### Article 31

**Preliminary Provisions**

Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3101</td>
<td>Title.</td>
<td>21-31-101</td>
</tr>
<tr>
<td>21-3105</td>
<td>Crimes defined; classes of crimes.</td>
<td>21-31-102</td>
</tr>
<tr>
<td>21-3102</td>
<td>Scope and application.</td>
<td>21-31-103</td>
</tr>
<tr>
<td>21-3111; 21-3112</td>
<td>Invalidity of part of Kansas Criminal Code; severability.</td>
<td>21-31-104</td>
</tr>
<tr>
<td>21-3103</td>
<td>Civil remedies preserved.</td>
<td>21-31-105</td>
</tr>
<tr>
<td>21-3104</td>
<td>Jurisdictional Applicability.</td>
<td>21-31-106</td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3106</td>
<td>Time limitations.</td>
<td>21-31-201</td>
</tr>
</tbody>
</table>

Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3109</td>
<td>Burden of proof; presumption of innocence.</td>
<td>21-31-301</td>
</tr>
</tbody>
</table>

Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3107</td>
<td>Multiple prosecutions for same act; lesser included crimes.</td>
<td>21-31-401</td>
</tr>
<tr>
<td>21-3108</td>
<td>Effect of former prosecution.</td>
<td>21-31-402</td>
</tr>
</tbody>
</table>

Section 5

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3110</td>
<td>Definitions.</td>
<td>21-31-501</td>
</tr>
</tbody>
</table>
21-31-101

21-31-101. Title.
This code is called and may be cited as the Kansas Criminal Code.

Comment
This section incorporates K.S.A. 21-3101. No change is recommended.

21-31-102

21-31-102. 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 or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

(a) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(b) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118 and amendments thereto.

(c) A cigarette or tobacco infraction is a violation of subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto.

(d) All other crimes are misdemeanors.

Comment
This section incorporates K.S.A. 21-3105. No change is recommended.

21-31-103

21-31-103. Scope and application.

(a) No conduct constitutes a crime against the state of Kansas 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.
(b) 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.

(c) 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.

(d) 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

This section incorporates K.S.A. 21-3102. No change is recommended.

21-31-104

21-31-104. Invalidity of part of Kansas Criminal Code; severability.

The provisions of the Kansas Criminal Code are severable. If any provision of this code or any part thereof and any amendment thereto is held invalid or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application; it shall be conclusively presumed that the legislature would have enacted the remainder of the code without such invalid or unconstitutional provision.

Comment

This section merges K.S.A. 21-3111 and 3112. The new language is adopted from K.S.A. 21-4726. Throughout the code several severability sections are eliminated. The Commission recommends that when the legislature creates new criminal statutes that are part of this code it not add new severability provisions as they are unnecessarily duplicative of this general statute.

21-31-105

21-31-105. 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
This section incorporates K.S.A. 21-3103. No change is recommended.

**21-31-106. Jurisdictional Applicability.**

(a) A person is subject to prosecution and punishment under the law of this state if:

(1) The person commits a crime wholly or partly within this state;

(2) being outside the state, the person counsels, aids, abets, or conspires with another to commit a crime within this state; or

(3) being outside the state, the person commits an act which constitutes an attempt to commit a crime within this state.

(b) A crime is committed partly within this state if:

(1) an act which is a constituent and material element of the offense;

(2) an act which is a substantial and integral part of an overall continuing criminal plan; or

(3) the proximate result of such act, occurs within the state.

(c) If the body of a homicide victim is found within the state, a person who is charged with committing the homicide is subject to prosecution and punishment under the laws of this state for commission of the homicide.

(d) 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.

(e) It is not a defense that the person’s conduct is also a crime under the laws of another state or of the United States or of another country.

(f) 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.

(g) Jurisdiction is question of law to be determined by the court by the preponderance of the evidence.

Comment
This section incorporates K.S.A. 21-3104. The title of the statute is changed from “Territorial Applicability” to “Jurisdictional Applicability.”

Subsection (b)(2) incorporates the principle of *State v. Grissom*, 251 Kan. 851 (1992). That case expanded the jurisdiction of the courts to criminal acts committed in Kansas were a substantial part of an ongoing criminal plan. In Grissom, the court held that Kansas had jurisdiction over a murder that occurred in Missouri because the defendant abducted the victim in Kansas.

Subsection (g) clarifies that jurisdiction is not an affirmative defense, but rather a question for the court. It also establishes the preponderance of the evidence as the proper evidentiary standard.

### 21-31-201

**21-31-201. Time limitations for commencement of prosecutions.**

(a) A prosecution for murder, terrorism or illegal use of weapons of mass destruction may be commenced at any time.

(b) Except as provided in subsection (e), a prosecution for any crime must be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(c) (1) Except as provided in subsection (e), a prosecution for a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, must be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.

(2) For purposes of this section, "DNA" means deoxyribonucleic acid.

(d) Except as provided by subsection (e), a prosecution for any crime, as defined in K.S.A. 21-3105, and amendments thereto, not governed by subsections (a), (b) or (c) must be commenced within five years after it is committed.

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

(1) The accused is absent from the state;

(2) the accused is concealed within the state so that process cannot be served upon the accused;

(3) the fact of the crime is concealed;
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;

an administrative agency is restrained by court order from investigating or
otherwise proceeding on a matter before it as to any criminal conduct
defined as a violation of any of the provisions of article 41 of chapter 25 and
article 2 of chapter 46 of the Kansas Statutes Annotated which may be
discovered as a result thereof regardless of who obtains the order of
restraint; or

whether or not the fact of the crime is concealed by the active act or conduct
of the accused, there is substantially competent evidence to believe two or
more of the following factors are present:

(A) The victim was a child under 15 years of age at the time of the crime;

(B) the victim was of such age or intelligence that the victim was unable
to determine that the acts constituted a crime;

(C) the victim was prevented by a parent or other legal authority from
making known to law enforcement authorities the fact of the crime
whether or not the parent or other legal authority is the accused;

and

(D) there is substantially competent expert testimony indicating the
victim psychologically repressed such witness' memory of the fact of
the crime, and in the expert's professional opinion the recall of such
memory is accurate and free of undue manipulation, and substantial
corroborating evidence can be produced in support of the allegations
contained in the complaint or information but in no event may a
prosecution be commenced as provided in this section later than the
date the victim turns 28 years of age. Corroborating evidence may
include, but is not limited to, evidence the defendant committed
similar acts against other persons or evidence of contemporaneous
physical manifestations of the crime. "Parent or other legal
authority" shall include but not be limited to natural and
stepparents, grandparents, aunts, uncles or siblings.

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.

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. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

Comment

This section incorporates K.S.A. 21-3106. No change is recommended.

21-31-301

21-31-301. Burden of proof; presumption of innocence.

(a) In all criminal proceedings the state has the burden to prove beyond a reasonable doubt that a defendant is guilty of a crime. This standard requires the prosecution to prove beyond a reasonable doubt each required element of a crime.

(b) A defendant is presumed to be innocent until proven guilty. When there is a reasonable doubt as to which of two or more degrees of a crime the defendant is guilty, the defendant must be convicted of the lowest degree only. When there is a reasonable doubt as to a defendant’s guilt, the defendant must be found not guilty.

(c) A defendant is entitled to an instruction on every affirmative defense that is supported by competent evidence. Competent evidence is that which could allow a rational fact finder to reasonably conclude that the defense applies. Once the defendant satisfies the burden of producing such evidence, the state has the burden of disproving the defense beyond a reasonable doubt.

(d) Issues raised under K.S.A. 21-115, K.S.A. 21-120, and K.S.A. 21-141 are not affirmative defenses under subsection (c).

Comment

This section incorporates K.S.A. 21-3109. Subsection (a) codifies Kansas case law regarding the burden of proof in criminal cases. The provision is consistent with PIK Crim. 2d 52.02.

21-31-401

21-31-401. Multiple prosecutions for same act; lesser included crimes.

(a) 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.

(b) Upon prosecution for a crime, the defendant may be convicted of either the crime charged or a lesser included crime, but not both. A lesser included crime is:
(1) a lesser degree of the same crime;
(2) a crime where all elements of the lesser crime are identical to some of the elements of the crime charged;
(3) an attempt to commit the crime charged; or
(4) an attempt to commit a crime defined under subsection (b)(1) or (b)(2).

Whenever charges are filed against a person, accusing the person of a crime which includes another crime of which the person has been convicted, the conviction of the lesser included crime shall not bar prosecution or conviction of the crime charged if the crime charged was not consummated at the time of conviction of the lesser included crime, but the conviction of the lesser included crime shall be annulled upon the filing of such charges. Evidence of the person's plea or any admission or statement made by the person in connection therewith in any of the proceedings which resulted in the person's conviction of the lesser included crime shall not be admissible at the trial of the crime charged. If the person is convicted of the crime charged, or of a lesser included crime, the person so convicted shall receive credit against any prison sentence imposed or fine to be paid for the period of confinement actually served or the amount of any fine actually paid under the sentence imposed for the annulled conviction.

Unless otherwise provided by law, when crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct, the defendant:

(1) may not be convicted of the two crimes based upon the same conduct, and
(2) shall be sentenced according to the terms of the more specific crime.

Comment

This section incorporates K.S.A. 21-3107. Subsection (d) is added to codify existing case law regarding the more specific offense doctrine. See, e.g., State v. Williams, 250 Kan. 730 (1992). This statute is the subject of a policy recommendation. Please see volume two of the Commission's final report.
(a) A prosecution is barred if the defendant was formerly prosecuted for the same crime, based upon the same facts, if such former prosecution:

1. Resulted in either a conviction or an acquittal or in a determination that the evidence was insufficient to warrant a conviction;

2. 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

3. Was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of:
   
   (A) The illness or death of an indispensable party;
   
   (B) the inability of the jury to agree; or
   
   (C) the impossibility of the jury arriving at a verdict. A defendant is in jeopardy when he or she 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 crime is an acquittal of the offense charged.

(b) 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:

1. 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 rely; or was for a crime which involves the same conduct, unless each prosecution requires proof of a fact not required in the other prosecution, or the crime was not consummated when the former trial began;

2. 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
(3) Was terminated without the consent of the defendant after the defendant had been placed in jeopardy, except where such termination shall have occurred by reason of:

(A) The illness or death of an indispensable party;

(B) the inability of the jury to agree; or

(C) the impossibility of the jury arriving at a verdict, 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.

