 60.06-B
- AGGRAVATED JUVENILE DELINQUENCY,**  
Elements instruction, 58.13
- AGGRAVATED KIDNAPPING,**  
Elements instruction, 56.25
- AGGRAVATED ROBBERY,**  
Elements instruction, 56.31
- AGGRAVATED SEXUAL BATTERY,**  
Child under 16, 57.21  
Dwelling, 57.22  
Elements instruction, 57.20, 57.21, 57.22, 57.23, 57.24,  
57.25  
Force or Fear, 57.20  
Mental deficiency of victim, 57.24  
Victim unconscious or powerless, 57.23
- AGGRAVATED SODOMY,**  
Elements instruction, 57.08
- AGGRAVATED TAMPERING WITH A TRAFFIC SIGNAL,**  
Elements instruction, 59.31
- AGGRAVATED VEHICULAR HOMICIDE,**  
Elements instruction, 56.07-A
- AGGRAVATED WEAPONS VIOLATION,**  
Elements instruction, 64.03
- AIDING AND ABETTING, 54.05**
- AIDING A FELON OR PERSON CHARGED AS A FELON,**  
Elements instruction, 60.13
- AIDING A PERSON CONVICTED OR CHARGED WITH A MISDEMEANOR,**  
Elements instruction, 60.14
- AIDING ESCAPE,**  
Elements instruction, 60.12
- AIRCRAFT,**  
Operating under influence, 70.06, 70.07
- AIRCRAFT IDENTIFICATION,**  
Fraudulent Acts, 60.35
- AIRCRAFT PIRACY,**  
Elements instruction, 56.25
- AIRCRAFT REGISTRATION,**  
Failure to register, 60.32

PATTERN INSTRUCTIONS FOR KANSAS 3d

Fraudulent, 60.33

**ALCOHOLIC BEVERAGES,**

Furnishing to a minor for illicit purposes, 58.12-B

Transporting in an opened container, 70.03

**ALCOHOLIC LIQUOR,**

Furnishing to a minor, 58.12

Defense, 58.12-C

**ALTERING A LEGISLATIVE DOCUMENT,**

Elements instruction, 59.15

**ALIBI,**

Guiding instruction, 52.19

**ALIEN, ILLEGAL,**

Knowingly employing, 66.09

**ALTERNATIVE CHARGES,**

Guiding instruction, 68.09-A

**ANABOLIC STEROIDS,**

Offer to sell with intent to sell, 67.14

Possession, 67.16

Possession with intent to sell, 67.14

Selling, offering to sell, cultivating or dispensing, 67.15

**ANIMALS,**

Cruelty, 65.15

Defense, 65.16

Unlawful disposition, 65.17

**ANTICIPATORY CRIMES,**

Chapter containing, 55.00

**APPEARANCE,**

Aggravated failure to appear, 60.15

Failure to appear, 60.15

**ARREST,**

Use of Force, 54.23, 54.24

Resisting use of force, 54.25

**ARSON,**

Aggravated, 59.22

Defraud an insurer or lienholder, 59.21

Elements instruction, 59.20

**ASSAULT,**

Aggravated, 56.14

Aggravated on law enforcement officer, 56.15

Elements instruction, 56.12

PATTERN INSTRUCTIONS FOR KANSAS 3d

- ASSAULT ON LAW ENFORCEMENT OFFICER,**  
Aggravated, 56.15  
Elements instruction, 56.13
- ASSEMBLY,**  
Unlawful, 63.02
- ASSISTING SUICIDE,**  
Elements instruction, 56.08
- ATTEMPT,**  
Defense, 55.02  
Elements instruction, 55.01
- ATTEMPTED POISONING,**  
Elements instruction, 56.21
- ATTEMPTING TO INFLUENCE A JUDICIAL OFFICER,**  
Elements instruction, 60.16
- ATTENDING AN UNLAWFUL DOG FIGHT,**  
Elements instruction, 65.19
- AUTHORIZED INTERCEPTION OF A COMMUNICATION,**  
Unlawful disclosure, 60.06-C
- AUTOMOBILE MASTER KEY VIOLATION,**  
Elements instruction, 59.48
- BATTERY,**  
Aggravated, 56.18  
Aggravated sexual, 57.20, 57.24, 57.25  
Aggravated against law enforcement officer, 56.19  
Domestic, 56.16-A  
Elements instruction, 56.16  
Law enforcement officer, 56.17  
School employee, 56.16-B  
Sexual, 57.19  
Vehicular, 56.07-B
- BEVERAGE CONTAINERS WITH DETACHABLE TABS,**  
Selling, 64.18
- BIGAMY,**  
Affirmative defense, 58.02  
Defense, 58.02  
Elements instruction, 58.01
- BINGO,**  
Elements instruction, 56.32
- BLACKMAIL,**  
Elements instruction, 56.32

PATTERN INSTRUCTIONS FOR KANSAS 3d

**BREACH OF PRIVACY - DIVULGING MESSAGE,**

Elements instruction, 62.04

**BREACH OF PRIVACY - INTERCEPTING MESSAGE,**

Elements instruction, 62.03

**BRIBERY,**

Commercial, 66.05

Elements instruction, 61.01

Sports, 66.06

Receiving, 66.07

**BURDEN OF PROOF,**

Affirmative defenses, 52.08

Guiding instruction, 52.02

**BURGLARY,**

Aggravated, 59.18

Elements instruction, 59.17

Possession of tools, 59.19

**BUSINESS,**

Crimes against, Chapter 66.00

**CABLE TELEVISION SERVICES THEFT,**

Elements instruction, 59.57

**CAMERAS IN THE COURTROOM,**

Instruction, 51.11

**CAPITAL MURDER, 56.00-A, et seq.**

Concluding instruction, sentencing proceeding, 68.01-A

Verdict Forms, 68.03, 68.14-A-1, 68.14-B-1, 68.17

**CARRYING CONCEALED WEAPONS,**

Elements instruction, 64.12

**CASTING OBJECT ONTO STREET OR ROAD,**

Elements instruction, 59.52, 59.55

**CAUSING AN UNLAWFUL PROSECUTION FOR A WORTHLESS CHECK,**

Elements instruction, 59.10

**CAUTIONARY INSTRUCTIONS,**

Application, 51.02

Chapter containing, 51.00

Consideration of instructions, 51.02, 51.03

Court rulings, 51.05

Penalty, consideration by jury, 51.10

Prejudice, 51.07

Receipt by jury before close of case, 51.09

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Rulings of court, 51.05  
Statements of counsel, 51.06  
Sympathy, 51.07

### **CEREAL MALT BEVERAGE,**

Furnishing to a minor, 58.12-A  
Defense, 58.12-D

### **CHECK, WORTHLESS,**

See worthless check, this index.

### **CHILD,**

Aggravated abandonment, 58.05-A  
Aggravated indecent liberties, 57.06  
Aggravated indecent solicitation of, 57.13  
Abandonment, 58.05  
Abuse, 58.11  
Contributing to misconduct or deprivation, 58.14  
Endangering, 58.10  
    Affirmative defense, 58.10  
Enticement, 57.11  
Hearsay evidence, 52.21  
Indecent liberties, 57.05, 57.05-A  
    Affirmative defenses, 57.05-B  
Indecent solicitation, 57.12  
Nonsupport, 58.06  
Promoting prostitution, under 16, 57.15-A  
Sexual exploitation, 57.13-A  
Sodomy, 57.05-A  
Solicitation,  
    Aggravated indecent, 57.13  
    Indecent, 57.12

