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Proposed Kansas Criminal Code

(The proposed Criminal Code is the product of a study undertaken by the Kansas Judicial Council pursuant to a Request of the 1963 Session of the Kansas Legislature.)

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Foreword

In 1963, the Judicial Council established an Advisory Committee on Criminal Law Revision. The Committee was given responsibility for studying and evaluating the substantive and procedural criminal law of the state and for recommending appropriate revisions of Chapters 21 and 62, Kansas Statutes Annotated. The Advisory Committee began its work on September 1, 1963, and has been continuously active since that date. The proposals contained in this publication constitute the preliminary recommendations of the Committee and the Council concerning Chapter 21—the substantive provisions. The procedural recommendations will appear in a later publication.

The Advisory Committee appointed by the Council represents a broad spectrum of experience and interest in the criminal law. Judge Doyle E. White of Arkansas City, a member of the Judicial Council, is Chairman of the Committee. Other appointed members are E. Lael Alkire of Wichita, William M. Ferguson of Wellington, Charles F. Forsyth of Erie, Lee Hornbaker of Junction City, Selby S. Soward of Goodland and George T. Van Bebber of Troy. J. Richard Foth, Assistant Attorney General, is the Attorney General's representative on the Committee and Professor Paul E. Wilson of the University of Kansas School of Law serves the Advisory Committee as its Reporter. Others who have served on the Advisory Committee are Howard T. Payne of Olathe, the late A. K. Stavely of Lyndon and the late Lester M. Goodell of Topeka. The Committee has met at monthly intervals during the past four and one-half years and has frequently met in joint session with the Judicial Council. All members of the Committee have had active roles in the preparation of the proposed revision.

The Advisory Committee has had the benefit of the experience of similar agencies in other states where recent programs of criminal law revision have been undertaken. It has drawn upon the work of recent drafting committees in Illinois, Minnesota, New Mexico, New York, Wisconsin and other states. Also, the Committee has had before it the work of the American Law Institute which published the Model Penal Code in 1962 after a ten year period of study and preparation. While the guidelines that have emerged from these efforts of other states have been most helpful, the Committee's principal concern has been that it produce a code that is suited to

the needs of the State of Kansas. The proposals of other drafting agencies have been adopted only to the extent that they, in the Committee's best judgment, can contribute to the improved administration of justice in Kansas.

THE DRAFTING PROCESS

The Judicial Council's experience with other drafting projects has demonstrated a necessity for research and the preparation of preliminary drafts of proposed revisions and the need for centering this responsibility upon a single individual or group. Accordingly, the Council appointed Professor Paul E. Wilson of the University of Kansas School of Law as Reporter for the Advisory Committee. He has worked with the Committee on a part-time basis since its creation.

The drafting process originates with the Reporter, who examines each section of the existing law together with relevant judicial opinions. Also, similar statutes in other states are reviewed, particularly those of states which have recently revised their criminal codes. With this material before him, the Reporter drafts a suggested revision of each section, which he supports by comments and materials from cases, statutes and other authorities. These suggestions are submitted to the Advisory Committee which undertakes an intensive scrutiny of each proposal. Usually each section is then redrafted by the Reporter, the new draft reflecting the views of the Advisory Committee, to which it is again submitted. This process may be repeated several times. Indeed, it is a safe estimate that few sections in the proposal have undergone fewer than three drafts and in some instances, sections have been drafted as many as six times before final approval.

The recommendations of the Advisory Committee are then reported to the Judicial Council for its study and approval. Again the sections are exposed to careful examination. Often one or more additional re-drafts are required before Council approval is given.

Thus, each recommended section that is here published has been considered by the Reporter, the Advisory Committee, and finally the Judicial Council. This process necessarily has involved compromise. No section is the product of the thinking of any single individual.

THE OBJECTIVES OF REVISION

At the outset, the Advisory Committee faced questions concerning the scope of the project. A possible approach to revision was to leave the language of present sections substantially unaffected and

to focus attention on the deletion of obsolete provisions, removal of ambiguities and inconsistencies, and reclassification and rearrangement. The Judicial Council advised the Committee that this approach would not accomplish the intended objective and instructed the Committee to study, evaluate and re-write the present law section by section, having due regard for the current problems of maintaining order and protecting life and property in Kansas, at the same time, recognizing the limitations imposed by due process of law.

The present criminal law of Kansas consists basically of statutes enacted by the first Kansas territorial legislature, which convened in 1855. The penal laws passed at that time were adaptions of the then existing criminal statutes of Missouri. Since then, many additions and amendments have been made, but often without regard for the relationship to or consistency with prior provisions. Until the present effort, a comprehensive or systematic revision has never been undertaken.

Certain considerations relevant to crimes and punishments are matters of state policy which lie outside the task of the technical re-drafting of the criminal code. For example, the Committee and Council have not felt it appropriate to make any recommendation concerning changes in use of the death penalty. It is their view that capital punishment is a matter of policy which transcends the ordinary considerations relevant to the substantive criminal law. In general, the substance of the recommendation here proposed does not depart widely from present standards. Most conduct that is prohibited by the present law is unlawful under the proposed code. A few new crimes have been created, but they are responses to recognized social problems for which the present law does not provide a satisfactory solution.

More specifically, the objectives of the proposed revision may be summarized as follows:

First, to remove duplications, inconsistencies, invalid provisions and obsolete materials;

Second, to state in clear, simple and understandable terms the elements of the prohibited acts. An attempt has been made to define each crime in language sufficiently specific that the individual who reads the statute can readily understand the conduct that is prohibited and, at the same time, to avoid the enumeration of specific acts which might exclude other conduct equally harmful

but not thought of at the time the enumeration was made. By defining each crime in forthright, simple terms it is hoped that undue technicality in the administration of criminal justice may be avoided;

Third, to conform the law to the accepted standards and concepts of modern penal legislation;

Fourth, to confine the provisions of the criminal code to those matters of substantive law which properly belong there. The present Chapter 21 includes many procedural and administrative provisions which are not properly parts of a substantive criminal code. It is recommended that these sections be transferred to more appropriate chapters. Other sections in Chapter 21 are regulatory measures, consisting of provisions intended to control and regulate particular activities. These sections do not define conduct that is truly criminal, but are designated as penal only because misdemeanor penalties are provided for violation. It is the policy of this revision to recommend removal of these measures from the criminal code and to transfer them to chapters dealing with the subject matter to which they relate. Whether a particular section belongs in the criminal code or should be classified as regulatory and removed from it often involves the exercise of judgment in borderline cases. Hence, the relocation of sections often involves difficult decisions.

Many statutes which provide penal sanctions are found outside of the crimes act. A search has revealed at least fifteen hundred separate penalty provisions outside of Chapters 21 and 62. These cannot be incorporated into the code; to do so would unduly burden the task of redrafting; also most of the conduct prohibited by these statutes is not essentially criminal. Their objective is to regulate. They deal with such matters as traffic control, the manufacture, sale and distribution of intoxicating liquors, the practice of various professions and callings, the production, sale, and distribution of food products, drugs and other similar matters. The Committee has recognized the existence of such statutes and has sought to avoid conflicts with the proposed code. In a few cases it has incorporated their content into its proposal for revision of Chapter 21. However, it has not been able to evaluate all of these provisions fully nor to examine the subject matter with which they deal. To do this would have extended this work unduly. But, it should be noted that there remains the possibility of some overlapping among penal provisions outside the criminal code and those in the recommended revision.

PENALTIES AND SENTENCING

In its effort to establish a more rational system of penalties, the proposal departs from the existing pattern which prescribes the penalty for each crime in or near the section which defines or prohibits the offense. The Committee has attempted to set up a few simple classifications of crimes for the purpose of fixing penalties, to assign crimes of like gravity to the same class and to provide uniform penalty limitations applicable to all crimes within the same class. Except for the most serious crimes, penalties are indeterminate. In the case of each, the maximum limit is fixed in the statute. For most offenses, the minimum limit will be fixed by the court within a range prescribed by the statute. Thus, in the case of Class B felonies, the statutory maximum is life imprisonment and the minimum may be fixed by the Court at any term not less than five nor more than fifteen years. The court has discretion to vary the minimum penalty in accordance with the circumstances of the offense, the personality of the defendant, his previous criminal record, and other relevant considerations. In view of the increased discretion given to the court to fix minimum penalties, the Committee has not recommended the continuation of the present Habitual Criminal Law. It is the view of the Committee and the Council that the fixing of the sentence is a judicial function over which the court should have ultimate control, within the limits fixed by the Legislature. Under the proposal, evidence of prior convictions is relevant to the sentence imposed, but the court may determine the effect to be given it. In general, terms of imprisonment authorized by the proposal are comparable to the terms presently provided. However, the increased use of fines is contemplated.

CONCLUSION

The Proposal is being published and distributed in the hope that it will give all lawyers, judges and others interested in the revision or parts of it an opportunity to examine its provisions and to offer any comments, suggestions or criticisms which they may care to make.

Communications with respect to the report should be directed to Judge Doyle E. White, Chairman of the Advisory Committee, Court House, Winfield, Kansas, or to Professor Paul E. Wilson, Reporter, The University of Kansas School of Law, Lawrence, Kansas. It is the intention of the Judicial Council to forward the recommendation in final form to the 1969 session of the Legislature.

Proposed Kansas Criminal Code

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Kansas Criminal Code

PART I.—General Provisions

Article I. *Preliminary*

21-101. *Title and Construction.* This Code is called and may be cited as the Kansas Criminal Code.

COMMENT

Statutes of this nature are ordinarily known and cited as Criminal Codes or Penal Codes. Since 1868, the chapter in the Kansas General Statutes dealing with the substantive criminal law has been referred to by the courts and compilers of statutes as the "crimes act." The change in designation is suggested for two reasons: (1) The title "Criminal Code" is consistent with the names given to similar enactments in other states (*e. g.*, Illinois, Minnesota, New Mexico and Wisconsin); and (2) The term "act" will be frequently used in the statute to describe conduct defined as criminal. To avoid possible confusion, a different term should be used to describe the statute defining crimes. Chapter 62, Kansas Statutes Annotated, is now called the Code of Criminal Procedure. As Chapter 21 is to be the Criminal Code, the committee recommends that the Rules of Criminal Procedure be transferred to Chapter 22 so that both the substantive and procedural criminal law may be included in a single volume of the statutes.

The proposed section has no counterpart in the present crimes act.

21-102. *Scope and Application.* (1) No conduct constitutes a crime unless it is made criminal in this Code or in another statute of this state, but where a crime is denounced by any statute of this state, but not defined, the definition of such crime at common law shall be applied.

(2) Unless expressly stated otherwise, or the context otherwise requires, the provisions of this Code apply to crimes created by statute other than in this Code.

(3) This Code does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(4) This Code has no application to crimes committed prior to its effective date. A crime is committed prior to the effective date of the Code if any of the essential elements of the crime as then defined occurred before that date. Prosecutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.

COMMENT

Subsection (1) restates, but does not change the present law of Kansas. Common law crimes are abolished in that the judiciary has no power to find and punish crimes not defined by legislative authority. However, common law definitions and concepts serve as guides when the statutes are silent.

Subsection (2) may be needed to make clear that the provisions of this revision, general in their nature, extend to crimes outside the Criminal Code.

Subsection (3) makes it clear that the Criminal Code has no application to the judicial power to punish for contempt or to use sanctions to enforce an order or a civil judgment or decree, even though imprisonment may be employed. While contempt has a criminal aspect, it involves highly specialized considerations, not feasible in a general crimes statute.

Subsection (4) eliminates questions that might otherwise arise in the process of transition to the new Code. It is a standard feature of legislation of this kind.

There are no current sections covering this subject matter. Subsection (1) is similar to Minnesota Criminal Code of 1963, 609.015, Subd. 1; Illinois Criminal Code of 1961, 1-3; and Wisconsin Criminal Code of 1955, 939.10. Subsection (2) is based on Minnesota Criminal Code, 609.015, Subd. 2; and Model Penal Code, 1.05 (2). Subsection (3) is taken from Model Penal Code, 1.05 (3). Subsection (4) is taken from the New Mexico Criminal Code of 1963, 1-2.

21-103. *Civil Remedies Preserved.* This Code does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based on conduct which this Code makes punishable; and the civil injury caused by criminal conduct is not merged in the crime.

COMMENT

Criminal conduct may also form the basis of civil rights and remedies. The proposed section states the present law of Kansas, which is contrary to the rule that formerly prevailed in England.

About half of the states provide by statute that civil remedies shall not be affected by criminal liability. The above section is similar to Illinois Criminal Code of 1961, 1-5.

Section to be repealed. K. S. A. 21-124.

21-104. *Territorial Applicability.* (1) A person is subject to prosecution and punishment under the law of this state if:

(*a*) He commits a crime wholly or partly within this state; or

(*b*) Being outside the state, he counsels, aids, abets, or conspires with another to commit a crime within this state; or

(*c*) Being outside the state, he commits an act which constitutes an attempt to commit a crime within this state.

(2) An offense is committed partly within this state if either an act which is a constituent and material element of the offense, or

the proximate result of such act, occurs within the state. If the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) A crime which is based on an omission to perform a duty imposed by the law of this state, is committed within the state, regardless of the location of the person omitting to perform such duty at the time of the omission.

(4) It is not a defense that the defendant's conduct is also a crime under the laws of another state or of the United States or of another country.

(5) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

COMMENT

Proposed section 21-104 defines the scope of the state's territorial jurisdiction.

Subsection (1) (*a*) applies where all or part of a crime is committed in the state. Where the entire crime is committed in Kansas, there is no problem of jurisdiction. However, this subsection, as amplified by subsection (2) makes it clear that the state has jurisdiction where any element or the result of the crime occurs in Kansas. Under (1) (*a*) two states may have concurrent jurisdiction over the same crime.

Subsection (1) (*b*) applies to the accessory or party who remains outside the state.

Subsection (1) (*c*) applies where acts are done outside the state which are intended to produce a prohibited result within the state and which fall short of accomplishment. For example, if A in the state of Missouri shoots at B in the state of Kansas, with intent to kill him, but misses, A could be prosecuted for attempted homicide under this subsection.

Subsection (2) amplifies and clarifies subsection (1) (*a*).

Subsection (3) clarifies the status of the negative act done outside the state. It is particularly applicable in child desertion cases. It restates the view that has long been taken in Kansas. (*In re Fowles,* 89 Kan. 430; *State v. Wellman,* 102 Kan. 503.)

Subsection (4) forestalls the possibility of the claim of double jeopardy where two states have concurrent jurisdiction.

Subsection (5) eliminates problems which might arise in the case of crimes committed in aircraft above the state or on navigable waters therein.

Subsection (1) is a combination of elements taken from the Minnesota Criminal Code of 1963, 609-025; the Illinois Criminal Code of 1961, 1-5; and Wisconsin Criminal Code of 1955, 339.03. Subsections (2) and (3) are taken from the Illinois Code, *supra.* The last sentence in subsection (2) is also found in the Model Penal Code, 1.03 (4). Subsection (4) is taken from the Minnesota Code, *supra.* Subsection (5) is a provision of the Model Penal Code, 1.03 (5).

Territorial jurisdiction is not now defined in Chapter 21. Article 4 of the present Chapter 62 is entitled "Local Jurisdiction of Public Offenses." However, with the exceptions mentioned below, that article relates to venue rather than jurisdiction.

Sections to be repealed. K. S. A. 62-402, 62-403. It is suggested that K. S. A. 62-408 be transferred to the article on theft.

21-105. *Crimes Defined; Classes of Crimes.* A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized. Crimes are classified as felonies and misdemeanors.

(1) A felony is a crime punishable by death or by imprisonment in the state penitentiary.

(2) All other crimes are misdemeanors.

COMMENT

The definition and classification of crime merely restates the present law of Kansas. No new idea is suggested. The language has been simplified and clarified. See K. S. A. 21-128, 62-102, 62-103, 62-104, and 62-105.

Sections to be repealed. K. S. A. 21-127, 21-128, 62-101, 62-102, 62-103, 62-104, 62-105.

21-106. *Time Limitations.* (1) A prosecution for murder may be commenced at any time.

(2) Except as otherwise provided in this section, prosecutions for other crimes are subject to the following periods of limitation:

(*a*) A prosecution for a felony must be commenced within two years after it is committed;

(*b*) A prosecution for a misdemeanor must be commenced within one year after it is committed.

(3) The period within which a prosecution must be commenced shall not include any period in which:

(*a*) The accused is absent from the state;

(*b*) The accused so conceals himself within the state that process cannot be served upon him;

(*c*) The defendant conceals the fact of the crime;

(*d*) A prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal.

(4) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, provided that such warrant is executed without unreasonable delay.

COMMENT

The present Kansas statutes of limitation are treated as procedural and are contained in Article V of Chapter 62. Since the statutes effectively limit the conditions under which penal liability may be imposed, it seems appropriate to include them in the chapter defining substantive rights and liabilities. The practice in other codes is not uniform. The Model Penal Code, Illinois and New Mexico include statutes of limitation in the substantive codes. Minnesota and Wisconsin do not.

Under the proposed section, there is no limitation on prosecutions for murder. Prosecutions for other felony may be commenced within two years while misdemeanor prosecutions are subject to a one year limitation. The lesser period of limitation for misdemeanors is justified on the ground that the public interest in bringing the miscreant to justice is not so great as in the case of the felon. Hence, the policy considerations which require the prompt disposition of alleged violations are of greater relative significance.

Subsection (3) restates K. S. A. 62-504. Subsection (3) also tolls the statute of limitations whenever a prosecution for the same conduct is pending under the laws of the state, expressly including those cases where the charge is quashed, set aside or judgment reversed. This section states the present law of Kansas.

Subsection (4) clarifies but does not materially change the present law of Kansas.

Subsection (5) restates the present Kansas law. While the statute does not expressly so provide, the Supreme Court has held that a period of unreasonable delay in serving the warrant must be computed in determining if the prosecution is barred. (See *State v. Bowman,* 106 Kan. 430.)

The language is original. Model Penal Code, 1.06 and K. S. A. Ch. 62, Art. V are drawn upon.

Sections to be repealed. K. S. A. 62-501, 62-502, 62-503, 62-504, 62-505.

21-107. *Multiple Prosecutions for Same Act.* (1) When the same conduct of a defendant may establish the commission of more than one crime under the laws of this state, the defendant may be prosecuted for each of such crimes. Each of such crimes may be alleged as a separate count in a single complaint, information or indictment.

(2) Upon prosecution for a crime, the defendant may be convicted of either the crime charged or an included crime, but not both. An included crime may be any of the following:

(*a*) A lesser degree of the same crime;

(*b*) An attempt to commit the crime charged;

(*c*) An attempt to commit a lesser degree of the crime charged; or

(*d*) A crime necessarily proved if the crime charged were proved.

(3) In cases where the crime charged may include some lesser crime it is the duty of the trial court to instruct the jury, not only as to the crime charged but as to all lesser crimes of which the accused

might be found guilty under the information or indictment and upon the evidence adduced, even though such instructions have not been requested or have been objected to.

COMMENT

This section sets out the method of prosecution when behavior constitutes more than one offense. This subject has definite procedural implications. The committee has determined that it may properly be dealt with in a substantive code. The Model Penal Code, Illinois, Wisconsin and Minnesota have all chosen to deal with it in the substantive chapter. The section defines the right of the prosecution to charge more than one offense based on the same act and to convict of an included offense not specifically charged. The main objective, however, is the formulation of limitations upon unfair multiplicity of convictions or prosecutions.

Subsection (1) permits a number of crimes, based on the same act, to be charged in a single accusative pleading. Presumably, the subject of joinder will be dealt with in the rules of criminal procedure.

Subsection (2) expressly authorizes conviction for the lesser included offense and defines the concept.

Subsection (3) restates the present law of Kansas. (See *State v. Fouts*, 169 Kan. 686.)

The proposal includes elements of the Illinois Code, 3-3 and the Minnesota Code, 609.035 and 609.04.

Sections to be repealed. K. S. A. 62-1022, 62-1023, 62-1024, 21-102.

21-108. *Effect of Former Prosecution.* (1) A prosecution is barred if the defendant was formerly prosecuted for the same crime, based upon the same facts, if such former prosecution:

(*a*) Resulted in either a conviction or an acquittal or in a determination that the evidence was insufficient to warrant a conviction; or

(*b*) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact or legal proposition necessary to a conviction in the subsequent prosecution; or

(*c*) Was terminated improperly after the defendant had been placed in jeopardy. A defendant is in jeopardy when he is put on trial in a court of competent jurisdiction upon an indictment, information or complaint sufficient in form and substance to sustain a conviction, and in the case of trial by jury, when the jury has been impaneled and sworn, or where the case is tried to the court without a jury, when the court has begun to hear evidence.

A conviction of an included offense is an acquittal of the offense charged.

(2) A prosecution is barred if the defendant was formerly prosecuted for a different crime, or for the same crime based upon different facts, if such former prosecution:

(*a*) Resulted in either a conviction or an acquittal and the subsequent prosecution is for a crime or crimes of which evidence has been admitted in the former prosecution and which might have been included as other counts in the complaint, indictment or information filed in such former prosecution or upon which the state then might have elected to reply; or was for a crime which involves the same conduct, unless each prosecution, or the crime was not consummated when the former trial began; or

(*b*) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution; or

(*c*) Was terminated improperly after the defendant had been placed in jeopardy, and the subsequent prosecution is for an offense of which the defendant could have been convicted if the former prosecution had not been terminated improperly.

(3) A prosecution is barred if the defendant was formerly prosecuted in a District Court of the United States or in a sister state or in the municipal or police court of any city for a crime which is within the concurrent jurisdiction of this state, if such former prosecution:

(*a*) Resulted in either a conviction or an acquittal, and the subsequent prosecution is for the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the offense was not consummated when the former trail began; or

(*b*) Was terminated by a final order or judgment, even if entered before trial, which required a determination inconsistent with any fact necessary to a conviction in the prosecution in this state.

(4) A prosecution is not barred under this section:

(*a*) By a former prosecution before a court which lacked jurisdiction over the defendant or the offense; or

(*b*) By a former prosecution procured by the defendant without the knowledge of the proper prosecuting officer and with the purpose of avoiding the sentence which otherwise might be imposed; or

(*c*) If subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty; but in no case where a conviction for a lesser included crime has been invalidated, set aside, reversed or

vacated shall the defendant be subsequently prosecuted for a higher degree of the crime for which he was originally convicted.

COMMENT

The Model Penal Code attempts, by statute, to cover entirely the complex problems of double jeopardy. Frequently criminal codes treat the matter quite generally, leaving particular applications to be made by the courts (*e. g.*, see K. S. A. 21-114, 21-115, 21-116, and 62-1444). The committee recommends comprehensive codification.

Subsection (1) (*a*) represents the present law of Kansas. An acquittal or conviction on the merits is a bar.

Subsection (1) (*b*) expressly introduces the principle of *res judicata* into criminal cases. Illustrative of pre-trial determinations that will bar a subsequent prosecution are a determination of prior conviction or acquittal. The determination may be either of law or of ultimate fact, if necessarily inconsistent with a proposition that must be relied on for conviction. This rule was adhered to by the Supreme Court of Kansas in *In re Lewis,* 152 Kan. 193, where a judgment of the court of Topeka sustaining a plea of former jeopardy was held binding on the district court in a subsequent prosecution there.

Subsection (1) (*c*) states the present law with some amplification. The text is taken substantially from *Hunter v. Wade,* 169 F. 2d 973.

The last sentence does not reflect the present law of Kansas. When a new trial is granted after a conviction of a lesser included offense, Kansas, along with 16 other states permits a retrial on the greater inclusive offense originally charged. (*In re Christensen,* 166 Kan. 671; *State v. Miller,* 35 Kan. 328.) On the other hand, the proposed rule is consistent with the view taken by the Supreme Court of the United States in federal cases. (*Green v. United States,* 355 U. S. 184.) The view expressed in the Green case is probably not binding on the states, but changing concepts of due process of law may make it so in the future.

Subsection (2) provides that in certain instances an earlier prosecution may bar a subsequent prosecution for a different offense, whether a violation of a different statute or a different violation of the same statute.

Subsection (2) (*a*) provides a bar, under circumstances now included within K. S. A. 62-1449.

Subsection (2) (*b*) defines the scope of *res judicata* as it applies when the subsequent prosecution is for a different offense. Its application may be illustrated by *Sealfon v. United States,* 332 U. S. 575 (1948), in which the defendant had been previously prosecuted for and found not guilty of conspiracy to defraud by presenting false invoices and making false representation to a rationing board. He was subsequently prosecuted for aiding and abetting the uttering of the same false invoices. In reversing the conviction the court stated:

". . . the substantive offense and a conspiracy to commit it are separate and distinct offenses. . . . Thus . . . one may be prosecuted for both crimes but *res judicata* may be a defense in the second prosecution."

The court found that the jury had previously made a determination of fact necessarily inconsistent with that required to convict the defendant as an aider and abetter.

Subsection (3) provides a bar to subsequent prosecution in case of prior prosecution in another jurisdiction.

In the absence of statute, the rule against double jeopardy does not apply as between separate sovereignties. Generally, a prosecution in the federal court or in the courts of another state will not bar a prosecution in Kansas, based on the same conduct. However, there are exceptions. K. S. A. 21-104 provides that persons charged with stealing or robbing in another state and bringing stolen property into Kansas may plead a former conviction or acquittal in another state, territory or country. K. S. A. 65-2520 makes conviction or acquittal under the federal narcotics laws a bar to prosecution under state law for the same unlawful conduct. Hence, the proposal is not without precedent in Kansas law.

Under the proposed section, an acquittal or conviction in a federal court or a court of any other state having concurrent jurisdiction would bar a prosecution in Kansas based on the same conduct. Also, the section makes *res judicata* applicable between jurisdictions.

Subsection (4) enumerates conditions under which the former jeopardy bar is not available.

Subsection (4) (*a*) reflects the present law of Kansas. (*State v. Hendren,* 127 Kan. 497.) Apparently this rule is universal.

Subsection (4) (*b*) is aimed at fraud or collusion on the part of the defendant. This, too, is presently the law of Kansas. (*State v. Smith,* 57 Kan. 673.)

Under subsection (4) (*c*) it is not material whether the defendant's conviction is set aside as a result of his collateral attack or his direct appeal. In either case he has waived his claim to second jeopardy. However, where the new trial is granted after conviction for an offense included in the crime originally charged, the subsequent prosecution is limited to the included crime for which the defendant was convicted.

Illinois Criminal Code, 3-4, and K. S. A. 62-1449, were drawn upon in drafting the proposal.

Sections to be repealed. K. S. A. 21-104, 21-114, 21-115, 21-116, 62-1441, 62-1442, 62-1443, 62-1444, 65-2520.

21-109. *Defendant Presumed Innocent; Reasonable Doubt as to Guilt.* A defendant is presumed to be innocent until the contrary is proved. When there is a reasonable doubt as to his guilt, he must be acquitted. When there is a reasonable doubt as to which of two or more degrees of an offense he is guilty, he may be convicted of the lowest degree only.

COMMENT

This section, while procedural in nature, deals with problems so fundamental as to have a substantive aspect.

The language is taken from K. S. A. 62-1439.

Section to be repealed. K. S. A. 62-1439.

21-110. *General Definitions.* The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(1) "Act" includes a failure or omission to take action.

(2) "Another" means a person or persons as defined in this Code other than the person whose act is claimed to be criminal.

(3) "Conduct" means an act or a series of acts, and the accompanying mental state.

(4) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(5) "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

(6) To "deprive permanently" means to

(*a*) Take from the owner the possession, use or benefit of his property, without an intent to restore the same; or

(*b*) Retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or

(*c*) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(7) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

(8) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

(9) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

(10) "Law enforcement officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(11) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(12) "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(13) "Owner" means a person who has any interest in property.

(14) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(15) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

(16) "Property" means anything of value, tangible or intangible, real or personal.

(17) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

(18) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(19) "Public officer" includes the following, whether elected or appointed:

(*a*) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.

(*b*) A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.

(*c*) A judicial officer, which shall include a judge, justice of the peace or other magistrate, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.

(*d*) A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.

(*e*) A law enforcement officer.

(*f*) Any other person exercising the functions of a public officer under color of right.

(20) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

(21) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

(22) "State" or "this State" means the State of Kansas and all land and water in respect to which the State of Kansas has either exclusive or concurrent jurisdiction, and the air space above such

land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(23) "Stolen property" means property over which control has been obtained by theft.

(24) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

(25) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

COMMENT

The use of definitions simplifies drafting, clarifies meanings and assists the courts in properly sensing the legislative intent. The area of crimes relating to misconduct of persons in public positions is one in which narrow interpretations often result from inadequately defined concepts, *e. g.*, *State v. Bowles,* 70 Kan. 821 and *In re Bozeman,* 42 Kan. 451.