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

(1) 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 trial began; or

(2) 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.

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

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

(2) By a former prosecution procured by the defendant without the knowledge of a prosecuting officer authorized to commence a prosecution for the maximum offense which might have been charged on the facts known to the defendant, and with the purpose of avoiding the sentence which otherwise might be imposed; or

(3) If subsequent proceedings resulted in the invalidation, setting aside, reversal or vacating of the conviction, unless the defendant was adjudged not guilty.

(e) 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 such defendant was originally convicted.

Comment
This section incorporates K.S.A. 21-3108. No change is recommended.


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.

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

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

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

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

(e) "Deception" means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he or she did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons is not deception.

(f) "Deprive permanently" means to:

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

(2) 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

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

(g) "Distribute" means the actual or constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act
of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(h) "DNA" means deoxyribonucleic acid.

(i) "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.

(j) "Expungement" means the sealing of records such that they are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701, et seq. and amendments thereto and except as provided in this act.

(k) "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

(l) "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.

(m) "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.

(n) "Law enforcement officer" means:

(1) Any person who by virtue of such person's 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;

(2) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 21-3409, 21-3411 and 21-3415, and amendments thereto, any employee of the Kansas department of corrections; or

(3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a and amendments thereto.

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

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

(q) "Owner" means a person who has any interest in property.
"Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

"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.

"Possession" means having joint or exclusive control over an item with knowledge of and or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

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

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

"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."

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

1. An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.
2. A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.
3. A judicial officer shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.
4. A hearing officer 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.
5. A law enforcement officer.
6. Any other person exercising the functions of a public officer under color of right.

"Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.
(z) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

(aa) "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 airspace 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.

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

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

(dd) "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

This section incorporates K.S.A. 21-3110 and 21-3110a. The terms "DNA," "Expungment," "Possession" and "Distribution" are added. The definition of possession is the same as the definition in KSA 21-36a01(q).

The definition of possession was taken from Kansas case law and the jury instruction defining possession, PIK 67.13-D. One change is made in this version. The phrase "knowledge of and intent" is changed to "knowledge of or intent" in order to avoid a definition of possession that requires specific intent. Possession offenses only require general intent as to the possession element.

The definition of "distribute" combines the terms frequently used throughout the statute to describe and act of transferring some thing from one person to another. This definition allows a number of unnecessarily repetitive terms to be eliminated.
**ARTICLE 32**

**PRINCIPLES OF CRIMINAL LIABILITY**

**Section 1**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>New statute</td>
<td>Requirement of Voluntary Act or Omission (New)</td>
<td>21-32-101</td>
</tr>
<tr>
<td>21-3201</td>
<td>Culpability requirement; definitions; application</td>
<td>21-32-102</td>
</tr>
<tr>
<td>21-3204</td>
<td>Guilt without culpable mental state, when.</td>
<td>21-32-103</td>
</tr>
<tr>
<td>21-3202</td>
<td>Culpability; exclusions.</td>
<td>21-32-104</td>
</tr>
</tbody>
</table>

**Section 2**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3208</td>
<td>Intoxication.</td>
<td>21-32-201</td>
</tr>
<tr>
<td>21-3209</td>
<td>Compulsion.</td>
<td>21-32-202</td>
</tr>
<tr>
<td>21-3203</td>
<td>Ignorance or mistake.</td>
<td>21-32-203</td>
</tr>
<tr>
<td>21-3210</td>
<td>Entrapment.</td>
<td>21-32-204</td>
</tr>
<tr>
<td>22-3220</td>
<td>Defense of lack of mental state.</td>
<td>21-32-205</td>
</tr>
</tbody>
</table>

**Section 3**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3211</td>
<td>Use of force in defense of a person.</td>
<td>21-32-301</td>
</tr>
<tr>
<td>21-3212</td>
<td>Use of force in defense of dwelling.</td>
<td>21-32-302</td>
</tr>
<tr>
<td>21-3213</td>
<td>Use of force in defense of property other than a dwelling.</td>
<td>21-32-303</td>
</tr>
<tr>
<td>21-3214</td>
<td>Use of force by an aggressor.</td>
<td>21-32-304</td>
</tr>
<tr>
<td>21-3215</td>
<td>Law enforcement officer's use of force in making arrest.</td>
<td>21-32-305</td>
</tr>
<tr>
<td>21-3216</td>
<td>Private person's use of force in making arrest.</td>
<td>21-32-306</td>
</tr>
<tr>
<td>21-3217</td>
<td>Use of force in resisting arrest.</td>
<td>21-32-307</td>
</tr>
<tr>
<td>21-3218</td>
<td>No duty to retreat; exceptions.</td>
<td>21-32-308</td>
</tr>
<tr>
<td>21-3219</td>
<td>Use of force; immunity from prosecution or liability; investigation.</td>
<td>21-32-309</td>
</tr>
</tbody>
</table>
### Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3205</td>
<td>Liability for crimes of another.</td>
<td>21-32-401</td>
</tr>
<tr>
<td>21-3206</td>
<td>Corporations; criminal responsibility.</td>
<td>21-32-402</td>
</tr>
<tr>
<td>21-3207</td>
<td>Individual liability for corporate crime.</td>
<td>21-32-403</td>
</tr>
</tbody>
</table>
21-32-101. Requirement of Voluntary Act or Omission (New)

(a) A person commits an offense only if such person voluntarily engages in conduct, including an act, an omission, or possession.

(b) A person who omits to perform an act does not commit an offense unless a law provides that the omission is an offense or otherwise provides that such person has a duty to perform the act.

Comment
This new section defines a crime as an act or an omission. The proposed statute is added to clarify that both acts and omissions may be punishable. The section codifies Kansas law by requiring a voluntary act or omission.

21-32-102. Culpability requirement; definitions; application.

(a) Except as otherwise provided, a culpable mental state is an essential element of every crime defined by this code. A culpable mental state may be established by proof that the conduct of the accused person was committed “intentionally,” “knowingly,” or “recklessly.”

(b) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

   (1) intentionally;
   (2) knowingly;
   (3) recklessly.

(c) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged. If recklessness suffices to establish an element, that element also is established if a person acts knowingly or intentionally. If acting knowingly suffices to establish an element, that element also is established if a person acts intentionally.

(d) If the definition of a crime does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.
(e) If the definition of a crime does not prescribe a culpable mental state, but one is nevertheless required under subsection (d), “intent,” “knowledge,” or “recklessness” suffices to establish criminal responsibility.

(f) If the definition of a crime prescribes a culpable mental state that is sufficient for the commission of a crime, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the crime, unless a contrary purpose plainly appears.

(g) If the definition of a crime prescribes a culpable mental state with regard to a particular element or elements of that crime, the prescribed culpable mental state shall be required only as to specified element or elements, and a culpable mental state shall not be required as to any other element of the crime unless otherwise provided.

(h) A person acts “intentionally”, or “with intent,” with respect to the nature of such person’s conduct or to a result of such person’s conduct when it is such person’s conscious objective or desire to engage in the conduct or cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as “intentionally” or “with intent” are specific intent crimes. A crime may provide that any other culpability requirement is a specific intent.

(i) A person acts “knowingly”, or “with knowledge,” with respect to the nature of such person’s conduct or to circumstances surrounding such person’s conduct when such person is aware of the nature of such person’s conduct or that the circumstances exist. A person acts “knowingly,” or “with knowledge,” with respect to a result of such person’s conduct when such person is aware that such person’s conduct is reasonably certain to cause the result. All crimes defined in this code in which the mental culpability requirement is expressed as “knowingly,” “known,” or “with knowledge” are general intent crimes.

(j) A person "acts recklessly" or is reckless when such person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

Comment

This section incorporates K.S.A. 21-3201 and defines criminal intent. The Commission submits this proposal to clarify the current code and to present a workable template for the legislature to write new criminal offenses.

Under the current statute, criminal intent is divided into “intentional” and “reckless” conduct. Under current law knowing and purposeful conduct both constitute intentional conduct. The Commission found several statutes where the legislature drew a distinction between knowing and purposeful conduct so the culpability terms have been changed. The term “intentional” is
defined to include purposeful conduct and “knowing” conduct is a separate culpability
standard.

The current statute does not clearly define the meaning of the terms “intentional/purposeful,”
“knowing,” and “reckless.” Subsections (h), (i), and (j) incorporate definitions of these terms
that are based on the Model Penal Code and are consistent with Kansas case law.

The culpability terms are ranked in relative degrees with “intentional” conduct being highest
and “reckless” conduct being lowest. Subsection (c) provides a default rule that proof of a
higher degree of culpability satisfies the requirements of a lower degree of culpability. When
a statute requires reckless conduct, proof that the defendant acted intentionally or knowingly
suffices to prove the reckless element. This provision is helpful as it allows elimination of
unnecessary, duplicative terms. No criminal statute need specify more than one culpability
term, use of the lowest degree of culpability is sufficient.

The question of whether an offense requires specific or general intent is important as it
determines the level of proof required and the applicability of certain defenses. However,
whether the legislature required specific intent in an offense is often not clear from the
statutory text. Subsections (h) and (i) are patterned on the Colorado culpability statute and
they clarify that use of the term “intent” indicates specific intent; “knowing” indicates general
intent.

Subsection (e) provides that, when a statute does not specify a culpability term, proof of any
culpability level is sufficient. This provision provides a default rule that recklessness is the
necessary culpability required unless the legislature says otherwise.

21-32-103

21-32-103. Guilt without culpable mental state, when.

A person may be guilty of an offense without having a culpable mental state if the crime is:

(a) A misdemeanor, cigarette or tobacco infraction or traffic infraction and the statute
defining the offense clearly indicates a legislative purpose to impose absolute
liability for the conduct described;

(b) a felony and the statute defining the offense clearly indicates a legislative purpose to
impose absolute liability for the conduct described;

(c) a violation of K.S.A. 8-1567 or 8-1567a and amendments thereto; or

(d) a violation of K.S.A. 22-4901 et. seq. and amendments thereto.

Comment
This section incorporates K.S.A. 21-3204. The terminology is revised to be consistent with the new culpability statute. The term “criminal intent” is replaced with “culpable mental state.”

Subsection (b) is revised to clarify that a felony may be a strict liability crime. The Commission discovered many instances where the legislature intended a felony to be a strict liability offense, with respect to at least one element.