### **CHILDREN,**

Crimes affecting, Chapter 58.00

### **CHILD'S HEARSAY EVIDENCE,**

Instruction, 52.21

### **CIRCULATING FALSE RUMORS CONCERNING FINANCIAL STATUS,**

Elements instruction, 62.08

### **CIRCUMSTANTIAL EVIDENCE,**

Guiding instruction, 52.16

### **CITY ORDINANCE,**

Violation, 70.05

PATTERN INSTRUCTIONS FOR KANSAS 3d

**CIVIL RIGHTS,**

Denial, 62.05

**CLAIM, FALSE,**

Presenting, 61.05

Permitting, 61.06

**COIN-OPERATED MACHINES,**

Opening, damaging or removing, 59.50

Possession of tools, 59.51

**COMMERCIAL BRIBERY,**

Elements instruction, 59.10

**COMMERCIAL GAMBLING,**

Elements instruction, 65.08

**COMMERCIAL PRACTICES,**

Deceptive, 66.03

**COMMITMENT,**

Insanity, 54.10-A

**COMMITTED PERSON, CUSTODY,**

Interference, 56.27

**COMMUNICABLE DISEASE,**

Unlawfully exposing another, 56.40

**COMMUNICATION,**

Unlawful disclosure of authorized interception, 60.06-C

**COMMUNICATION FACILITY,**

Unlawful use to facilitate felony drug transaction, 67.22

**COMMUNICATION WITH JURORS,**

Post-trial, 68.13

**COMPENSATION FOR PAST OFFICIAL ACTS,**

Defense, 61.04

Elements instruction, 61.03

**COMPOUNDING A CRIME,**

Elements instruction, 60.07

**COMPULSION,**

Instruction of principle, 54.13

**COMPUTER CRIME,**

Defense, 59.64-A

Elements instruction, 59.64

Trespass, 59.64-B

**CONCEALED WEAPONS,**

Carrying, 64.12

PATTERN INSTRUCTIONS FOR KANSAS 3d

**CONCLUDING INSTRUCTIONS AND VERDICT FORMS,**

Chapter containing, 68.00

**CONDONATION,**

Instruction on principle, 54.15

**CONDUCT,**

Disorderly, 63.01

**CONDUCT BY JUROR,**

Corrupt, 60.18

**CONFESSION,**

Guiding instruction, 52.17

**CONFINED PERSON,**

Mistreatment, 56.29

**CONFLICTS OF INTEREST,**

Lottery,

Commission member, 65.30

Contractor, 65.31

Employee, 65.30

Retailer, 65.31

**CONSPIRACY,**

Act in Furtherance, 55.06

Declarations of conspirator, 55.07

Defense, 55.04

Defined, 55.05

Elements instruction, 55.03

Subsequent entry, 55.08

**CONTRABAND,**

Traffic in correctional institution, 60.27

**CONTRIBUTING TO A CHILD'S MISCONDUCT OR**

**DEPRIVATION,**

Elements instruction, 58.14

**CONTROLLED STIMULANTS, DEPRESSANTS,**

**HALLUCINOGENIC DRUGS OR ANABOLIC STEROIDS,**

Cultivating, 67.15

Manufacture or dispensation, 67.15

Possession, 67.14, 67.16

Selling or offering to sell, 67.15

**CONTROLLED SUBSTANCES,**

Analog, 67.26

Chapter relating to, 67.00

Medicinals, 67.23

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Possession, 67.23

Selling, offering to sell, possessing with intent to sell  
or dispensing to person under 18 years of age, 67.23

Sale defined, 67.13-A

Sale, etc., 67.13-B

Substances designated under K.S.A. 65-4113, 67.23

Unlawfully manufacturing, 67.21

### **CONTROLLED SUBSTANCES, SIMULATED,**

See simulated controlled substances, this index.

### **CONTROLLED SUBSTANCES ACT, 67.13, 67.13-A, 67.13-B, 67.14, 67.15, 67.16, 67.23, 67.26**

Receiving or acquiring proceeds derived from  
violation, 67.25

### **CORPORATIONS,**

Criminal responsibility for acts of agents, 54.08

Responsibility for crime, 54.08, 54.09

### **CORRECTIONAL INSTITUTION,**

Traffic in contraband, 60.27

### **CORROBORATION,**

Rape case, 57.04

### **CORRUPT CONDUCT BY JUROR,**

Elements instruction, 60.18

### **CORRUPTLY INFLUENCING A WITNESS,**

Elements instruction, 60.06

### **COUNSEL,**

Arguments and statements, cautionary instruction, 51.06

### **COURT,**

Harassment by telefacsimile, 60.31

Rulings, cautionary instruction, 51.05

### **COURTROOM,**

Cameras, 51.11

### **CREATING A HAZARD,**

Elements instruction, 64.14

### **CREDIBILITY,**

Of witness, 52.09

Rape case, prosecutrix's testimony, 57.03

### **CRIME,**

Commission in Different Ways, 68.09-A

Compounding, 60.07

Falsely reporting, 60.19



PATTERN INSTRUCTIONS FOR KANSAS 3d

**CRIME, PROOF OF OTHER,**

Evidence, admissibility, 52.06

**CRIMES,**

Anticipatory, Chapter 55.00

Corporations,

Responsibility, 54.08, 54.09

Defenses, see Defenses, this index.

Other, proof, 52.06

**CRIMES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN,**

Chapter containing, 58.00

**CRIMES AFFECTING GOVERNMENTAL FUNCTIONS,**

Chapter containing, 60.00

**CRIMES AFFECTING PUBLIC TRUST,**

Chapter containing, 61.00

**CRIMES AFFECTING BUSINESS,**

Chapter containing, 66.00

**CRIMES AGAINST PERSONS,**

Chapter containing, 56.00

**CRIMES AGAINST PROPERTY,**

Chapter containing, 59.00

**CRIMES AGAINST THE PUBLIC MORALS,**

Chapter containing, 65.00

**CRIMES AGAINST THE PUBLIC PEACE,**

Chapter containing, 63.00

**CRIMES AGAINST THE PUBLIC SAFETY,**

Chapter containing, 64.00

**CRIMES INVOLVING VIOLATIONS OF PERSONAL RIGHTS,**

Chapter containing, 62.00

**CRIMES OF ANOTHER,**

Responsibility, 54.05

Actor not prosecuted, 54.07

Crime not intended, 54.06

**CRIMINAL ABORTION,**

Elements instruction, 56.10

Justification, 56.11

**CRIMINAL DAMAGE TO PROPERTY - WITH INTENT TO DEFRAUD AN INSURER OR LIENHOLDER,**

Elements instruction, 59.24

PATTERN INSTRUCTIONS FOR KANSAS 3d

**CRIMINAL DAMAGE TO PROPERTY - WITHOUT CONSENT,**

Elements instruction, 59.23

**CRIMINAL DEFAMATION,**

Elements instruction, 62.06

Truth as defense, 62.07

**CRIMINAL DEPRIVATION OF PROPERTY,**

Elements instruction, 59.04

**CRIMINAL DESECRATION,**

Cemeteries, 63.12

Dead Bodies, 63.13

Flags, 63.11

Monuments, 63.12

Places of worship, 63.12

**CRIMINAL DISCHARGE OF FIREARM,**

Affirmative defense, 64.02-B

Felony, 64.02-A-1

Misdemeanor, 64.02-A

**CRIMINAL DISCLOSURE OF A WARRANT,**

Elements instruction, 60.28

**CRIMINAL DISPOSAL OF EXPLOSIVES,**

Elements instruction, 64.11

**CRIMINAL DISPOSAL OF FIREARMS,**

Elements instruction, 64.05

**CRIMINAL HUNTING,**

Defense, 59.33-B

Elements instruction, 59.33

Posted land, 59.33-A

**CRIMINAL INJURY TO PERSON,**

Elements instruction, 56.18-A

**CRIMINAL INTENT,**

Presumption, 54.02

General, 54.01-A

**CRIMINAL LIABILITY,**

Defenses, see Defenses, this index.

Principles, Chapter 54.00

**CRIMINAL POSSESSION OF EXPLOSIVE,**

Defense, 64.11-B

Elements instruction, 64.11-A

**CRIMINAL POSSESSION OF A FIREARM,**

Felony, 64.06

PATTERN INSTRUCTIONS FOR KANSAS 3d

Juvenile, 64.07-B

Affirmative Defenses, 64.07-C

Misdemeanor, 64.07

**CRIMINAL POSSESSION OF A FIREARM - MISDEMEANOR,**

Elements instruction, 64.07

**CRIMINAL RESTRAINT,**

Elements instruction, 56.28

**CRIMINAL SODOMY,**

Aggravated, 57.08, 57.08-A, 57.08-B

Elements instruction, 57.07

**CRIMINAL SOLICITATION,**

Defense, 55.10

Elements instruction, 55.09

**CRIMINAL SYNDICALISM,**

Permitting premises to be used for, 60.04

**CRIMINAL TRESPASS,**

Elements instruction, 59.25

Health care facility, 59.25-A

Railroad property, 59.25-B

**CRIMINAL USE OF EXPLOSIVES,**

Elements instruction, 59.38

**CRIMINAL USE OF NOXIOUS MATTER,**

Elements instruction, 59.40

**CRIMINAL THREAT,**

Adulteration or contamination of food or drink, 56.23-A

Aggravated, 56.23-B

Elements instruction, 56.23

**CRUELTY TO ANIMALS,**

Defense, 65.16

Elements instruction, 65.15

**CULTIVATING,**

Controlled stimulants, depressants, hallucinogenic drugs or  
anabolic steroids, 67.15

**CUSTODY,**

Aggravated escape from, 60.11

Escape from, 60.10

**CUSTODY, COMMITTED PERSON,**

Interference, 56.27

PATTERN INSTRUCTIONS FOR KANSAS 3d

**CUSTODY, PARENTAL,**

Aggravated interference, 56.26-A, 56.26-B, 56.26-C  
Interference, 56.26

**DAMAGE TO PROPERTY,**

Criminal, without consent, 59.23  
Intent to defraud insurer or lienholder, 59.24

**DANGEROUS ANIMAL,**

Permitting to be at large, 56.22

**DEADLOCKED JURY,**

Instruction, 68.12

**DEALER,**

Possession - no tax stamp, 67.24

**DEALING IN FALSE IDENTIFICATION DOCUMENTS,**

Elements instruction, 60.30

**DEALING IN GAMBLING DEVICES,**

Defense, 65.10-A  
Elements instruction, 65.10  
Presumption, 65.11

**DEALING IN PIRATED RECORDINGS,**

Elements instruction, 59.58-A

**DEATH PENALTY,**

See Capital Murder, this index.