Sections to be repealed. K. S. A. 21-129, 21-130, 21-131, 21-132.

Article II. *Principles of Criminal Liability*

21-201. *Criminal Intent.* (1) Except as provided by sections 21-202, 21-204, and 21-405, a criminal intent is an essential element of every crime defined by this Code. Criminal intent may be established by proof that the conduct of the accused person was willful or wanton. Proof of willful conduct shall be required to establish criminal intent, unless the statute defining the crime expressly provides that the prohibited act is criminal if done in a wanton manner.

(2) Willful conduct is conduct that is purposeful and intentional and not accidental. As used in this Code, the terms "knowing," "intentional," "purposeful," and "on purpose" are included within the term "willful."

(3) Wanton conduct is conduct done under circumstances that show a realization of the imminence of danger to the person of another and a reckless disregard or complete indifference and unconcern for the probable consequences of such conduct. The terms "gross negligence," "culpable negligence," "wanton negligence" and "recklessness" are included within the term "wantonness" as used in this Code.

COMMENT

At common law, it is the general rule that acts are criminal only when they are accompanied by a blameworthy state of mind—specific intent, knowledge, willfulness, culpable negligence, general *mens rea,* etc. These concepts are vague and often misunderstood. Kansas decisions establish three categories of blameworthy conduct; to wit, willfulness, wantonness and negligence. The proposal seeks to codify and clarify the existing Kansas law.

Kniffen v. Hercules Powder Co., 164 Kan. 196; *State v. Ralston,* 131 Kan. 138; and *Heckert v. Wright,* 182 Kan. 100 serve as a basis for drafting the proposal.

21-202. *Criminal Intent: Exclusions.* (1) Proof of criminal intent does not require proof of knowledge of the existence or constitutionality of the statute under which the accused is prosecuted, or the scope or meaning of the terms used in that statute.

(2) Proof of criminal intent does not require proof that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which he is charged.

COMMENT

This section restates accepted propositions of law. Its purpose is to clarify the law and forestall frivolous defenses.

The language is similar to the Minnesota Criminal Code of 1963, 609.02, Subd. 9, (5) and (6).

21-203. *Ignorance or Mistake.* (1) A person's ignorance or mistake as to a matter of either fact or law, except as provided in Section 21-202, is a defense if it negatives the existence of the mental state which the statute prescribes with respect to an element of the crime.

(2) A person's reasonable belief that his conduct does not constitute a crime is a defense if:

(*a*) The crime is defined by an administrative regulation or order which is not known to him and has not been published in the Kansas Administrative Regulations or an annual supplement thereto, as provided by law; and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him; or

(*b*) He acts in reliance upon a statute which later is determined to be invalid; or

(*c*) He acts in reliance upon an order or opinion of the Supreme Court of Kansas or a United States appellate court later overruled or reversed;

(*d*) He acts in reliance upon an official interpretation of the statute, regulation or order defining the crime made by a public officer or agency legally authorized to interpret such statute.

(3) Although a person's ignorance or mistake of fact or law, or reasonable belief, as described in subsection (2) of this section, is a defense to the crime charged, he may be convicted of an included crime of which he would be guilty if the fact or law were as he believed it to be.

COMMENT

Subsection (1) states the commonly accepted position with regard to the mistake. It is a defense when it negatives the existence of a state of mind essential to the existence of the crime. Evidence of ignorance is admissible when it is relevant to a required intent. An effort is made to avoid the confusion that sometimes results from the attempt to distinguish between ignorance or mistake of fact and ignorance or mistake of law.

Subsection (2) permits the accused to defend on the ground of a reasonably mistaken belief that his conduct was not unlawful. Conditions of reasonableness are defined.

Subsection (3) is found in the Model Penal Code and the Illinois Code. If a defendant who is exculpated of a more serious crime on the ground of ignorance or mistake thought he was committing a less serious offense, he obviously ought not to be acquitted. To illustrate, burglary of a dwelling house is usually a more serious offense than burglary of a store. The suggestion has been made that to convict of the more serious crime it may not be unreasonable to require knowledge that the structure is a dwelling, or at least recklessness in failing to know that the structure is a dwelling. If the defendant has every reason to think the structure a store, although it is in fact a dwelling, it may not be proper to hold him for the more serious crime. It may be just to hold him for the lesser crime that he assumes he has committed. The proposed section is limited to those cases where the intended lesser offense is included in the greater offense that has been committed.

The proposed section is similar to Illinois Criminal Code of 1961, 4-8.

21-204. *Absolute Liability.* A person may be guilty of an offense without having criminal intent if the crime is a misdemeanor and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

COMMENT

The present disposition of legislatures and courts is to enlarge the area of strict liability for criminal conduct. These crimes are usually in the nature of breaches of police regulations where the public interest in enforcement is great and where violation involves no moral turpitude. The theory is well stated by the late Justice Jackson in *Morissette v. United States,* 342 U. S. 246:

". . . The crimes there involved depend on no mental element but consist only of forbidden acts or omissions. This, while not expressed by the Court, is made clear from examination of a century-old but accelerating tendency, discernible both here and in England, to call into existence new duties and crimes which disregard any ingredient of intent. The industrial revolution multiplied the number of workmen exposed to injury from increasingly

powerful and complex mechanisms, driven by freshly discovered sources of energy, requiring higher precautions by employers. Traffic of velocities, volumes and varieties unheard of, came to subject the wayfarer to intolerable casualty risks if owners and drivers were not to observe new cares and uniformities of conduct. Congestion of cities and crowding of quarters called for health and welfare regulations undreamed of in simpler times. Wide distribution of goods became an instrument of wide distribution of harm when those who dispersed food, drink, drugs, and even securities, did not comply with reasonable standards of quality, integrity, disclosure and care. Such dangers have engendered increasingly numerous and detailed regulations which heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare.

While many of these duties are sanctioned by a more strict civil liability, lawmakers, whether wisely or not, have sought to make such regulations more effective by invoking criminal sanctions to be applied by the familiar technique of criminal prosecutions and convictions. This has confronted the courts with a multitude of prosecutions, based on statutes or administrative regulations, for what have been aptly called 'public welfare offenses.' These cases do not fit neatly into any of such accepted classifications of common-law offenses, such as those against the state, person, property, or public morals. Many of these offenses are not in the nature of positive aggressions or invasions, with which the common law so often dealt, but are in the nature of neglect where the law requires care, or inaction where it imposes a duty. Many violations of such regulations result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize. While such offenses do not threaten the security of the state in the manner of treason, they may be regarded as offenses against its authority, for their occurrence impairs the efficiency of controls deemed essential to the social order as presently constituted. In this respect, whatever the intent of the violator, the injury is the same, and the consequences are injurious or not according to fortuity. Hence, legislation applicable to such offenses, as a matter of policy, does not specify intent as a necessary element. The accused, if he does not will the violation, usually is in a position to prevent it with no more care than society might reasonably expect and no more exertion than it might reasonably exact from one who assumed his responsibilities. Also, penalties commonly are relatively small, and conviction does no grave damage to an offender's reputation. Under such considerations, courts have turned to construing statutes and regulations which make no mention of intent as dispensing with it and holding that the guilty act alone makes out the crime. This has not, however, been without expressions of misgiving."

In such cases the legislature may dispense with the usual kind of criminal intent. (*State v. Avery,* 111 Kan. 588; *State v. Merrifield,* 180 Kan. 267.)

The proposal represents an effort to limit strict liability crimes to those situations where the penalty is relatively mild and where the legislature has clearly indicated an intention to dispense with criminal intent.

The proposal is drawn from Illinois Criminal Code of 1961, 4-9.

21-205. *Liability for Crimes of Another.* (1) A person is criminally responsible for a crime committed by another if he intentionally aids, abets, advises, hires, counsels or procures the other to commit the crime.

(2) A person liable under subsection (1) hereof is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by him as a probable consequence of committing or attempting to commit the crime intended.

(3) A person liable under this section may be charged with and convicted of the crime although the person alleged to have directly committed the act constituting the crime lacked criminal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the crime or of some other crime based on the same act.

COMMENT

This is intended to supersede K. S. A. 21-105, relating to principals in the second degree and accessories before the fact. There seems to be no reason to speak in terms of principals in the first and second degrees and accessories before the fact where all are liable to the same extent. The recommended section does not use the term "principal" but states the rule in terms of criminal liability. This makes no change in the substance of the law.

It would be possible to state the principles of liability in cases other than for the acts of another; namely, the principles of liability for one's own act of non-action. This is undertaken in Wisconsin and Illinois. However, the proposed draft, which follows the Minnesota Code, seems clearer.

Subsection (2) deals with liability for unintended crimes caused while committing a crime intended. The question arises principally in cases where several parties participate in the commission of a crime. It is believed consistent with the philosophy of personal fault underlying criminal liability that a person should not be liable for crimes not intended by him but stemming from another criminal act unless they were reasonably foreseeable by him.

Subsection (3) makes clear that a contrary rule which prevailed at common law is not the law in this state.

The proposed section is an adaptation of Minnesota Criminal Code of 1963, 609.05.

Section to be repealed. K. S. A. 21-105.

Note. Conduct creating liability as an accessory after the fact, as defined in K. S. A. 21-106, is treated hereafter with the sections defining specific crimes.

21-206. *Corporations: Criminal Responsibility.* (1) A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.

(2) "Agent" means any director, officer, servant, employee or other person who is authorized to act in behalf of the corporation.

COMMENT

The conditions of corporate liability for crime are not defined in the present statutes of Kansas. The fact that a corporation is not capable of being imprisoned or of entertaining a *mens rea* was once thought to preclude corporative criminal responsibility. This view no longer prevails. The corporation is generally held criminally responsible to the extent that its nature will permit. The section as drafted states the law generally applicable. (*State v. Creamery Co.*, 83 Kan. 389; *State v. Railway Co.*, 96 Kan. 609.)

The language of subsection (1) follows Wisc. Stat. 339.07. Subsection (2) is original.

21-207. *Individual Liability for Corporate Crime.* (1) An individual who performs criminal acts, or causes such acts to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in his own name or on his own behalf.

(2) An individual who has been convicted of a crime based on conduct performed by him for and on behalf of a corporation is subject to punishment as an individual upon conviction of such crime, although a lesser or different punishment is authorized for the corporation.

COMMENT

The import of the section is clear. An individual cannot avoid personal responsibility for crime because he acts for a corporation. He is responsible and subject to punishment as an individual.

The content is similar to Illinois Criminal Code of 1961.

21-208. *Mental Illness or Defect.* (1) A person is not criminally responsible for conduct if at the time of such conduct as a result of mental illness or defect he lacks substantial capacity:

(*a*) To know or understand the wrongfulness of his conduct; or

(*b*) To conform his conduct to the requirements of law.

(2) As used in this section, the terms "mental illness or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

COMMENT

The problem of defining the criteria of irresponsibility is one of the most difficult and controversial in the criminal law. A general lack of understanding of the conditions that produce irresponsibility as well as an apparent lack of sympathy and communication between the courts and law enforcement personnel on the one hand and the behavioral scientists on the other have contributed to the difficulty.

Any system of criminal justice that holds the individual responsible for anti-social acts done in the exercise of free will must provide standards for excepting from responsibility those injurious acts done under circumstances which destroy or impair free will. Patently, the punishment of an offender whose act is a manifestation of insane frenzy is both unjust and futile. It is unjust because the offender had no ability to know or to conform to the norm. It is futile because it cannot possibly deter other similar acts. The idea of deterrence presupposes a rational individual, capable of weighing values and selecting among them. It follows that some criterion of irresponsibility is an essential of a system of penal law.

Kansas presently has no statutory test of criminal responsibility, but follows the traditional M'Naghten rule which has been implemented by numerous judicial decisions. (See *State v. Andrews,* 197 Kan. 458). This test fixes responsibility on the accused when he knows the nature and quality of his act and knows that the act is wrong.

Several possibilities confronted the drafters of this Code. (1) The subject may be wholly omitted from the statute, in which case the M'Naghten rule will stand. (2) The proposed statute may state the M'Naghten rule, thus seeking to give legislative reinforcement to the judicially developed standard. (3) The draft may provide a new and different test of criminal responsibility. Alternatives considered by the advisory committee were (*a*) the "irresistible impulse" test, (*b*) the Durham or "product" test, (*c*) the A. L. I. Model Penal Code test, and (*d*) the A. L. I. test as modified in the Currens case (*U. S. v. Currens,* 3 Cir., 290 F. 2d 751).

The committee has determined that the American Law Institute's Model Penal Code test provides the best opportunity for reconciling the traditional concept of moral and legal accountability with contemporary scientific approaches to mental illness and deficiency. The language of the proposal is taken from the New York adaptation of the A. L. I. test. The following material in this comment is a rephrasing and adaptation of a portion of the New York Commission's 1963 Interim Report (Appendix B, Report of New York Temporary Commission on Revision of the Penal Law), and is here set forth as an expression of the thinking of the Kansas Advisory Committee.

Without attempting a full statement of the defects of the M'Naghten rule, we are agreed that an amendment should be drawn to overcome the following objections:

(1) There is, first, the difficulty that inheres in the ordinary meaning of the word "know," as applied to persons suffering from serious mental illness. The fact that the defendant is able to verbalize the right answer to a question, to respond, for example, that murder or stealing is wrong, or the fact that he exhibited a sense of guilt as by concealment or by flight, is often taken as conclusive evidence that he knew the nature and the wrongfulness of his behavior. Yet one of the most striking facts about the abnormality of many psychotics is that their way of knowing is entirely different from that of the ordinary person. In psychiatric terms, their knowledge is usually divorced from all effect, which is to say that it is like the knowledge children have of propositions they can state but cannot understand; it has no depth and is divorced from comprehension. The present rule makes it very difficult to put this point before the jury, though it often is the crucial point involved. It seems clear that the knowledge that should be deemed material in testing responsibility is more than merely surface intellection; it is the appreciation sane men have of what it is that they are doing and of its legal and its moral quality.

(2) The M'Naghten rule improperly confines the inquiry to the effect of mental illness or defect upon the actor's cognitive capacity; the finding must be that he did not know the nature or wrongfulness of the act. The limitation is, as Judge Cardozo pointed out, faithful neither to the facts of mental life nor to the demands of legal, ethical or social policy.

Mental illness, even in its extreme forms, may not destroy the minimal awareness called for by M'Naghten, while destroying power to employ such knowledge in determining behavior, the capacity that rational human beings have to guide their conduct in the light of knowledge. The point is a related one to that which we have made respecting the impairment of capacity to know. Capacity to know the nature and wrongfulness of conduct may not have been discernibly destroyed and yet the transformations in ability to cope with the external world, worked by severe psychosis, may have otherwise

destroyed the individual's capacity for self-control, in consequence of mental illness or defect, which from the point of view of morals and of legal policy warrants the special treatment of the irresponsible, the statute forces a discrimination which is neither logical nor just. We think that the discrimination should be rectified.

(3) A final difficulty which we think demands attention turns on the degree of the impairment of capacity to know or to control that ought to be demanded before irresponsibility may be acknowledged. Taken on its face, the present rule calls for an impairment that is total; the actor must not know. This extreme conception poses what some have thought the largest problem in the just administration of the test.

Even in the most extreme psychoses, there is often some residual capacity to know or to control; and, judging after the event, the psychiatric expert hardly can declare on oath that at the time of the disputed action the actor was totally bereft of knowledge or control. Yet this is a dilemma that it certainly is not deliberate legal policy to pose. In other situations, where the facts of life do not submit to any absolute appraisal, the law has been content to recognize that it must tolerate distinctions of degree. We think that such recognition is required here. People of relative sanity, on whom the threats of penal law can exert a deterrent force and who are within the range of influence of programs for correction, differ from the seriously deranged in the respect that theirs is an appreciable or substantial capacity to know and to control. We think a statute should be framed to recognize that this is so and to avoid a finding of responsibility for those psychotics who may have some remnant of capacity, however grossly it has been impaired by their illness.

The changes that the proposed formulation would effect may be summarized as follows:

1. With respect to the question which now is material under M'Naghten, the inquiry would be not merely whether the actor lacked *knowledge* of the nature and the wrongfulness of his behavior but also whether he was lacking in capacity to *appreciate* its wrongfulness. By adding the requirement of appreciation to that of knowledge, we would expect the courts to grant some leeway to an explication of the distinction between mere verbalization and a deeper comprehension, which we have discussed above. Moreover, since a person who is lacking in capacity to know or to appreciate the *nature* or the *quality* of his action, as those terms are understood in law, is necessarily incapable of an appreciation of its wrongfulness, we have thought it unnecessary to deal with the former possibility explicitly in statement of the principle.

2. Instead of asking whether the defendant did not know we think the legal inquiry should be addressed to his *capacity* to know or to appreciate. The reason is that any testimony by the psychiatric expert, addressed to the actor's mental state at the time in the past, will necessarily involve an inference upon his part from his judgment as to the actor's powers or capacity. We think the law gains in clarity by making this explicit.

3. The inquiry is not confined to the impairment of capacity to know or to appreciate the wrongfulness of the defendant's conduct. For reasons stated earlier, it extends also to the capacity of the actor to conform his conduct to the requirements of the law.

4. Finally, both in dealing with capacity to know or to appreciate and with capacity to conform, the question posed is not whether the actor wholly lacked

the requisite capacity but whether he lacked substantial capacity—meaning thereby, the quantum of capacity that represents a fair appraisal of the wide range that in our culture excludes a diagnosis of severe mental illness or defect. The scope of that range is essentially a problem for the psychiatric sciences, to be reflected in the testimony of the expert witness, but sifted and evaluated by the court and jury in the light of common sense.

We also propose a further paragraph as follows:

(2) The terms "mental illness or defect" do not include an abnormality manifested only by repeated criminal or anti-social conduct.

The purpose of this paragraph is to exclude from the concept of "mental illness or defect" and thus from the standard of irresponsibility so-called psychopathic or sociopathic personalities. These terms are employed by some psychiatrists to categorize persons who are insensitive to moral and social norms, as evidenced by their persistent and repeated conduct. Those psychiatrists who would regard such persons as the victims of illness proceed upon the theory that capacity for law-abiding living in society is a constituent of mental health, with the conclusion that its absence is illness; or else on the hypothesis that physical disorder underlies all maladjustment of this kind, although the present state of knowledge may not serve to explicate the nature of the psychical disorder except in terms of its results.

21-209. *Intoxication.* (1) The fact that a person charged with a crime was in an intoxicated condition at the time the alleged crime was committed is a defense only if such condition was involuntarily produced and rendered such person substantially incapable of knowing or understanding the wrongfulness of his conduct or of conforming his conduct to the requirements of law.

(2) An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

COMMENT

Subsection (1) restates the present law of Kansas, except that the test of responsibility is made consistent with section 21-208, *supra.* (*State v. Rumble,* 81 Kan. 16; *State v. Wells,* 54 Kan. 161; *State v. Guthridge,* 88 Kan. 846.)

Subsection (2) is taken from Minnesota Criminal Code, 609.075.

21-210. *Compulsion.* (1) A person is not guilty of a crime other than murder or voluntary manslaughter by reason of conduct which he performs under the compulsion or threat of the imminent infliction of death or great bodily harm, if he reasonably believes that death or great bodily harm will be inflicted upon him or upon his spouse, parent, child, brother or sister if he does not perform such conduct.

(2) The defense provided by this section is not available to one who willfully or wantonly places himself in a situation in which it is probable that he will be subjected to compulsion or threat.

COMMENT

It is the general rule that although coercion does not excuse taking the life of an innocent person, it does excuse in all lesser crimes. The proposed section codifies that rule. Twenty states have legislation on this subject.

Subsection (2) creates an exception for the person who connects himself with criminal activities or is otherwise indifferent to known risk.

Subsection (1) is similar to Illinois Code, 7-11. Subsection (2) is taken from the Model Penal Code, 2.09 (2).

21-211. *Entrapment.* A person is not guilty of a crime if his criminal conduct was induced or solicited by a public officer or his agent for the purposes of obtaining evidence to prosecute such person, unless:

(*a*) The public officer or his agent merely afforded an opportunity or facility for committing the crime in furtherance of a criminal purpose originated by such person or a co-conspirator; or

(*b*) The crime was of a type which is likely to occur and recur in the course of such person's business, and the public officer or his agent in doing the inducing or soliciting did not mislead such person into believing his conduct to be lawful.

COMMENT

While Kansas recognizes the defense of entrapment (*State, ex. rel., v. Leopold,* 172 Kan. 371) it has seldom been asserted effectively. The proposal seeks to clarify the status of the defense and make it more usable. The result is probably a broadening of the defense.

The defense of entrapment codified in this section is based upon the theory that improper law enforcement methods should be penalized, and that depriving the person using such methods of the fruits of his labor is a proper way of penalizing him. The defense is available only when the person doing the entrapping is a public officer. The defendant will raise the defense by showing that he was induced or solicited to commit the crime for the purpose of obtaining evidence with which to prosecute him. It then will be up to the state to prove that the entrapment methods were proper by proving either the facts set forth in subsection (*a*) or the facts set forth in subsection (*b*). If the idea for committing the crime originated with the actor or a co-conspirator, entrapment is no defense.

Some criminal activity is very difficult to detect unless law enforcement officers are permitted to take the initiative, in the form of a solicitation. Under the safeguards provided for the defendant in subsection (*b*), they are permitted to do so. The crime must be of a type which is likely to occur and recur in the course of the actor's business or activity. For example, if the actor is in the business of selling intoxicating liquors or if his activity is selling

narcotics, it is permissible for a law enforcement official to solicit a sale. If the actor is willing to sell to the official who pretends to be an ordinary patron, it is safe to assume that he would make similar unlawful sales to other persons. In such a case, the idea of committing the specific offense did not originate with the actor or a co-conspirator (so subsection (*a*) is not applicable), but the fact that such crimes are difficult to detect and the fact that the general idea of committing crimes of the type in question usually exists in the actor's mind before the solicitation to commit the specific criminal act, make it proper to abandon in this type of case the requirement of subsection (2) that the idea of committing the specific crime must originate with the actor or a co-conspirator. There are further safeguards provided under section (*b*). The person doing the entrapping cannot mislead the actor into thinking that the conduct is lawful (*e. g.*, by having an Indian who looks like a white man purchase liquor for the purpose of entrapping the actor into the federal crime of unlawful sale of liquor to Indians), nor can he use undue means of encouragement such as an appeal to the actor's impulses of pity (*e. g.* feigning excruciating pain to induce an unlawful sale of narcotics).

This section goes beyond the classical common-law defense of entrapment. That defense is based upon the premise that a person who instigates another to commit a crime requiring proof of non-consent may go so far as to consent to whatever conduct is in question, thereby making it impossible for the state to prove one of the essential elements of the crime. This is apparently the present Kansas view.

The content is similar to Wisconsin Code, 339.44. The language has been redrafted.

21-212. *Use of Force in Defense of a Person.* A person is justified in the use of force against an aggressor when and to the extent it appears to him and he reasonably believes that such conduct is necessary to defend himself or another against such aggressor's imminent use of unlawful force.

COMMENT

Statutes which spell out the limitations upon use of force are common characteristics of modern penal codes. See Model Penal Code, Art. 3: Illinois Criminal Code, 7-1 to 7-10; Minnesota Criminal Code, 609.06; Wisconsin Criminal Code, 339.48, 339.49. These sections have no counterparts in the present Kansas statutes.

The section defines the right to defend one's person against unlawful aggression. It attempts to define the phrase "reasonably believes." A reasonable belief implies both a belief and the existence of facts that would persuade a reasonable man to that belief.

The term "forcible felony" is defined in the section on general definitions.

Illinois Criminal Code, 7-1, and Restatement, Torts, 11, were relied upon in drafting the proposal.

21-213. *Use of Force in Defense of Dwelling.* A person is justified in the use of force against another when and to the extent that

it appears to him and he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon his dwelling.

COMMENT

The proposal states a general rule of law. See *State v. Countryman,* 57 Kan. 815.

21-214. *Use of Force in Defense of Property Other Than a Dwelling.* A person who is lawfully in possession of property other than a dwelling is justified in the threat or use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such degree of force or threat thereof as a reasonable man would deem necessary to prevent or terminate the interference may intentionally be used. It is not reasonable to intentionally use force intended or likely to cause death or great bodily harm for the sole purpose of defending property other than a dwelling.

COMMENT

Kansas case law has generally sanctioned reasonable force in defense of property. See *State v. Bradbury,* 67 Kan. 808 (1903), and *State v. Hazen,* 160 Kan. 733 (1946).

The proposal is adapted from Wisconsin Criminal Code, 339.49 (1).

21-215. *Use of Force by an Aggressor.* The justification described in sections 21-212, 21-213, and 21-214, is not available to a person who:

(1) Is attempting to commit, committing, or escaping from the commission of a forcible felony; or

(2) Initially provokes the use of force against himself or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(3) Otherwise initially provokes the use of force against himself or another, unless:

(*a*) He has reasonable ground to believe that he is in imminent danger of death or great bodily harm, and he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or great bodily harm to the assailant; or

(*b*) In good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

COMMENT

This proposed section limits the privilege to use force in self defense in the case of those persons whose aggression or other blameworthy conduct has resulted in their being placed in a position of danger. The proposal states generally accepted rules of law.

Illinois Criminal Code, 7-4, is the basis for the proposal.

21-216. *Law Enforcement Officer's Use of Force in Making Arrest.* (1) A law enforcement officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or another person, or when he reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and the person to be arrested has committed or attempted to commit a forcible felony or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

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

COMMENT

The proposal defined the extent of a law enforcement officer's power to employ force in making arrests. It tends to fill an omission in the present law.

The proposal is similar to Illinois Criminal Code 7-5.

Section to be repealed. K. S. A. 62-1204.

21-217. *Private Person's Use of Force in Making Arrest.* (1) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which he would be justified in using if he were summoned or directed by a law enforcement officer to make such arrest, except that he is justified in the use of force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or another.

(2) A private person who is summoned or directed by a law en-

forcement officer to assist in making an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful.

COMMENT

The right of the citizen to arrest offenders under proper circumstances has been recognized in Kansas. (*Elkins v. Wyandotte County Commissioners,* 91 Kan. 518; *State v. Mowry,* 37 Kan. 369; *Koch v. Murphy,* 151 Kan. 988). The proposed section furnishes a guide to the authorized use of force in connection with that power.

It should be noted that both this section and 21-220 protect the person who uses reasonable force in making an unlawful arrest that he believes to be lawful.

The proposed section follows Illinois Criminal Code, 7-6.

21-218. *Use of Force in Resisting Arrest.* A person is not authorized to use force to resist an arrest which he knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful and the arrest in fact is unlawful.

COMMENT

This section proposes to change the existing law of Kansas. In State v. Bowen, 118 Kan. 31, the Supreme Court said "It is well settled that a person has the right to resist an unlawful arrest, and to use such force as is reasonably necessary for that purpose. The full right of self-defense exists in favor of a person being unlawfully arrested by an officer." There seems to be justification for the proposed change of policy. There is probably less danger in the temporary submission to an unlawful arrest than in the circumstances of forcible resistance.

The proposed section is patterned after Illinois Criminal Code, 7-7.

PART II.—PROHIBITED CONDUCT

Article III. *Anticipatory Crimes.*

21-301. *Attempt.* (1) An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.

(2) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.

(3) An attempt to commit a Class A felony is a Class C felony. An attempt to commit a felony other than a Class A felony is a Class E felony. An attempt to commit a misdemeanor is a Class C misdemeanor.

COMMENT

Proposed subsection (1) restates the present law of Kansas. Attempt statutes impose criminal liability for acts that, in themselves, are harmless when such acts are aimed at carrying out a criminal intent. Hence, proof of an intent to commit a crime is an essential part of every attempt prosecution. One difficulty in the law of attempts relates to the point at which criminal liability attaches. It is commonly said that there is no criminal liability for mere acts of preparation. On the other hand, when the act comes close to the accomplishment of the criminal intent, liability clearly attaches. Where in the sequence of acts and events should the line be drawn? The phrase "any act toward the perpetration of such crime" is intended to exclude remote acts that are purely preparatory. Conceding that the language is a little indefinite, it may be as close to certainty as we can come.

Subsection (2) attempts to clarify the present law relating to impossibility as a defense. We now attempt to observe the distinction between legal impossibility and factual impossibility. (*State v. Visco,* 183 Kan. 562.) The distinction is confusing and seems to serve no useful purpose.

Subsection (3) which fixes penalties is less complex than the present section.

Subsection (1) is adopted from K. S. A. 21-101. Subsection (2) is similar to Minnesota Criminal Code, 609.17.

Section to be repealed. K. S. A. 21-101.