Subsection (d) is added to clarify that violations of the Kansas Offender Registration Act are strict liability offenses. The Commission determined that this was the legislative intent, although accomplice liability is still subject to the culpability requirements of 21-32-401.

### 21-32-104

#### 21-32-104. Culpability; exclusions.

Proof of a culpable mental state does not require:

(a) 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.

(b) 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 incorporates K.S.A. 21-3202. The terminology is revised to be consistent with the new culpability statute. The term “criminal intent” is replaced with “culpable mental state.”

### 21-32-201


(a) 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 such person’s conduct and of conforming such person’s conduct to the requirements of law.

(b) 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

This section incorporates K.S.A. 21-3208. No change is recommended other than the use of gender neutral terms.

21-32-202


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

(b) The defense provided by this section is not available to one a person who intentionally or recklessly places himself or herself in a situation in which he or she such person will be subjected to compulsion or threat.

Comment

This section incorporates K.S.A. 21-3209. The terms "willfully" and "wantonly" have been replaced with "intentionally" and "recklessly" to be consistent with the general culpability statute, 21-32-102.

This section recognizes duress as a defense in all crimes except murder and voluntary manslaughter. The explicit language of this section and 21-32-301, Use of force in defense of a person, are broad enough to provide implicit recognition of the common law necessity defense. The committee is not persuaded that a necessity defense provision should be proposed. However, it is still an open issue whether the Kansas Supreme Court will decide whether the defense is recognized in Kansas. See, City of Wichita v. Tilson, 253 Kan. 285 (1993).

21-32-203

21-32-203. Ignorance or mistake.

(a) A person’s ignorance or mistake as to a matter of either fact or law, except as provided in section 21-32-104, is a defense if it negates the existence of the culpable mental state which the statute prescribes with respect to an element of the crime.

(b) A person’s reasonable belief that his or her such person’s conduct does not constitute a crime is a defense if:
(1) The crime is defined by an administrative regulation or order which is not known to him or her such person and has not been published in the Kansas administrative regulations or an annual supplement thereto, as provided by law; and he or she such person could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him or her such person; or

(2) He or she such person acts in reliance upon a statute which later is determined to be invalid; or

(3) He or she such person acts in reliance upon an order or opinion of the supreme court of Kansas or a United States appellate court later overruled or reversed;

(4) He or she such person 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.

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

Comment

This section incorporates K.S.A. 21-3203. The phrase “mental state” is changed to “culpable mental state” to be consistent with the general culpability statute, 21-32-102. Gender neutral terms are added.

21-32-204

21-32-204. Entrapment.

A person is not guilty of a crime if his or her such person’s criminal conduct was induced or solicited by a public officer or his or her such officer’s agent for the purposes of obtaining evidence to prosecute such person, unless:

(a) The public officer or his or her such officer’s 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 or her such officer’s agent in doing the inducing or soliciting did not mislead such person into believing his or her such person’s conduct to be lawful.
Comment

This section incorporates K.S.A. 21-3210. No change is recommended other than the addition of gender neutral terms.

21-32-205

21-32-205. Defense of lack of culpable mental state.

It is a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, lacked the culpable mental state required as an element of the offense charged. Mental disease or defect is not otherwise a defense.

Comment

This section incorporates K.S.A. 22-3220. The phrase “mental state” is changed to “culpable mental state” to be consistent with the general culpability statute, 21-32-102.

21-32-301

21-32-301. Use of force in defense of a person.

(a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such force is necessary to defend such person or a third person against such other’s imminent use of unlawful force.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

Comment

This section incorporates K.S.A. 21-3211. No change is recommended.

21-32-302

21-32-302. Use of force in defense of dwelling or occupied vehicle.

(a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such force is
necessary to prevent or terminate such other’s unlawful entry into or attack upon such person’s dwelling or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling or occupied vehicle if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person’s dwelling or occupied vehicle.

Comment

This section incorporates K.S.A. 21-3212. No change is recommended.

21-32-303

21-32-303. Use of force in defense of property other than a dwelling or occupied vehicle.

A person who is lawfully in possession of property other than a dwelling or occupied vehicle 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 person would deem necessary to prevent or terminate the interference may intentionally be used.

Comment

This section incorporates K.S.A. 21-3213. No change is recommended. See the comment to 21-302-202 regarding the necessity defense.

21-32-304

21-32-304. Use of force by an aggressor.

The justification described in sections 21-230, 231, and 232 is not available to a person who:

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

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

(c) Otherwise initially provokes the use of force against such person or another, unless:
(1) He or she such person has reasonable ground to believe that he or she such person is in imminent danger of death or great bodily harm, and 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

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

Comment

This section incorporates K.S.A. 21-3214. No change is recommended other than the addition of gender neutral terms.

21-32-305. Law enforcement officer’s use of force in making arrest.

(a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and of any force which such officer reasonably believes to be necessary to defend the officer’s self or another from bodily harm while making the arrest. However, such officer is justified in using force likely to cause death or great bodily harm only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

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

Comment

This section incorporates K.S.A. 21-3215. No change is recommended.

(a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which such person would be justified in using if he or she were summoned or directed by a law enforcement officer to make such arrest, except that such person is justified in the use of force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary to prevent death or great bodily harm to such person or another.

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

Comment

This section incorporates K.S.A. 21-3216. No change is recommended except the addition of gender neutral terms.


A person is not authorized to use force to resist an arrest which such person 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.

Comment

This section incorporates K.S.A. 21-3217. No change is recommended.

21-32-308. No duty to retreat; exceptions.

A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has no duty to retreat and has the right to stand such person’s ground and meet force with force.

Comment

This section incorporates K.S.A. 21-3218. No change is recommended.
21-32-309. Use of force; immunity from prosecution or liability; investigation.

(a) A person who uses force which, subject to the provisions of K.S.A. 21-233, and amendments thereto, is justified pursuant to K.S.A. 21-230, 21-231 or 21-232, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, “criminal prosecution” includes arrest, detention in custody and charging or prosecution of the defendant.

(b) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (a), but the agency shall not arrest the person for using force unless it determines that there is probable cause for the arrest.

Comment

This section incorporates K.S.A. 21-3219. No change is recommended.


(a) A person is criminally responsible for a crime committed by another if such person, acting with the mental culpability required for the commission thereof, advises, hires, counsels, or procures the other to commit or intentionally aids the other in committing the conduct constituting the crime.

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

(c) 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 or legal 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 section incorporates K.S.A. 21-3205. Paragraph (a) is patterned after the New York accomplice liability statute. It is revised to reflect the holding in State v. Garza, 259 Kan. 826 (1996).

### 21-32-402

**21-32-402. Corporations; criminal responsibility.**

(a) A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.

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

Comment

This section incorporates K.S.A. 21-3206. No change is recommended.

### 21-32-403

**21-32-403. Individual liability for corporate crime.**

(a) 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 the person’s own name or on the person’s own behalf.

(b) An individual who has been convicted of a crime based on conduct performed by such individual 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

This section incorporates K.S.A. 21-3207. No change is recommended.
# ARTICLE 33

**ANTICIPATORY CRIMES**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3301</td>
<td>Attempt.</td>
<td>21-33-101</td>
</tr>
<tr>
<td>21-3302</td>
<td>Conspiracy.</td>
<td>21-33-102</td>
</tr>
<tr>
<td>21-3303</td>
<td>Criminal solicitation.</td>
<td>21-33-103</td>
</tr>
</tbody>
</table>

(a) 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.

(b) 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.

(c) An attempt to commit an off-grid felony shall be ranked at nondrug severity level 1. An attempt to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for an attempt to commit a nondrug felony shall be level 10. The provisions of this subsection shall not apply to a violation of attempting to commit the crime of terrorism pursuant to section 1, and amendments thereto, or of illegal use of weapons of mass destruction pursuant to section 2, and amendments thereto.

(d) An attempt to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(e) An attempt to commit a class A person misdemeanor is a class B person misdemeanor. An attempt to commit a class A nonperson misdemeanor is a class B nonperson misdemeanor.

(f) An attempt to commit a class B or C misdemeanor is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-3301. No change is recommended.


(a) A conspiracy is an agreement with another person to commit a crime or to assist in committing 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 such person or by a co-conspirator.
(b) 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 the accused person's co-conspirators, before any overt act in
furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(c) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2.
Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale
at two severity levels below the appropriate level for the underlying or completed
crime. The lowest severity level for conspiracy to commit a nondrug felony shall be
level 10. The provisions of this subsection shall not apply to a violation of conspiracy
to commit the crime of terrorism pursuant to section 1, and amendments thereto, or
of illegal use of weapons of mass destruction pursuant to section 2, and 16
amendments thereto.

(d) Conspiracy to commit a felony which prescribes a sentence on the drug grid shall
reduce the prison term prescribed in the drug grid block for an underlying or
completed crime by six months.

(e) A conspiracy to commit a misdemeanor is a class C misdemeanor.

Comment
This section incorporates K.S.A. 21-3302. No change is recommended. This statute requires use
of the bilateral theory of conspiracy. The Commission proposes a policy recommendation to
employ use of the unilateral theory of conspiracy. See volume two of the Commission’s final
report.

21-33-103

21-33-103. Criminal solicitation.

(a) Criminal solicitation is commanding, encouraging or requesting another person to
commit a felony, attempt to commit a felony or aid and abet in the commission or
attempted commission of a felony for the purpose of promoting or facilitating the
felony.

(b) It is immaterial under subsection (a) that the actor fails to communicate with the
person solicited to commit a felony if the person's conduct was designed to effect a
communication.

(c) It is an affirmative defense that the actor, after soliciting another person to commit a
felony, persuaded that person not to do so or otherwise prevented the commission of
the felony, under circumstances manifesting a complete and voluntary renunciation of
the actor's criminal purposes.
(d) Criminal solicitation to commit an off-grid felony shall be ranked at nondrug severity level 3. Criminal solicitation to commit any other nondrug felony shall be ranked on the nondrug scale at three severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for criminal solicitation to commit a nondrug felony shall be level 10. The provisions of this subsection shall not apply to a violation of criminal solicitation to commit the crime of terrorism pursuant to section 1, and amendments thereto, or of illegal use of weapons of mass destruction pursuant to section 2, and amendments thereto.