**DEATH SENTENCE,**

See Capital Murder, this index.  
Aggravating Circumstances, 56.00-C, 56.00-F  
Burden of Proof, 56.00-E  
Mitigating Circumstances, 56.00-D, 56.00-F  
Theory of Comparing Aggravating and Mitigating, 56.00-F  
Reasonable Doubt, 56.00-G  
Sentencing Proceeding, 56.00-B  
Sentencing Recommendation, 56.00-H  
Verdict Forms, 68.14-A-1, 68.14-B-1, 68.17

**DEBT ADJUSTING,**

Elements instruction, 66.02

**DECEPTIVE COMMERCIAL PRACTICES,**

Elements instruction, 66.03

**DEFAMATION,**

Criminal, 62.06  
Defense, 62.07

## PATTERN INSTRUCTIONS FOR KANSAS 3d

### **DEFACING IDENTIFICATION MARKS OF A FIREARM,**

Elements instruction, 64.08

### **DEFENDANTS,**

Failure to testify, 52.13

Multiple, 52.07

Witness, 52.10

### **DEFENSE OF PERSON,**

Use of force, 54.17

### **DEFENSES,**

Abortion, 56.11

Age of minor, 54.02

Animals, cruelty, 65.15

Attempt, 55.02

Bigamy, 58.02

Compensation for past official acts, 61.04

Compulsion, 54.13

Computer crime, 59.64-A

Condonation, 54.15

Conspiracy, 55.04

Crime of another, 54.05, 54.06, 54.07

Crime of corporation, 54.08, 54.09

Criminal abortion, 62.06

Criminal hunting, 59.33-B

Cruelty to animals, 65.15

Dealing in gambling devices, 65.10-A

Defense of dwelling, 54.18

Defense of person, 54.17

Defense of property other than dwelling, 54.19

Disclosing information obtained in preparing tax returns,  
56.34

Eavesdropping, 62.02

Entrapment, 54.14

General intent crime, voluntary intoxication, 54.12

Ignorance of fact, 54.03

Ignorance of law, 54.04

Ignorance of statute, 54.02

Impossibility of committing offense, attempt, 55.02

Insanity, mental disease or defect, 54.10

Intoxication,

Involuntary, 54.11

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Voluntary,
  - General intent crime, 54.12
  - Particular state of mind, 54.12-A-1
  - Specific intent crime, 54.12-A
- Law, mistake or ignorance, 54.04
- Minor, age, 54.02
- Mistake of fact, 54.03
- Mistake of law, 54.04
- Obscenity, promoting, 65.05
- Possession of gambling device, 65.12-A
- Procuring agent, 54.14-A
- Promoting obscenity, 65.05
- Promoting obscenity to a minor, 65.05-A
- Restitution, 54.16
- Self-defense, 54.17, 54.17-A, 54.18, 54.19
- Specific intent crime, voluntary intoxication, 54.12-A
- Unlawful discharge of firearm, 64.02-B
- Unlawful use of weapons, 64.04
- Voluntary intoxication,
  - General intent crime, 54.12
  - Particular state of mind, 54.12-A-1
  - Specific intent crime, 54.12-A
- Withdrawal, conspiracy, 55.04
- Worthless check, 59.07

### **DEFINITIONS,**

- Chapter containing, 53.00
- Conspiracy-Act in furtherance, 55.06
- Drug sale, 67.13-A
- Explosives, 64.10-A
- Gambling, 65.07
- Homicide definitions, 56.04
- Kansas Parimutuel Racing Act, 65.52
- Lottery, 65.25
- Obscenity, 65.03
  - Promoting, 65.03
- Sale, drugs, 67.13-A
- Sex offenses, 57.18
- Sexual intercourse, 57.02

### **DEFRAUDING AN INNKEEPER,**

- Elements instruction, 59.61

PATTERN INSTRUCTIONS FOR KANSAS 3d

**DELINQUENCY, JUVENILE,**

Aggravated, 58.13

**DELIVERY OF STORED GOODS,**

Unauthorized, 59.47

**DENIAL OF CIVIL RIGHTS,**

Elements instruction, 62.05

**DEPENDANT ADULT,**

Mistreatment, 56.37

Affirmative Defense, 56.38

**DEPOSITION,**

Guiding instruction, 52.12

**DEPRESSANTS,**

Cultivating, 67.15

Manufacture or dispensation, 67.15

Offer to sell with intent to sell, 67.14

Possession, 67.16

Possession with intent to sell, 67.14

Selling or offering to sell, 67.15

**DEPRIVATION,**

Childs, contributing, 58.14

**DEPRIVATION OF PROPERTY,**

Criminal, 59.04

**DESECRATION,**

Unlawful, 63.11, 63.12, 63.13

**DESECRATION OF FLAGS,**

Elements instruction, 63.15

**DESTROYING A WRITTEN INSTRUMENT,**

Elements instruction, 59.14

**DIMINISHED MENTAL CAPACITY,**

Elements instruction, 54.12-B

**DISCLOSING INFORMATION OBTAINED IN PREPARING TAX RETURNS,**

Defense, 56.34

Elements instruction, 56.33

**DISCOUNTING A PUBLIC CLAIM,**

Elements instruction, 61.07

**DISCLOSURE OF AUTHORIZED INTERCEPTION OF COMMUNICATIONS,**

Unauthorized, 60.06-C

PATTERN INSTRUCTIONS FOR KANSAS 3d

**DISCLOSURE OF A WARRANT,**

Unlawful, 60.28

**DISEASE, COMMUNICABLE,**

Unlawfully exposing another, 56.40

**DISORDERLY CONDUCT,**

Elements instruction, 63.01

**DISPENSATION,**

Controlled stimulants, depressants, hallucinogenic drugs or anabolic steroids, 67.15

**DISPOSAL OF EXPLOSIVES,**

Criminal, 64.11

**DISPOSAL OF FIREARMS,**

Criminal, 64.05

**DOCKAGE,**

Adding to grain, 59.63-B

**DOCUMENT,**

Fraudulently obtaining execution, 59.05

**DOG,**

Fight,

Attending unlawful, 65.19

Unlawful conduct, 65.18

Illegal ownership or keeping, 65.20

**DOMESTIC ANIMAL,**

Injury, 59.32

**DOMESTIC BATTERY,**

Elements instruction, 56.16-B

**DRIVE-BY SHOOTING,**

Elements instruction, 64.02-A-1

**DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS,**

Alcohol concentration .08 or more, 70.01-A

B.A.T. .08 or more charged in alternative, 70.01-B

Chemical test used, 70.02

Elements instruction, 70.01

Involuntary manslaughter, 56.06-A

**DRUGS, NARCOTIC,**

See Controlled Substances, this index.

**DRUG PARAPHERNALIA,**

Manufacture, 67.18-A

Possession, 67.18-A



## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Use or Possession with intent to use, 67.17
- DRUG TRANSACTION, FELONY,**
  - Unlawful use of communications facility to facilitate, 67.22
- DUTY TO RETREAT,**
  - Use of Force, 54.17-A
- EAVESDROPPING,**
  - Defense of public utility employee, 62.02
  - Elements instruction, 62.01
- EMBEZZLEMENT,**
  - Grain, 59.62
- ENCOURAGING JUVENILE MISCONDUCT,**
  - Elements instruction, 58.09
- ENDANGERING A CHILD,**
  - Affirmative defense, 58.10
  - Elements instruction, 58.10
- ENTICEMENT OF A CHILD,**
  - Elements instruction, 57.11
- ENTRAPMENT,**
  - Instruction on principle, 54.14
- EQUITY SKIMMING,**
  - Elements instruction, 66.10
- ESCAPE,**
  - Aiding, 60.12
- ESCAPE FROM CUSTODY,**
  - Aggravated, 60.11
  - Elements instruction, 60.10
- EVIDENCE,**
  - Admissibility,
    - More than one defendant, 52.07
    - Proof of other crime, 52.06
  - Admissions, 52.05
  - Affirmative defenses, 52.08
  - Alibi, 52.19
  - Burden of proof, 52.02, 52.08
  - Cautionary instructions, 51.01, 51.04
  - Child's hearsay, 52.21
  - Circumstantial, 52.16
  - Confession, 52.17
  - Consideration, 51.04
  - Credibility, 52.09

## PATTERN INSTRUCTIONS FOR KANSAS 3d

- Defendant as witness, 52.10
- Deposition testimony, 52.12
- Guides for consideration, 52.00
- Hearsay, child's, 52.21
- Indictment, 52.01
- Information, 52.01
- Introduction, instructions before, 51.01
- Multiple defendants, 52.07
- Number of witnesses, 52.11
- Presumption of innocence, 52.02, 52.03
- Proof of other crime, 52.06
- Reasonable doubt, 52.02, 52.04
- Stipulations, 52.05
- Testimony,
  - Accomplice, 52.18
  - Defendant's failure, 52.13
  - Deposition, 52.12
  - Expert witness, 52.14
  - Impeachment, 52.15
  - Witnesses, number, 52.11

### **EXECUTION OF DOCUMENTS,**

- Fraudulently obtaining, 59.05

### **EXHIBITION,**

- Hypnotic, 62.10

### **EXPERT WITNESSES,**

- Guiding instruction, 52.14

### **EXPLANATIONS OF TERMS,**

- Chapter containing, 53.00

### **EXPLOITATION OF A CHILD,**

- Sexual, 57.12-A

### **EXPLOSIVE DEVICES,**

- Possession, 59.39
- Transportation, 59.39

### **EXPLOSIVES,**

- Criminal possession, 64.11-A
  - Defense, 64.11-B
- Criminal use, 59.38
- Definition, 64.10-A