21-302. *Conspiracy.* (1) A conspiracy is an agreement with another person to commit a crime or to assist to commit a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by him or by a co-conspirator.

(2) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of his co-conspirators, before any overt act in furtherance of the conspiracy has been committed by him or by a co-conspirator.

(3) Conspiracy to commit a Class A felony is a Class C felony. Conspiracy to commit a felony other than a Class A felony is a Class E felony. A conspiracy to commit a misdemeanor is a Class C misdemeanor.

COMMENT

Kansas presently has no general conspiracy statute. However, conspiracies to commit several specific acts are made unlawful: certain acts against the government (21-305 to 21-308); unlawful assemblies (21-1001, 21-1002); false rumors concerning banks and other financial institutions (21-2452); restraint of trade (17-1634, 50-132); violation of industrial welfare regulations (44-615 to 44-618); kidnapping (21-452); obstruction of railroad business (21-1903); violation of real estate brokers laws (67-1015); and traffic violations (8-5,126). Citations are to the Kansas Statutes Annotated.

At least forty American jurisdictions now have statutes which prohibit conspiracies. The statutes vary in scope. The one proposed here is rather broad and is consistent with the terms of the federal statute.

The statutes vary in their handling of the overt act requirement. At common law the mere agreement to commit a crime was a sufficient basis for criminal responsibility. Apparently a majority of the modern statutes require some overt act implementing the criminal intent. The proposed section includes such a requirement.

The proposal is drawn from Minnesota Criminal Code, 609.175 and Illinois Criminal Code, 8-2.

Article IV. *Crimes Against Persons*

21-401. *Murder in the First Degree.* Murder in the first degree is the malicious killing of a human being committed willfully, deliberately and with premeditation or committed in the perpetration or attempt to perpetrate any felony.

Murder in the first degree is a Class A felony.

21-402. *Murder in the Second Degree.* Murder in the second degree is the malicious killing of a human being, committed without deliberation or premeditation and not in the perpetration or attempt to perpetrate a felony.

Murder in the second degree is a Class B felony.

COMMENT

While the proposed draft differs formally from the present statutes in that it expressly defines the crime of murder, it makes no substantive change in the law. The words "malicious' 'and "premeditation" are not defined in the code

but are to be given the meaning established by the decisions of the Supreme Court of Kansas.

The proposals are adopted from K. S. A. 21-401 and 21-402.

Sections to be repealed. K. S. A. 21-401, 21-402.

21-403. *Voluntary Manslaughter.* Voluntary manslaughter is the unlawful killing of a human being, without malice, which is done intentionally upon a sudden quarrel or in the heat of passion.

Voluntary manslaughter is a Class C felony.

21-404. *Involuntary Manslaughter.* Involuntary manslaughter is the unlawful killing of a human being, without malice, which is done unintentionally in the commission of an unlawful act not amounting to felony, or in the commission of a lawful act in an unlawful or wanton manner. As used in this section, an "unlawful act" is any act which is prohibited by a statute of the United States or the state of Kansas or an ordinance of any city within the state which statute or ordinance is enacted for the protection of human life or safety.

Involuntary manslaughter is a Class E felony.

COMMENT

Proposed sections 21-403 and 21-404 are intended to include all felonious homicides other than murder. The dichotomy, voluntary and involuntary manslaughter, follows the common law classification of manslaughter. Note that to be punishable as involuntary manslaughter, an unintentional homicide must be the result of either wantonness or a violation of positive law which is enacted for the protection of human life or safety. This is apparently the rule of *State v. Yowell,* 184 Kan. 352.

The proposed sections are substantially like Title 18, Sec. 1112 (*a*), U. S. C.

Sections to be repealed. K. S. A. 21-407, 21-410, 21-411, 21-412, 21-413, 21-414, 21-415, 21-418, 21-419, 21-420.

21-405. *Vehicular Homicide.* (1) Vehicular homicide is the killing of a human being by the operation of an automobile, airplane, motor boat or other motor vehicle in a manner which creates an unreasonable risk of injury to the person or property of another and which constitutes a substantial deviation from the standard of care which a reasonable person would observe under the same circumstances.

(2) This section shall be applicable only when the death of the injured person ensues within one year as the proximate result of the operation of a vehicle in the manner described in subsection (1) of this section.

(3) Vehicular homicide is a Class A misdemeanor.

COMMENT

The proposal is intended to replace K. S. A. 8-529 (2). The material changes are (1) a description of the prohibited conduct and (2) a clear statement that the section applies to motor vehicles other than automobiles.

Section to be repealed. K. S. A. 8-529.

Note: K. S. A. 8-529 (*c*) provides for the revocation of the driver's license of one convicted of vehicular homicide. While this part of the section is not included in the proposal, it is clearly a duplication of K. S. A. 8-254 (1). Hence, a repeal of K. S. A. 8-529 in its entirety is proper.

21-406. *Assisting Suicide.* Assisting suicide is intentionally advising, encouraging or assisting another in the taking of his own life.

Assisting suicide is a Class E felony.

COMMENT

Suicide is not now a crime in Kansas. Hence, one who aids and abets a suicide is not guilty of a crime in the absence of a statute so providing. Manslaughter, as defined heretofore, probably does not include this situation. Therefore, a specific prohibition seems necessary.

Section to be repealed. K. S. A. 21-408.

21-407. *Criminal Abortion.* (1) Criminal abortion is the purposeful and unjustifiable termination of the pregnancy of any woman other than by a live birth.

(2) A person licensed to practice medicine and surgery is justified in terminating a pregnancy if he believes there is substantial risk that a continuance of the pregnancy would gravely impair the physical or mental health of the mother or that the child would be born with grave physical or mental defect, or that the pregnancy resulted from rape, incest, or other felonious intercourse; and either:

(*a*) Three persons licensed to practice medicine and surgery, one of whom may be the person performing the abortion, have certified in writing their belief in the justifying circumstances, and have filed such certificate prior to the abortion in the licensed hospital where it is to be performed, or in such other place as may be designated by law; or

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

(3) For the purpose of this section pregnancy means that condition of a woman from the date of conception to the birth of her child.

(4) For the purpose of subsection (2) of this section all illicit intercourse with a girl under the age of 16 years shall be deemed felonious.

(5) Criminal abortion is a Class D felony.

COMMENT

This proposal substantially broadens the circumstances under which an abortion may be justifiably performed. The present law authorizes therapeutic abortions only when necessary "to preserve the life" of the mother. Subsection (2) following the Model Penal Code, recognizes other conditions that justify abortions.

Subsection (3) eliminates the necessity for distinguishing between the *quick child* and other fetus.

Sections to be repealed. K. S. A. 21-409, 21-437.

21-408. *Assault.* An assault is an intentional threat or attempt to do bodily harm to another coupled with apparent ability and resulting in immediate apprehension of bodily harm. No bodily contact is necessary.

Assault is a Class C misdemeanor.

COMMENT

The definition is the one used in Pattern Instructions for Kansas (Sec. 14.01). It follows the tort concept of assault and is narrower than the usual criminal definition of assault. The crime of assault does not usually include the apprehension of bodily harm as a necessary element of the offense. The status of the present Kansas law is not entirely clear. (State v. Hazen, 160 Kan. 733, 740).

Section to be repealed. K. S. A. 21-436.

21-409. *Assault of a Law Enforcement Officer.* Assault of a law enforcement officer is an assault, as defined in Sec. 21-408, committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of his duty.

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

COMMENT

This proposal, and proposed sections 21-411, 21-413, and 21-415 are consistent with K. S. A. 1967 Supp. 21-719a and 21-719b, which recognizes the increased gravity of crimes committed against law enforcement officers in the performance of duty.

Sections to be repealed. K. S. A. 21-719, K. S. A. 1967 Supp. 21-719a and 21-719b.

21-410. *Aggravated Assault.* Aggravated assault is:

(*a*) Unlawfully assaulting or striking at another with a deadly weapon; or

(*b*) Committing assault by threatening or menacing another while disguised in any manner designed to conceal identity; or

(*c*) Willfully and intentionally assaulting another with intent to commit any felony.

Aggravated assault is a Class D felony.

COMMENT

Kansas has several statutes which seem to relate to assaults or batteries, or both, when done under circumstances of aggravation. The present effort is to simplify and clarify. This section should be considered along with section 21-414, *infra*.

The ideas are common to many state statutes. The language is similar to New Mexico Criminal Code, 3-2.

Sections to be repealed. K. S. A. 21-430, 21-431, 21-434, 21-435.

21-411. *Aggravated Assault on a Law Enforcement Officer.* Aggravated assault of a law enforcement officer is an aggravated assault, as defined in Sec. 21-410, committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of his duty.

Aggravated assault of a law enforcement officer is a Class C felony.

COMMENT

See comment under 21-409, *supra*.

21-412. *Battery.* Battery is the unlawful, intentional touching or application of force to the person of another, when done in a rude, insolent or angry manner.

Battery is a Class B misdemeanor.

COMMENT

Battery is not defined in the present Kansas statutes. The definition here used seems to follow the generally accepted definition.

The language is similar to New Mexico Criminal Code, 3-4.

Section to be repealed. K. S. A. 21-436.

21-413. *Battery Against a Law Enforcement Officer.* Battery against a law enforcement officer is a battery, as defined in Sec. 21-412, committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of his duty.

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

COMMENT

See Comment under 21-409, *supra.*

21-414. *Aggravated Battery.* Aggravated battery is the unlawful touching or application of force to the person of another with intent to injure that person or another and which either:

(*a*) Inflicts great bodily harm upon him; or

(*b*) Causes any disfigurement or dismemberment to or of his person; or

(*c*) Is done with a deadly weapon, or in any manner whereby great bodily harm, disfigurement, dismemberment, or death can be inflicted.

Aggravated battery is a Class C felony.

COMMENT

See comment under proposed section 21-412, *supra.* Unlike the present law, the proposed sections attempt to maintain clear distinctions between assaults and batteries.

The language is similar to New Mexico, 3-5.

Sections to be repealed. See sections set out under 21-410, *supra.*

21-415. *Aggravated Battery Against a Law Enforcement Officer.* Aggravated battery against a law enforcement officer is an aggravated battery, as defined in Sec. 21-414, committed against a uniformed or properly identified state, county, or city law enforcement officer while such officer is engaged in the performance of his duty.

Aggravated battery against a law enforcement officer is a Class B felony.

COMMENT

See Comment under 21-409, *supra.*

21-416. *Attempted Poisoning.* Attempted poisoning is mingling poison with any food, drink or medicine, with intent to kill or injure any human being.

Attempted poisoning is a Class C felony.

COMMENT

This proposal covers an area probably not included in the definition of aggravated assault. It seems to reflect the present law of Kansas.

Sections to be repealed. K. S. A. 21-432, 21-433.

21-417. *Permitting Dangerous Animal to Be at Large.* Permitting a dangerous animal to be at large is the act or omission of the owner or custodian of an animal of dangerous or vicious propensities who,

knowing of such propensities, permits or suffers such animal to go at large or keeps such animal without taking ordinary care to restrain it.

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

COMMENT

K. S. A. 21-415 provides that the owner of a dangerous animal who permits it to go at large or negligently fails to restrain it is guilty of 3rd degree manslaughter when such animal kills another person who takes reasonable precautions to avoid it. The proposal is broader in that the crime defined consists of permitting a dangerous animal to go at large. Should the animal cause the death of some human being, the owner would probably be guilty of involuntary manslaughter under proposed section 21-404.

Section to be repealed. K. S. A. 21-415.

21-418. *Terroristic Threat.* A terroristic threat is any threat to commit violence communicated with intent to terrorize another, or to cause the evacuation of any building, place of assembly or facility of transportation, or in wanton disregard of the risk of causing such terror or evacuation.

A terroristic threat is a Class E felony.

COMMENT

This is a new provision designed to fill a gap in the present law. The idea is drawn from Model Penal Code, 211.3.

21-419. *Kidnapping.* Kidnapping is the taking or confining of any person, accomplished by force, threat or deception, 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.

Kidnapping is a Class C felony.

21-420. *Aggravated Kidnapping.* Aggravated kidnapping is kidnapping, as defined in Sec. 21-419, when bodily harm is inflicted upon the person kidnapped.

Aggravated kidnapping is a Class A felony.

COMMENT

The present statute provides for three degrees of kidnapping. The proposed draft contains two degrees only. It covers the offenses now defined in K. S. A. 21-449 and 21-450. The inflicting of bodily harm upon the victim

distinguishes first degree from second degree kidnapping. Third degree kidnapping under the present law is dealt within the section following the proposed sections on first and second degree kidnapping.

The draft combines elements of the Model Penal Code, 212.1, New Mexico Criminal Code, 4-1, and K. S. A. 21-449.

Sections to be repealed. K. S. A. 21-449, 21-450.

21-421. *Interference with Parental Custody.* Interference with parental custody is leading, taking, carrying away, decoying or enticing away any child under the age of 14 years, with the intent to detain or conceal such child from its parent, guardian, or other person having the lawful charge of such child.

Interference with parental custody is a Class E felony.

21-422. *Interference with Custody of a Committed Person.* Interference with custody of a committed person is knowingly taking or enticing any committed person away from the control of his lawful custodian without privilege to do so. A committed person is any person committed other than by criminal process to any institution or other custodian by any court or other officer or agency authorized by law to make such commitment.

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

COMMENT

Proposed Section 21-421 follows K. S. A. 21-451. Proposed section 21-422 follows K. S. A. 21-2005. The prohibited acts, while patently blameworthy from the standpoint of the state, often reflect benign objectives on the part of the offender. Hence, they should be distinguished from the crime of kidnapping.

The idea is suggested by Model Penal Code, 212-4.

Sections to be repealed. K. S. A. 21-451, 21-2005.

21-423. *Unlawful Restraint.* (1) Unlawful restraint is knowingly and without legal authority restraining another so as to interfere substantially with his liberty.

(2) This section shall not apply to acts done in the performance of duty by any law enforcement officer of the state of Kansas or any political subdivision thereof.

(3) Any merchant, his agent or employee, who has probable cause to believe that a person has actual possession of and has wrongfully taken or is about to wrongfully take merchandise from a mercantile establishment, may detain such person on the premises or in the immediate vicinity thereof, in a reasonable manner and for a reasonable period of time for the purpose of investigating the circumstances of such possession. Such reasonable detention shall not constitute an arrest nor an unlawful restraint.

(4) Unlawful restraint is a Class A misdemeanor.

COMMENT

The offense of unlawful restraint is not covered by present Kansas statutes. Subsection 1 is adapted from the Model Penal Code, 212.3.

The exception for merchants is a relocation of the substance of K. S. A. 21-535b. K. S. A. 21-535a appears to be covered by the proposed section on theft, 21-701.

Section to be repealed. K. S. A. 21-535b.

21-424. *Mistreatment of a Confined Person.* Mistreatment of a confined person is the intentional abuse, neglect or ill-treatment of any person who is physically disabled or mentally ill or whose detention or confinement is involuntary, by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution or any public or private hospital or nursing home.

Mistreatment of a confined person is a Class A misdemeanor.

COMMENT

The section is self-explanatory. The proposal would fill a void in the present law. Situations of this kind presently arising must be prosecuted under the laws relating to assault and battery.

Minnesota Criminal Code 609.23 and Wisconsin Criminal Code have been drawn upon in drafting the proposal.

21-425. *Robbery.* Robbery is the taking of property from the person or presence of another by threat of bodily harm to his person or the person of another or by force.

Robbery is a Class C felony.

21-426. *Aggravated Robbery.* Aggravated robbery is the taking of property from the person or presence of another by a person who is armed with a dangerous weapon or who inflicts bodily harm upon such other.

Aggravated robbery is a Class B felony.

COMMENT

The present Kansas statutes (K. S. A. 21-527 to 21-532) define three degrees of robbery and two crimes that are essentially attempts. Third degree robbery under the present statutes is extortion or blackmail and should be so designated. The substance of 21-531 and 21-532 is covered by the general prohibition against criminal attempts. Hence, no reason for retention of those sections appears.

Proposed section 21-425, by a more general statement, intends to include the substance of the presently defined crimes of first and second degree robbery (21-527 and 21-528) with two principal exceptions: (1) It does not apply to those situations where the actor's threat is directed against property only; and (2) where bodily harm is actually inflicted the crime is the more serious one of aggravated robbery.

Proposed section 21-526 suggests a distinction not found in the present law. However, the statutes of many states distinguish between armed or aggravated robbery and those robberies committed by less violent means. (See New Mexico Criminal Code, 16-2; Illinois Criminal Code, 18-1 and 18-2; and Minnesota Criminal Code, 609-24 and 609-245.)

Some of the language is derived from K. S. A. 21-527 and 21-528. Also, Minnesota Criminal Code 609.245 has been drawn from.

Sections to be repealed. K. S. A. 21-527, 21-528, 21-530.

21-427. *Blackmail.* Blackmail is verbally or by written or printed communication and with intent to extort or gain any thing of value from another or to compel another to do an act against his will:

(*a*) Accusing or threatening to accuse any person of a crime or conduct which would tend to degrade and disgrace the person accused; or

(*b*) Exposing or threatening to expose any fact, report or information concerning any person which would in any way subject such person to the ridicule or contempt of society, coupled with the threat that such accusation or exposure will be communicated to a third person or persons unless the person threatened or some other person pays or delivers to the accuser or some other person some thing of value or does some act against his will.

Blackmail is a Class E felony.

COMMENT

The proposal restates K. S. A. 21-2412.

Section to be repealed. K. S. A. 21-2412.

Article V. *Sex Offenses*

21-501. *Definitions.* The following definitions apply in this Article unless a different meaning is plainly required:

(1) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ;

(2) "Unlawful sexual act" means any rape, indecent liberties with a child, sodomy, aggravated sodomy, or lewd and lascivious behavior, as defined in this article.

21-502. *Rape.* (1) Rape is the act of sexual intercourse committed by a man with a woman not his wife, and without her consent when committed under any of the following circumstances:

(*a*) When a woman's resistance is overcome by force or fear; or

(*b*) When the woman is unconscious or physically powerless to resist; or

(*c*) When the woman is incapable of giving her consent because of mental deficiency or disease, which condition was known by the man or was reasonably apparent to him; or

(*d*) When the woman's resistance is prevented by the effect of any alcoholic liquor, narcotic, drug or other substance administered to the woman by the man or another for the purpose of preventing the woman's resistance, unless the woman voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Rape is a Class C felony.

COMMENT

Rape is not defined in the present statutes of Kansas. The crime is described as "carnally and unlawfully knowing" and as "forcibly ravishing" any female. While these terms have accepted common law meanings, it seems desirable that the crime should be more specifically defined. Also, the term "sexual intercourse" is specifically defined for the sake of clarity. The proposal does not change the present law relating to forcible rape. It simply seeks to clarify.

The proposal contains elements of New Mexico Criminal Code, 9-1 and 9-2.

Sections to be repealed. K. S. A. 21-424, 21-425.

21-503. *Indecent Liberties with a Child.* (1) Indecent liberties with a child is engaging in either of the following acts with a child under the age of 16 years who is not the spouse of the offender:

(*a*) The act of sexual intercourse;

(*b*) Any lewd fondling or touching of the sex organs of either the child or the offender done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender or both.

(2) It shall be a defense to indecent liberties with a child that the defendant had reasonable grounds to believe the child was of the age of 16 or upwards at the time of the act giving rise to the charge.

(3) Indecent liberties with a child is a Class D felony.

COMMENT

This section is in lieu of the former provision relating to statutory rape. The name of the crime has been changed. The prohibited conduct includes not only sexual intercourse, but other indecent sexual conduct. Moreover, the proposed section applies to the one who submits to as well as performs indecent acts with a child. Thus, the female participant in a sexual relationship with a child might be prosecuted under this section.

The proposal adopts part of the Illinois Criminal Code, 11-4.

Section to be repealed. See 21-424 under preceding section.

21-504. *Indecent Liberties with a Ward.* Indecent liberties with a ward is either of the following acts when committed with a child under the age of 16 years by any guardian, proprietor or employee of any foster home, orphanage, or other public or private institution for the care and custody of minor children, to whose charge such child has been committed or entrusted by any court, probation officer, department of social welfare or other agency acting under color of law:

(*a*) The act of sexual intercourse;

(*b*) Any lewd fondling or touching of the sex organs of either the child or the offender done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender or both.

Indecent liberties with a ward is a Class C felony.

COMMENT

The advisory committee was of the view that the crime of indecent liberties with a child is more reprehensible when committed by a person in whose charge the child has been placed by a court or other agency acting pursuant to law. Hence, the crime of indecent liberties with a ward is defined and a more severe penalty is provided.

Section to be repealed. K. S. A. 21-909.

21-205. *Sodomy.* Sodomy is oral or anal copulation between persons or between a person and an animal, or coitus with an animal. Any penetration, however slight, is sufficient to complete the crime of sodomy.

Sodomy is a Class B misdemeanor.

21-506. *Aggravated Sodomy.* Aggravated sodomy is sodomy committed:

(*a*) With force or threat of force, or where bodily harm is inflicted on the victim during the commission of the crime; or

(*b*) With a child under the age of 16 years.

Aggravated sodomy is a Class C felony.

COMMENT

K. S. A. 21-907 prohibits the "detestable and abominable crime against nature, committed with mankind and with beast." The elements of the crime are not specified. Proposed section 21-505 identifies the conduct ordinarily included in the crime of sodomy or crime against nature. It probably does not materially change the present law. It only seeks to clarify. Some of the new codes have abandoned the term "sodomy" and instead employ the terms "deviate sexual conduct" or "sexual perversion." See Illinois Criminal Code, 11-2 and Wisconsin Criminal Code, 344.17.

Sexual crimes involving violence and those against children are usually regarded as more serious. Hence, proposed section 21-506 defines a distinct crime of aggravated sodomy and permits a more severe penalty.

The language is similar to New Mexico Criminal Code, 9-6.

Section to be repealed. K. S. A. 21-907.

21-507. *Adultery.* (1) Adultery is sexual intercourse by a person with another who is not his spouse if

(*a*) Such person is married; or

(*b*) Such person is not married and knows that the other person involved in such intercourse is married.

(2) Adultery is a Class B misdemeanor.

COMMENT

Adultery is not presently defined in the laws of Kansas, although it is made criminal (K. S. A. 21-908). Hence the courts adhere to the common law concept and hold that adultery cannot be committed by an unmarried person (*State v. Chafin,* 80 Kan. 653). The proposed section is applicable to extramarital sexual intercourse committed both by a married person and by a single person who has knowledge that his partner in the amorous frolic is married.

The committee does not recommend that sexual intercourse between consenting adults, neither of whom is married, should be made criminal.

Section to be repealed. K. S. A. 21-908.

21-508. *Lewd and Lascivious Behavior.* (1) Lewd and lascivious behavior is:

(*a*) The commission of an act of sexual intercourse or sodomy with any person or animal with knowledge or reasonable anticipation that the participants are being viewed by others; or

(*b*) The exposure of a sex organ in the presence of a person who is not the spouse of the offender, with intent to arouse or gratify the sexual desires of the offender or another.

(*c*) Any other lewd act which the offender knows is likely to be observed by others who would be affronted or alarmed thereby.

(2) Lewd and lascivious behavior is a Class B misdemeanor.

COMMENT

This proposal and the preceding one restate the substance of K. S. A. 21-908. The present statute uses such epithets as "lewdness," "lascivious behavior," "indecency," "grossly scandalous," etc., without defining the terms. The proposal attempts to identify the conduct to which the epithets apply.

The proposal is adapted from the Wisconsin Criminal Code, 344.20.

Section to be repealed. See K. S. A. 21-908, under preceding section.

21-509. *Enticement of a Child.* Enticement of a child is inviting, persuading or attempting to persuade a child under the age of 16

years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the person of said child.

Enticement of a child is a Class D felony.

21-510. *Indecent Solicitation of a Child.* Indecent solicitation of a child is the accosting, enticing or soliciting of a child under the age of 16 years to commit or to submit to an unlawful sexual act.

Indecent solicitation of a child is a Class A misdemeanor.

21-511. *Aggravated Indecent Solicitation of a Child.* Aggravated indecent solicitation of a child is the accosting, enticing or soliciting of a child under the age of 12 years to commit or to submit to an unlawful sexual act.

Aggravated indecent solicitation of a child is a Class E felony.

COMMENT

Sexual crimes against children are often committed in vehicles, buildings or secluded places. Proposed section 21-509 is intended to protect the child from exposure to the danger of being induced to enter such a place by a person who intends to abuse the child sexually. Under this section, the gist of the crime is the invitation to enter, coupled with the unlawful intent.

Proposed sections 21-510 and 21-511 prohibit the solicitation or invitation to the child to participate in the unlawful act. The solicitation may be in a public as well as in a private place. It involves no effort to obtain control over the child's person in a secluded location.

New Mexico Criminal Code, 9-10, and Wisconsin Criminal Code, 344-12, have been used as guides in drafting. Also, note that 21-510 and 21-511 cover substantially the same conduct as K. S. A. 38-711.

21-512. *Prostitution.* Prostitution is performing an act of sexual intercourse for hire, or offering or agreeing to perform an act of sexual intercourse or any unlawful sexual act for hire.

Prostitution is a Class B misdemeanor.

21-513. *Promoting Prostitution.* (1) Promoting prostitution is:

(*a*) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance, or management thereof; or

(*b*) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution; or

(*c*) Procuring a prostitute for a house of prostitution; or

(*d*) Inducing another to become a prostitute; or

(*e*) Soliciting a patron for a prostitute or for a house of prostitution; or

(*f*) Procuring a prostitute for a patron; or

(*g*) Procuring transportation for, paying for the transportation of, or transporting a person within this state with the intention of assisting or promoting that person's engaging in prostitution; or

(*h*) Being employed to perform any act which is prohibited by this section.

(2) Promoting prostitution is a Class A misdemeanor.

21-514. *Habitually Promoting Prostitution.* Habitually promoting prostitution is the commission of any act constituting promoting prostitution, as defined in section 21-513, by a person who has, prior to the commission of such act, been convicted of a prior violation of said section 21-513.

Habitually promoting prostitution is a Class E felony.

21-515. *Patronizing a Prostitute.* (1) Patronizing a prostitute is either:

(*a*) Knowingly entering or remaining in a house of prostitution with intent to engage in sexual intercourse or any unlawful sexual act with a prostitute; or

(*b*) Knowingly hiring a prostitute to engage in sexual intercourse or any unlawful sexual act.

(2) Patronizing a prostitute is a Class C misdemeanor.

COMMENT

Prostitution, *per se,* is not now prohibited by the laws of Kansas. Penalties are provided for keeping a place of prostitution, soliciting, taking a woman for purposes of prostitution, etc. However, there are both gaps and overlaps to be encountered. The proposed sections attempt to cover the ground more completely and, at the same time, to collect and systematize material now scattered through several sections and articles.

Proposed section 21-515 creates a new crime. The view of the committee is simply that both parties to a prohibited transaction share in the culpability and both should be dealt with accordingly.

Note that the persistent violation of proposed section 21-513 is to be treated as a felony under 21-514. Proof of a crime under 21-514 would include proof of a prior conviction under 21-513.

The draft draws upon Illinois Criminal Code, 11-14, and New Mexico Criminal Code, 9-12 and 9-13.

Sections to be repealed. K. S. A. 21-426, 21-427, 21-428, 38-705, 21-937, 21-938, 21-939, 21-940, 21-941, 21-942.

Sections to be amended. 21-933, 21-934, 21-935, 21-936.

Article VI. *Crimes Affecting Family Relationships and Children*

21-601. *Bigamy.* (1) Bigamy is any of the following:

(*a*) Marriage within this state by any person who shall have another spouse living at the time of such marriage;

(*b*) Marriage within this state by an unmarried person to a person known to such unmarried person to be the spouse of some other person;

(*c*) Cohabitation within this state after marriage in another state or country under circumstances described in subsection (1) (*a*) or subsection (1) (*b*) of this section.

(2) It shall be a defense to a charge of bigamy that the accused reasonably believed the prior marriage had been dissolved by death, divorce or annulment.

(3) Bigamy is a Class E felony.

COMMENT

The proposal substantially restates the present law of Kansas. Note, however, that fewer defenses are stated in the statute. Also, the definition of bigamy includes the crime of cohabiting within the state after a bigamous marriage without, now prohibited by a separate section.

The proposal follows K. S. A. 21-901 and 21-905 and Illinois Criminal Code 11-12.

Sections to be repealed. K. S. A. 21-901, 21-902, 21-903, 21-904, 21-905.

21-602. *Incest.* Incest is marriage to or engaging in sexual intercourse with a person known to the defendant to be related to him as brother or sister of the one-half as well as the whole blood, uncle, aunt, nephew or niece.