(e) Criminal solicitation to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

Comment

This section incorporates K.S.A. 21-3303. No change is recommended.
# ARTICLE 34

**CRIMES AGAINST PERSONS**

## Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3439</td>
<td>Capital Murder</td>
<td>21-34-101</td>
</tr>
<tr>
<td>21-3401, 21-3436</td>
<td>Murder in the first degree; inherently dangerous felony</td>
<td>21-34-102</td>
</tr>
<tr>
<td>21-3402</td>
<td>Murder in the second degree</td>
<td>21-34-103</td>
</tr>
<tr>
<td>21-3403</td>
<td>Voluntary manslaughter</td>
<td>21-34-104</td>
</tr>
<tr>
<td>21-3442, 21-3442</td>
<td>Involuntary manslaughter</td>
<td>21-34-105</td>
</tr>
<tr>
<td>21-3405</td>
<td>Vehicular homicide</td>
<td>21-34-106</td>
</tr>
<tr>
<td>21-3442</td>
<td>Involuntary manslaughter DUI</td>
<td>21-34-107</td>
</tr>
<tr>
<td>21-3406</td>
<td>Assisting suicide</td>
<td>21-34-108</td>
</tr>
<tr>
<td>21-3436</td>
<td>Inherently dangerous felony; definition</td>
<td>21-34-109</td>
</tr>
</tbody>
</table>

## Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3420; 21-3421</td>
<td>Kidnapping</td>
<td>21-34-201</td>
</tr>
<tr>
<td>21-3421</td>
<td>Aggravated kidnapping</td>
<td>21-34-202</td>
</tr>
<tr>
<td>21-3422; 21-3422a</td>
<td>Interference with parental custody</td>
<td>21-34-203</td>
</tr>
<tr>
<td>21-3422a</td>
<td>Aggravated interference with parental custody</td>
<td>21-34-204</td>
</tr>
<tr>
<td>21-3423</td>
<td>Interference with the custody of a committed person</td>
<td>21-34-205</td>
</tr>
<tr>
<td>21-3424</td>
<td>Criminal restraint</td>
<td>21-34-206</td>
</tr>
</tbody>
</table>

## Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3408; 21-3409; 21-3410; 21-3411</td>
<td>Assault</td>
<td>21-34-301</td>
</tr>
<tr>
<td>21-3409</td>
<td>Assault of a law enforcement officer</td>
<td>21-34-302</td>
</tr>
<tr>
<td>21-3410</td>
<td>Aggravated assault</td>
<td>21-34-303</td>
</tr>
<tr>
<td>21-3411</td>
<td>Aggravated assault of a law enforcement officer</td>
<td>21-34-304</td>
</tr>
<tr>
<td>21-3412, 21-3413, 21-3414, 21-3415, 21-3443, and 21-3448</td>
<td>Battery</td>
<td>21-34-305</td>
</tr>
</tbody>
</table>
### Article 3

<table>
<thead>
<tr>
<th>KCCRC Section Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3412a</td>
<td>Domestic battery</td>
<td>21-34-306</td>
</tr>
<tr>
<td>21-3413</td>
<td>Battery against a law enforcement officer</td>
<td>21-34-307</td>
</tr>
<tr>
<td>21-3414</td>
<td>Aggravated battery</td>
<td>21-34-308</td>
</tr>
<tr>
<td>21-3415</td>
<td>Aggravated battery against a law enforcement officer</td>
<td>21-34-309</td>
</tr>
<tr>
<td>21-3443</td>
<td>Battery against a school employee</td>
<td>21-34-310</td>
</tr>
<tr>
<td>21-3448</td>
<td>Battery against a mental health employee</td>
<td>21-34-311</td>
</tr>
<tr>
<td>21-3419; 21-3419a</td>
<td>Criminal threat</td>
<td>21-34-312</td>
</tr>
<tr>
<td>21-3419a</td>
<td>Aggravated criminal threat</td>
<td>21-34-313</td>
</tr>
<tr>
<td>21-3425</td>
<td>Mistreatment of a confined person</td>
<td>21-34-314</td>
</tr>
<tr>
<td>21-3424</td>
<td>Mistreatment of a dependent adult</td>
<td>21-34-315</td>
</tr>
<tr>
<td>21-3434</td>
<td>Promoting or permitting hazing</td>
<td>21-34-316</td>
</tr>
<tr>
<td>21-3452</td>
<td>Application of certain crimes to an unborn child</td>
<td>21-34-317</td>
</tr>
</tbody>
</table>

**Section 4**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3426; 21-3427</td>
<td>Robbery</td>
<td>21-34-401</td>
</tr>
<tr>
<td>21-3427</td>
<td>Aggravated robbery</td>
<td>21-34-402</td>
</tr>
</tbody>
</table>

**Section 5**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3416</td>
<td>Unlawful interference with a firefighter</td>
<td>21-34-501</td>
</tr>
<tr>
<td>21-3425</td>
<td>Unlawful interference with an emergency medical services attendant</td>
<td>21-34-502</td>
</tr>
<tr>
<td>21-3449</td>
<td>Terrorism</td>
<td>21-34-503</td>
</tr>
<tr>
<td>21-3450</td>
<td>Illegal use of weapons of mass destruction</td>
<td>21-34-504</td>
</tr>
<tr>
<td>21-3451</td>
<td>Furtherance of terrorism or illegal use of weapons of mass destruction.</td>
<td>21-34-505</td>
</tr>
<tr>
<td>21-3435</td>
<td>Exposing another to a life threatening communicable disease</td>
<td>21-34-506</td>
</tr>
<tr>
<td>21-3425</td>
<td>Unlawful administration of a substance</td>
<td>21-34-507</td>
</tr>
<tr>
<td>21-3446; 21-3447</td>
<td>Trafficking</td>
<td>21-34-508</td>
</tr>
<tr>
<td>21-3447</td>
<td>Aggravated trafficking</td>
<td>21-34-509</td>
</tr>
<tr>
<td>21-3438</td>
<td>Stalking</td>
<td>21-34-510</td>
</tr>
<tr>
<td>21-3418</td>
<td>Permitting a dangerous animal to be at large</td>
<td>21-34-511</td>
</tr>
<tr>
<td>21-3428</td>
<td>Blackmail</td>
<td>21-34-512</td>
</tr>
</tbody>
</table>

(a) Capital murder is the:

(1) Intentional and premeditated killing of any person in the commission of
kidnapping, as defined in K.S.A. 21-3420 and amendments thereto, or
aggravated kidnapping, as defined in K.S.A. 21-3421 and amendments
thereto, when the kidnapping or aggravated kidnapping was committed with
the intent to hold such person for ransom;

(2) intentional and premeditated killing of any person pursuant to a contract or
agreement to kill such person or being a party to the contract or agreement
pursuant to which such person is killed;

(3) intentional and premeditated killing of any person by an inmate or prisoner
confined in a state correctional institution, community correctional
institution or jail or while in the custody of an officer or employee of a state
correctional institution, community correctional institution or jail;

(4) intentional and premeditated killing of the victim of one of the following
crimes in the commission of, or subsequent to, such crime: Rape, as defined
in K.S.A. 21-3502 and amendments thereto, criminal sodomy, as defined in
subsections (a)(2) or (a)(3) of K.S.A. 21-3505 and amendments thereto or
aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments
thereto, or any attempt thereof, as defined in K.S.A. 21-3301 and
amendments thereto;

(5) intentional and premeditated killing of a law enforcement officer, as defined
in K.S.A. 21-3110 and amendments thereto;

(6) intentional and premeditated killing of more than one person as a part of
the same act or transaction or in two or more acts or transactions connected
together or constituting parts of a common scheme or course of conduct; or

(7) intentional and premeditated killing of a child under the age of 14 in the
commission of kidnapping, as defined in K.S.A. 21-3420 and amendments
thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421 and
amendments thereto, when the kidnapping or aggravated kidnapping was
committed with intent to commit a sex offense upon or with the child or
with intent that the child commit or submit to a sex offense.
(b) For purposes of this section, "sex offense" means rape, as defined in K.S.A. 21-3502 and amendments thereto, aggravated indecent liberties with a child, as defined in K.S.A. 21-3504 and amendments thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, prostitution, as defined in K.S.A. 21-3512 and amendments thereto, promoting prostitution, as defined in K.S.A. 21-3513 and amendments thereto or sexual exploitation of a child, as defined in K.S.A. 21-3516 and amendments thereto.

(c) Capital murder is an off-grid person felony.

Comment

This section incorporates K.S.A. 21-3439. No change to the statute is recommended. The homicide offenses are arranged in a logical order, with the worst offenses first. Currently these offenses are scattered throughout the statute book.

21-34-102. Murder in the first degree.

(a) Murder in the first degree is the killing of a human being committed:

(1) Intentionally or knowingly, and with premeditation; or

(2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

(c) An inherently dangerous felony is:

(1) any of the following felonies, whether or not such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in K.S.A. 21-3420, and amendments thereto;

(B) aggravated kidnapping, as defined in K.S.A. 21-3421, and amendments thereto;

(C) robbery, as defined in K.S.A. 21-3426, and amendments thereto;

(D) aggravated robbery, as defined in K.S.A. 21-3427, and amendments thereto;
(E) rape, as defined in K.S.A. 21-3502, and amendments thereto;

(F) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amendments thereto;

(G) abuse of a child, as defined in K.S.A. 21-3609, and amendments thereto;

(H) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and amendments thereto;

(I) burglary, as defined in K.S.A 21-3715, and amendments thereto;

(J) aggravated burglary, as defined in K.S.A. 21-3716, and amendments thereto;

(K) arson, as defined in K.S.A. 21-3718, and amendments thereto;

(L) aggravated arson, as defined in K.S.A. 21-3719, and amendments thereto;

(M) treason, as defined in K.S.A. 21-3801, and amendments thereto;

(N) any felony offense as provided in K.S.A. 65-4127a, 65-4127b or 65-4159 or 65-4160 through 65-4164, and amendments thereto;

(O) any felony offense as provided in K.S.A. 21-4219, and amendments thereto;

(P) endangering the food supply as defined in K.S.A. 21-4221, and amendments thereto;

(Q) aggravated endangering the food supply as defined in K.S.A. 21-4222, and amendments thereto;

(R) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto; or

(S) aggravated endangering a child, as defined in subsection (a)(1) of K.S.A. 21-3608a, and amendments thereto;

(2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto, as to not be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:
(A) Murder in the first degree, as defined in subsection (a) of K.S.A. 21-3401, and amendments thereto;

(B) murder in the second degree, as defined in subsection (a) of K.S.A. 21-3402, and amendments thereto;

(C) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-3403, and amendments thereto;

(D) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-3411, and amendments thereto;

(F) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-3415, and amendments thereto.