PATTERN INSTRUCTIONS FOR KANSAS 3d

- Disposal, criminal, 64.11
- Failure to register receipt, 64.10
- Failure to register sale, 64.09
- EXPOSING A PAROLED OR DISCHARGED PERSON,**
  - Elements instruction, 62.09
- EXPOSING ANOTHER TO A COMMUNICABLE DISEASE,**
  - Unlawfully, 56.40
- EYEWITNESS IDENTIFICATION,**
  - Elements instruction, 52.20
- FAILURE TO APPEAR,**
  - Elements instruction, 60.15
- FAILURE TO POST SMOKING PROHIBITED AND DESIGNATED SMOKING AREA SIGNS,**
  - Elements instruction, 62.11-A
- FAILURE TO REGISTER AN AIRCRAFT,**
  - Elements instruction, 60.32
- FAILURE TO REGISTER RECEIPT OF EXPLOSIVES,**
  - Elements instruction, 64.10
- FAILURE TO REGISTER SALE OF EXPLOSIVES,**
  - Elements instruction, 64.09
- FAILURE TO REPORT A WOUND,**
  - Elements instruction, 64.15
- FALSE ALARM,**
  - Giving, 63.10
- FALSE CLAIM,**
  - Presenting, 61.05
- FALSE IDENTIFICATION DOCUMENTS,**
  - Elements instruction, 60.30
- FALSE IMPERSONATION,**
  - Aggravated, 60.26
  - Elements instruction, 60.25
- FALSE INFORMATION**
  - Making, 59.13
- FALSE MEMBERSHIP CLAIM,**
  - Elements instruction, 65.14
- FALSE RUMORS,**
  - Concerning financial status, 62.08
- FALSE SIGNING OF PETITION,**
  - Elements instruction, 60.24

PATTERN INSTRUCTIONS FOR KANSAS 3d

**FALSE TOKENS,**

Disposal, 59.37

Manufacture, 59.37

**FALSE WRITING,**

Making, 59.13

**FALSELY REPORTING A CRIME,**

Elements instruction, 60.19

**FAMILY RELATIONSHIPS,**

Crimes affecting, Chapter 58.00

**FAX,**

Harassment of court by, 60.31

**FELON,**

Aiding, 60.13

Forcible, use of force, 54.20

Class A, punishment, 68.04

Class A, verdicts, 68.05

Possession of firearms, 64.06

Unlawful use of weapons, 64.01

**FELONY DRUG TRANSACTION,**

Communication facility to facilitate, 67.22

**FELONY MURDER,**

Alternatives instruction, 56.02-A

Instruction, 56.02

Verdict forms, 68.15, 68.16

**FINANCIAL CARD,**

Altered or nonexistent, 59.36

Cancelled, use of, 59.35

Use of another, 59.34

**FINANCIAL STATUS,**

Circulating false rumors concerning, 62.08

**FIREARMS,**

Criminal discharge,

Defense, 64.02-B

Felony, 64.02-A-1

Misdemeanor, 64.02-A

Criminal disposal, 64.05

Criminal possession,

Felony, 64.06

Juvenile, 64.07-B

Affirmative Defenses, 64.07-C

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Misdemeanor, 64.07

Identification marks, defacing, 64.08

Possession in state building or county courthouse, 64.07-A

### **FIREFIGHTER,**

Unlawful interference, 56.20

### **FIRST DEGREE MURDER,**

Felony murder alternatives, 56.02-A

Felony murder instruction, 56.02

Illustrative instructions, 69.01

Mandatory minimum 40 year sentence,

Aggravating circumstances, 56.01-B

Burden of proof, 56.01-D

Mitigating circumstances, 56.01-C

Reasonable doubt, 56.01-F

Sentencing procedure, 56.01-A

Sentencing recommendation, 56.01-G

Theory of comparison, 56.01-E

Verdict form, 68.14-A

### **FLAGS,**

Desecration, 63.15

### **FOOD OR DRINK,**

Adulteration or contamination - criminal threat, 56.23-A

### **FORCE, USE,**

Defense of dwelling, 54.18

Defense of person, 54.17

Defense of property other than dwelling, 54.19

Duty to retreat, 54.17-A

Felon, forcible, 54.20

Initial aggressor, 54.22

Law enforcement officer, 54.23

Private person,

Not summoned to assist, 54.24

Summoned to assist, 54.23

Resisting arrest, 54.25

### **FOREIGN MATERIAL,**

Adding to grain, 59.36-B

### **FORGERY,**

Lottery ticket, 65.32

Making or issuing a forged instrument, 59.11

Passing a forged instrument, 59.12

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Possession of devices, 59.16

### **FORMS, VERDICT,**

Multiple counts, 68.08

Value in Issue, 68.11

### **FRAUD, WAREHOUSE RECEIPT,**

Duplicate or additional receipt, 59.46

Original receipt, 59.45

### **FRAUDULENT ACTS RELATING TO AIRCRAFT IDENTIFICATION NUMBERS,**

Elements instruction, 60.35

### **FRAUDULENT REGISTRATION OF AIRCRAFT,**

Elements instruction, 60.33

Supplying false information, 60.34

### **FRAUDULENT RELEASE OF A SECURITY AGREEMENT,**

Elements instruction, 59.44

### **FRAUDULENTLY OBTAINING EXECUTION OF A DOCUMENT,**

Elements instruction, 59.05

### **FURNISHING ALCOHOLIC BEVERAGES TO A MINOR FOR ILLCIT PURPOSES,**

Elements instruction, 58.12-B

### **FURNISHING ALCOHOLIC LIQUOR TO A MINOR,**

Elements instruction, 58.12

Defense, 58.12-A

### **FURNISHING CEREAL MALT BEVERAGE TO A MINOR,**

Elements instruction, 58.12-A

Defense, 58.12-D

### **GAMBLING,**

Commercial, 65.08

Definition, 65.07

Elements instruction, 65.06

Permitting premises to be used for commercial, 65.09

### **GAMBLING, DEVICES,**

Dealing in, 65.10

Defense, 65.10-A

Possession, 65.12

Defense, 65.12-A

Presumption, 65.11

### **GAMING LAW,**

Violations of Tribal, 65.36

PATTERN INSTRUCTIONS FOR KANSAS 3d

**GENERAL CRIMINAL INTENT,**

Instruction, 54.01-A

**GENERAL INTENT CRIME,**

Voluntary intoxication defense, 54.12

**GIVING A FALSE ALARM,**

Elements instruction, 63.10

**GOVERNMENTAL FUNCTIONS,**

Crimes affecting, Chapter 60.00

**GRAIN EMBEZZLEMENT,**

Elements instruction, 59.62

**GUILTY VERDICT,**

General form, 68.02

**HABITUALLY GIVING A WORTHLESS CHECK,**

Same day, 59.09

Within two years, 59.08

**HABITUALLY PROMOTING PROSTITUTION,**

Elements instruction, 57.16

**HALLUCINOGENIC DRUGS,**

Cultivating, 67.15

Manufacture or dispensation, 67.15

Offer to sell with intent to sell, 67.14

Possession, 67.16

Possession with intent to sell, 67.14

Selling or offering to sell, 67.15

**HARASSMENT BY TELEPHONE,**

Elements instruction, 63.14

**HARASSMENT OF COURT BY TELEFACSIMILE,**

Elements instruction, 60.31

**"HARD 40",**

See Murder, First Degree, Mandatory minimum 40 year sentence, this index

**HAZARD,**

Creating, 64.14

**HAZING,**

Elements instruction, 56.36

**HEARSAY EVIDENCE,**

Child's, 52.21

**HEALTH CARE FACILITY,**

Criminal trespass, 59.25-A

PATTERN INSTRUCTIONS FOR KANSAS 3d

**HIGHWAY SIGN OR MARKER,**

Landmark, tampering, 59.29

**HOMICIDE,**

Aggravated vehicular, 56.07-A

Definitions, 56.04

Unintended victim, 56.09

**HUNTING,**

Criminal, 59.33

Defense, 59.33-B

Posted land, 59.33-A

**IDENTIFICATION DOCUMENTS,**

False, 60.30

**IDENTIFICATION, EYEWITNESS,**

Elements instruction, 52.20

**IDENTIFICATION MARKS ON FIREARMS,**

Defacing, 64.08

**IGNITION INTERLOCK DEVICE VIOLATION,**

Elements instruction, 70.08

**IGNORANCE,**

Of fact, 54.03

Of law, 54.04

Of statute, 54.02

Of age of minor, 54.02

**ILLEGAL ALIEN,**

Knowingly employing, 66.09-A

**ILLEGAL BINGO OPERATION, 65.06-A**

**ILLUSTRATIVE SETS OF INSTRUCTIONS,**

Chapter containing, 69.00

**IMPAIRING A SECURITY INTEREST,**

Concealment, 59.41

Destruction, 59.41

Exchange, 59.42

Failure to account, 59.43

Sale, 59.42

**IMPAIRING A SECURITY INTEREST - CONCEALMENT OR  
DESTRUCTION,**

Elements instruction, 59.41

**IMPERSONATION,**

Aggravated false, 60.26

False, 60.25



PATTERN INSTRUCTIONS FOR KANSAS 3d

- INCENDIARY DEVICE,**
  - Possession, 59.39
  - Transportation, 59.39
- INCEST,**
  - Aggravated, 58.04
  - Elements instruction, 58.03
- INCITEMENT TO RIOT,**
  - Elements instruction, 63.05
- INCLUDED OFFENSES, LESSER, 68.09**
- INDECENT LIBERTIES WITH A CHILD,**
  - Aggravated, 57.06
  - Elements instruction, 57.05, 57.05-A
- INDECENT SOLICITATION OF A CHILD,**
  - Affirmative defenses, 57.05-B
  - Aggravated, 57.13
  - Elements instruction, 57.12
- INDICTMENT,**
  - Guiding instruction, 52.01
- INFLUENCE, JUDICIAL OFFICER,**
  - Attempting, 60.16
- INFLUENCING A WITNESS,**
  - Corruptly, 60.06
- INFORMATION,**
  - Guiding instruction, 52.01
- INFORMANT,**
  - Testimony - for benefits, 52.18-A
- INITIAL AGGRESSOR'S USE OF FORCE,**
  - Instruction, 54.22
- INJURING PREGNANT WOMAN,**
  - Elements instruction, 56.41
  - By Vehicle, 56.42
- INJURY TO A DOMESTIC ANIMAL,**
  - Elements instruction, 59.32
- INMATES, ETC.,**
  - Unlawful Sexual Relations, 57.26
- INNKEEPER, DEFRAUDING,**
  - Elements instruction, 56.18-A
- INSANITY,**
  - See Mental Disease or Defect, this index