Incest is a Class E felony.

21-603. *Aggravated Incest.* (1) Aggravated incest is sexual intercourse or any unlawful sexual act by a parent with a person he knows is his child.

(2) Parent for the purposes of this section means a natural father or mother, an adoptive father or mother, a stepfather or stepmother or a grandfather or grandmother of any degree.

(3) Child for the purposes of this section means a son, daughter, grandson or granddaughter, regardless of legitimacy or age; and also means a stepson or stepdaughter or adopted son or adopted daughter under the age of 18.

(4) Aggravated incest is a Class D felony.

COMMENT

Two grades of incest are proposed. It is the view of the committee that sexual intercourse between parent and child is more reprehensible than similar acts between others within the prohibited degrees of relationship. The definition of the term "child" does not include an adopted child or stepchild who is 18 years of age or older. It is the committee's thought that when the child has reached the age of consent and discretion and is not related by blood to the other partner in the enterprise, the matter should be treated as any other sexual conduct between consenting, non-related adults.

In drafting, the committee has relied upon K. S. A. 21-906 and 23-102 and Illinois Criminal Code, 11-11.

Section to be repealed. K. S. A. 21-906.

21-604. *Abandonment of a Child.* Abandonment of a child is the leaving of a child under the age of sixteen years, in a place where such child may suffer because of neglect, by the parent, guardian or other person to whom the care and custody of such child shall have been entrusted, when done with intent to abandon such child.

Abandonment of a child is a Class E felony.

COMMENT

The proposal is similar in content to present K. S. A. 21-441, but it has been broadened. Also, the maximum age of protected children is stated in the statute.

The idea is found in many statutes, including Kan. G. S. 1949, 21-441. The language "in a place where he may suffer because of neglect," comes from Wisconsin Criminal Code, 340.23.

Section to be repealed. K. S. A. 21-441.

21-605. *Non-support of a Child.* (1) Non-support of a child is a parent's failure, neglect or refusal to provide for the support and maintenance of his child in necessitous circumstances.

(2) As used in this section, "child" means a child under the age of 16 years, and includes an adopted child or a child born out of wedlock whose parentage has been judicially determined or has been acknowledged in writing by the person to be charged with the support of such child.

(3) At any time before the trial, upon petition and notice, the court, or a judge thereof, may enter such temporary order as may seem just providing for support of such child, and may punish for violation of such order as for contempt.

(4) At any stage of the proceeding, instead of imposing the penalty hereinafter provided, or in addition thereto, the court, in its discretion, having regard to the circumstances and to the finan-

cial ability or earning capacity of the defendant, shall have the power to make an order which shall be subject to change by the court from time to time, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding the period during which the obligation to support shall continue, to the guardian or custodian of said child or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his entering into a recognizance, with or without surety in such sum as the court or a judge thereof may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise of full force and effect.

(5) If the court be satisfied by due proof that at any time during the period while the obligation to support continues the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence as the case may be.

(6) A preponderance of the evidence shall be sufficient to prove that the defendant is the father or mother of such child. In no prosecution under this act shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent witnesses to testify against each other to any and all relevant matters, including the parentage of such child. Proof of the non-support of such child in necessitous circumstances or neglect or refusal to provide for the support and maintenance of such child shall be prima facie evidence that such neglect or refusal is willful.

(7) Non-support of a child is a Class E felony.

COMMENT

The present law of Kansas protects both the wife and children. It is based upon the Uniform Desertion and Non-Support Act which was drafted in 1910. The increased economic independence of women and the civil remedies available to wives make it seem feasible to withdraw this special protection from the wife. Otherwise, the proposal substantially follows the present law.

Subsection (2) makes the act specifically applicable to adopted children and illegitimate children whose paternity has been judicially established or

acknowledged in writing. Note, under the present statutes of Kansas, paternity is regularly and normally an issue only in a bastardy proceeding. It may be proper to provide for a special proceeding in which a preliminary determination of paternity may be made. Such a section probably should be located in the chapter on procedure.

The proposal is based largely on K. S. A. 21-442 through 21-447, as modified.

Sections to be repealed. K. S. A. 21-442, 21-443, 21-444, 21-445, 21-446.

21-606. *Criminal Desertion.* Criminal desertion is a husband's or wife's abandonment or willful failure without just cause to provide for the care, protection or support of a spouse who is in ill health or necessitous circumstances.

Criminal desertion is a Class E felony.

COMMENT

This proposal supplements proposed 21-605 which applies only to failure to support children. Penalties are imposed for desertion of either spouse who is ill or in necessitous circumstances.

21-607. *Encouraging Juvenile Misconduct.* Encouraging juvenile misconduct is knowingly:

(*a*) Encouraging any person subject to the Kansas Juvenile Code to violate any law of the state; or

(*b*) Causing or permitting any person subject to the Kansas Juvenile Code to be or remain in any house of prostitution or any room or place where intoxicating liquor is unlawfully kept, possessed, sold or bartered or any gambling place.

Encouraging juvenile misconduct is a Class B misdemeanor.

COMMENT

Part of the substance of the proposed section is presently found in the Juvenile Code, K. S. A. 38-712. However, one who actually causes a child to commit a crime would be liable under 21-205. "Gambling place" is defined in 21-1304 (4).

Section to be repealed. K. S. A. 38-712.

21-608. *Endangering a Child.* Endangering a child is willfully:

(1) Causing or permitting a child under the age of 16 years to suffer unjustifiable physical pain or mental distress; or

(*b*) Causing or permitting a child under the age of 16 years to be placed in a situation in which its life, body or health may be injured or endangered.

(2) Endangering a child is a Class A misdemeanor.

COMMENT

This proposal is restated and removed from the Juvenile Code.

Section to be repealed. K. S. A. 38-713.

21-609. *Abuse of a Child.* Abuse of a child is willfully torturing, cruelly beating or inflicting cruel and inhuman corporal punishment upon any child under the age of 16 years.

Abuse of a child is a Class E felony.

COMMENT

Transferred from the Juvenile Code.

Section to be repealed. K. S. A. 38-714.

21-610. *Furnishing Intoxicants to a Minor.* (1) Furnishing intoxicants to a minor is directly or indirectly, selling to, buying for, giving or furnishing any intoxicating liquor to any person under the age of 21 years.

(2) It shall be a defense to furnishing intoxicants to a minor that the defendant had reasonable cause to believe the child was of the age of 21 years or upwards at the time of the act giving rise to the charge.

(3) Furnishing intoxicants to a minor is a Class C misdemeanor.

COMMENT

This section restates K. S. A. 38-715, passed by the legislature in 1965. Presumably it reflects the current thinking of the legislature. However, the defense in subsection (2) is new.

Section to be repealed. K. S. A. 38-715.

21-611. *Aggravated Juvenile Delinquency.* (1) Aggravated juvenile delinquency is any of the following acts committed by any person confined in the state industrial school for boys or in the state industrial school for girls:

(*a*) Willfully burning or attempting to burn any building of either of such institutions, or setting fire to any combustible material for the purpose of burning such buildings;

(*b*) Willfully burning or otherwise destroying property of the value of more than one hundred dollars belonging to the state of Kansas;

(*c*) Willfully and forcibly resisting the lawful authority of any officer of either of such institutions;

(*d*) Committing an aggravated assault or aggravated battery upon any officer, attendant, employee or inmate of either of such institutions;

(*e*) Exerting a dangerous and pernicious influence over other persons confined in either of such institutions by gross or habitual misconduct;

(*f*) Running away or escaping from either of such institutions after having previously run away or escaped therefrom one or more times.

(2) Aggravated juvenile delinquency is a Class E felony.

(3) At the expiration of the term of imprisonment adjudged for aggravated juvenile delinquency, or at such earlier time as the state director of penal institutions may direct, the person imprisoned shall be returned to the custody of the superintendent of the institution from which he shall have been received.

(4) The juvenile court shall not have jurisdiction to try persons charged with aggravated juvenile delinquency, as defined by this section, but such persons shall be prosecuted under the general criminal laws of the state.

COMMENT

This is a restatement of the substance of K. S. A. 21-2001 through 21-2004. It removes from the purview of the juvenile code certain offenses committed by juveniles who are inmates of state institutions. Apparently such a provision is helpful in dealing with exceptional cases not amenable to the processes and controls employed in the juvenile institutions.

K. S. A. 21-2003 is probably superfluous. Hence, it is omitted from the restatement.

Sections to be repealed. K. S. A. 21-2001, 21-2002, 21-2003, 21-2004.

Article VII. *Crimes Against Property*

21-701. *Theft.* Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of his property:

(*a*) Obtaining or exerting unauthorized control over property; or

(*b*) Obtaining by deception control over property; or

(*c*) Obtaining by threat control over property; or

(*d*) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of $100 or more is a Class D felony. Theft of property of the value of less than $100 is a Class A misdemeanor.

COMMENT

The proposal follows generally the pattern of California, Illinois, the Model Penal Code, and other recent drafts in that it consolidates the present crimes

of larceny, embezzlement, false pretense, extortion, receiving stolen property and the like into a single crime of theft. The present distinctions are historical but apparently serve no useful purpose. They tend to make the law unduly complex, and create unnecessary problems in pleading and proof. All involve the common elements of an obtaining of property by dishonest means. The distinctions are not sufficiently basic to require treatment in separate sections. The proposed section covers the same acts now prescribed by at least 30 sections in the Kansas Statutes Annotated.

The general terms used in the proposal are defined in section 21-110, *supra.*

The section was drafted after examining the Illinois Criminal Code, 16-1 and Model Penal Code, 223.1.

Sections to be repealed. K. S. A. 21-103, 21-529, 21-532, 21-533, 21-534, 21-535, 21-535a, 21-536, 21-537, 21-539, 21-540, 21-541, 21-542, 21-543, 21-544, 21-545, 21-546, 21-547, 21-548, 21-549, 21-550, 21-551, 21-552, 21-560, 21-561, 21-562, 21-2301, 21-2302, 21-2412, 21-2422.

21-702. *Theft of Lost or Mislaid Property.* Theft of lost or mislaid property is failure to take reasonable measures to restore stolen or mislaid property to the owner by a person who has obtained control of such property, who knows or learns the identity of the owner thereof, and who intends to deprive the owner permanently of the possession, use or benefit of the property.

Theft of lost or mislaid property is a Class A misdemeanor.

COMMENT

At common law, the finder of lost or mislaid property commits larceny only when he takes possession with intent to convert and at the same time knows or has a reasonable means of identifying the owner. The elements must concur at the time of taking. The proposed section is broader. The crime is a misdemeanor, regardless of the value of the property, since no trespass is involved.

It follows Illinois Criminal Code, 16-2, with modifications.

21-703. *Theft of Services.* (1) Theft of services is obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or use of false token or device.

(2) "Services" within the meaning of this section, includes, but is not limited to, labor, professional service, public utility or transportation service, entertainment and the supplying of equipment for use.

(3) Theft of services of the value of $100 or more is a Class D felony. Theft of services of the value of less than $100 is a Class A misdemeanor.

COMMENT

There is no present general prohibition against theft of services in Kansas. A few specific items are protected, *i. e.* transportation. The proposal does not cover hotel and restaurant services, protected by K. S. A. 36-206.

Sections to be repealed. K. S. A. 21-703, 21-1908, 21-2455.

21-704. *Unlawful Deprivation of Property.* Unlawful deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of the temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of his property.

Unlawful deprivation of property is a Class A misdemeanor.

COMMENT

The proposal represents an expansion of the present "joyriding" statute, K. S. A. 21-544, to include all classes of property.

Section to be repealed. K. S. A. 21-544.

21-705. *Fraudulently Obtaining Execution of a Document.* Fraudulently obtaining execution of a document is causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred.

Fraudulently obtaining execution of a document is a Class A misdemeanor.

COMMENT

Theft, as defined in proposed section 21-702, includes the situation where control of property is obtained by deception. The present proposal defines a lesser species of crime. The gist of the section is the wrongful procuring of the execution of a document which may or may not convey an interest in property. It may be included in K. S. A. 21-1112.

The language is taken from Illinois Criminal Code. 17-1.

Section to be repealed. K. S. A. 21-551.

21-706. *Giving a Worthless Check.* (1) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft as aforesaid, that the maker or drawer has no deposit in or credits with such bank or depository or has not sufficient funds in, or credits with, such bank or depository for the payment of such check, order or draft in full upon its presentation.

(2) In any prosecution against the maker or drawer of a check, order or draft payment of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit

with, such bank or depository, providing such maker or drawer shall not have paid the holder thereof the amount due thereon, within seven days after notice has been given to him that such check, draft, or order has not been paid by the drawee. The word "notice," as used herein, shall be construed to include notice to the person entitled thereto given orally as well as notice given to such person in writing. Notice in writing shall be presumed to have been given when deposited as restricted matter in the United States mail, addressed to the person to be charged with notice at his address as it appears on such check, draft or order.

(3) It shall be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:

(*a*) Was post-dated, or

(*b*) Was given to a payee who had knowledge or had been informed, when he accepted such check, draft or order, that the maker did not have sufficient funds in the hands of the drawee to pay such check, draft or order upon presentation.

(4) Giving a worthless check is a Class D felony if the check, draft or order is drawn for $100 or more. Giving a worthless check is a Class A misdemeanor if the check, draft or order is drawn for less than $100.

21-707. *Habitually Giving Worthless Checks.* (1) Habitually giving worthless checks is:

(*a*) Giving a worthless check, as defined by section 21-706, drawn for less than $100, by a person who has, within two years immediately preceding the giving of such worthless check, been twice convicted of giving worthless checks; or

(*b*) Giving two or more worthless checks, as defined by section 21-706, each drawn for less than $100, where the total amount for which such worthless checks are drawn is $100 or more, and each of such checks was given on the same day.

(2) A complaint, information or indictment charging a violation of subsection (1) (*a*) shall allege specifically that the defendant has twice been convicted of giving a worthless check and shall allege the dates and places of such convictions and that both of them occurred within a period of two years immediately preceding the crime charged. For the purpose of subsection (1) (*b*) worthless checks bearing the same date shall be presumed to have been given the same day. Any complaint, information or indictment charging a violation of this section shall allege that the defendant feloniously committed the crime.

(3) Habitually giving worthless checks is a Class D felony.

Sections to be repealed. K. S. A. 21-555, 21-555a, 21-555b, 21-555c, 21-555d, 21-557, 21-559.

21-708. *Causing an Unlawful Prosecution for Worthless Check.* Causing an unlawful prosecution for worthless check is filing a complaint before a magistrate or supplying information upon which a prosecution for giving a worthless check is commenced with knowledge that the check, draft or order upon which such prosecution is based was post-dated or when the payee had knowledge, when he accepted such check, draft or order, that there were no funds or insufficient funds in the hands of the drawee to pay such check, draft or order upon presentation.

Causing an unlawful prosecution is a Class A misdemeanor and any person convicted of such violation shall pay the taxable costs of the prosecution initiated by him or upon information supplied by him.

COMMENT

Proposed sections 21-706, 21-707 and 21-708 state the substance of K. S. A. 21-554 through 21-555d, enacted in 1963. Some restatement has been employed for purpose of clarification. Because the enactment is so recent, it has been assumed that it probably reflects the present legislative attitude.

Sections to be repealed. K. S. A. 21-555d.

21-709. *Forgery.* Forgery is knowingly and with intent to defraud:

(*a*) Making or altering any written instrument in such manner that it purports to have been made by another person or at another time or with different provisions or by authority of one who did not give such authority; or

(*b*) Issuing or delivering such written instrument knowing it to have been thus made or altered; or

(*c*) Possessing, with intent to issue or deliver, any such written instrument knowing it to have been thus made or altered.

Forgery is a Class D felony.

COMMENT

This section is proposed in lieu of more than 20 sections now covering the same area. The phrase, "intent to defraud," is defined in the section on definitions (21-110 (9)).

"Written instrument" is also defined in 21-110 (25), *supra.*

The draft is similar to the Illinois Criminal Code, 17-3.

Sections to be repealed. K. S. A. 21-601, 21-602, 21-603, 21-606, 21-607, 21-608, 21-609, 21-610, 21-611, 21-612, 21-613, 21-614, 21-615, 21-616, 21-617, 21-618, 21-619, 21-620, 21-621, 21-622, 21-625, 21-626, 21-627, 21-628, 21-629, 21-630, 21-631, 21-637.

21-709a. *Making a False Writing.* Making a false writing is making, drawing or keeping or causing to be made, drawn or kept any written instrument or entry in a book of account with knowledge that such writing falsely states or represents some material matter or is not what it purports to be, and with intent to defraud or induce official action.

Making a false writing is a Class D felony.

COMMENT

This proposal compliments section 21-709, *supra.*

Sections to be repealed. K. S. A. 21-604, 21-605, 34-295c, 41-509, 79-316a, 79-3320.

21-710. *Destroying a Written Instrument.* Destroying a written instrument is knowingly tearing, cutting, burning, erasing, obliterating or destroying a written instrument, in whole or in part, with intent to defraud.

Destroying a written instrument is a Class E felony.

COMMENT

This proposal includes acts presently punishable as forgery, but probably not within proposed section 21-709.

Sections to be repealed. K. S. A. 21-624, 21-635.

21-711. *Altering a Legislative Document.* Altering a legislative document is intentionally mutilating, altering or changing, otherwise than in the regular course of legislation, any act, bill or resolution introduced into or acted upon by either or both houses of the legislature of this state either before or after such act, bill or resolution has been signed by the Governor.

Altering a legislative document is a Class E felony.

COMMENT

This is a restatement of K. S. A. 21-636.

Section to be repealed. K. S. A. 21-636.

21-712. *Possession of Forgery Devices.* Possession of forgery devices is making or possessing, with knowledge of its character and with intent to use or to aid or permit another to use for

purposes of forgery, any device, apparatus, equipment or article capable of or adaptable for use in counterfeiting, simulating or otherwise forging written instruments.

Possession of forgery devices is a Class E felony.

COMMENT

This proposal reflects an idea found in the present laws—the prohibition of possession of instruments for purposes of forgery. Note that proof of intent to use is an element of the act prohibited.

The source is proposed New York Penal Law, 175.40.

Sections to be repealed. K. S. A. 21-632, 21-633.

21-713. *Burglary.* Burglary is knowingly and without authority entering into or remaining within any building, mobile home, tent or other structure, or any motor vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony or theft therein.

Burglary is a Class D felony.

21-714. *Aggravated Burglary.* Aggravated burglary is knowingly and without authority entering into or remaining within any building, mobile home, tent or other structure, or any motor vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is some human being, with intent to commit a felony or theft therein.

Aggravated burglary is a Class C felony.

COMMENT

The elements of burglary, under the proposed sections consist of a known entry without authority and with intent to commit a felony or theft. A breaking is not required. The technical requirement of breaking in the present law is an historical anomaly and serves no useful purpose. The distinction between burglary and aggravated burglary lies in the presence or absence of some person in the place entered.

The proposals are similar to Illinois Criminal Code, 19-1.

Sections to be repealed. K. S. A. 21-513, 21-514, 21-515, 21-516, 21-517, 21-518, 21-519, 21-520, 21-521, 21-522, 21-525.

21-715. *Possession of Burglary Tools.* Possession of burglary tools is the knowing possession of any key, tool, instrument, device or any explosive, suitable for use in entering an enclosed structure or a vehicle or means of conveyance of persons or property, with intent to commit burglary.

Possession of burglary tools is a Class E felony.

COMMENT

Possession of burglary tools is probably prohibited by K. S. A. 21-2437 along with explosives and other devices "designed or commonly used for breaking into" certain structures. The proposal is intended to clarify the conduct prohibited.

The proposal is similar to Illinois Criminal Code, 19-2.

Section to be repealed. K. S. A. 21-2437.

21-716. *Arson.* (1) Arson is knowingly, by means of fire or explosive:

(*a*) Damaging any building or property in which another person has any interest without the consent of such other person; or

(*b*) Damaging any building or property with intent to injure or defraud an insurer or lienholder.

(2) Arson is a Class D felony.

COMMENT

The scope of the proposed section includes the conduct now prohibited by the several sections defining the four degrees of arson and the burning of insured property.

The proposal is drawn from Illinois Criminal Code 20-1.

Sections to be repealed. K. S. A. 21-581, 21-582, 21-583, 21-584, 21-585, 21-586.

21-717. *Criminal Damage to Property.* (1) Criminal damage to property is by means other than by fire or explosive:

(*a*) Willfully injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

(*b*) Injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

(2) Criminal damage to property is a Class E felony if the property damaged by such acts is of the value of $100 or more and is damaged to the extent of $100 or more. Criminal damage to property is a Class A misdemeanor if the property damaged by such acts is of the value of less than $100 or is of the value of $100 or more and is damaged to the extent of less than $100.

COMMENT

Many sections of the Kansas statutes provide penalties for malicious injuries to property, real and personal, public and private. The proposed section attempts to prohibit all such acts by a single statute.

The idea of a consolidated offense is found in Illinois Criminal Code, 21-1.

Sections to be repealed. K. S. A. 21-563, 21-566, 21-567, 21-568, 21-570, 21-571, 21-572, 21-576, 21-578, 21-579, 21-1401 (1967 Supp.), 21-1407, 21-1408, 21-2305, 21-2308, 21-2310, 21-2423, 21-2431, 21-2453, 21-2454.

21-718. *Criminal Trespass.* Criminal trespass is entering or remaining upon or in any land, structure, vehicle, aircraft or watercraft by one who knows he is not authorized or privileged to do so, and,

(*a*) He enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to him by the owner thereof or other authorized person; or

(*b*) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are fenced or otherwise enclosed.

Criminal trespass is a Class C misdemeanor.

COMMENT

These proposals go beyond present Kansas statutes which require proof of trespass coupled with injury. It should be noted that the treble damage provisions of K. S. A. 21-2435 are not carried forward into this code.

The proposed draft is similar to Illinois Criminal Code, 21-2 and 21-3.

Sections to be repealed. K. S. A. 32-139, 32-142, 21-2435, 21-2436.

21-719. *Littering.* Littering is dumping, throwing, placing, depositing or leaving, or causing to be dumped, thrown, deposited or left any refuse of any kind or any object or substance which tends to pollute, mar or deface, into, upon or about:

(*a*) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or

(*b*) Any private property without the consent of the owner or occupant of such property.

Littering is a Class C Misdemeanor.

Sections to be repealed. K. S. A. Supp. 21-578, K. S. A. 21-592, 68-545, 68-546.

21-720. *Maintaining an Unlawful Junk Yard.* Maintaining an unlawful junk yard is establishing, conducting, owning or operating an automobile salvage yard or junk yard within 200 feet of any federal or state highway or county or township road directly connecting a town or city to a federal or state highway unless such automobile wrecking yard or junk yard is screened from said road by a tight board or other screen fence not less than ten feet high, and of sufficiently greater height to screen the wrecked or disabled

automobiles or junk kept therein from the view of persons using such highway or road on foot or in vehicles in the ordinary manner.

Maintaining an unlawful junk yard is a Class C misdemeanor.

COMMENT

The proposal incorporates the content of K. S. A. 21-579a and 21-579b.

Sections to be repealed. K. S. A. 21-574, 21-575, 21-579a, 21-579b.

21-721. *Tampering With a Landmark.* Tampering with a landmark is willfully and maliciously:

(*a*) Removing any monument of stone or other durable material, established or created for the purpose of designating the corner of or any other point upon the boundary of any lot or tract of land, or of the state, or any legal subdivision thereof; or

(*b*) Defacing or altering marks upon any tree, post or other monument, made for the purpose of designating any point on such boundary; or

(*c*) Cutting down or removing any tree, post or other monument upon which any such marks shall be made for such purpose, with intent to destroy such marks; or

(*d*) Breaking, destroying, removing or defacing any mile post, mile stone or guide board erected by authority of law on any public highway or road; or

(*e*) Defacing or altering any inscription on any such marker or monument.

Tampering with a landmark is a Class C misdemeanor.

Sections to be repealed. K. S. A. 21-573, 21-574.

21-722. *Tampering with a Traffic Signal.* Tampering with a traffic signal is intentionally manipulating, altering, destroying or removing any light, sign, marker, or other signal device erected or installed for the purpose of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft.

Tampering with a traffic signal is a Class C misdemeanor.

21-722a. *Aggravated Tampering with a Traffic Signal.* Aggravated tampering with a traffic signal is tampering with a traffic signal which results in a traffic accident causing the death or great bodily injury of any person.

Aggravated tampering with a traffic signal is a Class E felony.

COMMENT

These proposals broaden K. S. A. 66-2210 and 68-423.

Sections to be repealed. K. S. A. 66-2210, 68-423.

21-723. *Injury to a Domestic Animal.* (1) Injury to a domestic animal is willfully and maliciously:

(*a*) Administering any poison to any domestic animal; or

(*b*) Exposing any poisonous substance with the intent that the same shall be taken or swallowed by any domestic animal; or

(*c*) Killing, maiming, or wounding any domestic animal of another without the consent of the owner.

(2) This section shall not apply to any persons exposing poison upon their premises for the purpose of destroying wolves, coyotes or other predatory animals.

(3) Injury to a domestic animal is a Class A misdemeanor.

Sections to be repealed. K. S. A. 21-564, 21-565.

21-724. *Unlawful Hunting.* Unlawful hunting is fishing, or shooting, hunting or pursuing any bird or animal upon any land of another or from any traveled public road or railroad right-of-way that adjoins occupied or improved premises, without having first obtained permission of the owner or person in possession of such premises.

Unlawful hunting is a Class C misdemeanor.

Section to be repealed. K. S. A. 32-139.

21-725. *Unlawful Use of Credit Card.* (1) Unlawful use of a credit card is any of the following acts done for the purpose of obtaining money, goods, property, services or communication services on credit, and with intent to defraud:

(*a*) Using a credit card issued to another person or entity without the consent of the person or entity to whom it is issued; or

(*b*) Knowingly using a credit card, or the number or description thereof, which has been revoked or canceled; or

(*c*) Using a falsified, mutilated, altered or nonexistent credit card or a number or description thereof.

(2) The term "credit card" as used herein means an identification card or device issued by a business organization authorizing the person or entity to whom it is issued to purchase or obtain goods, property or services on credit.

(3) For the purposes of subsection (1) (*b*) hereof, a credit card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such credit card or by the records of the company.

(4) Unlawful use of a credit card is a Class E felony if the

money, goods, property, services or communication services obtained within any seven day period are of the value of $100 or more; otherwise, the crime is a Class A misdemeanor.

COMMENT

This is a restatement of the present statute, enacted in 1961. It probably is necessary to fill a gap in the law of fraud. Our proposed sections on theft (21-701 and 21-703) cover property or services obtained by deception. However, they might not reach the credit card situation since the user of canceled or stolen credit cards does not obtain goods by any deception practiced upon or victimizing the seller. The seller will collect from the issuer of the card, as credit card issuers assume the risk of misuse of cards in order to encourage sellers to honor the cards readily. Thus it is the non-deceived issuer who is the victim of the practice.

Sections to be repealed. K. S. A. 21-589, 21-590, 21-591.

21-726. *Unlawful Manufacture or Disposal of False Tokens.* (1) The unlawful manufacture or disposal of false tokens is manufacturing for sale, offering for sale, or giving away any false token, slug, substance, false or spurious coin or other device intended or calculated to be placed or deposited in any automatic vending machine, coin-operated telephone, parking meter or other such receptacle with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of such automatic vending machine, coin-operated telephone, parking meter or other receptacle designed to receive coins or currency of the United States of America in connection with the sale, use or enjoyment of property or service.

(2) The manufacture for sale, advertising, offering for sale or distribution of any such slug, device or substance shall be prima facie evidence of an intent to cheat or defraud within the meaning of this section.

(3) Unlawful manufacture or disposal of false tokens is a Class B misdemeanor.

COMMENT

This proposal restates K. S. A. 21-2456 and 21-2457. No change in content is intended. Use of such devices to obtain property or services is theft.

Sections to be repealed. K. S. A. 21-2456, 21-2457.

21-727. *Criminal Use of Explosives.* Criminal use of explosives is the possession, manufacture or transportation of any explosive or combustible substance with intent to use such substance to commit a crime, or the knowing delivery of such substance to another with

knowledge that such other intends to use such substance to commit a crime.

Criminal use of explosives is a Class E felony.

21-728. *Criminal Use of Noxious Matter.* (1) Criminal use of noxious matter is the possession, manufacture or transportation of any noxious matter with intent to use such matter for an unlawful purpose, or the use or attempt to use noxious matter to the injury of persons and property, or the placing or depositing of such matter upon or about the premises of another person without the consent of such person.

(2) "Noxious Matter," as used in this section means any bomb, compound or substance which may give off dangerous or disagreeable odors or cause distress to persons exposed thereto.