Comment

This section merges K.S.A. 21-3401 and 21-3436. The section merges first degree murder with the definition of an inherently dangerous felony. The term “knowingly” is deleted to clarify that this is a specific intent crime.

The Commission recommends adding abandonment of a child to the list of inherently dangerous felonies. Please see volume two of the Commission’s final report.

21-34103

21-34-103. Murder in the second degree.

(a) Murder in the second degree is the killing of a human being committed:

(1) Intentionally; or

(2) knowingly; or

(3) unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life.
(b) Murder in the second degree as described in subsection (a) is a severity level 1, person felony. Murder in the second degree as described in subsection (b) is a severity level 2, person felony.

Comment

The section incorporates K.S.A. 21-3402. The term “knowingly” is removed to clarify that violation of subsection (a)(1) is a specific intent crime.

21-34-104

21-34-104. Voluntary manslaughter.

(a) Voluntary manslaughter is the intentional or knowingly killing of a human being committed:

(1) Upon a sudden quarrel or in the heat of passion; or

(2) upon an unreasonable but honest belief that circumstances existed that justified deadly force under K.S.A. 21-3211, 21-3212 or 21-3213 and amendments thereto.

(b) Voluntary manslaughter is a severity level 3, person felony.

Comment

This section incorporates K.S.A. 21-3403. The term “intentional” is removed as it is redundant alongside the lesser culpability term of “knowingly.”

21-34-105

21-34-105. Involuntary manslaughter.

(a) Involuntary manslaughter is the unintentional or unknowing killing of a human being committed:

(1) Recklessly;

(2) in the commission of, or attempt to commit, or flight from any felony, other than an inherently dangerous felony as defined in K.S.A. 21-3436 21-34-102 and amendments thereto, that is enacted for the protection of human life or safety or a misdemeanor that is enacted for the protection of human life or safety, including acts described in K.S.A. 8-1566 and subsection (a) of 8-1568, and amendments thereto, but excluding the acts described in K.S.A. 8-1567 and amendments thereto;
(3) in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567 and amendments thereto; or

(4) during the commission of a lawful act in an unlawful manner.

(b) Involuntary manslaughter is a severity level 5, person felony except that a violation of subsection (a)(3) is a severity level 4, person felony.

Comment

This section merges K.S.A. 21-3404 and 21-3442. The terms “unintentional” and “unknowing” are deleted as unnecessary. This section merges involuntary manslaughter with involuntary manslaughter committed while driving under the influence of alcohol or drugs.

The Commission considered the possibility that a separate DUI manslaughter statute might be necessary for federal funding. Staff contacted the KDOT, specifically Kyle Schnieweis, Chief of Government Affairs. He informed the Commission that the KDOT does not object to combining the two statutes. On December 31, 2008 he sent the following email to the Commission: “Thanks for giving KDOT the opportunity to review the proposal. As we discussed on the phone, K.S.A. 21-3442 is not tied to any federal law or KDOT funding or reporting issues and so KDOT does not require that the statutes be separate.”

21-34-106

Vehicular homicide.

(a) Vehicular homicide is the unintentional killing of a human being committed 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 material deviation from the standard of care which a reasonable person would observe under the same circumstances.

(b) Vehicular homicide is a class A person misdemeanor.

(c) “Material deviation” means conduct amounting to more than simple or ordinary negligence but not amounting to gross negligence.

Comment

This section incorporates K.S.A. 21-3405. The culpability requirement is clarified by adding language that codifies the holding in State v. Krovvidi, 274 Kan. 1059, 1069 (2002). That case defined the term “material deviation.”
**21-34-107. Involuntary manslaughter while driving under the influence of alcohol or drugs.**

(a) Involuntary manslaughter while driving under the influence of alcohol or drugs is the unintentional killing of a human being committed in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567 and amendments thereto.

(b) Involuntary manslaughter while driving under the influence of alcohol or drugs is a severity level 4, person felony.

**Comment**

This section merges K.S.A. 21-3442 into 21-34-105.

---

**21-34-108. Assisting suicide.**

(a) Assisting suicide is:

(1) Knowingly, by force or duress, causing another person to commit or to attempt to commit suicide; or

(2) with the intent and purpose of intentionally assisting another person to commit or to attempt to commit suicide, by knowingly either:

(A) Providing the physical means by which another person commits or attempts to commit suicide; or

(B) participating in a physical act by which another person commits or attempts to commit suicide.

(b) Assisting suicide under subsection (1) is a severity level 3, person felony. Assisting suicide under subsection (2) is a severity level 9, person felony.

**Comment**

This section incorporates K.S.A. 21-3406. The phrase “knowingly either” is removed from (a)(2) to avoid confusion about the culpability requirement. Under current law, violation of (a)(2) is a specific intent offense. The phrase “with the intent and purpose of” is replaced with “intentionally” to promote clarity.
thereto, as not to be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:

— (1) Kidnapping, as defined in K.S.A. 21-3420, and amendments thereto;

— (2) aggravated kidnapping, as defined in K.S.A. 21-3421, and amendments thereto;

— (3) robbery, as defined in K.S.A. 21-3426, and amendments thereto;

— (4) aggravated robbery, as defined in K.S.A. 21-3427, and amendments thereto;

— (5) rape, as defined in K.S.A. 21-3502, and amendments thereto;

— (6) aggravated criminal sodomy, as defined in K.S.A. 21-3506, and amendments thereto;

— (7) abuse of a child, as defined in K.S.A. 21-3609, and amendments thereto;

— (8) felony theft under subsection (a) or (c) of K.S.A. 21-3701, and amendments thereto;

— (9) burglary, as defined in K.S.A. 21-3715, and amendments thereto;

— (10) aggravated burglary, as defined in K.S.A. 21-3716, and amendments thereto;

— (11) arson, as defined in K.S.A. 21-3718, and amendments thereto;

— (12) aggravated arson, as defined in K.S.A. 21-3719, and amendments thereto;

— (13) treason, as defined in K.S.A. 21-3801, and amendments thereto;

— (14) any felony offense as provided in K.S.A. 65-4127a, 65-4127b or 65-4159 or 65-4160 through 65-4164, and amendments thereto;

— (15) any felony offense as provided in K.S.A. 21-4219, and amendments thereto;

— (16) endangering the food supply as defined in K.S.A. 21-4221, and amendments thereto;

— (17) aggravated endangering the food supply as defined in K.S.A. 21-4222, and amendments thereto;

— (18) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1558, and amendments thereto; or

— (19) aggravated endangering a child, as defined in subsection (a)(1) of K.S.A. 21-3608a, and amendments thereto.

— (b) Any of the following felonies shall be deemed an inherently dangerous felony only when such felony is so distinct from the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto, as to not be an ingredient of the homicide alleged to be a violation of subsection (b) of K.S.A. 21-3401, and amendments thereto:

— (1) Murder in the first degree, as defined in subsection (a) of K.S.A. 21-3401, and amendments thereto;

— (2) murder in the second degree, as defined in subsection (a) of K.S.A. 21-3402, and amendments thereto;

— (3) voluntary manslaughter, as defined in subsection (a) of K.S.A. 21-3403, and amendments thereto;

— (4) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto;

— (5) aggravated assault of a law enforcement officer, as defined in K.S.A. 21-3411, and amendments thereto;

— (6) aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto; or

— (7) aggravated battery against a law enforcement officer, as defined in K.S.A. 21-3415, and amendments thereto.

— (c) This section shall be part of and supplemental to the Kansas criminal code.

Comment
This section merges K.S.A. 21-3436 into 21-34-102.

21-34-201. Kidnapping.

(a) Kidnapping is the taking or confining of any person, accomplished by force, threat or deception, with the intent to hold such person:

(1) For ransom, or as a shield or hostage;

(2) to facilitate flight or the commission of any crime;

(3) to inflict bodily injury or to terrorize the victim or another; or

(4) to interfere with the performance of any governmental or political function.

(b) Aggravated kidnapping is kidnapping, as described in subsection (a), when bodily harm is inflicted upon the person kidnapped.

(c) (1) Kidnapping is a severity level 3, person felony,

(2) Aggravated kidnapping is a severity level 1, person felony.

Comment

This section merges K.S.A. 21-3420 and 21-3421. No change is recommended.

21-34-202. Aggravated kidnapping. Aggravated kidnapping is kidnapping, as defined in K.S.A. 21-3420 and amendments thereto, when bodily harm is inflicted upon the person kidnapped.

— Aggravated kidnapping is a severity level 1, person felony.

Comment

This section merges KSA 21-3421 into 21-34-201.

21-34-203. Interference with parental custody.
(a) Interference with parental custody is leading, taking, carrying away, decoying or enticing away any child under the age of 16 years with the intent to detain or conceal such child from its the child’s parent, guardian, or other person having the lawful charge of such child.

(b) Aggravated interference with parental custody is:

(1) hiring someone to commit the crime of interference with parental custody, as defined in subsection (a); or

(2) the commission of interference with parental custody, as defined in subsection (a), by a person who:

(A) has previously been convicted of the crime;

(B) commits the crime for hire;

(C) takes the child outside the state without the consent of either the person having custody or the court;

(D) after lawfully taking the child outside the state while exercising visitation rights or parenting time, refuses to return the child at the expiration of that time;

(E) at the expiration of the exercise of any visitation rights or parenting time outside the state, refuses to return or impedes the return of the child; or

(F) detains or conceals the child in an unknown place, whether inside or outside the state.

(c) (1) Interference with parental custody is:

(A) a severity level 10, person felony, except that:

(B) it is a class A person misdemeanor if the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order;

(2) Aggravated interference with parental custody is a severity level 7, person felony.

(d) It is not a defense to a prosecution under subsection (a) that the defendant is a parent entitled to joint custody of the child either on the basis of a court order or by virtue of the absence of a court order.
Comment

This section merges K.S.A. 21-3422 and 21-3422a. The terms “leading,” “carrying away,” and “decoying” are deleted as repetitive of “taking” and “enticing.”