PATTERN INSTRUCTIONS FOR KANSAS 3d

**INSTALLING COMMUNICATION FACILITIES FOR GAMBLERS,**

Elements instruction, 65.13

**INSTRUCTIONS,**

Application, 52.01, 51.03

Concluding,

Chapter containing, 68.00

Specific instruction, 68.01

Illustrative, Chapter 69.00

Multiple counts, 68.07

**INSURANCE CONTRACT,**

Unlawful interest, 61.08

Unlawful procurement, 61.09

**INSURER,**

Arson to defraud, 59.21

Damage to property to defraud, 59.24

**INTENT,**

Criminal, 54.02

Instruction, 54.01-A

Presumption, 54.01

**INTENT TO SELL,**

Possession,

Controlled stimulants, depressants, hallucinogenic drugs or anabolic steroids, 67.14

**INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE,**

Elements Instruction, 60.17

**INTERFERENCE WITH A FIREFIGHTER,**

Unlawful, 56.20

**INTERFERENCE WITH PARENTAL CUSTODY,**

Aggravated, 56.26-A, 56.26-B, 56.26-C

Elements instruction, 56.26

**INTERFERENCE WITH THE CONDUCT OF PUBLIC BUSINESS IN A PUBLIC BUILDING,**

Elements instruction 60.29

**INTERFERENCE WITH THE CUSTODY OF A COMMITTED PERSON,**

Elements instruction, 56.27

**INTIMIDATION OF A WITNESS OR VICTIM,**

Aggravated, 60.06-B

Elements instruction, 60.06-A

PATTERN INSTRUCTIONS FOR KANSAS 3d

**INTOXICATING LIQUOR OR DRUGS,**

- Operating aircraft, 70.06
- If chemical test used, 70.07

**INTOXICATION,**

- Involuntary, 54.11
- Public, 63.09
- Voluntary, 54.12, 54.12-A, 54.12-A-1

**INTRODUCTORY INSTRUCTIONS,**

- Application, 51.02, 51.03
- Arguments of counsel, 51.06
- Binding application, 51.02
- Chapter containing, 51.00
- Close of case, jury receives before, 51.09
- Consideration of evidence, 51.04
- Consideration of instructions, 51.01, 51.02
- Counsel, statements and arguments, 51.06
- Court, rulings, 51.05
- Evidence, 51.01
- Evidence, consideration, 51.04
- Guiding application, 51.03
- Jury, consideration of penalty, 51.10
- Jury receives before close of case, 51.09
- Nature of, 51.02, 51.03
- Penalty, consideration by jury, 51.10
- Prejudice, 51.07
- Pronoun, form, 51.08
- Statements of counsel, 51.06
- Sympathy, 51.07

**INVOLUNTARY INTOXICATION,**

- Defense, 54.11

**INVOLUNTARY MANSLAUGHTER,**

- Driving under the influence, 56.06-A
- Elements instruction, 56.06

**ISSUING A FORGED INSTRUMENT,**

- Elements instruction, 59.11

**JUDICIAL OFFICER,**

- Attempting to influence, 60.16
- Unlawful collection, 61.10

**JUROR, CONDUCT,**

- Corrupt, 60.18

PATTERN INSTRUCTIONS FOR KANSAS 3d

**JURY,**

- Consideration of penalty, cautionary instruction, 51.10
- Deadlocked, 68.12
- Penalty, consideration, cautionary instruction, 51.10
- Post-trial communication, 68.13
- Receipt of instructions before close of case, cautionary instruction, 51.00

**JUSTICE, ADMINISTRATION OF,**

- Interference, 60.17

**JUVENILE DELINQUENCY,**

- Aggravated, 58.13

**JUVENILE MISCONDUCT,**

- Encouraging, 58.09

**KANSAS ODOMETER ACT,**

- Violations, 59.65-A to 59.65-F

**KANSAS PARIMUTUEL RACING ACT,**

- Definitions, 65.52
- Violation, 65.51

**KIDNAPPING,**

- Aggravated, 56.25
- Elements instruction, 56.24

**KNOWINGLY EMPLOYING AN ALIEN ILLEGALLY WITHIN THE UNITED STATES,**

- Elements instruction, 66.09

**LANDMARK,**

- Highway sign or marker, 59.29
- Tampering, 59.28

**LAW ENFORCEMENT OFFICER,**

- Aggravated assault, 56.14
- Aggravated battery, 56.19
- Assault, 56.13
- Battery, 56.17

**LEGAL PROCESS,**

- Obstructing, 60.08
- Simulating, 60.21

**LEGISLATIVE DOCUMENT,**

- Altering, 59.15

**LESSER INCLUDED OFFENSES,**

- Forms, 68.10
- Instruction, 68.09

PATTERN INSTRUCTIONS FOR KANSAS 3d

**LEWD AND LASCIVIOUS BEHAVIOR,**

Elements instruction, 57.10

**LIABILITY,**

Principles, Chapter 54.00

**LIBERTIES WITH A CHILD,**

Aggravated indecent, 57.06

Indecent, 57.05, 57.05-A

Affirmative defenses, 57.05-B

Sodomy, 57.05-A

**LIENHOLDER,**

Arson to defraud, 59.21

Damage to property to defraud, 59.24

**LITTERING,**

Private property, 59.27

Public, 59.26

**LOST OR MISLAID PROPERTY,**

Theft, 59.02

**LOTTERY,**

Conflicts of interest,

Commission member, 65.30

Contractor, 65.31

Employee, 65.30

Retailer, 65.31

Definitions, 65.25

Forgery of ticket, 65.32

Ticket,

Forgery, 65.32

Unlawful purchase, 65.34

Unlawful sale, 65.33

Unlawful purchase of ticket, 65.34

Unlawful sale of ticket, 65.33

**MACHINES, COIN-OPERATED,**

Opening, damaging or removing, 59.50

Possession of tools for opening, damaging or removing, 59.51

**MAGAZINE SALE,**

Tie-in, 66.04

**MAINTAINING A PUBLIC NUISANCE,**

Elements instruction, 63.06

**MAKING FALSE INFORMATION,**

Elements instruction, 59.13

PATTERN INSTRUCTIONS FOR KANSAS 3d

**MAKING A FORGED INSTRUMENT,**

Elements instruction, 59.11

**MAKING FALSE PUBLIC WAREHOUSE REPORTS,**

Elements instruction, 59.63-A

**MAKING FALSE PUBLIC WAREHOUSE RECORDS AND STATEMENTS,**

Elements instruction, 59.63

**MANDATORY MINIMUM 40 YEAR SENTENCE,**

Aggravated circumstances, 56.01

Burden of proof, 56.01-D

Mitigating circumstances, 56.01-C

Reasonable doubt, 56.01-F

Sentencing procedure, 56.01-A

Sentencing recommendation, 56.01-G

Theory of comparison, 56.01-E

Verdict form, 68.14-A

**MANSLAUGHTER,**

Involuntary, 56.06

Driving under the influence, 56.06-A

Voluntary, 56.05

**MANUFACTURING,**

Controlled stimulants, depressants, hallucinogenic drugs or anabolic steroids, 67.15

Controlled substance, 67.21

**MANUFACTURING A CONTROLLED SUBSTANCE,**

Elements instruction, 67.21

**MARRIAGE,**

Rape defense, 57.01-A

**MASTER KEY,**

Automobile, 59.48

**MEMBERSHIP CLAIM,**

False, 65.14

**MENTAL DISEASE OR DEFECT,**

Commitment, 54.10-A

Instruction on principle, 54.10

**MENTAL CAPACITY,**

Diminished, 54.12-B

**MINOR,**

Furnishing alcoholic liquor, 58.12

Defenses, 58.12-C

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Furnishing cereal malt beverage, 58.12-D