(3) Criminal use of noxious matter is a Class A misdemeanor.

COMMENT

The proposals are similar in content to K. S. A. 21-2454. However, the criminal use of explosives is made a felony, while under the present law it is a misdemeanor only.

Sections to be repealed. K. S. A. 21-2347, 21-2454.

21-729. *Impairing a Security Interest.* (1) Impairing a security interest is:

(*a*) Damaging, destroying or concealing any personal property subject to a security interest with intent to defraud the secured party; or

(*b*) Selling, exchanging or otherwise disposing of any personal property subject to a security interest without the consent of the secured party where such sale, exchange or other disposition is not authorized by the secured party under the terms of the security agreement; or

(*c*) Failure to account to the secured party for the proceeds of the sale, exchange or other disposition of any personal property subject to a security interest where such sale, exchange or other disposition is authorized and such accounting for proceeds is required by the secured party under the terms of the security agreement or otherwise.

(2) Impairing a security interest is a Class E felony when the personal property subject to the security interest is of the value of $100 or more and is subject to a security interest of $100 or more. Impairment of security interest is a Class A misdemeanor when the personal property subject to the security interest is of the value of

less than $100, or of the value of $100 or more but subject to a security interest of less than $100.

Section to be repealed. K. S. A. (1967 Supp.) 21-652.

21-730. *Fraudulent Release of a Security Agreement.* (1) Fraudulent release of a security agreement is the execution of a release or the providing of a termination statement or statement of release of a security agreement, with intent to defraud a secured party, by a person named as a secured party in the security agreement, who is not at the time the owner and holder of the debt secured by such security agreement.

(2) Fraudulent release of a security agreement is a Class E felony.

Section to be repealed. K. S. A. (1967 Supp.) 21-653.

21-731. *Warehouse Receipt Fraud.* (1) Warehouse receipt fraud is making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering by a warehouseman, or any officer, agent or servant of a warehouseman, of:

(*a*) A negotiable receipt for goods with knowledge that the goods for which such receipt is issued have not actually been received by such warehouseman, or are not under his actual control at the time of issuing such receipt; or

(*b*) A negotiable receipt for goods with knowledge that such receipt contains a false statement; or

(*c*) A duplicate or additional negotiable receipt for goods with knowledge that a former negotiable receipt for the same goods or any part thereof is outstanding and uncanceled, without plainly placing on the face thereof the word "duplicate," except in the case of a lost, stolen or destroyed receipt after proceedings as provided in K. S. A. 84-7-601 (1), [UCC 7-601 (2)].

(2) Warehouse receipt fraud is a Class E felony.

Sections to be repealed. K. S. A. (1967 Supp.) 21-656, 21-657, 21-658 and 21-661.

21-732. *Unauthorized Delivery of Stored Goods.* (1) Unauthorized delivery of stored goods is delivery of goods out of the possession of a warehouseman by such warehouseman, or any officer, agent or servant of such warehouseman, with knowledge that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery except:

(*a*) In the case of a lost, stolen or destroyed receipt, after proceedings as provided in K. S. A. 84-7-601 (1) [UCC 7-601 (2)], or

(*b*) In the case of delivery in good faith as provided in K. S. A. 84-7-601 (2) [UCC 7-601 (2)], or

(*c*) In the case of optional termination of storage as provided in K. S. A. 84-7-206 [UCC 7-206].

(2) Unauthorized delivery of stored goods is a Class A misdemeanor.

Section to be repealed. K. S. A. (1967 Supp.) 21-660.

21-733. *Automobile Master Key Violation.* (1) Automobile master key violation is either

(*a*) Selling or offering to sell a motor vehicle master key knowingly designed to fit the ignition switch of more than one motor vehicle to a person who is not regularly carrying on the business of garage proprietor or locksmith or employed as a law enforcement officer; or

(*b*) Possession of a motor vehicle master key knowingly designed to fit the ignition switch of more than one motor vehicle by a person who is not regularly carrying on the business of garage proprietor or locksmith or employed as a law enforcement officer.

(2) It shall not be unlawful for the owner of two or more vehicles to possess a motor vehicle master key for any or all of the motor vehicles so owned, nor shall the sale of such master keys to such owner be unlawful.

(3) Automobile master key violation is a Class B misdemeanor.

COMMENT

This is a restatement of a 1967 enactment.

Sections to be repealed. K. S. A. (1967 Supp.) 21-2474 to 21-2477.

Article VIII. *Crimes Affecting Governmental Functions*

21-801. *Treason.* (1) Treason is levying war against the state, adhering to its enemies, or giving them aid and comfort.

(2) No person shall be convicted of treason unless on the evidence of two witnesses to the overt act or confession in open court.

(3) Treason is a Class A felony.

COMMENT

Treason is defined in the Constitution of Kansas (B. of R., Sec. 13) and limitations are there imposed on the proof necessary to convict. The present statute (K. S. A. 21-201) provides a penalty without defining the crime. The proposed section follows closely the language of the constitutional provision.

Section to be repealed. K. S. A. 21-201.

21-802. *Sedition.* Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any document which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this state by violence or unlawful means.

Sedition is a Class E felony.

COMMENT

This section provides penalties for those who advocate overthrow of the state government by violence or who knowingly join an organization devoted to such ends. The proposal, like the treason section, is drafted to apply only to acts against the state, in view of the decision in *Pennsylvania v. Nelson,* 350 U. S. 497, which held that the Congress has fully occupied the field of protecting the national government against seditious acts. The proposal is similar to Illinois Criminal Code, 30-3.

Sections to be repealed. K. S. A. 21-203, 21-306, 21-307, 21-308.

21-803. *Practicing Criminal Syndicalism.* (1) Practicing criminal syndicalism is:

(*a*) Orally or by means of writing advocating or promoting criminal syndicalism; or

(*b*) Intentionally organizing or becoming a member of any assembly, group or organization known to advocate or to promote criminal syndicalism; or

(*c*) For or on behalf of another person, distributing, selling, publishing or publicly displaying any writing, which is intended to and does advocate or promote criminal syndicalism.

(2) As used herein, "criminal syndicalism" means the use of crime, malicious damage or injury to the property of an employer, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(3) Practicing criminal syndicalism is a Class E felony.

COMMENT

The proposed section covers the substance of G. S. 1949, 21-301 through 21-303. It is aimed at persons and groups who urge sabotage and other forms of industrial violence as a means of accomplishing economic or political objectives. The text is shortened in the interests of simplicity.

Sections to be repealed. K. S. A. 21-301, 21-302, 21-303.

21-804. *Permitting Premises to Be Used for Criminal Syndicalism.* Permitting premises to be used for criminal syndicalism is knowingly permitting any assembly or group of persons to use premises owned or controlled by the offender for the purpose of advocating or promoting criminal syndicalism.

Permitting premises to be used for criminal syndicalism is a Class A misdemeanor.

COMMENT

Similar to present law. The principal material change is the elimination of language which seems to dispense with the requirement of knowledge if the defendant has been notified of the prohibited use by an officer. Evidence of such notice would always be admissible on the issue of knowledge.

The source is K. S. A. 21-304 and Minnesota Criminal Code, 609.41.

Statute to be repealed. K. S. A. 21-304.

21-805. *Perjury.* Perjury is willfully, knowingly, and falsely swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation legally administered in any cause, matter or proceeding before any court, tribunal, public body, notary public or other officer authorized to administer oaths.

Perjury is a Class C felony if the false statement is made upon the trial of a felony. Perjury is a Class E felony if the false statement is made in a cause, matter or proceeding other than the trial of a felony charge.

COMMENT

The proposal represents no departure from the traditional concept of perjury. At common law and under our present statutes, the gist of perjury is false *swearing* in connection with judicial or other official proceedings. Nor is substantial change suggested in the present statutory language relating to the proceeding and tribunal in which the false declaration is made.

Note that a more severe penalty is provided for the perjurer whose false testimony occurs in the trial of a felony case. A false statement that may result in loss of life or in a long term of imprisonment is considered more serious than false declarations in other situations.

The proposal is taken in part from K. S. A. 21-701.

Sections to be repealed. K. S. A. 21-655 (1967 Supp.), K. S. A. 21-701, 21-703, 21-1108.

21-806. *Corruptly Influencing a Witness.* Corruptly influencing a witness is inducing or attempting to induce any witness by bribery, threat or other means to absent himself from the jurisdiction or to avoid the service of process, or deterring or attempting to deter a witness by such means from giving evidence in any trial or other proceeding.

Corruptly influencing a witness is a Class A misdemeanor.

COMMENT

This is a restatement of the present law. It covers the situations where the witness is induced to avoid testifying only.

The proposal is adapted from Kan. G. S. 21-708.

Section to be repealed. K. S. A. 21-708.

21-807. *Compounding a Crime.* (1) Compounding a crime is accepting or agreeing to accept any thing of value as consideration for a promise not to initiate or aid in the prosecution of a person who has committed a crime.

(2) Compounding a crime is a Class A misdemeanor.

COMMENT

The present law of Kansas differentiates between compounding a felony and compounding a misdemeanor. The distinction is here omitted. No compounding is above the grade of misdemeanor. The section is applicable only where pecuniary benefits have been accepted or agreed upon.

The proposed statute is based largely on Model Penal Code 252.5 and Illinois Criminal Code 30-1.

Sections to be repealed. K. S. A. 21-714, 21-715, 21-716.

21-808. *Obstructing Legal Process.* Obstructing legal process is knowingly and willfully obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

Obstructing legal process in a case of felony is a Class E felony. Obstructing legal process in a case of misdemeanor or a civil case is a Class A misdemeanor.

COMMENT

Obstructing justice was an indictable crime at common law. The historic scope of the crime is quite broad, including almost any act that would interfere with the efficient operation of the courts. The proposal, which follows the present law quite closely, prohibits one kind of conduct included in the common law concept of obstructing justice. The phrase "obstruct, resist or oppose" is construed in *State v. Merrifield,* 180 Kan. 267.

The proposal is based upon K. S. A. 21-717 and 21-718.

Sections to be repealed. K. S. A. 21-717, 21-718.

21-809. *Escape from Custody.* (1) Escape from custody is escaping while held in lawful custody on a charge or conviction of misdemeanor.

(2) As used in this section and the next two succeeding sections, "escape" means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court.

Escape from custody is a Class A misdemeanor.

21-810. *Aggravated Escape from Custody.* Aggravated escape from custody is:

(*a*) Escaping while held in lawful custody upon a charge or conviction of felony; or

(*b*) Escaping while held in custody on a charge or conviction of any crime when such escape is effected or facilitated by the use of violence or the threat of violence against any person.

Aggravated escape from custody is a Class E felony.

21-811. *Aiding Escape.* Aiding escape is:

(*a*) Assisting another who is in lawful custody on a charge or conviction of crime to escape from such custody; or

(*b*) Supplying to another who is in lawful custody on a charge or conviction of crime, any object or thing adapted or designed for use in making an escape, with intent that it shall be so used; or

(*c*) Introducing into an institution in which a person is confined on a charge or conviction of crime any object or thing adapted or designed for use in making any escape, with intent that it shall be so used.

Aiding escape is a Class E felony.

COMMENT

The common law recognizes three crimes in the area of escape: (1) Rescue, (2) escape, and (3) permitting a prisoner to escape. Rescues are no more than aid or assistance to the crime of escape. Hence, the rescuer would probably be punishable as an accessory. However, the committee deemed it appropriate to specifically prohibit such conduct. Also, it should be noted that supplying an instrument to a prisoner to facilitate escape is not made dependent upon an actual or attempted escape. Such conduct is deemed sufficiently grave that culpability ought to attach from the mere supplying of such an instrument.

The texts of the above proposals combine elements of Minnesota Criminal Code 609.485 and existing Kansas statutes.

Sections to be repealed. K. S. A. 21-737, 21-738, 21-739, 21-740, 21-741, 21-742, 21-743, 21-744, 21-2006, 21-727, 21-728, 21-729, 21-730, 21-731, 21-732, 21-733, 21-734, 21-735, 21-735a, 21-736, 21-720, 21-721, 21-722, 21-723, 21-724, 21-725, 21-726.

21-812. *Aiding a Felon.* Aiding a felon is knowingly harboring, concealing or aiding any person who has committed or has been charged with a felony under the laws of this state or another state or the United States with intent that such person shall avoid or escape from arrest, trial, conviction or punishment for such felony.

Aiding a felon is a Class E felony.

COMMENT

This will supersede K. S. A. 21-106, which deals with what is commonly known as the accessory after the fact. As in the present statute, the act is here treated as an independent substantive crime.

The principal change that the recommended section makes in the present law, is that it applies to those aiding others who are felons under the laws of the United States and other states, as well as Kansas.

The proposal is adapted from Minnesota Criminal Code, 609.495.

Section to be repealed. K. S. A. 21-106.

21-813. *Failure to Appear.* (1) Failure to appear is willfully incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days following the date of such forfeiture by one who has been released on bond for appearance before any court of this state, other than the municipal or police court of a city, for trial or other proceeding prior to conviction.

(2) The provisions of subsection (1) of this section shall apply to any person who is released upon his own recognizance, without surety, or who fails to appear in response to a summons or traffic citation.

(3) The provisions of subsection (1) of this section shall not apply to any person who forfeits a cash bond supplied pursuant to law upon an arrest for a traffic offense.

(4) Failure to appear is a Class B misdemeanor.

21-814. *Aggravated Failure to Appear.* Aggravated failure to appear is willfully incurring a forfeiture of bail and failing to surrender oneself within 30 days after his conviction of a felony has become final by one who has been admitted to bail by any court of this state.

Aggravated failure to appear is a Class E felony.

COMMENT

Bond jumping is not an offense under the present statutes of Kansas. However, such provisions are common among the laws of other states. Also, there is a current trend in the United States toward release on one's own recognizance.

Thus, it seems appropriate to provide a sanction to secure the attendance of the accused who is released without surety. A specific exception is made for those persons who default upon cash bonds posted in traffic cases.

The proposal is based, in part, on Illinois Criminal Code, 30-10.

21-815. *Attempting to Influence a Judicial Officer.* Attempting to influence a judicial officer is communicating with any judicial officer in relation to any matter which is or may be brought before such judge, magistrate, master or juror with intent improperly to influence such officer.

Attempting to influence a judicial officer is a Class E felony.

21-816. *Interference with the Administration of Justice.* (1) Interference with the administration of justice is communicating in any manner a threat of violence to any judicial officer or harassing

a judicial officer by repeated vituperative communication, or picketing, parading or demonstrating in or near a building housing a judicial officer or near his residence or place of abode, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer on any matter then pending before him.

(2) Nothing in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt.

(3) Interference with the administration of justice is a Class A misdemeanor.

COMMENT

These sections are similar to present 21-712. They are more specific in that they require an actual communication. They do not include the case where bribery is attempted or completed. The latter offense will be dealt with in a general bribery section.

The proposed statutes are drawn from K. S. A. 21-712 and Wisconsin Criminal Code, 364-64.

Sections to be repealed. K. S. A. 21-712, 21-746.

21-817. *Corrupt Conduct by Juror.* Corrupt conduct by a juror is the conduct of a person summoned or sworn as a juror in any case who

(*a*) Promises or agrees to give any verdict for or against any party in any proceeding, civil or criminal; or

(*b*) Receives any evidence or information from anyone in relation to any matter or cause for the trial of which he has been or will be sworn, without the authority of the court or officer before whom such juror shall have been summoned, and without immediately disclosing the same to such court or officer.

Corrupt conduct by a juror is a Class A misdemeanor.

COMMENT

This is a restatement of K. S. A. 21-711.

Section to be repealed. K. S. A. 21-711.

21-818. *Falsely Reporting a Crime.* Falsely reporting a crime is informing a law enforcement officer that a crime has been committed, knowing that such information is false and intending that the officer shall act in reliance upon such information.

Falsely reporting a crime is a Class C misdemeanor.

COMMENT

The proposed section is intended to prevent malicious harassment through false accusation.

The draft is similar to Minnesota Criminal Code, 609.505.

21-819. *Performance of an Unauthorized Official Act.* (1) Performance of an unauthorized official act is knowingly and without lawful authority:

(*a*) Conducting a marriage ceremony; or

(*b*) Certifying an acknowledgment of the execution of any document which by law may be recorded.

(2) Performance of an unauthorized official act is a Class B misdemeanor.

COMMENT

This proposal penalizes spurious official acts when the social consequences are deemed especially grave. While several present statutes overlap the proposal, it has no real counterpart in the present law.

The idea comes from Illinois Criminal Code, 32-6.

Sections to be repealed. K. S. A. 21-910, 23-104.

21-820. *Simulating Legal Process.* (1) Simulating legal process is:

(*a*) Sending or delivering to another any document which simulates or purports to be, or is reasonably designed to cause others to believe it to be, a summons, petition, complaint, or other judicial process, with intent thereby to induce payment of a claim; or

(*b*) Printing, distributing or offering for sale any such document, knowing or intending that it shall be so used.

(2) Subsection (1) of this section does not apply to the printing, distribution or sale of blank forms of legal documents intended for actual use in judicial proceedings.

(3) Simulating legal process is a Class A misdemeanor.

COMMENT

The section is intended to penalize acts commonly resorted to by collection agencies. Illinois, Minnesota and Wisconsin have all taken a similar approach.

The Minnesota Criminal Code has been drawn upon in drafting the proposal.

Section to be repealed. K. S. A. (1967 Supp.) 21-2464a.

21-821. *Tampering with a Public Record.* Tampering with a public record is knowingly and without lawful authority altering, destroying, defacing, removing or concealing any public record.

Tampering with a public record is a Class A misdemeanor.

COMMENT

The proposal contains elements of Illinois Criminal Code, 32-8.

21-822. *Tampering with Public Notice.* Tampering with public notice is knowingly and without lawful authority altering, defacing,

destroying, removing or concealing any public notice posted according to law, during the time said notice is required or authorized to remain posted.

Tampering with public notice is a Class C misdemeanor.

COMMENT

The Illinois Criminal Code, 32-9 has been drawn upon in drafting the proposal.

21-823. *False Signing of a Petition.* False signing of a petition is the affixing of any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the legislature, or either house thereof, or to any agency or officer of the state of Kansas or any of its political subdivisions.

False signing of an official petition is a Class C misdemeanor.

COMMENT

This is a restatement of K. S. A. 21-2413. No material change in content is intended.

Section to be repealed. K. S. A. 21-2413.

21-824. *False Impersonation.* False impersonation is representing oneself to be a public officer or employee or a person licensed to practice or engage in any profession or vocation for which a license is required by the laws of the state of Kansas, with knowledge that such representation is false.

False impersonation is a Class B misdemeanor.

COMMENT

The present laws of Kansas prohibit impersonation of peace officers. Hence, the proposal goes beyond the present law.

The draft is similar to Illinois Criminal Code, 32-5.

Sections to be repealed. K. S. A. 21-1617, 65-1440.

21-825. *Aggravated False Impersonation.* Aggravated false impersonation is falsely representing or impersonating another and in such falsely assumed character:

(*a*) Becoming bail or security, or acknowledging any recognizance, or executing any bond or other instrument as bail or security, for any party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or security; or

(*b*) Confessing any judgment; or

(*c*) Acknowledging the execution of any conveyance of property, or any other instrument which by law may be recorded; or

(*d*) Doing any other act in the course of a suit, proceeding or

prosecution whereby the person who is represented or impersonated may be made liable to the payment of any debt, damages, costs or sum of money, or his rights or interests may be in any manner affected.

Aggravated false impersonation is a Class E felony.

COMMENT

This is a restatement of K. S. A. 21-634.

Section to be repealed. K. S. A. 21-634.

21-826. *Traffic in Contraband in a Penal Institution.* Traffic in contraband in a penal institution is introducing or attempting to introduce into or upon the grounds of any institution under the supervision and control of the director of penal institutions or any jail, or taking, sending, attempting to take or attempting to send therefrom any narcotic, synthetic narcotic, drug, stimulant, sleeping pill, barbituate, nasal inhaler, alcoholic liquor, intoxicating beverage, firearm, ammunition, gun powder, weapon, hypodermic needle, hypodermic syringe, currency, coin, communication, or writing without the consent of the warden, superintendent or jailer.

Traffic in contraband in a penal institution is a Class E felony.

Section to be repealed. K. S. A. (1967 Supp.) 21-2006.

21-827. *Unlawful Disclosure of a Warrant.* An unlawful disclosure of a warrant is revealing or making public in any way, not necessary for the execution of such warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such warrant is based, prior to the execution thereof.

An unlawful disclosure of a warrant is a Class B misdemeanor.

COMMENT

This provision is presently found in K. S. A. 62-1832.

Section to be repealed. K. S. A. 62-1832.

Article IX. *Crimes Affecting Public Trusts*

21-901. *Bribery.* Bribery is:

(*a*) Offering, giving or promising to give, directly or indirectly, to any public officer or public employee any benefit, reward or consideration to which he is not legally entitled with intent thereby to influence such officer or employee with respect to the performance of his powers or duties as such officer or employee; or

(*b*) The act of a public officer or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with intent that he will be so influenced.

Bribery is a Class D felony. If the convicted person is a public officer or employee, in addition to the other penalties prescribed by law, he shall forfeit his office or employment and be forever disqualified from holding public office or public employment in this state.

COMMENT

Originally, at common law, the crime of bribery was limited to judges. Only the receiver of the bribe was criminally liable. The modern concept has been much broadened, extending to most persons occupying positions of public trust and including the giver as well as the receiver. In some states it has been enlarged to include officers of political parties and labor organizations. Sports officials will be dealt with in another section.

The basic concept in all cases is the giving or holding out of benefits, or the request or receipt of them, to influence official action favorable to the giver.

This comprehensive statute is intended to supersede the several Kansas statutes, cited below, prohibiting bribery and related offenses. The import is broader than the present Kansas law in that it applies to all public officers and employees, including jurors, and also reaches the public officer or employee who solicits a bribe.

The language is taken from Minnesota Criminal Code, 609.42, with modifications.

Sections to be repealed. K. S. A. 21-708, 21-709, 21-710, 21-801, 21-802, 21-803, 21-824, 21-825, 34-108.

21-902. *Official Misconduct.* Official misconduct is any of the following acts committed by a public officer or employee in his public capacity or under color of his office or employment:

(*a*) Willfully and maliciously committing an act of oppression, partiality, misconduct or abuse of authority; or

(*b*) Willfully demanding or receiving any fee or reward, knowing that same is illegal, for the execution of any official act or the performance of a duty imposed by law or the terms of his employment.

Official misconduct is a Class A misdemeanor. Upon conviction of official misconduct a public officer or employee shall forfeit his office or employment.

COMMENT

Several sections of the present statutes prohibit misconduct by persons in positions of public trust. These sections proscribe oppression, partiality, misconduct, or abuse by public officials (21-807), fraud by state or county officers (21-808), exacting illegal fees (21-810) and taxes (21-811), and

willful misconduct or neglect (21-812). The proposed draft draws the language and substance of the above crimes in a single section.

The proposal includes elements of K. S. A. 21-807, 21-808, 21-812, and 21-813.

Sections to be repealed. K. S. A. 21-713, 21-741, 21-742, 21-743, 21-807, 21-808, 21-809, 21-810, 21-811, 21-812, 21-813, 21-1607.

21-903. *Compensation for Past Official Acts.* (1) Compensation for past official acts is giving or offering to give to any public officer or employee any benefit, reward or consideration for having given, in his official capacity as such public officer or employee, a decision, opinion, recommendation or vote favorable to the person giving or offering such benefit, reward or consideration, or for having performed an act of official misconduct.

(2) Subsection (1) of this section shall not apply to the following:

(*a*) Gifts or other benefits conferred on account of kinship or other personal, professional or business relationships independent of the official status of the receiver; or

(*b*) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(3) Compensation for past official acts is a Class B misdemeanor.

COMMENT

This proposal is a complement to the bribery prohibition. Bribery contemplates prospective official action. The present proposal covers the instance where the breach of official duty has already occurred.

The proposal is adapted from Model Penal Code, 240.3 and 240.5.

21-904. *Presenting a False Claim.* Presenting a false claim is knowingly and with intent to defraud presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

Presenting a false claim for $100 or more is a Class E felony. Presenting a false claim for less than $100 is a Class A misdemeanor.

COMMENT

Except for mileage and subsistence expenses, (75-3202), fraudulent claims against governmental agencies are presently prosecuted under general statutes relating to fraud, perjury, etc. The proposal, based on the Minnesota law, intended to expedite the prosecution of such offenses by providing a specific violation. K. S. A. 75-3202 which has special application to false expense accounts by public employees probably need not be repealed in view of its limited scope.

Minnesota Criminal Code, 609-564, is the source for the proposals.

21-905. *Permitting a False Claim.* Permitting a false claim is the auditing, allowing, or paying of any claim or demand made upon the state or any subdivision thereof or other governmental instrumentality within the state by a public officer or employee who knows such claim or demand is false or fraudulent in whole or in part.

Permitting a false claim for $100 or more is a Class E felony. Permitting a false claim for less than $100 is a Class A misdemeanor. Upon conviction of permitting a false claim, a public officer shall forfeit his office or employment.

COMMENT

These proposals are designed to protect against collusion on the part of disbursing officers in the payment of fraudulent claims. There appears to be no such penal sanction now. However, the officer might, under some circumstances, be a party to the principal crime. Also, he would probably be civilly liable and subject to ouster.

The proposals are based upon Minnesota Criminal Code, 609.455.

21-906. *Discounting a Public Claim.* Discounting a public claim is the act of a public officer or employee, who in his private capacity either directly or indirectly, purchases for less than full value or discounts any claim held by another against the state or a political subdivision or municipality thereof.

Discounting public claims is a Class A misdemeanor.

COMMENT

The purpose of this proposal is to prevent speculation in public claims by a a public officer or employee who might use his official position to his personal advantage. A similar provision, limited in its application to treasurers of governmental entities has been the law of Kansas since 1867.

The proposal is similar to Wisconsin Criminal Code, 346.14.

Sections to be repealed. K. S. A. 21-1604, 21-1609.

21-907. *Unlawful Interest in Insurance Contract.* (1) An unlawful interest in an insurance contract is the act of a public officer or employee who

(*a*) Represents in any capacity or divides commissions with any surety company or other writer of a surety bond in the writing of any bond or contract subject to the approval of such public officer or employee; or

(*b*) Represents in any capacity or divides commissions with an insurance company or other insurer in the writing of any policy of fire, casualty, workmen's compensation or other insurance which is paid for from the public funds of the political unit served by such officer or employee.

(2) In addition to the other penalties provided by law, a person convicted of an unlawful interest in an insurance contract shall forfeit his office or public employment.

(3) Unlawful interest in an insurance contract is a Class B misdemeanor.

Section to be repealed. K. S. A. 21-826.

21-908. *Unlawful Procurement of Insurance Contract.* An unlawful procurement of an insurance contract is the act of any surety company or other writer of surety bonds or any insurance company or other insurer who employs or contracts with a public officer or employee to represent such writer of surety bonds or insurer in any capacity or to share commissions on any surety bond or contract subject to the approval of such public officer or employee, or any policy of fire, casualty, workmen's compensation or other insurance which is paid for from the public funds of the political unit served by such officer or employee.

Unlawful procurement of an insurance contract is a Class B misdemeanor.

Section to be repealed. K. S. A. 21-827.

21-909. *Unlawful Collection by a Judicial Officer.* Unlawful collection by a judicial officer is causing or permitting an action or proceeding upon a claim placed in his hands for collection to be brought in a court over which he presides.

Unlawful collection by a judicial officer is a Class B misdemeanor. Upon conviction of violating this section a judicial officer shall forfeit his office.

COMMENT

The collection of accounts by justices of the peace is not uncommon. The possibility of abuse is apparent when the judge before whom the issue is pending has a direct pecuniary interest in the outcome of the case.

The proposal is similar to Wisconsin Criminal Code, 346.16, in content.

21-910. *Misuse of Public Funds.* (1) Misuse of public funds is using, lending or permitting another to use, public money in a manner not authorized by law, by a custodian or other person having control of public money by virtue of his official position.

(2) As used herein, "public money," means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.

(3) Misuse of public funds is a Class D felony.

COMMENT

This proposal augments proposed sections 21-701 and 21-704. It covers those situations of official misuse of public funds where the intent to deprive the owner permanently of his property may not be present.

Sections to be repealed. K. S. A. 19-529, 75-616.

Article X. *Crimes Involving Violations of Personal Rights*

21-1001. *Eavesdropping.* (1) Eavesdropping is knowingly and without lawful authority:

(*a*) Entering into a private place with intent to listen surreptitiously to private conversations or to observe the personal conduct of any other person or persons therein; or

(*b*) Installing or using outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; or

(*c*) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire communication without the consent of the person in possession or control of the facilities for such wire communication.