21-34-204

Aggravated interference with parental custody. (a) Aggravated interference with parental custody is:
   (1) Hiring someone to commit the crime of interference with parental custody, as defined by K.S.A. 21-3422 and amendments thereto; or
   (2) the commission of interference with parental custody, as defined by K.S.A. 21-3422 and amendments thereto, by a person who:
      (A) Has previously been convicted of the crime;
      (B) commits the crime for hire;
      (C) takes the child outside the state without the consent of either the person having custody or the court;
      (D) after lawfully taking the child outside the state while exercising visitation rights or parenting time, refuses to return the child at the expiration of that time;
      (E) at the expiration of the exercise of any visitation rights or parenting time outside the state, refuses to return or impedes the return of the child; or
      (F) detains or conceals the child in an unknown place, whether inside or outside the state.
   (b) Aggravated interference with parental custody is a severity level 7, person felony.
   (c) This section shall be a part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 21-3422a into 21-34-203.

21-34-205

Interference with custody of a committed person.

(a) Interference with custody of a committed person is knowingly taking or enticing any committed person away from the control of such person’s 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.

(b) Interference with custody of a committed person is a class A nonperson misdemeanor.
(c) 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.

Comment

This section incorporates K.S.A. 21-3423. Definitional material is moved from (a) to (c) to improve readability.

21-34-206

21-34-206. Criminal restraint.

(a) Criminal restraint is knowingly and without legal authority restraining another person so as to interfere substantially with such person's liberty.

(b) Criminal restraint is a class A person misdemeanor.

(c) 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.

(d) Any merchant, or a merchant’s 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 criminal restraint.

Criminal restraint is a class A person misdemeanor.

Comment

This section incorporates K.S.A. 21-3423. The statute is reorganized for clarity.

21-34-301

21-34-301. Assault.

(a) Assault is intentionally knowingly placing another person in reasonable apprehension of immediate bodily harm;

(b) Aggravated assault is assault, as described in subsection (a), committed:

(1) with a deadly weapon;
Article 31

(2) while disguised in any manner designed to conceal identity; or

(3) with intent to commit any felony.

(c) Assault of a law enforcement officer is assault, as defined in subsection (a), committed against:

(1) a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer’s duty; or

(2) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer’s duty.

(d) Aggravated assault of a law enforcement officer is assault of a law enforcement officer, as defined in subsection (c), committed:

(1) with a deadly weapon;

(2) while disguised in any manner designed to conceal identity; or

(3) with intent to commit any felony.

(e) (1) Assault is a class C person misdemeanor,

(2) Aggravated assault is a severity level 7, person felony. A person convicted of aggravated assault shall be subject to the provisions of subsection (h) of K.S.A. 21-4704 and amendments thereto,

(3) Assault of a law enforcement officer is a class A person misdemeanor,

(4) Aggravated assault of a law enforcement officer is a severity level 6, person felony. A person convicted of aggravated assault of a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704, and amendments thereto.

(f) As used in this section, “Law Enforcement Officer” means a uniformed or properly identified state, county or city law enforcement officer, as defined by 21-31-501.

Comment

This section merges K.S.A. 21-3408, 21-3409, 21-3410 and 21-3411. The culpability term “intentionally” is replaced with “knowingly” to indicate that this is a general intent offense.
21-34-302

Assault of a law enforcement officer. (a) Assault of a law enforcement officer is an assault, as defined in K.S.A. 21-3408 and amendments thereto:

— (1) Committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty;
   or
   — (2) committed against a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(b) Assault of a law enforcement officer is a class A person misdemeanor.

Comment

This section merges K.S.A. 21-3409 into 21-34-301.

21-34-303

Aggravated assault. Aggravated assault is an assault, as defined in K.S.A. 21-3408 and amendments thereto, committed:

— (a) With a deadly weapon;
   — (b) while disguised in any manner designed to conceal identity; or
   — (c) with intent to commit any felony.

Aggravated assault is a severity level 7, person felony. A person convicted of aggravated assault shall be subject to the provisions of subsection (h) of K.S.A. 21-4704 and amendments thereto.

Comment

This section merges K.S.A. 21-3410 into 21-34-301.

21-34-304

Aggravated assault of a law enforcement officer. (a) Aggravated assault of a law enforcement officer is an aggravated assault, as defined in K.S.A. 21-3410 and amendments thereto:

— (1) Committed against a uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty;
   or
   — (2) committed against a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(b) Aggravated assault of a law enforcement officer is a severity level 6, person felony. A person convicted of aggravated assault of a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704, and amendments thereto.

Comment
This section merges K.S.A. 21-3411 into 21-34-301.

21-34-305. Battery.

(a) Battery is:

(1) Intentionally knowingly or recklessly causing bodily harm to another person; or

(2) intentionally knowingly causing physical contact with another person when done in a rude, insulting or angry manner.

(b) Aggravated battery is:

(1) (A) intentionally knowingly causing great bodily harm to another person or disfigurement of another person;

(B) intentionally knowingly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(C) intentionally knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

(B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

(c) Battery against a law enforcement officer is:

(1) Battery, as described in subsection (a)(2), committed against:

(A) A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer’s duty; or

(B) a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or
employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty; or

(2) battery, as described in subsection (a)(1), committed against:

(A) A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(B) a uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty; or

(3) battery, as described in subsection (a) committed against:

(A) A state correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) committed against a juvenile correctional facility officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) committed against a juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(D) committed against a city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(d) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as described in subsection (b)(1)(A) committed against:

(A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or
(B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(2) an aggravated battery, as described in subsection (b)(1)(B) or (b)(1)(C), committed against:

(A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or

(3) intentionally knowingly causing, with a motor vehicle, bodily harm to:

(A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(e) Battery against a school employee is a battery, as described in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(f) Battery against a mental health employee is a battery, as described in subsection (a), committed against a mental health employee by a person in the custody of the secretary of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty.

(g) (1) Battery is a class B person misdemeanor,

(2) Aggravated battery

(A) as described in subsection (b)(1)(A) is a severity level 4, person felony,

(B) as described in subsections (b)(1)(B) and (b)(1)(C) is a severity level 7, person felony,
(C) as described in subsection (b)(2)(A) is a severity level 5, person felony,

(D) as described in subsection (a)(2)(B) is a severity level 8, person felony.

(3) Battery against a law enforcement officer

(A) as described in subsection (c)(1) is a class A person misdemeanor,

(B) as described in subsection (c)(2) is a severity level 7, person felony,

(C) as described in subsection (c)(3) is a severity level 5, person felony.

(4) Aggravated battery against a law enforcement officer

(A) as described in subsection (f)(1) or (f)(3) is a severity level 3, person felony,

(B) as described in subsection (f)(2) is a severity level 4, person felony.

(5) Battery against a school employee is a class A, person misdemeanor.

(6) Battery against a mental health employee is a severity level 7, person felony.

(h) A person convicted of aggravated battery shall be subject to the provisions of subsection (h) of K.S.A. 21-4704 and amendments thereto.

(i) A person convicted of aggravated battery against a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.

(j) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections.

(2) "State correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

(3) "Juvenile correctional facility officer or employee" means any officer or employee of the juvenile justice authority or any independent contractor, or any employee of such contractor, working at a juvenile correctional facility, as defined in K.S.A. 38-2302, and amendments thereto.
"Juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 38-2302, and amendments thereto.

"City or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility.

"School employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any or the grades one through 12.

"Mental health employee" means an employee of the department of social and rehabilitation services working at Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

Comment

This section merges K.S.A. 21-3412, 21-3413, 21-3414, 21-3415, 21-3443, and 21-3448. The culpability term “intentionally” is replaced with “knowingly” to indicate that this is a general intent offense.

21-34-306. Domestic battery.

(a) Domestic battery is:

(1) Intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or

(2) Intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

(b) Upon a first conviction of a violation of domestic battery, a person shall be guilty of a class B person misdemeanor and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than $200, nor more than $500 or in the court's discretion the court may
enter an order which requires the person enroll in and successfully complete
a domestic violence prevention program.

(2) If, within five years immediately preceding commission of the crime, a
person is convicted of a violation of domestic battery a second time, such
person shall be guilty of a class A person misdemeanor and sentenced to not
less than 90 days nor more than one year's imprisonment and fined not less
than $500 nor more than $1,000. The five days' imprisonment mandated by
this subsection may be served in a work release program only after such
person has served 48 consecutive hours' imprisonment, provided such work
release program requires such person to return to confinement at the end of
each day in the work release program. The person convicted must serve at
least five consecutive days' imprisonment before the person is granted
probation, suspension or reduction of sentence or parole or is otherwise
released. As a condition of any grant of probation, suspension of sentence or
parole or of any other release, the person shall be required to enter into and
complete a treatment program for domestic violence prevention.

(3) If, within five years immediately preceding commission of the crime, a
person is convicted of a violation of domestic battery a third or subsequent
time, such person shall be guilty of a person felony and sentenced to not less
than 90 days nor more than one year's imprisonment and fined not less than
$1,000 nor more than $7,500. The person convicted shall not be eligible for
release on probation, suspension or reduction of sentence or parole until the
person has served at least 90 days' imprisonment. The court shall require as
a condition of parole that such person enter into and complete a treatment
program for domestic violence. If the person does not enter into and
complete a treatment program for domestic violence, the person shall serve
not less than 180 days nor more than one year's imprisonment. The 90 days'
imprisonment mandated by this subsection may be served in a work release
program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to
return to confinement at the end of each day in the work release program.

(c) As used in this section:

(1) Family or household member means persons 18 years of age or older who
are spouses, former spouses, parents or stepparents and children or
stepchildren, and persons who are presently residing together or who have
resided together in the past, and persons who have a child in common
regardless of whether they have been married or who have lived together at
any time. Family or household member also includes a man and woman if
the woman is pregnant and the man is alleged to be the father, regardless of
whether they have been married or have lived together at any time; and
(2) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(B) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(C) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any three-year period.