### **MISCONDUCT,**

Contributing to a child's, 58.14

Official, 61.02

### **MISCONDUCT, JUVENILE,**

Encouraging, 58.09

### **MISDEMEANORS,**

Chapter containing, 70.00

Driving under the influence of intoxicating liquor or drugs,  
70.01

Driving while intoxicated, chemical test used, 70.02

Operating aircraft under influence, 70.06

Reckless driving, 70.04

Traffic offenses, 70.01

Transporting liquor in opened container, 70.03

Unlawful use of weapons, 64.02

Violation of city ordinance, 70.05

### **MISTAKE OF LAW,**

Defense, 54.04

### **MISTREATMENT OF A CONFINED PERSON,**

Elements instruction, 56.29

### **MISTREATMENT OF DEPENDANT ADULT,**

Affirmative Defense, 56.38

### **MISUSE OF PUBLIC FUNDS,**

Elements instruction, 61.11

### **MULTIPLE COUNTS,**

Forms, 68.08

Instructions, 68.07

### **MULTIPLE DEFENDANT,**

Admissibility of evidence, 52.07

### **MURDER,**

Alternatives, 56.02-A

Capital Murder, 56.00 *et seq.*

Felony murder, 56.02

First degree, 56.03

First degree, mandatory minimum 40 year sentence,

Aggravating circumstances, 56.01-B

Burden of proof, 56.01-D

Mitigating circumstances, 56.01-C

Reasonable doubt, 56.01-F

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Sentencing procedure, 56.01-A  
Sentencing recommendation, 56.01-G  
Theory of comparison, 56.01-E  
Verdict form, 68.14-A

Homicide definitions, 56.04  
Second degree, 56.03  
Unintentional, 56.03-A

### **NARCOTICS,**

Drug sale defined, 67.13  
Sale, 67.13, 67.13-B

### **NARCOTIC DRUGS AND CERTAIN STIMULANTS,**

Offer to sell with intent to sell, 67.13-C  
Possession, 67.13, 67.13-B, 67.13-C  
Sale, 67.13, 67.13-B, 67.13-C

### **NONCONTROLLED SUBSTANCE,**

Representation controlled, 67.20

### **NONDISCLOSURE OF SOURCE OF RECORDINGS,**

Elements instruction, 59.60

### **NONSUPPORT OF A CHILD,**

Elements instruction, 58.06

### **NONSUPPORT OF A SPOUSE,**

Elements instruction, 58.07

### **NOT GUILTY VERDICT,**

Because of insanity, 68.06  
General form, 68.03

### **NOXIOUS MATTER,**

Criminal use, 59.40

### **NUISANCE, PUBLIC,**

Maintaining, 63.06  
Permitting, 63.07

### **OBJECT ONTO STREET OR ROAD,**

Casting, 59.52, 59.53, 59.54, 59.55

### **OBSCENITY,**

Promoting, 65.01  
Affirmative defenses, 65.05  
Definitions, 65.03  
Minor, 65.02  
Affirmative defenses, 65.05-A  
Presumption, 65.04



PATTERN INSTRUCTIONS FOR KANSAS 3d

**OBSTRUCTING LEGAL PROCESS,**

Elements instruction, 60.08

**OBSTRUCTING OFFICIAL DUTY,**

Elements instruction, 60.09

**ODOMETER, ACT,**

Violations, 59.65-A to 59.65-F

**OFFENSES, LESSER INCLUDED,**

Forms, 68.10

Instruction, 68.09

**OFFICIAL ACTS, PAST,**

Compensation, 61.03

Defense, 61.04

**OFFICIAL ACT, UNAUTHORIZED,**

Performance, 60.20

**OFFICIAL DUTY,**

Obstructing, 60.09

**OFFICIAL MISCONDUCT,**

Elements instruction, 61.02

**OPENING, DAMAGING, OR REMOVING COIN-OPERATED MACHINES,**

Elements instruction, 59.50

Possession of tools, 59.51

**OPERATING AIRCRAFT,**

While under influence, 70.06

If chemical test used, 70.07

**OTHER CRIMES,**

Instruction, 52.06

**PARAPHERNALIA,**

See Drug Paraphernalia, this index.

**PARENTAL CUSTODY,**

Aggravated interference, 56.26-A, 56.26-B, 56.26-C

Interference, 56.26

**PARIMUTUEL RACING ACT,**

Definitions, 65.52

Violations, 65.51

**PAROLED OR DISCHARGED PERSON,**

Exposing, 62.09

**PARTY LINE, TELEPHONE,**

Refusal to yield, 64.13

PATTERN INSTRUCTIONS FOR KANSAS 3d

**PASSING A FORGED INSTRUMENT,**

Elements instruction, 59.12

**PAST OFFICIAL ACTS,**

Compensation, 61.03

Defense, 61.04

**PATRONIZING A PROSTITUTE,**

Elements instruction, 57.17

**PENALTY,**

Consideration by jury, cautionary instruction, 51.10

**PERFORMANCE OF AN UNAUTHORIZED OFFICIAL ACT,**

Elements instruction, 60.20

**PERJURY,**

Elements instruction, 60.05

**PERMITTING A FALSE CLAIM,**

Elements instruction, 61.06

**PERMITTING A PUBLIC NUISANCE,**

Elements instruction, 63.07

**PERMITTING DANGEROUS ANIMAL TO BE AT LARGE,**

Elements instruction, 56.22

**PERMITTING PREMISES TO BE USED FOR COMMERCIAL GAMBLING,**

Elements instruction, 65.09

**PERMITTING PREMISES TO BE USED FOR CRIMINAL SYNDICALISM,**

Elements instruction, 60.04

**PERSONAL RIGHTS,**

Crimes involving, Chapter 62.00

**PETITION SIGNING,**

False, 60.24

**PIRACY, AIRCRAFT,**

Elements instruction, 56.35

**PIRACY OF RECORDINGS,**

Dealing in, 59.58-A

Defense, 59.59

Elements instruction, 59.58

Non-disclosure of source, 59.60

**POISONING,**

Attempted, 56.21

**POLITICAL PICTURES OR ADVERTISEMENTS,**

Posting, 56.21

PATTERN INSTRUCTIONS FOR KANSAS 3d

**POSSESSION,**

Burglary tools, 59.19

Controlled stimulants, depressants, hallucinogenic  
drugs or anabolic steroids, 67.16