(2) A "private place" within the meaning of this section is a place where one may reasonably expect to be safe from uninvited intrusion or surveillance, but does not include a place to which the public has lawful access.

(3) Any evidence obtained in violation of this section is not admissible in any civil or criminal trial, or any administrative or legislative inquiry or proceeding, nor in any preliminary hearing or grand jury investigation.

(4) Eavesdropping is a Class A misdemeanor.

COMMENT

The protection of the citizen's right to privacy is a legitimate objective of the criminal law. Nearly 40 years ago Justice Holmes described wiretapping by law enforcement officers as a "dirty business" in which government should have no part (Dissent in *Olmstead v. U. S.*, 277 U. S. 438). The striking advances in devices for electronic detection and recording of sound have greatly jeopardized the individual's right to be let alone. Any telephone can be quickly transformed into a microphone which transmits every sound in the room even though the receiver is on the hook. Tiny microphones can be secreted behind pictures and in other inconspicuous locations. Highly directive microphones known as "parabolic microphones" are capable of eavesdropping on a conversation in an office on the opposite side of a hundred-foot-wide street while the street is

filled with traffic. Less efficient, but still a means of unjustifiable intrusion are cameras that may be concealed on the person and by stealth and deceit used to obtain photographs of unsuspecting persons.

Proposed subsection (1) (*a*) prohibits entry into a private place to listen or observe, unless authorized by law. In the proposed article on procedure the committee recommends a method of obtaining authority to eavesdrop in criminal investigations. Subsection (1) (*b*) prohibits use of devices for observing, photographing, listening to or recording events or sounds in a private place without the consent of the person entitled to privacy therein. Subsection (1) (*b*) prohibits use of a listening or recording device at any place to intercept or record sounds emanating from a private place, unless consented to by the person entitled to privacy therein.

The section *does not* prohibit visual observation, even though telescopic devices are used, of an unsuspecting person if no unauthorized entry is made upon private premises in which the person observed is entitled to privacy. Hence, A may observe B, without B's consent, from any place to which the public has access or from the private premises of any person other than B. Also, A may photograph B from such place, so long as no device is used for hearing. The section *does* prohibit use of any hearing or recording device to intercept or record sounds emanating from a private place, regardless of the location of the use, if the person entitled to privacy in that place has not consented.

The term "private place" is defined in subsection (2). The phrase "person entitled to privacy therein" is not defined. Such a person can probably be identified only on an *ad hoc* basis, within the factual framework of each case. Generally, a person is entitled to privacy in a private place when reasonably, and without negligence on his part, he believes that he is safe from uninvited intrusion or surveillance. The following are illustrative of persons who, in the absence of special circumstances, are entitled to privacy:

(1) Any member of the household while in the home; (2) an invited guest in a private home; (3) a client or patient in the consultation room or private office of a professional man; (4) a business invitee while in a private office; (5) a person in consultation with a public official in the private office of such official; (6) a properly registered guest in a hotel room and the invitees of such guest.

The presence of other persons or the consent of the owner or the occupant of the premises to the surveillance does not deprive the unsuspecting person of his status as a person entitled to privacy. To illustrate, A invites B to A's hotel room to discuss a matter of business. C, with A's consent, hides in the closet of A's room, and listens to and records the statements of B. C's conduct is unlawful. To the extent that B reasonably believed his statements to be free from uninvited surveillance, he was entitled to privacy in A's room.

The draft is similar to Model Penal Code, 250.12(1).

21-1002. *Breach of Privacy.* (1) Breach of privacy is knowingly and without lawful authority:

(*a*) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication; or

(*b*) Divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency in transmitting it.

(2) Subsection (1) (*a*) of this section shall not apply to messages overheard through a regularly installed instrument on a telephone party line or on an extension.

(3) Any evidence obtained in violation of this section is not admissible in any civil or criminal trial, or any administrative or legislative inquiry or proceeding, nor in any preliminary hearing or grand jury investigation.

(4) Breach of privacy is a Class A misdemeanor.

COMMENT

This proposal aims to protect the privacy of private communications. It prohibits wiretapping except where authorized and tampering with private mail, as well as unauthorized disclosures.

The Model Penal Code, 250.12 (2), has been drawn upon in drafting the proposal.

Sections to be repealed. K. S. A. 21-959, 21-960, 21-961.

21-1003. *Denial of Civil Rights.* (1) Denial of civil rights is denying to another, on account of the race, color, ancestry, national origin or religion of such other:

(*a*) The full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the state of Kansas or any political subdivision or municipality thereof; or

(*b*) The full and equal use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any establishment which provides lodging to transient guests for hire, or any establishment which is engaged in selling food or beverage to the public for consumption upon the premises, or any place of recreation, amusement, exhibition or entertainment which is open to members of the public; or

(*c*) The full and equal use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods; 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; or

(*e*) The full and equal exercise of the right to vote in any election held pursuant to the laws of Kansas.

(2) Denial of civil rights is a Class B misdemeanor.

COMMENT

The proposal broadens K. S. A. 21-2424. Section 21-2424 prohibits discrimination in (1) schools, including universities and colleges, (2) hotels and restaurants, (3) places of public entertainment and amusement for which municipal licenses are required, and (4) public transportation facilities. The proposal applies to (1) all publicly owned or supported facilities or services, (2) all public accommodations and public recreational facilities, (3) establishments rendering personal and professional services, (4) public transportation facilities, and (5) elections. The facilities and services covered by the proposal are so closely related to the public interest and enjoyment that discrimination in connection therewith seems properly the subject of a penal law.

Amendments to the anti-discrimination laws were passed by the 1965 session of the legislature (K. S. A. 1967 Supp., 44-1001, *et seq.*). However, this legislation is not penal in character. It authorizes the Commission on Civil Rights to investigate and make findings in connection with certain "unlawful discriminatory practices" and "unlawful employment practices," and to enforce its orders through civil proceedings.

Sections to be repealed. K. S. A. 21-2424, 21-2461.

21-1004. *Criminal Defamation.* (1) Criminal defamation is maliciously communicating to a person orally, in writing, or by any other means, any information tending to expose another living person to public hatred, contempt or ridicule, or to deprive him of the benefits of public confidence and social acceptance, or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke his surviving relatives and friends.

(2) In all prosecutions under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal defamation if it is found that such matter was true and was published with good motives and for justifiable ends.

(3) Criminal defamation is a Class A misdemeanor.

COMMENT

The law of Kansas now provides penalties for libel—written defamation—only (K. S. A. 21-2401 to 21-2406). The proposal expands the crime to include any malicious communication. As here defined, criminal defamation requires publication to a third person. This represents a change from the present law.

The proposal is a composite of parts of Minnesota Criminal Code, 609.75, and K. S. A. 21-2401 to 21-2403.

Sections to be repealed. K. S. A. 21-2401, 21-2403, 21-2404, 21-2405, 21-2406.

21-1005. *Circulating False Rumors Concerning Financial Status.* Circulating false rumors concerning financial status is maliciously

and without probable cause circulating or causing to be circulated any rumor with intent to injure the financial standing or reputation of any bank, financial or business institution or the financial standing of any individual in this state, or making any statement or circulating or assisting in circulating any false rumor or report for the purpose of injuring the financial standing of any bank or financial institution or of any individual in this state, or seeking either by word or action to start a run upon said bank or financial institution.

Circulating false rumors concerning financial status is a Class A misdemeanor.

COMMENT

This proposal restates the present law. The conspiracy feature has been omitted in view of the Committee proposal of a general conspiracy statute (21-302).

The draft is a restatement of K. S. A. 21-2452.

Section to be repealed. K. S. A. 21-2452.

21-1006. *Exposing a Paroled or Discharged Person.* Exposing a paroled or discharged person is maliciously and willfully communicating or threatening to communicate to another any oral or written statement that any person has been charged with or convicted of a felony, with intent to interfere with the employment or business of the person so charged or convicted.

Exposing a paroled or discharged person is a Class B misdemeanor.

COMMENT

The purpose of this proposal is to prevent malicious harassment of persons who have been convicted of crime. Obtaining money or other thing of value by this means is a species of theft and is prohibited by proposed section 21-701.

This proposal restates part of K. S. A. 21-2451.

Section to be repealed. K. S. A. 21-2451.

21-1007. *Hypnotic Exhibition.* (1) Hypnotic exhibition is:

(*a*) Giving for entertainment any instruction, exhibition, demonstration or performance in which hypnosis is used or attempted; or

(*b*) Permitting oneself to be exhibited while in a state of hypnosis.

(2) "Hypnosis," as used herein, means a condition of altered attention, frequently involving a condition of increased selective suggestibility brought about by an individual through the use of certain physical or psychological manipulations of one person by another.

(3) Hypnotic exhibition is a Class C misdemeanor.

Sections to be repealed. K. S. A. (1967 Supp.) 21-2471, 21-2472 and 21-2473.

Article XI. *Crimes Against the Public Peace*

21-1101. *Disorderly Conduct.* Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace:

(*a*) Engaging in brawling or fighting; or

(*b*) Disturbing an assembly, meeting, or procession, not unlawful in its character; or

(*c*) Using offensive, obscene, or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

Disorderly conduct is a Class C misdemeanor.

COMMENT

This section covers conduct now called disturbing the peace. The phrase "disorderly conduct" is thought to be a more accurately descriptive one. Also the section seeks specifically to identify the conduct prohibited.

The proposal is based upon Minnesota Criminal Code, 609-72., with additions.

Sections to be repealed. K. S. A. 21-949, 21-950.

21-1102. *Unlawful Assembly.* Unlawful assembly is meeting or coming together with two or more other persons for the purpose of engaging in conduct constituting either disorderly conduct, as defined by Sec. 21-1101, or a riot, as defined by Sec. 21-1104, or when lawfully assembled with two or more other persons, agreeing to engage in such conduct.

Unlawful assembly is a Class B misdemeanor.

21-1103. *Remaining at an Unlawful Assembly.* Remaining at an unlawful assembly is willfully failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.

Remaining at an unlawful assembly is a Class A misdemeanor.

21-1104. *Riot.* Riot is any use of force or violence which produces a breach of the public peace, or any threat to use such force or violence if accompanied by power or apparent power of immediate execution, by three or more persons acting together and without authority of law.

Riot is a Class A misdemeanor.

21-1105. *Incitement to Riot.* Incitement to riot is by words or conduct urging others to commit acts of force or violence against persons or property or to resist the lawful authority of law enforcement officers under circumstances which produce a clear and present danger of injury to persons or property or a breach of the public peace.

Incitement to riot is a Class D felony.

COMMENT

Proposed sections 21-1102 through 21-1105 define and prohibit conduct deemed inimical to the public peace. Proposed 21-1102 restates the substance of K. S. A. 21-1001. 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. Proposed 21-1103 applies not only to participants in the unlawful assembly, but to bystanders. It is deemed proper as an aid to the control of such groups. Proposed 21-1104 and 21-1105 are applicable when group conduct actually threatens the safety of persons or property or puts the public peace in jeopardy, or is urged under conditions producing a clear and present danger.

Sections to be repealed. K. S. A. 21-1001, 21-1002, 21-1003.

21-1106. *Maintaining a Public Nuisance.* Maintaining a public nuisance is by act, or by failure to perform a legal duty, intentionally causing or permitting a condition to exist which injures or endangers the public health, safety or welfare.

Maintaining a public nuisance is a Class C misdemeanor.

COMMENT

The present Kansas statutes do not attempt to define public nuisances generally, although several particular kinds of nuisance are prescribed—gambling places, road houses, hog pens in town, unclean candle factories, etc. A general definition would seem to be useful. The proposal contemplates that specific penalties may be provided for particular nuisances such as liquor, gambling, etc., by other sections of the code.

Sections to be repealed. K. S. A. 21-1211, 21-1212.

21-1107. *Permitting a Public Nuisance.* Permitting a public nuisance is knowingly permitting property under the control of the offender to be used to maintain a public nuisance, as defined in section 21-1106.

Permitting a public nuisance is a Class C misdemeanor.

COMMENT

This proposal is self-explanatory. It is drawn from Minnesota Criminal Code, 609.745.

21-1108. *Vagrancy.* Vagrancy is:

(*a*) Engaging in an unlawful occupation; or

(*b*) Being of the age of 18 years or over and able to work and without lawful means of support and failing or refusing to seek employment; or

(*c*) Loitering in any community without visible means of support; or

(*d*) Loitering on the streets or in a place open to the public with intent to solicit for immoral purposes; or

(*e*) Deriving support in whole or in part from begging.

Vagrancy is a Class C misdemeanor.

COMMENT

Vagrancy statutes are traditionally vague and identify the proscribed conduct only in the most general terms. The proposal, based in part upon the Minnesota Act, seeks to identify the acts constituting vagrancy. It includes the substance of the present Kansas law with some enlargement.

It may be questioned whether vagrancy statutes are necessary. However, it is clear that such laws have been deemed necessary by most American jurisdictions. Every society has its misfits. They often constitute more of an annoyance than a menace to the community. Laws to deal with such people have existed since the 14th century. It is a peculiar characteristic of such laws that they traditionally punish being such a person rather than a particular act done by him. However, the modern use of vagrancy laws has in practice been enlarged and is often used by the police as an aid in the investigation of other crimes.

The vagrancy concept is a useful one for law enforcement officers. It enables them to make cases against undesirables without evidence of a specific crime. It permits arrest when the objective is to get information about more serious crimes. It permits the removal of potential criminals from the streets before they have had the opportunity to commit more serious crimes. In brief, such laws are generally used by the police as a means of control of undesirables in the community.

The proposal comes in part from Minnesota Criminal Code, 609.725.

Sections to be repealed. K. S. A. 21-2409.

21-1109. *Public Intoxication.* Public intoxication is being in a highway, street, public place or public building while under the influence of intoxicating liquor, narcotics or other drug to the degree that one may endanger himself or other persons or property, or annoy persons in his vicinity.

Public intoxication is a Class C misdemeanor.

COMMENT

Three aspects of the proposal should be noted: (1) The definition of the crime is transferred from Chapter 41 to Chapter 21; (2) the proposal defines intoxication; and (3) intoxication in a private place is not proscribed.

The proposal is taken in part from the Proposed New York Penal Law, 250.20

Section to be repealed. K. S. A. 41-802.

21-1110. *Giving a False Alarm.* Giving a false alarm is:

(*a*) Initiating or circulating a report or warning of an impending bombing or other crime or catastrophe, knowing that the report or warning is baseless and under such circumstances that it is likely to cause evacuation of a building, place of assembly, or facility of public transport or to cause public inconvenience or alarm; or

(*b*) Transmitting in any manner to the fire department of any city, township or other municipality a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists.

Giving false alarm is a Class B misdemeanor.

COMMENT

The proposal is self-explanatory. Current news reports make such legislation seem timely. *Note:* Recommended section 21-418, *terroristic threats,* provides felony penalties for the person who threatens to commit the crime.

The proposal is drawn from Model Penal Code, 250.3, and Illinois Criminal Code, 26-1.

21-1111. *Criminal Desecration.* (1) Criminal desecration is purposely desecrating any public monument or structure, or any place of worship or burial or purposely and publicly desecrating the national flag, the state flag of Kansas or any other object venerated by the public or a substantial segment thereof.

(2) "Desecrate" means to deface, damage, pollute or otherwise physically mistreat in a way that will outrage the sensibilities of persons likely to observe or discover the action.

(3) Criminal desecration is a Class C misdemeanor.

COMMENT

Except for the national flag, Kansas laws do not protect venerated objects against desecration. The interest of the public in the safekeeping of objects of special religious, patriotic and cultural significance seems an interest that the state ought to protect.

Model Penal Code, 250.9, is the source of the proposal.

Sections to be repealed. K. S. A. 21-1301, 21-1409, 21-1410, 21-2431.

21-1112. *Desecrating a Dead Body.* Desecrating a dead body is knowingly and without authorization of law:

(*a*) Opening a grave or other place of interment or sepulcher with intent to remove the dead body or remains of any human being or any coffin, vestment or other article interred with such body; or

(*b*) Removing the dead body or remains of any human being, or the coffin, vestment or other article interred with such body, from the grave or other place of interment or sepulcher; or

(*c*) Receiving the dead body or remains of any human being knowing the same to have been disinterred unlawfully.

Desecrating a dead body is a Class B misdemeanor.

COMMENT

The proposal covers the substance of present K. S. A. 21-911, 21-912 and 21-913.

Sections to be repealed. K. S. A. 21-911, 21-912, 21-913.

21-1113. *Harassment by Telephone.* (1) Harassment by telephone is use of telephone communication for any of the following purposes:

(*a*) Making any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent; or

(*b*) Making a telephone call, whether or not conversation ensues, without disclosing the identity of the caller and with intent to annoy, abuse, threaten or harass any person at the called number; or

(*c*) Making or causing the telephone of another repeatedly to ring, with intent to harass any person at the called number; or

(*d*) Making repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or

(*e*) Playing any recording on a telephone when the number thereof is dialed, unless the person or group playing the recording shall identify itself or himself and state that it is a recording; or

(*f*) Knowingly permitting any telephone under ones control to be used for any of the purposes mentioned herein.

(2) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth the provisions of this act. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING."

(3) Harassment by telephone is a Class A misdemeanor.

COMMENT

This is a restatement of the present law which was enacted in 1967.

Sections to be repealed. K. S. A. (1967 Supp.) 21-970 and 21-971.

Article XII. *Crimes Against the Public Safety*

21-1201. *Unlawful Use of Weapons.* (1) Unlawful use of weapons is knowingly:

(*a*) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sand-club, shotgun with a barrel less than 18 inches

in length, metal knuckles or any knife, commonly referred to as a switch-blade, which has a blade that opens automatically by hand pressure applied to a button, spring or other device in the handle of the knife, or any knife having a blade that opens or falls or is ejected into position by the force of gravity or by an outward, downward, or centrifugal thrust or movement; or

(*b*) Carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, black jack, slung shot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, *provided,* an ordinary pocket knife with no blade more than four inches in length shall not be construed to be a dangerous knife, or a dangerous or deadly weapon or instrument; or

(*c*) Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke gun, projector or bomb or any object containing a noxious liquid, gas or substance; or

(*d*) Carrying any pistol, revolver or other firearm concealed on the person except when on his land or in his abode or fixed place of business; or

(*e*) Setting a spring gun; or

(*f*) Possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm; or

(*g*) Selling, manufacturing, purchasing, possessing or carrying any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger.

(2) *Exemptions.* (*a*) Subsections (1) (*a*) (*b*) (*c*) (*d*) and (*g*) of this section shall not apply to or affect any of the following: (*i*) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer; (*ii*) Wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (*iii*) Members of the Armed Services or Reserve Forces of the United States or the Kansas National Guard while in the performance of their official duty; (*iv*) Manufacture of, transportation to, or sale of weapons to person authorized under (*i*) through (*iii*) of this subsection to possess such weapons.

(*b*) Subsection (1) (*d*) of this section shall not apply to or affect the following: (*i*) Watchmen while actually engaged in the performance of the duties of their employment; or (*ii*) Licensed

hunters or fishermen while engaged in hunting or fishing; or (*iii*) Persons licensed as private detectives by the State of Kansas, detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service.

(3) It shall be a defense that the defendant is within an exemption.

(4) Violation of subsections (1) (*a*) through (1) (*f*) of this section is a Class B misdemeanor; violation of subsection (1) (*g*) of this section is a Class E felony.

21-1202. *Aggravated Weapons Violation.* An aggravated weapons violation is the violation of any of the provisions of section 21-1201 by a person who within five years immediately preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony.

Aggravated weapons violation is a Class E felony.

COMMENT

These proposals are the first sections of a comprehensive weapons control act and should be read with proposed sections 21-1203 through 21-1206, *infra*. The Illinois Criminal Code provisions, as modified by the committee, provide the basis for the proposal.

Subsection (1) enumerates the prohibited acts and weapons.

Subsection (2) relates to exemptions and may be summarized thusly. (1) There are no exemptions to subsections (1) (*e*) and (*f*) which respectively prohibit setting spring guns and use or possession of a silencer; (2) the other prohibitions contained in the section have no application to peace officers, prison keepers and security personnel, military personnel and the manufacture, transportation and sale of such weapons to persons authorized to possess them; (3) subsection (1) (*d*), which prohibits the carrying of firearms in a concealed manner, does not apply to watchmen, hunters and fishermen, and licensed private detectives and others performing authorized and bona fide police services.

Subsection (4) provides penalties. Note that violations are misdemeanors, with one exception: Crimes involving machine guns are felonies. Also under 21-1202 any violation by a convicted felon within five years following his conviction or release from the penitentiary is a felony.

For enumeration of the present Kansas statutes relating to weapons, see comment following 21-1206, *infra*.

21-1203. *Unlawful Disposal of Firearms.* (1) Unlawful disposal of firearms is knowingly:

(*a*) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age; or

(*b*) Selling, giving or otherwise transferring any firearm to any habitual drunkard or narcotic addict; or

(*c*) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within 5 years after his release from the penitentiary or within 5 years after his conviction if the defendant has not been imprisoned in the penitentiary.

(2) Unlawful disposal of firearms is a Class B misdemeanor.

21-1204. *Unlawful Possession of a Firearm.* (1) Unlawful possession of a firearm is:

(*a*) Possession of any firearm by a habitual drunkard or narcotics addict; or

(*b*) Possession of a firearm with a barrel less than 12 inches long by a person who, within five years preceding such possession, has been convicted of a felony in this or any other jurisdiction or released from a penitentiary.

(2) Violation of subsection (1) (*a*) of this section is a Class B misdemeanor; violation of subsection (1) (*b*) is a Class E felony.

21-1205. *Defacing Identification Marks of a Firearm.* (1) Defacing identification marks of a firearm is changing, altering, removing or obliterating the name of the maker, model, manufacturer's number or other mark of identification of any firearm.

(2) Possession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, or obliterated the same.

(3) Defacing identification marks of a firearm is a Class B misdemeanor.

21-1206. *Confiscation and Disposition of Weapons.* (1) Upon conviction of a violation of Sections 21-1201, 21-1202 or 21-1204 of this article, any weapon seized in connection therewith shall remain in the custody of the trial court.

(2) Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court, be destroyed, preserved as county property, or sold and the proceeds of such sale shall be paid to the county general fund.

COMMENT

Proposed sections 21-1201 to 21-1205, taken together, constitute a comprehensive statute governing the use, possession and trade in firearms. The proposals are in line with the Illinois act and the proposed Colorado law.

Present Kansas statutes prohibit carrying concealed weapons; possession or transportation of machine guns; possession, manufacture or conveyance of pistols by felons, drug addicts and habitual drunkards, and provide for the confiscation of contraband weapons.

Proposed changes in the law are the following:

1. The class of prohibited weapons is enlarged to include all those commonly used in connection with crime.
2. Persons who may use the weapons for legitimate purposes are recognized in the exemptions. Exemption is an affirmative defense.
3. Sales or gifts of pistols to persons under 18 or felons who have been convicted or in prison during the last five years are prohibited.
4. Sales or gifts of any firearm to habitual drunkards or narcotic addicts is forbidden.
5. Possession of a pistol by a convicted felon within five years after release from prison is prohibited.
6. A penalty is provided for obliteration of identification marks.

The proposal is drawn from the Illinois Criminal Code, 24-1 to 24-6, with committee modifications.

Sections to be repealed. K. S. A. 21-2411, 21-2429, 21-2601, 21-2606, 21-2611, 21-2613, 21-2614, 21-2615, 38-701, 38-702.

21-1207. *Failure to Register Sale of Explosives.* (1) Failure to register sale of explosives is the omission, by the seller of any explosive or detonating substance, to keep a register as required by this section of every sale or other disposition of such explosives made by him.

(2) The register of sales required by this section shall contain the date of the sale or other disposition, the name, address, age and occupation of the person to whom the explosive is sold or delivered, the kind and amount of explosive delivered, the place at which it is to be used and for what purpose it is to be used. Said register and said record of sale or other disposition shall be open for inspection by any law enforcement officer, mine inspector or fire marshal of this state for a period of not less than one year after said sale or other disposition.

(3) Failure to register sale of explosives is a Class C misdemeanor.

21-1208. *Failure to Register Receipt of Explosives.* Failure to register receipt of explosives is the omission, by any person to whom delivery of any quantity of explosive or other detonating substance

is made, to acknowledge the receipt thereof by signing his name in the register provided in section 21-1207 (2) on the page where the record of such delivery is entered.

Failure to register receipt of explosives is a Class C misdemeanor.

Sections to be repealed. K. S. A. 21-2444, 21-2446.

21-1209. *Unlawful Disposal of Explosives.* (1) Unlawful disposal of explosives is knowingly selling, giving or otherwise transferring any explosive or detonating substance to:

(*a*) A person under 18 years of age; or

(*b*) An habitual drunkard or narcotic addict; or

(*c*) A person who has been convicted of a felony under the laws of this or any other jurisdiction within 5 years after his release from a penal institution or within 5 years after his conviction if he has not been imprisoned.

(2) Unlawful disposal of explosives is a Class C misdemeanor.

COMMENT

K. S. A. 21-2445 prohibits sales of explosives to any "intoxicated or irresponsible person." If sales are to be prohibited in the interests of public safety, it would appear that the class to whom sales are prohibited might properly be enlarged to include narcotic addicts and recent felons, thus paralleling the firearms section.

Section to be repealed. K. S. A. 21-2445.

21-1210. *Carrying Concealed Explosives.* Carrying concealed explosives is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner.

Carrying concealed explosives is a Class C misdemeanor.

COMMENT

This is a restatement of K. S. A. 21-2448. There is no change in content.

Section to be repealed. K. S. A. 21-2448.

21-1211. *Refusal to Yield a Telephone Party Line.* (1) Refusal to yield a telephone party line is willfully refusing to immediately yield or surrender the use of a party line when informed that the line is needed for an emergency call to a fire department or police department or for medical aid or ambulance service.

(2) Definitions. (*a*) "Party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(*b*) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

(3) No person shall request the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists.

(4) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth the provisions of this section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING." The provisions of this subsection shall not apply to those directories distributed solely for business advertising services, commonly known as classified directories.

(5) Violation of any subsection of this section is a Class C misdemeanor.

COMMENT

This proposal follows substantially the present law, enacted in 1963. No change in content is intended.

Sections to be repealed. K. S. A. 21-2465, 21-2466, 21-2467, 21-2468.

21-1212. *Creating a Hazard.* (1) Creating a hazard is:

(*a*) Storing or abandoning in any place accessible to children, a container which has a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container; or

(*b*) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located, knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or

(*c*) Exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children.

(2) Creating a hazard is a Class B misdemeanor.

COMMENT

Abandoned refrigerators constitute a special hazard to children. The present section prohibiting their abandonment in a place accessible to children is found in the juvenile code (K. S. A. 38-710). The proposed section follows New York Penal Law, 275.10, and extends to other hazards.

Section to be repealed. K. S. A. 38-710.

21-1213. *Unlawful Failure to Report a Wound.* (1) Unlawful failure to report a wound is the failure by an attending physician or other person to report his treatment of any wound, described in

subsections (*a*) and (*b*) hereafter, to the chief of police of the city or the sheriff of the county in which such treatment took place:

(*a*) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

(*b*) Any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick, or other sharp or pointed instrument.

(2) Unlawful failure to report a wound is a Class C misdemeanor.

COMMENT

The idea is taken from the New York Penal Law. The obvious purpose is to assist in the prompt detection of crimes against persons. The section, as drawn, does not require the disclosure of communications between the patient and the physician—only the fact of treatment of a wound of the kind mentioned is required to be reported.

Article XIII. *Crimes Against the Public Morals*

21-1301. *Promoting Obscenity.* (1) Promoting obscenity is knowingly or recklessly:

(*a*) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material; or

(*b*) Possessing any obscene material with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material; or

(*c*) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material; or

(*d*) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

A person who promotes obscene material or possesses the same with intent to promote it, in the course of his business, is presumed to do so knowingly or recklessly. Evidence that materials were promoted by emphasizing their prurient appeal or sexually provocative aspects shall be relevant in determining the question of the obscenity of such materials.

(2) (*a*) Any material or performance is "obscene" if, considered as a whole, its predominant appeal is to prurient, shameful or morbid

interest in nudity, sex, excretion, sadism or masochism, and the material is patently offensive and utterly without redeeming social value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be intended for distribution to children or other especially susceptible audience.

(*b*) "Material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.

(*c*) "Performance" means any play, motion picture, dance or other exhibition performed before an audience.

(3) It is a defense to a prosecution for obscenity that the persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing or viewing the same.

(4) Promoting obscenity is a Class A misdemeanor.