Comment

This section incorporates K.S.A. 21-3412a. The term “knowingly” is removed from (a)(1) as it is unnecessary in light of the lesser culpability term “recklessly.” Proof of knowing or intentional conduct satisfies the culpability of subsection (a)(1). The term “knowingly” is used in subsection (a)(2) to indicate general intent.
Article 3

1. state correctional officer or employee, a city or county correctional officer or employee, a
2. juvenile correctional facility officer or employee or a juvenile detention facility officer or
3. employee, while such officer is engaged in the performance of such officer's duty; or
4. — (2) battery, as defined in subsection (a)(1) of K.S.A. 21-3412, and amendments thereto,
5. committed against: (A) a uniformed or properly identified university or campus police
6. officer, while such officer is engaged in the performance of such officer's duty; or (B) a
7. uniformed or properly identified state, county or city law enforcement officer, other than a
8. state correctional officer or employee, a city or county correctional officer or employee, a
9. juvenile correctional facility officer or employee or a juvenile detention facility officer or
10. employee, while such officer is engaged in the performance of such officer's duty; or
11. — (3) battery, as defined in K.S.A. 21-3412, and amendments thereto, committed against:
12. (A) a state correctional officer or employee by a person in custody of the secretary of
13. corrections, while such officer or employee is engaged in the performance of such officer's
14. or employee's duty;
15. — (B) committed against a juvenile correctional facility officer or employee by a person
16. confined in such juvenile correctional facility, while such officer or employee is engaged in
17. the performance of such officer's or employee's duty;
18. — (C) committed against a juvenile detention facility officer or employee by a person
19. confined in such juvenile detention facility, while such officer or employee is engaged in the
20. performance of such officer's or employee's duty; or
21. — (D) committed against a city or county correctional officer or employee by a person
22. confined in a city holding facility or county jail facility, while such officer or employee is
23. engaged in the performance of such officer's or employee's duty.
24. — (b) Battery against a law enforcement officer as defined in subsection (a)(1) is a class A
25. person misdemeanor. Battery against a law enforcement officer as defined in subsection
26. (a)(2) is a severity level 7, person felony. Battery against a law enforcement officer as
27. defined in subsection (a)(3) is a severity level 5, person felony.
28. — (c) As used in this section:
29. — (1) "Correctional institution" means any institution or facility under the supervision and
30. control of the secretary of corrections.
31. — (2) "State correctional officer or employee" means any officer or employee of the
32. Kansas department of corrections or any independent contractor, or any employee of such
33. contractor, working at a correctional institution.
34. — (3) "Juvenile correctional facility officer or employee" means any officer or employee of
35. the juvenile justice authority or any independent contractor, or any employee of such
36. contractor, working at a juvenile correctional facility, as defined in K.S.A. 2007 Supp. 38-
37. 2302, and amendments thereto.
38. — (4) "Juvenile detention facility officer or employee" means any officer or employee of a
39. juvenile detention facility as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto.
40. — (5) "City or county correctional officer or employee" means any correctional officer or
41. employee of the city or county or any independent contractor, or any employee of such
42. contractor, working at a city holding facility or county jail facility.

Comment
This section merges K.S.A. 21-3413 into 21-34-305.

### 21-34-308

**Aggravated battery.** (a) Aggravated battery is:

— (1) (A) Intentionally causing great bodily harm to another person or disfigurement of another person; or

— (B) intentionally causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

— (C) intentionally causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

— (2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

— (B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

— (b) Aggravated battery as described in subsection (a)(1)(A) is a severity level 4, person felony. Aggravated battery as described in subsections (a)(1)(B) and (a)(1)(C) is a severity level 7, person felony. Aggravated battery as described in subsection (a)(2)(A) is a severity level 5, person felony. Aggravated battery as described in subsection (a)(2)(B) is a severity level 8, person felony. A person convicted of aggravated battery shall be subject to the provisions of subsection (h) of K.S.A. 21-4704 and amendments thereto.

### Comment

This section merges K.S.A. 21-3414 into 21-34-305.

### 21-34-309

**Aggravated battery against a law enforcement officer.** (a) Aggravated battery against a law enforcement officer is:

— (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

— (2) an aggravated battery, as defined in subsection (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

— (3) intentionally causing, with a motor vehicle, bodily harm to: (A) A uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or (B) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.
or campus police officer while such officer is engaged in the performance of such officer's
duty.

(b)(1) Aggravated battery against a law enforcement officer as described in subsection
(a)(1) or (a)(3) is a severity level 3, person felony.

(b)(2) Aggravated battery against a law enforcement officer as described in subsection
(a)(2) is a severity level 4, person felony.

(c) A person convicted of aggravated battery against a law enforcement officer shall be
subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.

Comment

This section merges K.S.A. 21-3415 into 21-34-305.

21-34-310

Battery against a school employee. (a) Battery against a school employee is a
battery, as defined in K.S.A. 21-3412, and amendments thereto, committed against a
school employee in or on any school property or grounds upon which is located a building
or structure used by a unified school district or an accredited nonpublic school for student
instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or
any of the grades one through 12 or at any regularly scheduled school sponsored activity or
event, while such employee is engaged in the performance of such employee's duty.

(b) Battery against a school employee is a class A, person misdemeanor.

(c) As used in this section, "school employee" means any employee of a unified school
district or an accredited nonpublic school for student instruction or attendance or
extracurricular activities of pupils enrolled in kindergarten or any or the grades one
through 12.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 21-3443 into 21-34-305.

21-34-311

Battery against a mental health employee. (a) Battery against a mental health
employee is a battery, as defined in K.S.A. 21-3412, and amendments thereto, committed
against a mental health employee by a person in the custody of the secretary of social and
rehabilitation services, while such employee is engaged in the performance of such
employee's duty.

(b) Battery against a mental health employee is a severity level 7, person felony.

(c) As used in this section, "mental health employee" means an employee of the
department of social and rehabilitation services working at Larned state hospital,
Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute.
and Parsons state hospital and training center and the treatment staff as defined in K.S.A.
59-29a02, and amendments thereto.
— (d) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 21-3448 into 21-34-305.

21-34-312

21-34-312. Criminal threat.

(a) A criminal threat is any threat to:

(1) Commit violence communicated with intent to terrify place another in fear, or to cause the evacuation, lock down or disruption in regular, ongoing activities of any building, place of assembly or facility of transportation, or in reckless disregard of the risk of causing such terror or evacuation, lock down or disruption in regular, ongoing activities;

(2) adulterate or contaminate any food, raw agricultural commodity, beverage, drug, animal feed, plant or public water supply; or

(3) expose any animal in this state to any contagious or infectious disease.

(b) Aggravated criminal threat is the commission of a criminal threat, as described in subsection (a), when a public, commercial or industrial building, place of assembly or facility of transportation is evacuated locked down or disrupted as to regular, ongoing activities as a result of the threat.

(c) (1) A criminal threat is a severity level 9, person felony,

(2) Aggravated criminal threat is a severity level 5, person felony.

(d) As used in this section, "threat" includes any statement that one has committed any action described by subsection (a)(1) or (2).

Comment

This section merges K.S.A. 21-3419 and 21-3419a. The Commission found that the phrase “place another in fear” is preferable to “terrorize” because many jurors associate the term “terrorize” with global terrorism. The phrase “place another in fear” is meant to capture the true legislative intent behind this offense.
21-34-313. Aggravated criminal threat. (a) Aggravated criminal threat is the commission of one or more crimes of criminal threat, as defined in K.S.A. 21-3419 and amendments thereto, when a public, commercial or industrial building, place of assembly or facility of transportation is evacuated as a result of the threat or threats.
(b) Aggravated criminal threat is a severity level 5, person felony.

Comment
This section merges K.S.A. 21-3419a into 21-34-312.

21-34-314. Mistreatment of a confined person.
(a) Mistreatment of a confined person is the intentional knowingly abusing, neglecting or ill-treating of any person, who is detained or confined and who is physically disabled, mentally ill or mentally retarded 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.

(b) Mistreatment of a confined person is a class A person misdemeanor.

Comment
This section incorporates K.S.A. 21-3425. The deleted language is removed because it is duplicated in 21-34-315.

21-34-315. Mistreatment of a dependent adult.
(a) Mistreatment of a dependent adult is knowingly and intentionally committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or cruel punishment upon a dependent adult;

(2) taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person; or
(3) omitting or depriving treatment, goods or services by a caretaker or another person which are necessary to maintain physical or mental health of a dependent adult.

(b) (1) Mistreatment of a dependent adult as defined in subsection (a)(1) is a severity level 6, person felony.

(2) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 6, person felony if the aggregate amount of the value of the resources is $100,000 or more.

(3) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 7, person felony if the aggregate amount of the value of the resources is at least $25,000 but less than $100,000.

(4) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is at least $1,000 but less than $25,000.

(5) Mistreatment of a dependent adult as defined in subsection (a)(2) is a class A person misdemeanor if the aggregate amount of the value of the resources is less than $1,000 except that it is a severity level 9, person felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of a dependent adult two or more times.

(6) Mistreatment of a dependent adult as defined in subsection (a)(3) is a class A person misdemeanor.

(7) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 9, person felony if the aggregate amount of the value of the resources is less than $1,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of a dependent adult two or more times.

(c) No dependent adult is considered to be mistreated for the sole reason that such dependent adult relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult is a member or adherent.

(d) For purposes of this section: "Dependent adult" means an individual 18 years of age or older who is unable to protect their own interest. Such term shall include, but is not limited to:
Any resident of an adult care home including but not limited to those facilities defined by K.S.A. 39-923 and amendments thereto;

any adult cared for in a private residence;

any individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

any individual with mental retardation or a developmental disability receiving services through a community mental retardation facility or residential facility licensed under K.S.A. 75-3307b and amendments thereto;

any individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

any individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for the mentally retarded.

A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in articles 34, 35, 36, or 37 of this chapter.

Comment

This section incorporates K.S.A. 21-3437. Subsection (e) is added to clarify that this offense may be charged in addition to other person, sex, family, and property offenses. The Commission determined that the legislature did not intent for this offense to supplant prosecution of other crimes such as battery, rape, incest, or theft.

21-34-316. Promoting or permitting hazing.

(a) No social or fraternal organization shall promote or permit hazing.

(a) hazing is intentionally recklessly, coercing, demanding or encouraging another person to perform, as a condition of membership in a social or fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death or which is done in a manner whereby great bodily harm, disfigurement or death could be inflicted.

(b) Promoting or permitting hazing is a class B nonperson misdemeanor.
Article 31

(d) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section incorporates K.S.A. 21-3434. The culpability term of “recklessly” is added to reflect the proper culpability. The Commission finds that hazing most often occurs as a result of reckless conduct and the legislature likely intended to cover this kind of conduct.

21-34-317

21-34-317. Application of certain crimes to an unborn child.

(a) As used in this section:

(1) "Abortion" means an abortion as defined by K.S.A. 65-6701, and amendments thereto.