With intent to sell, 67.14

Firearm,

Felony, 64.07

Juvenile, 64.07-B

Affirmative Defenses, 64.07-C

Misdemeanor, 59.12

Forged instrument, 59.12

Forgery devices, 59.16

Gambling device, 65.12

Incendiary or explosive device, 59.39

**POSSESSION BY DEALER - NO TAX STAMP,**

Elements instruction, 67.24

**POSSESSION OF CONTROLLED STIMULANTS,**

**DEPRESSANTS, HALLUCINOGENIC DRUGS OR ANABOLIC  
STERIODS,**

Elements instruction, 67.16

Intent to sell, 67.14

**POSSESSION OF FIREARM IN STATE BUILDING OR COUNTY  
COURTHOUSE,**

Elements instruction, 64.07-A

**POSSESSION OF A GAMBLING DEVICE,**

Elements instruction, 65.12

**POSSESSION OR MANUFACTURE OF DRUG  
PARAPHERNALIA,**

Elements instruction, 67.18-A

**POSTED LAND,**

Unlawful hunting, 59.33-A

**POST-TRIAL COMMUNICATION WITH JURORS,**

Instruction, 68.13

**POSTING OF POLITICAL PICTURES OR ADVERTISEMENTS,**

Elements instruction, 59.49

**PRACTICING CRIMINAL SYNDICALISM,**

Elements instruction, 60.03

**PREGNANT WOMAN,**

Injuring, 56.41

By Vehicle, 56.42

PATTERN INSTRUCTIONS FOR KANSAS 3d

**PREJUDICE,**

Cautionary instruction, 51.07

**PREMISES,**

Gambling, permitting use, 65.09

**PRESCRIPTION ONLY DRUG,**

Unlawfully obtaining, 64.16

For sale, 64.17

**PRESENTING A FALSE CLAIM,**

Elements instruction, 61.05

**PRESUMPTION OF INNOCENCE,**

Guiding instruction, 52.02, 52.03

**PRESUMPTION OF INTENT,**

Instruction of principle, 54.01

To deprive, 54.01-B

**PRESUMPTIONS,**

Gambling devices, dealing, 65.11

Obscenity, 65.04

**PRESUMPTIONS OF INTENT TO DEFRAUD,**

Worthless check, 59.06-A

**PRINCIPLES OF CRIMINAL LIABILITY,**

Chapter containing, 54.00

**PRIVACY, BREACH OF,**

Divulging message, 62.04

Intercepting message, 62.03

**PROCURING AGENT,**

Instruction, 54.14-A

**PROMOTING OBSCENITY,**

Affirmative defenses, 65.05

Definitions, 65.03

Elements instruction, 65.01

Presumptions, 65.04

**PROMOTING OBSCENITY TO A MINOR,**

Affirmative defenses, 65.05-A

Elements instruction, 65.02

**PROMOTING PROSTITUTION,**

Child under 16, 57.15-A

Elements instruction, 57.15

Habitually, 57.16

**PROMOTING PYRAMID PROMOTIONAL SCHEME,**

Elements instruction, 59.66

PATTERN INSTRUCTIONS FOR KANSAS 3d

**PROMOTING SEXUAL PERFORMANCE BY A MINOR,**

Elements instruction, 57.12-B

**PRONOUN FORM,**

Cautionary instruction, 51.08

**PROOF OF OTHER CRIME,**

Admissibility of evidence, 52.06

**PROPERTY,**

Criminal damage with intent to defraud insurer  
or lienholder, 59.24

Criminal damage - without consent, 59.23

Criminal deprivation, 59.04

**PROPERTY, CRIMES AGAINST,**

Chapter containing, 59.00

**PROSTITUTION,**

Elements instruction, 57.14

Habitually promoting, 57.16

Patronizing, 57.17

Promotion, 57.15

**PROVOCATION,**

Retaliation, 54.21

**PUBLIC BUILDING,**

Interference with conduct of public business, 60.29

**PUBLIC BUSINESS,**

Interference with conduct of in public building, 60.29

**PUBLIC CLAIM,**

Discounting, 61.07

**PUBLIC FUNDS,**

Misuse, 61.11

**PUBLIC INTOXICATION,**

Elements instruction, 63.09

**PUBLIC MORALS,**

Crimes, Chapter 65.00

**PUBLIC NOTICE,**

Tampering, 60.23

**PUBLIC NUISANCE,**

Maintaining, 63.06

Permitting, 63.07

**PUBLIC PEACE,**

Crimes against, Chapter 63.00

PATTERN INSTRUCTIONS FOR KANSAS 3d

**PUBLIC RECORD,**

Tampering, 60.22

**PUBLIC SAFETY,**

Crimes against, Chapter 64.00

**PUBLIC TRUSTS,**

Crimes affecting, Chapter 61.00

**PUBLIC WAREHOUSE,**

Making false,

Records, 59.63

Reports, 59.63-A

Statements, 59.63

**PUBLIC UTILITY EMPLOYEE,**

Eavesdropping, 62.02

**PUNISHMENT,**

Felony, Class A, 68.04

**PYRAMID PROMOTIONAL SCHEME,**

Promoting, 59.66

**RACING ACT,**

Parimutuel,

Definitions, 65.52

Violations, 65.51

**RACKETEERING,**

Elements instruction, 66.01

**RAILROAD PROPERTY,**

Criminal trespass, 59.25-B

**RAPE,**

Corroboration, necessity, 57.04

Credibility of prosecutrix's testimony, 57.03

Defense of marriage, 57.01-A

Elements instruction, 57.01

**REASONABLE DOUBT,**

Guiding instruction, 52.02, 52.04

**RECEIPT OF EXPLOSIVES,**

Failure to register, 64.10

**RECEIVING A SPORTS BRIBE,**

Elements instruction, 66.07

**RECEIVING OR ACQUIRING PROCEEDS DERIVED FROM A VIOLATION OF THE UNIFORM CONTROLLED SUBSTANCES ACT,**

Elements instruction, 67.25

PATTERN INSTRUCTIONS FOR KANSAS 3d

**RECENTLY STOLEN PROPERTY,**

Possession, 59.01

**RECKLESS DRIVING,**

Elements instruction, 70.04

**RECORDINGS,**

Piracy, 59.58

Defense, 59.59

Dealing in, 59.58-A

Non-disclosure of source, 59.60

**RECUT TIRES,**

Sale, 59.56

**REFUSAL TO YIELD A TELEPHONE PARTY LINE,**

Elements instruction, 64.13

**REMAINING AT AN UNLAWFUL ASSEMBLY,**

Elements instruction, 63.03

**REPORTING A CRIME,**

Falsely, 60.19

Resisting arrest, 54.25

**RESPONSIBILITY FOR CRIMES OF ANOTHER,**

Actor not prosecuted, 54.07

Crime not intended, 54.06

Instruction on principle, 54.05

**RESTITUTION,**

Instruction on principle, 54.16

**RESTRAINT,**

Criminal, 56.28

**RIOT,**

Elements instruction, 63.04

Incitement, 63.05

**ROBBERY,**

Aggravated, 56.31

Elements instruction, 56.30

**RULINGS OF COURT,**

Cautionary instructions, 51.05

**RUMORS, FALSE,**

Concerning financial status, 62.08

**SALE OF EXPLOSIVES,**

Failure to register, 64.09

**SALE OF RECUT TIRES,**

Elements instruction, 59.56

PATTERN INSTRUCTIONS FOR KANSAS 3d

**SCHOOL EMPLOYEE,**

Battery against, 56.16-B

**SECOND DEGREE MURDER, 56.03**

Elements instruction, 56.03

Unintentional, 56.03-A

**SECURITY AGREEMENT,**

Fraudulent release, 59.44

Definition, Chapter 53.00

**SECURITY INTEREST,**

Definition, Chapter 53.00

Impairing,

Concealment, 59.41

Destruction, 59.41

Exchange, 59.42

Failure to account, 59.43

Sale, 59.42

**SEDITION,**

Elements instruction, 60.02

**SELECTED MISDEMEANORS,**

Chapter containing, 70.00

**SELF-DEFENSE,**

Defense of dwelling, 54.18

Defense of person, 54.17, 54.17-A

Defense of property other than dwelling, 54.19

Felon, forcible, 54.20

Force, use of, 54.17, 54.18, 54.19, 54.20

**SELLING, OFFERING TO SELL, CULTIVATING OR  
DISPENSING CONTROLLED STIMULANTS, DEPRESSANTS,  
HALLUCINOGENIC DRUGS OR ANABOLIC STEROIDS,**

Elements instruction, 67.15

**SELLING, OFFERING TO SELL, POSSESSING WITH INTENT  
TO SELL OR DISPENSING CONTROLLED SUBSTANCES  
DESIGNATED UNDER K.S.A. 65-4113 TO A PERSON UNDER 18  
YEARS OF AGE,**