COMMENT

The proposal is adopted from the proposed New York law. The definition of obscenity is similar to the provision of the Model Penal Code, 251.4; Illinois Criminal Code, 11-20 (*b*); and the Colorado Proposal, 40-18-2. It appears to conform with the Supreme Court tests of *Roth v. United States,* 354 U. S. 476, *Manual Enterprises v. Day,* 370 U. S. 478, *Mishkin v. New York,* 383 U. S. 502, and *Ginzburg v. U. S.,* 383 U. S. 463.

The proposal is broader than the present Kansas law in that it reaches obscene performances and sound communications, as well as graphic materials. Also, it is more specifically aimed at commercial obscenity than the present Kansas law.

The language of the test, while stated more simply and not in the precise words of the *Roth* case, seems to convey the same idea.

The proposal is drawn from the New York Penal Law, 24.00, with modifications based on the Model Penal Code, 251.4 and the committee's recommendations.

Sections to be repealed. K. S. A. 21-1102, 21-1105, 21-1102a, 21-1115.

GENERAL COMMENT—GAMBLING

The Kansas law of gambling is found in two articles of Chapter 21. Sections 21-915 through 21-936 and 21-1501 through 21-1510 prohibit and provide penalties for various kinds of gambling. The sections mentioned contain not only the substantive law of gambling, but provide special procedures for enforcement. Generally, the present law is based upon the enactments of the Territorial Legislature of 1855. Amendments were enacted in 1895 (Laws, Ch. 154), 1903 (Laws, Ch. 223) and 1907 (Laws, Ch. 263). There have been no significant amendments since 1907.

The approach of the present statutes is to specific activities, rather than a general prohibition of gambling. This fact, coupled with the indiscriminate mixing of substantive sections with procedural provisions may produce unnecessary complexity and at the same time fail effectively to cover the area.

Two features of the suggested draft should be kept in mind. (1) It attempts to define the prohibited conduct in a generic way. (2) The procedural provisions are omitted with the thought that they will be transferred to the code of criminal procedure.

21-1302. *Gambling: Definitions.* (1) A "bet" is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

(*a*) Bona fide business transactions which are valid under the law of contracts including but not limited to contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to contracts of indemnity or guaranty and life or health and accident insurance;

(*b*) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;

(*c*) A lottery as defined in this section.

(2) A "lottery" is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance.

(3) "Consideration" as used in this section means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

(4) A "gambling device" is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(5) A "gambling place" is any place, room, building, vehicle, tent or location which is used for any of the following: making and settling bets; receiving, holding, recording or forwarding bets

or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

COMMENT

This section defines certain terms used only in the gambling sections. Subsection (1) defines a bet. Almost any unqualified definition of a bet includes legal contracts because the distinction between a betting contract and many types of legal contracts is often slight. Paragraphs (*a*) and (*b*) set out two categories of contracts which, although they might otherwise come within the definition of a bet, are not betting contracts. Restatement, *Contracts* §§ 520-523 (1933). Paragraph (*c*) excludes a lottery, which is defined and treated separately in the gambling sections notwithstanding the fact that the person who buys a lottery ticket is actually entering a betting contract.

Subsection (2) defines a lottery which, like a bet, is a wagering contract. It is defined and treated separately because it is a common type of gambling and because the constitution specifically prohibits the legislature from authorizing a lottery. Kan. Const. Art. 15, Sec. 3. A lottery differs from an ordinary wager in that it always involves mass participation. Subsection (3) defines the term "consideration." The first sentence of this definition is a restatement of the rule laid down by the supreme court. *State ex rel. v. Bissing,* 178 Kan. 111; *State v. Brown,* 173 Kan. 166. The second sentence is intended to exempt trade promotion schemes not involving purchase of goods or services or other payments by the participants.

Subsection (4) defines gambling devices. A slot machine is probably the most familiar type of gambling device. However, this definition includes not only mechanical and electronic devices but lottery tickets, numbers slips, and other evidence of participation in gambling enterprises.

Subsection (5) which defines a gambling place, reaches any structure where betting or lotteries are carried on or promoted.

These definitions are similar to those in several states. Wisc. Crim. Code, 345.01; N. Mex. Crim. Code, 19-1 and the proposed revision of the Colo. Crim. Laws, 40-26-1 (Res. Pub. No. 98, Colo. Legis. Council) have been consulted in preparing the drafts of this and the next four sections.

21-1303. *Gambling.* Gambling is:

(*a*) Making a bet; or

(*b*) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

Gambling is a Class B misdemeanor.

COMMENT

Under subsection (*a*) the offender must make a bet, *i. e.*, he must make a bargain of the kind defined as a bet in 21-1302 (1).

Under subsection (*b*) it must be proved that (1) the offender entered or

remained in a gambling place, *i. e.*, a structure, one of whose principal uses is for making and settling bets, receiving, holding, recording or forwarding bets or offers to bet, conducting lotteries, or playing gambling devices [21-1302 (5)] and (2) that the offender had an intent to make a bargain which is a bet under 21-1302 (1) or to participate in an enterprise which is a lottery under 21-1302 (2) or to play a contrivance which is a gambling device under 21-1302 (4).

21-1304. *Commercial Gambling.* Commercial gambling is:

(*a*) Operating or receiving all or part of the earnings of a gambling place; or

(*b*) Receiving, recording, or forwarding bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possessing facilities to do so; or

(*c*) For gain, becoming a custodian of anything of value bet or offered to be bet; or

(*d*) Conducting a lottery, or with intent to conduct a lottery possessing facilities to do so; or

(*e*) Setting up for use or collecting the proceeds of any gambling device.

Commercial gambling is a Class E felony.

COMMENT

The activities of the professional gambler are usually recognized as more serious threats to the public welfare than the existence of casual social gambling. Hence, commercial gambling is treated as a felony.

21-1305. *Permitting Premises to Be Used for Commercial Gambling.* Permitting premises to be used for commercial gambling is intentionally:

(*a*) Granting the use or allowing the continued use of a place as a gambling place; or

(*b*) Permitting another to set up a gambling device for use in a place under the offender's control.

Permitting premises to be used for commercial gambling is a Class B misdemeanor.

COMMENT

In the context of subsection (*a*) and (*b*) "intentionally" means that the offender must either (1) grant the use or allow the continued use of a place knowing that it is being used as a gambling place, *i. e.*, that one of its principal uses is for making and settling bets, for receiving, holding, recording or forwarding bets or offers to bet, for conducting lotteries, or for playing gambling machines or (2) permit another to set up for use in a place under the offender's control a machine which the offender knows is a contrivance that for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance.

21-1306. *Dealing in Gambling Devices.* (1) Dealing in gambling devices is manufacturing, transferring or possessing with intent to transfer any gambling device or sub-assembly or essential part thereof.

(2) Proof of possession of any device designed exclusively for gambling purposes, which is not set up for use or which is not in a gambling place, creates a presumption of possession with intent to transfer.

(3) Dealing in gambling devices is a Class E felony.

COMMENT

Under this section the offender must know that the thing or device he manufactures, transfers or possesses with intent to transfer either (1) evidences, purports to evidence or is designed to evidence participation in a lottery, *i. e.*, an enterprise defined as a lottery in section 21-1302, or the making of a bet (defined in section 21-1302), or (2) is designed exclusively for gambling purposes or as a sub-assembly or essential part of a device designed exclusively for gambling purposes.

Examples of things covered by this section are racing tickets, lottery tickets, gambling machines, numbers jars, punch boards and roulette wheels.

Subsection (2) creates a presumption of possession with intent to transfer upon proof of certain facts. The fact that the device is not set up for use or is not in a gambling place gives rise to an inference that it is possessed with intent to transfer it rather than with intent to use it. Therefore, the jury should consider the presumption along with all the other evidence in determining whether they are convinced beyond a reasonable doubt of the defendant's guilt.

21-1307. *Possession of a Gambling Device.* Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee, or otherwise, of any gambling device.

Possession of a gambling device is a Class B misdemeanor.

COMMENT

Enforcement of the present Kansas statutes relating to gambling devices is difficult because evidence of the actual setting up and use of the machine is required to prove a crime. Because such devices are usually employed in places to which only a selected and sympathetic clientele has access, evidence of their use is not readily obtainable by officers. The proposal is intended to provide a remedy for this problem.

Several states make possession of such devices criminal, *e. g.*, California (Cal. Pen. Code § 330, Deering) and Florida (Fla. Stat. Ann. § 849.15).

21-1308. *Installing Communication Facilities for Gamblers.* Installing communication facilities for gamblers is:

(*a*) Installing communication facilities in a place which the person who installs the facilities knows is a gambling place; or

(*b*) Installing communication facilities knowing that they will be used principally for the purpose of transmitting information to be used in making or settling bets; or

(*c*) Knowing that communication facilities are being used principally for the purpose of transmitting information to be used in making or settling bets, allowing their continued use.

Installing communication facilities for gamblers is a Class E felony.

COMMENT

Under subsection (*a*) the offender must know the place in which he installs the communication facilities is a gambling place, *i. e.*, a structure, one of whose principal uses is for making and settling bets, receiving, holding, recording or forwarding bets or offers to bet, conducting lotteries, or playing gambling machines.

Under subsection (*b*) the offender must know that the communication facilities he installs will be used principally for the purpose of transmitting information to be used in making or settling bets.

In subsection (*c*) the offender must allow the continued use of his communication facilities with knowledge that they are being used principally to transmit information to be used in making or settling bets.

Sections to be repealed. K. S. A. 21-915, 21-916, 21-917, 21-922, 21-923, 21-924, 21-933, 21-934, 21-948, 21-1501, 21-1502, 21-1504, 21-1505, 21-1506, 21-1507, 21-1508, 21-1510.

21-1309. *False Membership Claim.* A false membership claim is falsely representing oneself to be a member of a fraternal or veteran's organization.

False membership claim is a Class C misdemeanor.

COMMENT

The proposal replaces K. S. A. 21-1307 and 21-1308.

Sections to be repealed. K. S. A. 21-1307, 21-1308.

21-1310. *Cruelty to Animals.* (1) Cruelty to animals is:

(*a*) Subjecting any animal to cruel mistreatment; or

(*b*) Having custody of any animal and subjecting such animal to cruel neglect.

(2) This section shall not be deemed applicable to accepted veterinary practices or activities carried on for scientific research. Any police officer or public health officer or any officer or agent of any duly incorporated humane society may take charge of any animal found abandoned that may appear to be diseased or disabled beyond recovery for any useful purpose and such officer or agent may at once cause such animal to be killed in a humane manner.

(3) Cruelty to animals is a Class B misdemeanor.

COMMENT

Subsection (1) is substantially the Model Penal Code provision. It is suggested in lieu of the present law which covers the same substance but is somewhat more complex. Subsection (2), in part, follows K. S. A. 21-1203. There are no specific provisions in the proposal for appraisal and liability to the owner. However, it is assumed that the owner would be able to recover for the wrongful destruction of his animal, even in the absence of express provisions.

Sections to be repealed. K. S. A. 21-1201, 21-1202, 21-1203.

Article XIV. *Crimes Against Business*

21-1401. *Racketeering.* (1) Racketeering is demanding, soliciting or receiving anything of value from the owner, proprietor, or other person having a financial interest in a business, by means of either a threat, express or implied, or a promise, express or implied, that the person so demanding, soliciting or receiving such thing of value will:

(*a*) Cause the competition of the person from whom the payment is demanded, solicited or received to be diminished or eliminated; or

(*b*) Cause the price or goods or services purchased or sold in the business to be increased, decreased or maintained at a stated level; or

(*c*) Protect the property used in the business or the person or family of the owner, proprietor or other interested person from injury by violence or other unlawful means.

(2) Racketeering is a Class D felony.

COMMENT

Under proposed section 21-701 (1) (*c*), extortion is treated as one kind of theft and is punishable as such. However, extortion and racketeering are not parallel offenses, although there may be some overlap. Extortion (theft) applies only when any property is obtained by threat, as defined in proposed section 21-110 (24). Racketeering includes only the obtaining of business tribute and extends not only to those cases involving threats but to situations where special benefits are unlawfully promised or obtained.

The proposal submitted is lifted generally from the present statute.

Section to be repealed. K. S. A. 21-2460.

21-1402. *Debt Adjusting.* (1) Debt adjusting is engaging in the business of making contracts, express or implied, with a debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaging in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors.

(2) The provisions of this act shall not apply to those situations involving debt adjusting, as defined herein, which is incidental to the lawful practice of law in this state.

(3) Debt adjusting is a Class B misdemeanor.

COMMENT

This proposal follows closely K. S. A. 21-2464, passed by the legislature in 1961. The validity of the act was sustained by the Supreme Court of the United States in *Ferguson v. Skrupa*, 372 U. S. 726.

Section to be repealed. K. S. A. 21-2464.

21-1403. *Deceptive Commercial Practices.* (1) A deceptive commercial practice is the act, use or employment by any person of any deception, fraud, false pretense, false promise, or knowing misrepresentation of any material fact, with the intent that others shall rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived or damaged thereby.

(2) The following definitions shall be applicable to this section:

(*a*) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services.

(*b*) "Person" means any natural person or his legal representative, partnership, corporation (domestic or foreign), company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.

(*c*) "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.

(3) This section shall not apply to the owner or publisher of any newspaper, magazine, or other printed matter wherein an advertisement appears, or to the owner or operator of a radio or television station which disseminates an advertisement, when such owner, publisher or operator had no knowledge of the intent, design of purpose of the advertisement.

(4) (*a*) A deceptive commercial practice is a Class B misdemeanor.

(*b*) Whenever it appears to the Attorney General or any county attorney that a person has engaged in, is engaging or is about to engage in any practice declared by this act to be a deceptive commercial practice, such officer, in the name of the state, may institute a civil action to enjoin the future commission of such practice. Upon proof that the defendant has engaged in, is engaging or is about to engage in any practice prohibited by this section, the

court may enjoin the future commission of such practice. It shall be no defense to such action that the state may have an adequate remedy at law.

COMMENT

This proposal is modeled upon the consumer fraud laws of Minnesota (Minn. Stat., 1964 Pocket Part, 325.78, *et seq.*) and Illinois (Ill. Rev. Stat., Ch. 121, Sec. 261, *et seq.*). However, neither the Minnesota nor the Illinois provisions are penal in nature. Both provide only injunctive remedies and are not found in the criminal codes.

This section was drafted prior to the 1968 session of the legislature. The Buyer Protection Act (H. B. No. 1782) passed in that session apparently covers the same area.

Sections to be repealed. K. S. A. 21-1112, 21-2301, 21-2302.

21-1404. *Tie-In Magazine Sale.* (1) A tie-in magazine sale is a sale or delivery on consignment for sale by a wholesaler of a magazine or other periodical of one kind or name to a retailer conditioned on the requirement that such retailer shall agree to, or shall, purchase or receive on consignment for sale a magazine or periodical of another kind or name.

(2) As used in this section: (*a*) "Retailer" means a person who sells magazines or periodicals at retail;

(*b*) "Wholesaler" means a person who sells or distributes or delivers on consignment for sale or who offers to sell or distribute or deliver on consignment for sale magazines or other periodicals to a retailer;

(*c*) "Sell" in addition to its ordinary meaning, means offer to sell, distribute, deliver or sell on consignment.

(3) A tie-in magazine sale is a Class B misdemeanor.

COMMENT

This is the substance of K. S. A. 21-119 and 21-1120.

Sections to be repealed. K. S. A. 21-1102b, 21-1119, 21-1120.

21-1405. *Commercial Bribery.* Commercial bribery is conferring, offering or agreeing to confer, or soliciting, accepting or agreeing to accept, any benefit as consideration for knowingly violating or agreeing to violate a duty of fidelity or trust by:

(*a*) An agent or employee of another; or

(*b*) A trustee, conservator or guardian; or

(*c*) A lawyer, physician, accountant, appraiser or other professional adviser; or

(*d*) An officer, director, partner, manager, or other participant in the affairs of a corporation, partnership, or unincorporated association; or

(*e*) An arbitrator or other purportedly disinterested adjudicator or referee.

Commercial bribery is a Class E felony.

COMMENT

Bribery in matters involving public trusts has long been regarded as criminal. During the past few years, the bribery concept has been expanded to include transactions not affecting government. For example, the Kansas legislature has made it felonious to pay or accept a reward for conduct prejudicial to the fairness of a sports contest (K. S. A. 21-2469, 2-2470). The Model Penal Code (Sec. 224.8) and the New York Penal Law (Sec. 185, *et seq.*) have undertaken to assure the fidelity of persons occupying special positions of trust in private affairs and have prohibited conduct described as "commercial bribery."

The section applies only in those cases where the law imposes on one, by reason of contract or status, a special duty of fidelity to another. In those cases, a knowing breach of that duty for a consideration paid by another is criminal.

Model Penal Code, 224.8, is the source for the proposal.

21-1406. *Sports Bribery.* (1) Sports bribery is:

(*a*) Conferring, or offering or agreeing to confer, any benefit upon a sports participant with intent to influence him not to give his best efforts in a sports contest; or

(*b*) Conferring or offering or agreeing to confer, any benefit upon a sports official with intent to influence him to perform his duties improperly.

(2) The following definitions are applicable to this section and to sections 21-1407 and 21-1408, hereafter.

(*a*) "Sports contest" means any professional or amateur sports or athletic game or contest viewed by the public.

(*b*) "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.

(*c*) "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.

(3) Sports bribery is a Class E felony.

21-1407. *Receiving a Sports Bribe.* Receiving a Sports Bribe is:

(*a*) Accepting, agreeing to accept or soliciting by a sports participant of any benefit from another person upon an understanding that such sports participant will thereby be influenced not to give his best efforts in a sports contest; or

(*b*) Accepting, agreeing to accept or soliciting by a sports official any benefit from another person upon an understanding that he will perform his duties improperly.

Receiving a Sports Bribe is a Class A misdemeanor.

21-1408. *Tampering with a Sports Contest.* Tampering with a sports contest is seeking to influence a sports participant or sports official, or tampering with any animal or equipment or other thing involved in the conduct or operation of a sports contest in a manner contrary to the rules and usages governing such contest and with intent to influence the outcome of such contest.

Tampering with a sports contest is a Class E felony.

COMMENT

The Kansas legislature of 1963 passed legislation prohibiting bribery and receiving bribes in connection with sports contests. The provisions are found in K. S. A. 21-2469 and 21-2470. Proposed sections 21-1406 and 21-1407 cover the same offenses.

Proposed section 21-1408 is new. It covers meddling or interference other than by means of bribery.

The language for all these proposals is drawn from New York Penal Law, 185.25 to 185.40.

Sections to be repealed. K. S. A. 21-2469, 21-2470.

PART III. Classification of Crimes and Sentencing

Article XV. *Classification of Crimes and Penalties*

21-1501. *Classification of Felonies and Terms of Imprisonment.* For the purpose of sentencing, the following classes of felonies and terms of imprisonment authorized for each class are established:

(*a*) Class A, the sentence for which shall be death or imprisonment for life. If there is a jury trial the jury shall determine which punishment shall be inflicted. If there is a plea of guilty or if a jury trial is waived the court shall determine which punishment shall be inflicted and in so doing shall hear evidence;

(*b*) Class B, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than five years nor more than fifteen years and the maximum of which shall be life;

(*c*) Class C, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than one year nor more than five years and the maximum of which shall be twenty years;

(*d*) Class D, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be fixed by the court at not less than one year nor more than three years and the maximum of which shall be ten years;

(*e*) Class E, the sentence for which shall be an indeterminate term of imprisonment, the minimum of which shall be one year and the maximum of which shall be five years.

(*f*) Unclassified felonies, which shall include all crimes declared to be felonies without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no sentence is provided in such law, the offender shall be sentenced as for a Class E felony.

21-1502. *Classification of Misdemeanors and Terms of Confinement.* (1) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(*a*) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year;

(*b*) Class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months;

(*c*) Class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month;

(*d*) Unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be a definite term of confinement in the county jail fixed by the court which shall not exceed one year.

(2) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K. S. A. 21-1503, instead of or in addition to confinement, as provided in this section.

21-1503. *Fines.* A person who has been convicted of a felony may, in addition to or instead of the imprisonment authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(*a*) For a Class B or C felony, a sum not exceeding $10,000;

(*b*) For a Class D or E felony, a sum not exceeding $5,000;

(2) A person who has been convicted of a misdemeanor may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:

(*a*) For a Class A misdemeanor, a sum not exceeding $2,500;

(*b*) For a Class B misdemeanor, a sum not exceeding $1,000;

(*c*) For a Class C misdemeanor, a sum not exceeding $500;

(*d*) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime; if no penalty is provided in such law, the fine shall not exceed $2,500;

(3) As an alternative to any of the above, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

COMMENT

By classifying crimes of like gravity within a single category and providing a single statutory penalty for all crimes within each class, the proposal seeks to establish a rational and consistent system of penalties. Where punishments are provided separately, in connection with each definition of criminal conduct, apparent disparities may often be observed. The proposed classification is intended to eliminate those disparities.

The idea here implemented is suggested by the Model Penal Code, 6.06.

The following characteristics of the penalty provisions should be observed:

(*a*) The alternative penalties of death or life imprisonment are retained for Class A felonies (first degree murder and aggravated kidnapping).

(*b*) Other felony penalties are indeterminate within the limits fixed by the statute.

(*c*) In each case the maximum term is fixed by law.

(*d*) In the cases of Class B, C and D felonies, the Court shall fix the minimum term within the limits provided.

(3) The habitual criminal penalty (K. S. A. 21-107a) is not retained. In lieu thereof is the discretion of the court to select an appropriate minimum penalty, after giving consideration to the criteria suggested in proposed section 21-1607. Note that the defendant's history of prior criminal activity is one of the circumstances that may be considered by the court in fixing the penalty. From the standpoint of the convicted person, the minimum term is the most significant part of the sentence, as it determines the period that must be served before he becomes eligible for parole.

(*f*) Fines are authorized in felony cases. Criteria for the imposition of fines are found in section 21-1608.

(*g*) Maximum penalties are prescribed for misdemeanors of each class. Within these limits, a court may impose any appropriate sentence of confinement or fine or both.

(*h*) Unclassified crimes are those which are defined and made punishable in chapters other than the crimes act. There are more than 1500 such offenses, found in virtually every chapter of the statute book. These are mainly intended to implement regulatory legislation and are not appropriate subjects for a criminal code. Hence, this proposed revision of the crimes act does not affect them either as to content or penalty.

Article XVI. *Sentencing*

21-1601. *Construction.* This article shall be liberally construed to the end that persons convicted of crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities as revealed by case studies; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the offender, or shall be committed for a limited period.

COMMENT

The above construction and purpose section is adopted from Section 1 of the Model Sentencing Act prepared by the Advisory Council of Judges of the National Council on Crime and Delinquency. The statement probably expresses the current objectives of the correctional process and relates to a stage in the criminal proceeding where a relaxation of the usual rules of strict construction is proper.

The section has a partial counterpart in the present K. S. A. 62-2226.

Section to be repealed. K. S. A. 62-2226.

21-1602. *Definitions.* As used in this article:

(1) "Court" means any court having jurisdiction and power to sentence offenders for violations of the laws of this state;

(2) "Suspension of sentence" is a procedure under which a defendant, found guilty of a crime, upon verdict or plea, is released by the court without imposition of sentence. The release may be with or without supervision in the discretion of the court;

(3) "Probation" is a procedure under which a defendant, found guilty of a crime upon verdict or plea, is released by the court after imposition of sentence, without imprisonment subject to conditions imposed by the court and subject to the supervision of the probation service of the state, county or court;

(4) "Parole" is the release of a prisoner to the community by the parole board prior to the expiration of his term, subject to conditions imposed by the board and to its supervision. "Parole" is also the release by a court of competent jurisdiction of a person confined in the county jail or other local place of detention after conviction and prior to expiration of his term, subject to conditions imposed by the court and its supervision. Where a court or other authority has filed a warrant against the prisoner, the board or paroling court may release him on parole to answer the warrant of such court or authority;

(5) "Institution" means the state penitentiary at Lansing, the state industrial farm for women, the state industrial reformatory at Hutchinson, the state reception and diagnostic center at Topeka, and any other institution or camp under control of the director of penal institutions.

COMMENT

The definitions are found in the present law at 62-2227, to which has been added a definition of suspension of sentence. Also, parole is defined to include the judicial release of prisoners in local jails prior to the expiration of their terms.

Section to be repealed. K. S. A. 62-2227.

21-1603. *Authorized Dispositions.* (1) Whenever any person has been found guilty of a crime upon verdict or plea and a sentence of death is not imposed, the court may adjudge any of the following:

(*a*) Commit the defendant to the state director of penal institutions or to jail for confinement for the term provided by law;

(*b*) Impose the fine applicable to the offense;

(*c*) Release the defendant on probation;

(*d*) Suspend the imposition of the sentence;

(*e*) Impose any appropriate combination of (*a*), (*b*), (*c*) and (*d*).

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation the court shall direct that he be under the supervision of the state board of probation and parole or the probation or parole officer of the court or county.

The court in committing a defendant to the custody of the state director of penal institutions shall not fix a maximum term of imprisonment, but the maximum term provided by law shall apply in each case. In those cases where the law does not fix a maximum term of imprisonment for the crime for which the defendant was convicted, the court shall fix the maximum term of such imprisonment. In all cases where the defendant is committed to the custody of the state director of penal institutions, the court shall fix the minimum term within the limits provided by law.

Any time within 120 days after a sentence is imposed, the court may modify such sentence by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits. If an appeal is taken and determined adversely to the defendant, such sentence may be modified within 120 days after the receipt by the clerk of the district court of the mandate from the supreme court. The court may reduce the minimum term of imprisonment at any time before the expiration thereof when such reduction is recommended by the state board of probation and parole and the court is satisfied that the best interests of the public will not be jeopardized and that the welfare of the prisoner will be served by such reduction. The power here conferred upon the court includes the power to reduce such minimum below the statutory limit on the minimum term prescribed for the crime of which the prisoner has been convicted. The recommendation of the board and the order of reduction shall be made in open court.

Dispositions which do not involve commitment to the custody of the state director of penal institutions and commitments which are revoked within 120 days shall not entail the loss by the defendant of any civil rights.

(2) This section shall not deprive the court of any authority conferred by any other section of Kansas Statutes Annotated to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty as a result.

(3) An application for probation or suspended sentence shall not constitute an acquiescence in the judgment for purpose of appeal,

and any convicted person may appeal from his conviction, as provided by law, without regard to whether he has applied for probation or suspended sentence.

COMMENT

This proposal is essentially K. S. A. 62-2239, with some modifications. Subsection (3) codifies the present case law.

Section to be repealed. K. S. A. 62-2239.

21-1604. *Pre-Sentence Investigation and Report.* No defendant convicted of a felony shall be sentenced and committed to an institution until a written report of investigation by a probation officer is presented to and considered by the court. The court may, in its discretion, order a pre-sentence investigation for a defendant convicted of a misdemeanor.

21-1605. *Content of Investigation; Cooperation of Police Agencies.* Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish to the probation officer on request the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court.

21-1606. *Availability of Report to Defendants and Others.* The judge shall make the pre-sentence report, any report that may be received from the diagnostic center, and other diagnostic reports, available to the attorney for the state and to the counsel for the defendant when requested by them, or either of them. Such reports shall be part of the record but shall be sealed and opened only on order of the court.

If a defendant is committed to a state institution such reports shall be sent to the director of penal institutions.

COMMENT

The present law relating to pre-sentencing investigations is found in K. S. A. 62-2238. The proposals differ from present law in that (1) they require a pre-sentence investigation in those felony cases where the defendant is actually committed to an institution. They also provide standards for disclosure of information not found in the present law.

Section to be repealed. K. S. A. 62-2238.

21-1607. *Criteria for Fixing Minimum Terms.* (1) In sentencing a person to prison, the court, having regard to the nature and circumstances of the crime and the history, character and condition of the defendant, shall fix the lowest minimum term which, in the opinion of said court, is consistent with the public safety, the needs of the defendant, and the seriousness of the defendant's crime.

(2) The following factors, while not controlling, shall be considered by the court in fixing the minimum term of imprisonment:

(*a*) The defendant's history of prior criminal activity;

(*b*) The extent of the harm caused by the defendant's criminal conduct;

(*c*) Whether the defendant intended that his criminal conduct would cause or threaten serious harm;

(*d*) The degree of the defendant's provocation;

(*e*) Whether there were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense;

(*f*) Whether the victim of the defendant's criminal conduct induced or facilitated its commission;

(*g*) Whether the defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained.

21-1608. *Criteria for Imposing Fines.* (1) When the law authorizes any other disposition, a fine shall not be imposed as the sole and exclusive punishment unless having regard to the nature and circumstances of the crime and to the history and character of the defendant, the court is of the opinion that the fine alone suffices for protection of the public.