Elements instruction, 67.23

**SELLING BEVERAGE CONTAINER WITH DETACHABLE  
TABS,**

Elements instruction, 64.18

**SERVICES,**

Theft, 59.03



PATTERN INSTRUCTIONS FOR KANSAS 3d

**SEX OFFENSES,**

Chapter containing, 57.00

Definitions, 57.18

**SEXUAL BATTERY,**

Aggravated, 57.20, 57.24, 57.25

Elements instruction, 57.19

**SEXUAL EXPLOITATION OF A CHILD,**

Elements instruction, 57.12-A

**SEXUAL INTERCOURSE,**

Definition, 57.02

**SEXUAL PERFORMANCE,**

Promoting by a minor, 57.12-B

**SEXUAL PREDATOR,**

Civil commitment, 57.40

Burden of Proof, 57.42

Definitions, 57.41

**SEXUAL RELATIONS,**

With Inmates, Etc., 57.26

**SHOOTING,**

Drive By, 64.02-A-1

**SIGNING OF PETITION,**

False, 60.24

**SIMULATED CONTROLLED SUBSTANCES,**

Manufacture, 67.18

Possession, 67.18

Possession with intent to use, 67.17

Promotion, 67.19

Use, 67.17

**SIMULATING LEGAL PROCESS,**

Elements instruction, 60.21

**SKIMMING,**

Elements instruction, 66.10

**SMOKING,**

Failure to post signs, 62.11-A

**SMOKING IN PUBLIC PLACE,**

Unlawful, 62.11

Defense, 62.12

**SODOMY,**

Aggravated, 57.08

Elements instruction, 57.07

PATTERN INSTRUCTIONS FOR KANSAS 3d

**SOLICITATION, CRIMINAL,**

Defense, 55.10

Elements instruction, 55.09

**SOLICITATION OF A CHILD,**

Aggravated indecent, 57.13

Indecent, 57.12

**SPECIFIC INTENT CRIME,**

Voluntary intoxication defense, 54.12-A

**SPORTS BRIBERY,**

Elements instruction, 66.06

**SPORTS CONTEST,**

Tampering, 66.08

**SPOUSE,**

Nonsupport, 58.07

**STALKING,** 56.39

**STATE POSTAGE,**

Unlawful use, 61.12

**STATUTORY PRESUMPTION OF INTENT TO DEPRIVE,**

Instruction, 54.01-B

**STEROIDS,**

Possession, 67.16

Possession with intent to sell, 67.14

Selling, offering to sell, cultivating or dispensing, 67.15

**STIMULANTS,**

Cultivating, 67.15

Dispensation, 67.15

Offer to sell with intent to sell, 67.14

Possession, 67.13, 67.16

Possession with intent to sell, 67.14

Selling or offering to sell, 67.13-B

**STIPULATIONS,**

Guiding instruction, 52.05

**STORED GOODS,**

Unauthorized delivery, 59.47

**STREET OR ROAD,**

Casting object onto, 59.52-59.55

**SUICIDE,**

Assisting, 56.08

PATTERN INSTRUCTIONS FOR KANSAS 3d

**SYMPATHY,**

Cautionary instruction, 51.07

**SYNDICALISM,**

Permitting premises to be used for criminal, 60.04

Practicing criminal, 60.03

**TAMPERING WITH A LANDMARK,**

Elements instruction, 59.28

**TAMPERING WITH A LANDMARK - HIGHWAY SIGN OR  
MARKER,**

Elements instruction, 59.29

**TAMPERING WITH PUBLIC NOTICE,**

Elements instruction, 60.23

**TAMPERING WITH A PUBLIC RECORD,**

Elements instruction, 60.22

**TAMPERING WITH A SPORTS CONTEST,**

Elements instruction, 66.08

**TAMPERING WITH A TRAFFIC SIGNAL,**

Aggravated, 59.31

Elements instruction, 59.30

**TAX RETURNS,**

Defense, 56.34

Disclosing information obtained in preparing, 56.33

**TAX STAMP,**

Possession by dealer without, 67.24

**TELEFACSIMILE,**

Harassment of court, 60.31

**TELEPHONE,**

Harassment, 63.14

Refusal to yield party line, 64.13

**TERMS, EXPLANATIONS,**

Chapter containing, 53.00

**TESTIMONY,**

Informant-for benefits, 52.18-A

**TESTIMONY OF INFORMANT FOR BENEFITS,**

Instruction, 51.18-A

**THEFT,**

Elements instruction, 59.01

Illustrative instructions, 69.02

Knowledge of property stolen, 59.01-A

Lost or mislaid property, 59.02

## PATTERN INSTRUCTIONS FOR KANSAS 3d

Recently stolen property, 59.01; Notes on Use  
Services, 59.03

Welfare fraud, 59.01-B

### **THEFT OF CABLE TELEVISION SERVICES,**

Elements instruction, 59.57

### **THEFT OF LOST OR MISLAID PROPERTY,**

Elements instruction, 59.02

### **THEFT OF SERVICES,**

Elements instruction, 59.03

### **THREAT,**

Adulteration or contamination of food or drink, 56.23-A

Aggravated, 56.23-B

Criminal, 56.23

### **TIE-IN MAGAZINE SALE,**

Elements instruction, 66.04

### **TIRES,**

Sale of recut, 59.56

### **TOKENS, FALSE,**

Disposal, 59.37

Manufacture, 59.37

### **TRAFFIC OFFENSE,**

Alcohol concentration of .08 or more, 70.01-A

B.A.T. .08 or more, 70.02-B

D.U.I., 70.01

### **TRAFFIC IN CONTRABAND IN A CORRECTIONAL INSTITUTION,**

Elements instruction, 60.27

### **TRAFFIC SIGNAL,**

Aggravated tampering, 59.31

Tampering, 59.30

### **TRANSPORTATION,**

Explosive device, 59.39

Incendiary device, 59.39

### **TRANSPORTING ALCOHOLIC BEVERAGE IN OPENED CONTAINER,**

Elements instruction, 70.03

### **TREASON,**

Elements instruction, 60.01

PATTERN INSTRUCTIONS FOR KANSAS 3d

**TRESPASS,**

- Computer, 59.64-B
- Criminal, 59.25-A
- Health care facility, 59.25-A

**TRIBAL GAMING LAW,**

- Violations, 65.36

**UNAUTHORIZED DELIVERY OF STORED GOODS,**

- Elements instruction, 59.47

**UNAUTHORIZED OFFICIAL ACT,**

- Performance, 60.20

**UNIFORM CONTROLLED SUBSTANCES ACT,**

- 67.13, 67.13-A, 67.13-B, 67.14, 67.15, 67.16
- Receiving or acquiring proceeds derived from a violation,  
67.25

**UNLAWFUL ASSEMBLY,**

- Elements instruction, 63.02
- Remaining, 63.03

**UNLAWFUL COLLECTION BY A JUDICIAL OFFICER,**

- Elements instruction, 61.10

**UNLAWFUL CONDUCT OF DOG FIGHTING,**

- Attending, 65.19
- Elements instruction, 65.18

**UNLAWFUL DEPRIVATION OF PROPERTY,**

- Elements instruction, 59.04

**UNLAWFUL DISCLOSURE OF AUTHORIZED INTERCEPTION  
OF COMMUNICATIONS,**

- Elements instruction, 60.06-C

**UNLAWFUL DISCLOSURE OF A WARRANT,**

- Elements instruction, 60.28

**UNLAWFUL DISPOSITION OF ANIMALS,**

- Elements instruction, 65.17

**UNLAWFUL FAILURE TO REPORT A WOUND,**

- Elements instruction, 64.15

**UNLAWFUL HUNTING,**

- Posted land, 59.33-A

**UNLAWFUL INTEREST IN AN INSURANCE CONTRACT,**

- Elements instruction, 61.08

**UNLAWFUL INTERFERENCE WITH A FIREFIGHTER,**

- Elements instruction, 56.20

PATTERN INSTRUCTIONS FOR KANSAS 3d

- UNLAWFUL MANUFACTURE OR DISPOSAL OF FALSE  
TOKENS,**  
Elements instruction, 59.37
- UNLAWFUL PROCUREMENT OF INSURANCE CONTRACT,**  
Elements instruction, 61.09
- UNLAWFUL PURCHASE OF LOTTERY TICKET,**  
Instruction, 65.34
- UNLAWFUL SALE OF LOTTERY TICKET,**  
Instruction, 65.33
- UNLAWFUL SEXUAL RELATIONS WITH INMATES, ETC.,**  
Elements instruction, 57.26
- UNLAWFUL SMOKING IN PUBLIC PLACE,**  
Defense, 62.12  
Elements instruction, 62.11
- UNLAWFUL USE OF A COMMUNICATION FACILITY TO  
FACILITATE FELONY DRUG TRANSACTION,**  
Elements instruction, 67.22
- UNLAWFUL USE OF FINANCIAL CARD - ALTERED OR  
NONEXISTENT,**  
Elements instruction, 59.39
- UNLAWFUL USE OF FINANCIAL CARD - CANCELLED,**  
Elements instruction, 59.35
- UNLAWFUL USE OF FINANCIAL CARD OF ANOTHER,**  
Elements instruction, 59.34
- UNLAWFUL USE OF STATE POSTAGE,**  
Elements instruction, 61.12
- UNLAWFUL USE OF WEAPONS - FELONY,**  
Affirmative defense, 64.04  
Elements instruction, 64.01
- UNLAWFUL USE OF WEAPONS - MISDEMEANOR,**  
Affirmative defense, 64.04  
Elements instruction, 64.02
- UNLAWFULLY EXPOSING ANOTHER TO A  
COMMUNICABLE DISEASE,**  
Elements instruction, 56.40
- UNLAWFULLY MANUFACTURING A CONTROLLED  
SUBSTANCE,**  
Elements instruction, 67.21
- UNLAWFULLY OBTAINING PRESCRIPTION-ONLY DRUG,**  
Elements instruction, 64.16

## PATTERN INSTRUCTIONS FOR KANSAS 3d

For resale, 64.17

### **USE OF FORCE,**

Defense of dwelling, 54.18

Defense of person, 54.17

Defense of property other than dwelling, 54.19

Duty to retreat, 54.17-A

Felon, forcible, 54.20

Initial aggressor, 54.22

Law enforcement officer, 54.23

Private person,

Not summoned to assist, 54.24

Summoned to assist, 54.23

Resisting arrest, 54.25

### **VAGRANCY,**

Elements instruction, 63.08

### **VALUE IN ISSUE,**

Instruction, 59.70

Verdict form, 68.11

### **VEHICULAR BATTERY,**

Elements instruction, 56.07-B

### **VEHICULAR HOMICIDE,**

Aggravated, 56.07-A

Elements instruction, 56.07

### **VERDICT FORMS,**

Capital murder, 68.14-A-1, 68.14-B-1, 68.17

Chapter containing, 68.00

Guilty, form, 68.02

Mental disease or defect, not guilty, 68.06

Not guilty, form, 68.03

Value in issue, 68.11

### **VICTIM OR WITNESS,**

Aggravated intimidation, 60.06-B

Intimidation, 60.06-A

### **VIOLATION OF CITY ORDINANCE,**

Elements instruction, 70.05

### **VIOLATION OF KANSAS ODOMETER ACT,**

Conspiring, 59.65-B

Operating a vehicle, 59.65-C

Tampering, 59.65-A

Unlawful device, 59.65-D

PATTERN INSTRUCTIONS FOR KANSAS 3d

Unlawful sale, 59.65-E

Unlawful service, 50.65-F

**VIOLATION OF PERSONAL RIGHTS,**

Chapter containing, 62.00

**VIOLATION OF TRIBAL GAMING LAW,**

Elements Instruction, 65.36

**VOLUNTARY INTOXICATION,**

Defense, 54.12, 54.12-A-1

General intent crime, Defense, 54.12

Particular state of mind, Defense, 54.12-A-1

**VOLUNTARY MANSLAUGHTER,**

Elements instruction, 56.05

**WAREHOUSE RECEIPT FRAUD - DUPLICATE OR  
ADDITIONAL RECEIPT,**

Elements instruction, 59.46

**WAREHOUSE RECEIPT FRAUD - ORIGINAL RECEIPT,**

Elements instruction, 59.45

**WARRANT, DISCLOSURE,**

Unlawful, 60.28

**WEAPONS,**

Affirmative defense, 64.04

Aggravated violation, 64.03

Carrying concealed, 64.12

Unlawful use,

Felony, 64.01

Misdemeanor, 64.02

**WELFARE FRAUD,**

Theft, 59.01-B

**WITNESS,**

Corruptly influencing, 60.06

**WITNESSES,**

Credibility, 52.09

Defendant, 52.10

Expert, 52.14

Number, 52.11

**WITNESS OR VICTIM,**

Aggravated intimidation, 60.06-B

Intimidation, 60.06-A

**WORTHLESS CHECK,**

Causing unlawful prosecution, 59.10



PATTERN INSTRUCTIONS FOR KANSAS 3d

Defense, 59.07

Elements instruction, 59.06

Habitually giving on same day, 59.09

Habitually giving within two years, 59.08

Presumption of intent to defraud, 59.06-A

**WOUND,**

Failure to report, 64.15

**WRITTEN INSTRUMENT,**

Destroying, 59.14