(2) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment or probation unless:

(*a*) The defendant has derived a pecuniary gain from the crime; or

(*b*) The court is of the opinion that a fine is adapted to deterrence of the crime involved or to the correction of the offender.

(3) In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

21-1609. *Multiple Sentences.* (1) When separate sentences of imprisonment for different crimes are imposed on a defendant at

the same time, including sentences for crimes for which suspended sentences or probation have been revoked, such sentences shall run concurrently or consecutively as the court determines. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently.

(2) When a defendant who has previously been sentenced to imprisonment is subsequently sentenced to another term for a crime committed prior to the former sentence, other than a crime committed while in custody:

(*a*) The sentences imposed shall conform to Subsection (1) of this Section; and

(*b*) Whether the court determines that the terms shall run concurrently or consecutively, the defendant shall be credited with time served in imprisonment on the prior sentence in determining the aggregate length of the term or terms remaining to be served; and

(*c*) When a new sentence is imposed on a prisoner who is on parole, the balance of the parole term on the former sentence shall be deemed to run during the period of the new imprisonment.

(3) Any prisoner who commits a crime while at large on parole or conditional release and is convicted and sentenced thereafter, shall serve such sentence concurrently with the term under which he was released, unless otherwise ordered by the court in sentencing for the new crime.

(4) Except as otherwise provided in this Section, multiple terms of imprisonment imposed at different times shall run concurrently or consecutively as the court determines when the second or subsequent sentence is imposed.

(5) In calculating the time to be served to satisfy concurrent and consecutive terms of imprisonment, the following rules shall apply:

(*a*) When indeterminate terms run concurrently, the shorter minimum terms merge in and are satisfied by serving the longest minimum term and the shorter maximum terms merge in and are satisfied by discharge of the longest maximum term.

(*b*) When indeterminate terms run consecutively, the minimum terms are added to arrive at an aggregate minimum to be served equal to the sum of all minimum terms and the maximum terms are added to arrive at an aggregate maximum equal to the sum of all maximum terms.

(*c*) When a definite and an indefinite term run consecutively, the period of the definite term is added to both the minimum and maximum of the indeterminate term and both sentences are satisfied by serving the indeterminate term.

(6) When a defendant is convicted of a crime committed while under suspension of sentence or on probation:

(*a*) If the conviction is in the court which imposed suspension of sentence or probation in the earlier case, the court shall, at the time of sentencing determine whether the suspension of sentence or probation shall be revoked. In case of revocation, the provisions of subsection (1) of this section shall apply.

(*b*) If the conviction is in another court, the court in which the conviction is had shall transmit a copy of the information, indictment, or complaint and the judgment thereon to the court which imposed the suspension of sentence or probation and such court shall within thirty days thereafter determine whether such suspension of sentence or probation shall be revoked. If the suspension of sentence or probation is revoked the revoking court shall determine whether the sentence of imprisonment shall run concurrently with or consecutively to the term of imprisonment adjudged on the subsequent conviction.

COMMENT

Multiple sentences produce many problems for prison administrators and are frequently involved in past conviction procedures. Hence, it is deemed appropriate to spell out with particularity the manner in which such sections are to be executed.

Subsection (1) reflects a policy of the present law, (K. S. A. 62-1512).

Subsection (2) applies only to the cases of persons already sentenced to imprisonment who are convicted and sentenced for crimes committed prior to the present imprisonment.

Subsection (3) restates the present law (K. S. A. 62-2251).

Subsection (4) applies the policy of subsection (1) to multiple sentences imposed at different times.

Subsection (5) (*a*) follows the present law. Subsections (5) (*b*) and (*c*) change the present law which requires that in the case of consecutive sentences, all terms prior to the last be fully served.

Subsection (6) applies to fresh crimes by probationers and provides a procedure for establishing the relationship of the sentences imposed for the prior and current conviction.

Sections to be repealed. K. S. A. 62-1512, 62-2251.

21-1610. *Custody of Persons Sentenced to Imprisonment.* When a convicted person is sentenced to imprisonment, the judgment of the court shall order that such person be committed, for such term

or terms as the court may direct, to the custody of the state director of penal institutions, who shall designate the place where such sentence of imprisonment shall be served.

The state director of penal institutions may designate as the place of imprisonment any available and suitable institution or facility maintained by the state of Kansas or a political subdivision thereof.

Any person serving a sentence of imprisonment may be transferred from one institution to another by order of the state director of penal institutions.

COMMENT

Commitment to the director of penal institutions is intended to provide greater flexibility in the assignment of prisoners to appropriate institutions.

21-1611. *Conditions of Probation and Suspended Sentence.* The state board of probation and paroles may adopt general rules or regulations concerning the conditions of probate or suspension of sentence. The conditions shall apply in the absence of any inconsistent conditions imposed by the court. Nothing herein contained shall limit the authority of the court to impose or modify any general or specific conditions of probation or suspension of sentence.

The probation officer may recommend and by order duly entered the court may impose and at any time may modify any conditions of probation or suspension of sentence. Due notice shall be given to the probation officer before any such conditions are modified and he shall be given an opportunity to be heard thereon. The court shall cause a copy of any such order to be delivered to the probation officer and the probationer.

The court may include among the conditions of probation the following and any other that it deems proper:

The defendant shall . . .

(*a*) Avoid injurious or vicious habits;

(*b*) Avoid persons or places of disreputable or harmful character;

(*c*) Report to the probation officer as directed;

(*d*) Permit the probation officer to visit him at his home or elsewhere;

(*e*) Work faithfully at suitable employment insofar as possible;

(*f*) Remain within a specified area;

(*g*) Pay a fine or costs, applicable to the offense, in one or several sums as directed by the court;

(*h*) Make reparation or restitution to the aggrieved party for the

damage or loss caused by his offense in an amount to be determined by the court;

(*i*) Support his dependents;

(*j*) Obey the laws of the United States, the state of Kansas or any other jurisdiction to whose laws he may be subject.

COMMENT

See K. S. A. 62-2241.

Section to be repealed. K. S. A. 62-2241.

21-1612. *Period of Probation or Suspension of Sentence.* The period of suspension of sentence or probation fixed by the court shall not exceed five years in felony cases or two years in misdemeanor cases, subject to renewal and extension for additional fixed periods not exceeding five years in felony cases, nor two years in misdemeanor cases, but in no event shall the total period of probation or suspension of sentence for a felony exceed the maximum term provided by law for the crime, except that where the defendant is convicted of non-support of a child, the period may be continued as long as the responsibility for support continues. Probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term of probation or suspension of sentence, an order to this effect shall be entered by the court.

The district court having jurisdiction of the offender may parole from sentences to confinement in the county jail. The period of such parole shall be fixed by the court and shall not exceed two years and shall be terminated in the manner provided for termination of suspended sentence and probation.

COMMENT

The proposal follows the Committee recommendation.

Section to be repealed. K. S. A. 62-2243.

21-1613. *Parole from Sentence of Inferior Court.* Any person confined in jail under judgment of conviction before a county court, justice of the peace, city court, magistrate court, court of common pleas, or any other inferior court except police court, may be paroled, his parole terminated and absolute discharge granted by the district court or a judge of the district court having jurisdiction of appeals from such inferior court in criminal cases, in the

same manner and subject to the same restrictions as if such person had been convicted in and placed on probation by said district court.

COMMENT

Same as K. S. A. 62-2240.

Section to be repealed. K. S. A. 62-2440.

21-1614. *Transfer of Jurisdiction of Probationer.* Whenever a defendant who has been paroled by the district court or is on probation or under suspended sentence is permitted to go from one judicial district in which he is being supervised to another judicial district, jurisdiction over him may be transferred from one judicial district to another with the concurrence of the receiving court. Thereupon the court for the district to which jurisdiction is transferred shall have all power with respect to the defendant that was previously possessed by the court for the district from which the transfer is made, except that the period of parole, probation or suspension of sentence shall not be changed without the consent of the sentencing court.

COMMENT

Same as K. S. A. 62-2242.

Section to be repealed. K. S. A. 62-2242.

21-1615. *Annulment of Conviction.* Every defendant who has fulfilled the conditions of his probation or suspension of sentence for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time thereafter be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or if he has been convicted after a plea of not guilty, the court may set aside the verdict of guilty; and in either case, the court shall thereupon dismiss the complaint, information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the crime of which he has been convicted, and he shall in all respects be treated as not having been convicted, except that upon conviction of any subsequent crime such conviction may be considered as a prior conviction in determining the sentence to be imposed. The defendant shall be informed of this privilege when he is placed on probation or suspended sentence.

In any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose conviction of crime has been annulled under this statute may state that he has never been convicted of such crime.

COMMENT

This proposal is new. Similar provisions are found in California, Washington and other states.

21-1616. *Deduction of Time Spent in Jail.* In any criminal action in which the defendant is convicted upon a plea of guilty or trial by court or jury, the judge, if he sentences the defendant to jail, or to an institution, may direct that for the purpose of computing defendant's sentence and his parole eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the journal entry of conviction, such date to be not more than ninety days prior to the date of conviction, and not exceeding the time actually spent in jail, as an allowance for the time which the defendant has spent in jail pending the disposition of the defendant's case. In recording the commencing date of such sentence, the date as specifically set forth by the court in the journal entry of conviction shall be used as the date of sentence and all good time allowances as are authorized by the board of probation and parole are to be allowed on such sentence from such date as though the defendant were actually incarcerated in any of the institutions of the state penal system. Such jail time credit is not to be considered to reduce the minimum or maximum terms of confinement as are authorized by law for the offense of which the defendant has been convicted.

Section to be repealed. K. S. A. 1967 Supp. 62-1533.

21-1617. *Rights of Imprisoned Persons; Restoration.* (1) A person who has been convicted in any state or federal court of a crime punishable by death or by imprisonment for a term of one year or longer and is imprisoned pursuant to such conviction shall, by reason of such conviction and imprisonment, be ineligible to hold any public office under the laws of the state of Kansas or to be employed in any position of honor or trust by the state of Kansas or any political subdivision thereof, or to register as a voter or to vote in any election held under the laws of the state of Kansas or to serve as a juror in any civil or criminal case.

(2) The disabilities imposed by this section shall attach when the convicted person is delivered to the custody of the state director of penal institutions for imprisonment and shall continue until such person is finally discharged from parole or conditional release or is discharged from custody by reason of the expiration of the term of imprisonment to which he was sentenced, except that when a sentence of imprisonment is modified by the court within 120 days from the date thereof and the convicted person is admitted to probation, such person shall not thereafter be subject to the disabilities imposed by this section.

(3) The disabilities imposed upon a convicted person by this section shall be in addition to such other penalties as may be provided by law.

COMMENT

Under existing Kansas statutes a prisoner serving sentence for a term of years loses "all civil rights—during the term thereof, and forfeits all public offices and trusts, authority and power." A person sentenced to life term "shall thereafter be deemed civilly dead." (K. S. A. 21-118). Convicts serving a term of years retain the right and power to make contracts concerning their property. (K. S. A. 211-134). On the other hand, confinement in the penitentiary either for a term of years or for life suspends the convicts' right to sue (*Hammet v. San Ore Construction Co.*, 195 Kan. 122). In other areas, the status of the inmates' rights is less clear.

Under the proposal, the convicted person who is confined to prison loses his right to hold public office or employment, his right to vote and his right to be a juror. Otherwise, his civil rights will remain intact, excepting of course, those rights that must be limited in order to make his imprisonment effective. No distinction is made between life termers and other prisoners, since many persons sentenced to life imprisonment are eventually released.

Sections to be repealed. K. S. A. 21-118, 21-119, 21-120, 21-121, 21-122, 21-123, 21-134.

Cross Reference Table

The following table indicates the suggested disposition made in the proposed criminal code of each of the sections of K. S. A. Chapter 21 and other sections superseded by the proposed code. A section listed as superseded by a section of the proposed criminal code does not necessarily mean that changes have not been made. "Repeal" indicates that there is no section in the proposed code dealing with the subject matter of the repealed section. However, in some cases the substance of the repealed section may be found elsewhere in the statutes or in administrative regulations. "Transfer" means that the section referred to is recommended for transfer to another chapter of Kansas Statutes Annotated and, unless otherwise indicated, no change in content is proposed.

K. S. A. section	Superseded by section indicated or other disposition
21–101	21–301
21–102	Repeal
21–103	21–701
21–104	21–108
21–105	21–205
21–106	21–812
21–107a	Repeal
21–109	Repeal
21–110	Repeal
21–111	Repeal
21–112	21–1502 (1) (*d*)
21–113	21–1502 (2)
21–114	21–108 (1)
21–115	21–108
21–116	21–108
21–118	21–1617
21–119	Repeal
21–120	Repeal
21–121	21–1617
21–122	21–1617
21–123	21–1617
21–124	21–103
21–125	Transfer to procedure
21–126	Transfer to procedure
21–127	Repeal
21–128	21–105
21–129	21–110 (16)
21–130	21–110 (21)
21–131	21–110 (17)
21–132	21–110 (15)
21–133	21–110 (9)
21–134	Repeal

K. S. A. section	Superseded by section indicated or other disposition
21–201	21–801
21–202	Repeal
21–203	Repeal
21–204	Repeal
21–301	21–803
21–302	21–803
21–303	21–803
21–304	21–804
21–305	Repeal
21–306	Repeal
21–307	Repeal
21–308	Repeal
21–401	21–401
21–402	21–402
21–403	21–1501
21–404, 21–405	21–212, 21–213, 21–216, 21–217
21–406	Repeal
21–407	21–403
21–408	21–406
21–409	21–407
21–410	21–404
21–411	21–404
21–412	21–404
21–413	21–404
21–414	21–404
21–415	21–404
21–418	21–404
21–419	21–404
21–420	21–404
21–421	21–1501
21–422	21–1501
21–423	21–1501
21–424	21–502, 21–503
21–425	21–502
21–426	Repeal
21–427	Repeal
21–428	Repeal
21–429	Repeal
21–430	21–414
21–431	21–410
21–432	21–416
21–433	21–416
21–434	21–410
21–435	21–414
21–436	21–408, 21–412
21–437	21–407
21–441	21–604
21–442	21–605, 21–606
21–443	Repeal
21–444	21–605
21–445	21–605
21–446	21–605

K. S. A. section	Superseded by section indicated or other disposition
21–447	Repeal
21–449	21–420
21–450	21–419
21–451	21–421, 21–422
21–452	21–302
21–513, 21–514, 21–515, 21–516, 21–517, 21–518, 21–519, 21–520, 21–521, 21–522	21–713, 21–714
21–523	21–1501
21–524	Repeal
21–525	21–713, 21–714
21–526	21–1501
21–527, 21–528, 21–529	21–425, 21–426, 21–701
21–530	21–1501
21–531	Repeal; see 21–425, 21–426
21–532	21–302, 21–701
21–533	21–701
21–534	21–1501
21–535	21–701
21–535a	21–701
21–535b	21–423 (3)
21–536	21–701
21–537	21–425, 21–701
21–538	Repeal
21–539	21–701
21–540	21–701
21–541	21–701
21–542	21–701
21–543	21–701
21–544	21–704
21–545 (1967 Supp.)	21–701
21–546	21–701
21–547	21–701
21–548	21–701
21–549	21–701
21–550	Repeal
21–551	21–701
21–552	21–1501
21–553	Repeal
21–554	21–706
21–555	21–1501, 21–1502
21–555a	21–707
21–555b	21–706 (2)
21–555c	21–706 (3)
21–555d	21–708
21–557	Repeal

K. S. A. section	Superseded by section indicated or other disposition
21–558	Repeal
21–559	Repeal
21–560	21–701
21–561	21–701
21–562	Repeal
21–563	21–717
21–564	21–723
21–565	21–723
21–566	21–717
21–567	21–717
21–568	21–717
21–569	Repeal
21–570	21–717
21–571	21–717
21–572	21–717
21–573	21–721
21–574	21–721
21–575	Repeal
21–576	21–717
21–577	21–1502
21–578 (1967 Supp.)	21–719
21–578a	Transfer to Ch. 68
21–578b	Repeal
21–579	21–1502
21–579a	21–720
21–579b	21–1502
21–580	21–703
21–581	21–716
21–582	21–716
21–583	21–716
21–584	21–716
21–585	21–205, 21–302
21–586	21–302
21–588	Repeal
21–589	21–725 (2)
21–590 (1967 Supp.)	21–725
21–591	21–725 (3)
21–592	21–719
21–593	Repeal
21–594 (1967 Supp.)	21–701
21–595 (1967 Supp.)	Repeal
21–601	21–709
21–602	21–709
21–603	21–709
21–604	21–709
21–605	21–709
21–606	21–709
21–607	21–709
21–608	21–709
21–609	21–709
21–610	21–709
21–611	21–709
21–612	21–709
21–613	21–709

K. S. A. section	Superseded by section indicated or other disposition
21–614	21–709
21–615	21–709
21–616	21–709
21–617	21–709
21–618	21–709
21–619	21–709
21–620	21–709
21–621	21–709
21–622	21–709
21–623	Repeal
21–624	21–710
21–625	21–709
21–626	21–110 (26)
21–627	21–709
21–628	21–709
21–629	21–709
21–630	21–709
21–631	21–1501
21–632	21–712
21–633	21–712
21–634	21–825
21–635	21–710
21–636	21–711
21–637	21–709
21–638	21–1502
21–639	Repeal (See K. S. A. 58–2309)
21–640	Repeal
21–641	Repeal
21–642	Repeal
21–651 (1967 Supp.)	Repeal (See K. S. A. 84–9–105)
21–652 (1967 Supp.)	21–729
21–653 (1967 Supp.)	21–730
21–654 (1967 Supp.)	Transfer to procedure
21–655 (1967 Supp.)	21–805
21–656 (1967 Supp.)	21–731
21–657 (1967 Supp.)	21–731
21–658 (1967 Supp.)	21–731
21–659 (1967 Supp.)	Repeal
21–660 (1967 Supp.)	21–732
21–661 (1967 Supp.)	21–731
21–701	21–805
21–702	21–1501
21–703	21–805
21–704	Repeal
21–705	21–301, 21–805
21–706	Transfer to procedure
21–707	Repeal
21–708	21–806, 21–901
21–709	21–901
21–710	21–901
21–711	21–817
21–712	21–815
21–713	21–902

K. S. A. section	Superseded by section indicated or other disposition
21–714	21–807
21–715	21–807
21–716	Repeal
21–717	21–808
21–718	21–808
21–719 21–719a (1967 Supp.) 21–719b (1967 Supp.)	21–409, 21–411, 21–413, 21–415
21–720 21–721 21–722 21–723 21–724 21–725 21–726 21–727 21–728 21–729	21–809, 21–810, 21–811
21–730 21–732 21–733 21–734 21–735 21–735a 21–736 21–737 21–738 21–739 21–740	21–809, 21–810, 21–811
21–741	21–902
21–742	21–902
21–743	21–902
21–744	Repeal
21–745	Repeal
21–746 (1967 Supp.)	21–816
21–801	21–901
21–802	21–901
21–803	21–901
21–804	Transfer to Ch. 25
21–805	Transfer to Ch. 25
21–806	Repeal
21–807	21–902
21–808	21–902
21–809	21–901, 21–902
21–810	21–902
21–811	21–902
21–812	21–902
21–813	21–902
21–814	Repeal
21–815	Transfer to Ch. 25
21–816	Transfer to Ch. 25
21–817	Transfer to Ch. 25
21–818	Transfer to Ch. 25
21–819	Transfer to Ch. 25

K. S. A. section	Superseded by section indicated or other disposition
21–820	Transfer to Ch. 25
21–821	Transfer to Ch. 25
21–822	Transfer to Ch. 25
21–823	Transfer to Ch. 25
21–824	21–901
21–825	21–901
21–826	21–907
21–827	21–908
21–901	21–601
21–902	21–601
21–903	21–601
21–904	Transfer to procedure
21–905	21–601
21–906	21–602, 21–603
21–907	21–505, 21–506
21–908	21–507, 21–508
21–909	21–504
21–910	21–819
21–911	21–1112
21–912	21–1112
21–913	21–1112
21–914	Repeal
21–914a	Transfer to procedure
21–915	21–1304
21–916	21–1305
21–917	21–1305
21–918	Transfer to procedure
21–919	Transfer to procedure
21–920	Transfer to procedure
21–921	Transfer to procedure
21–922	Transfer to Ch. 12
21–923	21–1304
21–924	21–1305
21–925	Transfer to procedure
21–926	Transfer to procedure
21–927	Transfer to procedure
21–928	Transfer to procedure
21–929	Transfer to procedure
21–930	21–701
21–931	Repeal
21–932	Repeal
21–933	21–513
21–934	21–1305
21–935	Repeal
21–936	Repeal
21–937	21–513
21–938	21–513
21–939	21–513 (*b*)
21–940	Repeal
21–941	Transfer to procedure
21–942	21–512
21–943	Transfer to procedure
21–945	Transfer to procedure
21–948	21–1303
21–949	21–1101

K. S. A. section	Superseded by section indicated or other disposition
21–950	21–1101
21–951	Repeal
21–954	Repeal
21–957	Repeal (See K. S. A. 65–1639)
21–958	Repeal
21–959	21–1002
21–960	21–1002
21–961	Repeal
21–962	Repeal
21–963	Repeal
21–970 (1967 Supp.)	21–1113
21–971 (1967 Supp.)	21–1113
21–1001	21–1102
21–1002	21–1103
21–1003	21–1104
21–1004	Repeal
21–1005	Repeal
21–1006	Transfer to procedure
21–1007 (1967 Supp.)	Transfer to Ch. 19 Art. 8
21–1008	Transfer to Ch. 19, Art. 8
21–1009	Transfer to Ch. 19, Art. 8
21–1102	21–1301
21–1102a	21–1301
21–1102b	21–1404
21–1102c	Transfer to procedure
21–1105	21–1301
21–1106	21–1502
21–1107	Repeal
21–1108	21–805
21–1109	Repeal
21–1110	Repeal
21–1111	Repeal
21–1112	21–1403
21–1113	Repeal
21–1114	Repeal
21–1115	21–1301
21–1116	Repeal
21–1117	Repeal
21–1118	Repeal
21–1119	21–1404
21–1120	21–1502
21–1201	21–1310
21–1202	21–1310
21–1203	Repeal
21–1204	Repeal (See K. S. A. 47–624)
21–1205	Repeal
21–1206	Repeal
21–1207	Repeal (See K. S. A. 47–624)
21–1208	Repeal (See K. S. A. 47–624)
21–1211	21–1106
21–1212	21–1106
21–1301	21–1111
21–1302	Repeal

K. S. A. section	Superseded by section indicated or other disposition
21–1303	Repeal
21–1304	Repeal
21–1305	Repeal
21–1306	Repeal
21–1307	21–1309
21–1308	21–1309
21–1401 (1967 Supp.)	21–717, 21–718
21–1402 (1967 Supp.)	Repeal
21–1403	Repeal
21–1404	Repeal
21–1405	Repeal
21–1406	Repeal
21–1407	21–718
21–1408	21–718
21–1409	21–1111
21–1410	21–1111
21–1411	21–1502
21–1501	21–1304
21–1502	21–1304
21–1503	Repeal
21–1504	21–1304
21–1505	21–1305
21–1506	21–1302
21–1507	21–1304
21–1508	21–1304
21–1509	Transfer to procedure
21–1510	21–1304
21–1601	Repeal (See K. S. A. 59–207)
21–1602	Transfer to Ch. 59, Art. 2
21–1603	Repeal
21–1604	21–906
21–1605	Repeal
21–1607	21–902
21–1608	Repeal (See K. S. A. 1967 Pocket Part Ch. 75, Art. 43)
21–1609	Repeal
21–1610	Repeal
21–1611	Repeal
21–1612	Repeal
21–1613	Repeal
21–1614	Repeal
21–1615	Repeal
21–1616	Repeal
21–1617	21–824
21–1618	Repeal
21–1701 (1967 Supp.) to 21–1705	Transfer to Ch. 75, Art. 4
21–1801 to 21–1803	Transfer to Ch. 74, Art. 29
21–1901	Repeal
21–1902	Repeal
21–1903	Repeal

K. S. A. section	Superseded by section indicated or other disposition
21–1906	Repeal
21–1907	Repeal
21–1908	21–703
21–1908a	Repeal
21–1908b	Repeal
21–1909	Repeal
21–1910	Repeal
21–1911	Repeal
21–2001	21–611
21–2002	21–611
21–2003	Repeal
21–2004	21–611
21–2005	21–422
21–2005 (1967 Supp.)	21–826
21–2006 (1967 Supp.)	21–826
21–2131a	Transfer to procedure
21–2131b	Transfer to procedure
21–2301	21–701, 21–1403
21–2302	21–701, 21–1403
21–2303	21–1502
21–2304	21–106
21–2305	21–717
21–2306	21–1502
21–2307	Repeal
21–2308	21–717
21–2309	21–1502
21–2310	21–717
21–2401	21–1004
21–2402	21–1502
21–2403	21–1004
21–2404	21–1004
21–2405	21–1004
21–2406	Repeal
21–2407	Repeal
21–2408	Repeal
21–2409	21–1108
21–2410	Repeal
21–2411	21–1201, 21–1206
21–2412	21–427
21–2413	21–823
21–2414	Repeal
21–2415	Repeal
21–2416	Repeal
21–2417	Repeal
21–2418	Repeal
21–2419	Repeal
21–2420	Repeal
21–2421	Repeal
21–2422	21–701
21–2423	21–717
21–2424	21–1003
21–2425	Repeal
21–2426	Repeal

K. S. A. section	Superseded by section indicated or other disposition
21–2427	Repeal
21–2428	Repeal
21–2429	21–1201
21–2430	21–1502
21–2431	21–1111
21–2435	21–718
21–2436	21–718
21–2437	21–727
21–2438	Repeal
21–2439	Repeal
21–2440	Repeal
21–2441	Repeal
21–2442	Repeal
21–2443	Repeal
21–2444	21–1207
21–2445	21–1209
21–2446	21–1208
21–2447	Repeal
21–2448	21–1210
21–2449	21–1502
21–2450	Repeal
21–2451	21–1006
21–2452	21–1005
21–2453	Repeal
21–2454	21–727
21–2455	21–703
21–2456	21–726
21–2457	21–726
21–2458	Repeal
21–2459	Repeal
21–2460	21–1401
21–2461	21–1003
21–2462	Repeal
21–2463	21–1502
21–2464	21–1402
21–2464a	21–820
21–2465	21–1211
21–2466	21–1211
21–2467	21–1211
21–2468	21–1211
21–2469	21–1406
21–2470	21–1407
21–2471 (1967 Supp.)	21–1007
21–2472 (1967 Supp.)	21–1007
21–2473 (1967 Supp.)	21–1502
21–2474 (1967 Supp.)	21–733
21–2475 (1967 Supp.)	21–733
21–2476 (1967 Supp.)	21–1502
21–2477 (1967 Supp.)	21–733
21–2501 to 21–2506	Transfer to Ch. 75, Art. 7
21–2601	21–1201
21–2602	21–1501

K. S. A. section	Superseded by section indicated or other disposition
21–2606	Transfer to procedure
21–2607	Repeal
21–2608	Repeal
21–2609	Repeal
21–2610	Repeal
21–2611	21–1204
21–2612	21–1502
21–2613	21–1206
21–2614	21–1206
21–2615	21–1201
21–2616	Repeal
21–2617	21–1502
21–2801 to 21–2805	Retain; possibly transfer
8–529 (*a*) & (*b*)	21–405
32–139	21–718, 21–724
32–142	21–718
38–701	21–1203
38–702	Repeal
38–703	21–1007
38–704	21–609
38–705	21–513
38–710	21–1212
38–711	21–510, 21–511
38–712	21–607
38–713	21–608
38–714	21–609
38–715	21–610
41–802	21–1109
62–101	21–105
62–102	21–105
62–103	21–105
62–104	21–105
62–105	21–105
62–501	21–106
62–502	21–106
62–503	21–106
62–504	21–106
62–505	21–106
62–1022	21–107
62–1023	21–107
62–1024	21–108
62–1204	21–216
62–1439	21–109
62–1441	21–108
62–1442	21–108
62–1443	21–108
62–1444	21–108

K. S. A. section	Superseded by section indicated or other disposition
62–1512	21–1609
62–1533 (1967 Supp.)	21–1616
62–1832	21–827
62–2226	21–1601
62–2227	21–1602
62–2238	21–1604, 21–1605, 21–1606
62–2239	21–1603
62–2240	21–1613
62–2241	21–1611
62–2242	21–1614
62–2243	21–1612
62–2251	21–1609
68–423	21–722
68–545	21–719
68–546	21–719

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