(2) "Unborn child" means a living individual organism of the species homo sapiens, in utero, at any stage of gestation from fertilization to birth.

(b) This section shall not apply to:

(1) Any act committed by the mother of the unborn child;

(2) any medical procedure, including abortion, performed by a physician or other licensed medical professional at the request of the pregnant woman or her legal guardian; or

(3) the lawful dispensation or administration of lawfully prescribed medication.

(c) As used in K.S.A. 21-3401, 21-3402, 21-3403, 21-3405, 21-3405, 21-3412, 21-3414, 21-3439 and 21-3442, and amendments thereto, "person" and "human being" also mean an unborn child.

(d) This section shall be known and may be cited as Alexa's law.

(e) The provisions of this act shall be part of and supplemental to the Kansas criminal code.

Comment

This section incorporates K.S.A. 21-3452. The subsections are reordered for clarity and unnecessary material is deleted.

21-34-401
21-34-401. Robbery.

(a) Robbery is knowingly the taking of property from the person or presence of another by force or by threat of bodily harm to any person.

(b) Aggravated robbery is robbery, as described in subsection (a), when committed by a person:

(1) who is armed with a dangerous weapon, or

(2) who inflicts bodily harm upon any person in the course of such robbery.

(c) (1) Robbery is a severity level 5, person felony,

(2) Aggravated robbery is a severity level 3, person felony.

Comment

This section merges K.S.A. 21-3426 and 21-3427. The culpability term “knowingly” is added to clarify that this is a general intent offense.

21-34-402

21-34-402. Aggravated robbery. Aggravated robbery is a robbery, as defined in K.S.A. 21-3426 and amendments thereto, committed by a person who is armed with a dangerous weapon or who inflicts bodily harm upon any person in the course of such robbery.

(2) Aggravated robbery is a severity level 3, person felony.

Comment

This section merges K.S.A. 21-3427 into 21-34-401.

21-34-501

21-34-501. Unlawful interference with a firefighter.

Moved to Article 42

21-34-502

21-34-502. Unlawful interference with an emergency medical services attendant.

Moved to Article 42
21-34-503. Terrorism.

(a) Terrorism is the commission of, the attempt to commit, or the conspiracy to commit, or the criminal solicitation to commit any felony with the intent to:

(1) intimidate or coerce the civilian population,

(2) influence government policy by intimidation or coercion, or

(3) to affect the operation of any unit of government.

(b) Terrorism is an off-grid person felony.

(c) The provisions of subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of terrorism pursuant to this section. The provisions of subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of terrorism pursuant to this section. The provisions of subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of terrorism pursuant to this section.

Comment

This section incorporates K.S.A. 21-3449. The phrase “the criminal solicitation to commit” is added to include solicitation along with the other inchoate crimes of attempt and conspiracy. The Commission determined that the legislature intended to punish solicitation in this offense along with attempt and conspiracy.

21-34-504. Illegal use of weapons of mass destruction.

(a) The illegal use of weapons of mass destruction is:

(1) Intentionally, knowingly and without lawful authority, developing, producing, stockpiling, transferring, acquiring, retaining or possessing any:

(A) Biological agent, toxin or delivery system for use as a weapon;

(B) chemical weapon; or
(C) nuclear materials or nuclear byproduct materials for use as a weapon;

(2) knowingly assisting a foreign state or any organization to do any such activities as specified in paragraph (1); or

(3) attempting, threatening, conspiring, or criminally soliciting to do any such activities as specified in paragraph (1) or (2).

(b) Illegal use of weapons of mass destruction is an off-grid person felony.

(c) The provisions of subsection (c) of K.S.A. 21-3301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (c) of K.S.A. 21-3302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of illegal use of weapons of mass destruction pursuant to this section. The provisions of subsection (d) of K.S.A. 21-3303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of illegal use of weapons of mass destruction pursuant to this section.

(d) The following shall not be prohibited under the provisions of this section:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) any military purpose of the United States that is not connected with the use of a chemical weapon or that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm;

(4) any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment; or

(5) any individual self-defense device, including those using a pepper spray or chemical mace.

(e) As used in this section:

(1) "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:
(A) Death, disease or other biological malfunction in a human, an animal, a plant or another living organism;

(B) deterioration of food, water, equipment, supplies or material of any kind; or

(C) deleterious alteration of the environment;

(2) "chemical weapon" means the following together or separately:

(A) A toxic chemical and its precursors, except where intended for a purpose not prohibited under this section, as long as the type and quantity is consistent with such a purpose;

(B) a munition or device, specifically designed to cause death or other harm through toxic properties of those toxic chemicals specified in subparagraph (A), which would be released as a result of the employment of such munition or device; or

(C) any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in subparagraph (B);

(3) "key component of a binary or multicomponent chemical system" means the precursor which plays the most important role in determining the toxic properties of the final product and reacts rapidly with other chemicals in the binary or multicomponent system;

(4) "delivery system" means:

(A) Any apparatus, equipment, device or means of delivery specifically designed to deliver or disseminate a biological agent, toxin or vector; or

(B) any vector;

(5) "for use as a weapon" does not include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin or delivery system for prophylactic, protective or other peaceful purposes;

(6) "nuclear material" means material containing any:

(A) Plutonium;

(B) uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;
(C) enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) uranium 233;

(7) "nuclear byproduct material" means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;

(8) "precursor" means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system;

(9) "toxic chemical" means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere;

(10) "toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(A) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(B) any poisonous isomer or biological product, homolog or derivative of such a substance; and

(11) "vector" means a living organism or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

Comment

This section incorporates K.S.A. 21-3450. The term “knowingly” replaces “intentionally” to clarify that specific intent is not required. As “knowingly” is a lesser degree of culpability, proof of intentional conduct fulfills the culpability requirement.
Furtherance of terrorism or illegal use of weapons of mass destruction.

(a) It is unlawful for any person knowingly or intentionally to receive or acquire property, or engage in transactions involving property, for the purpose of with the intent to commit or furthering the commission of any violation of K.S.A. 21-3449 or 21-3450, and amendments thereto. The provisions of this subsection do not apply to any transaction between an individual and that individual's counsel necessary to preserve that individual's right to representation, as guaranteed by section 10 of the bill of rights of the constitution of the state of Kansas and by the sixth amendment to the United States constitution. This exception does not create any presumption against or prohibition of the right of the state to seek and obtain forfeiture of any proceeds derived from a violation of K.S.A. 21-3449 or 21-3450, and amendments thereto.

(b) It is unlawful for any person knowingly or intentionally to intentionally give, sell, transfer, trade, invest, conceal, distribute, transport, or maintain an interest in or otherwise make available any property which that person knows is intended to be used for the purpose of committing or furthering the commission of any violation of K.S.A. 21-3449 or 21-3450, and amendments thereto.

(c) It is unlawful for any person knowingly or intentionally to intentionally direct, plan, organize, initiate, finance, manage, supervise or facilitate the transportation or transfer distribution of property which that person knows is intended to be used to commit known to be for the purpose of committing or furthering the commission of K.S.A. 21-3449 or 21-3450, and amendments thereto.

(d) It is unlawful for any person knowingly or intentionally to conduct a financial transaction involving property with the intent to commit or furthering the commission of any violation of K.S.A. 21-3449 or 21-3450, and amendments thereto, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the property which that person knows is intended to be used to commit known to be for the purpose of committing or furthering the commission of any violation of K.S.A. 21-3449 or 21-3450, and amendments thereto, or to avoid a transaction reporting requirement under state or federal law.

(e) A person who violates this section is guilty of a severity level 1, person felony.

(f) As used in this section:

(1) "Property" means anything of value, and includes any interest in property, including any benefit, privilege, claim or right with respect to anything of value, whether real or personal, tangible or intangible;

(2) "transaction" includes a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, transfer
between accounts, exchange of currency, extension of credit, purchase, or
sale of any monetary instrument, use of a safe deposit box, or any other
acquisition or disposition of property whatever means effected.

Comment

This section incorporates K.S.A. 21-3451. The culpability terms are edited in subsection (a) to
clarify that it requires the intent to commit or further the commission of a violation of
terrorism or illegal use of weapons of mass destruction. The terms “sell, transfer, trade” are
removed from subsection (a)(2) as they are duplicative of the definition of “distribute.”

21-34-506

21-34-506. Exposing another to a life threatening communicable disease.

(a) It is unlawful for an individual, who knows oneself to be infected with a life
threatening communicable disease, to knowingly:

(1) To engage in sexual intercourse or sodomy with another individual with the
intent to expose that individual to that life threatening communicable
disease;

(2) To sell or donate one’s own blood, blood products, semen, tissue, organs or
other body fluids with the intent to expose the recipient to a life threatening
communicable disease; or

(3) To share with another individual a hypodermic needle, syringe, or both, for
the introduction of drugs or any other substance into, or for the withdrawal
of blood or body fluids from, the other individual's body with the intent to
expose another person to a life threatening communicable disease.

(b) Violation of this section is a severity level 7, person felony.

(c) As used in this section, the term "sexual intercourse" shall not include penetration
by any object other than the male sex organ; the term "sodomy" shall not include
the penetration of the anal opening by any object other than the male sex organ.

(c) Violation of this section is a severity level 7, person felony.

Comment

This section incorporates K.S.A. 21-3435. The term “knowingly” is removed as it is duplicative of
the phrase “knows oneself to be infected.” Subsections (a)(1) – (3) require a further specific
intent to expose a person to a life threatening disease.
21-34-507. Unlawful administration of a substance.

(a) Unlawful administration of a substance is the intentional and knowing administration of a substance to another person without consent for the purpose of with the intent to impairing such other person's physical or mental ability to appraise or control such person's conduct.

(b) "Unlawful administration of a substance" means any method of causing the ingestion by another person of a controlled substance, including gamma hydroxybutyric acid, or any controlled substance analog, as defined in K.S.A. 65-4101, of gamma hydroxybutyric acid, including gamma butyrolactone; butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with CAS No. 96-48-0; 1,4 butanediol; butanediol; butane-1,4-diol; 1,4-butylen glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diyl, into any food, beverage or other consumable that the person knows, or should know, would be consumed by such other person.

(c) This section shall not prohibit administration of any substance described in subsection (b) for lawful medical or therapeutic treatment.

(d) Unlawful administration of a substance is a class A person misdemeanor.

Comment

This section incorporates K.S.A. 21-3445. The phrase “intentional and knowing” is replaced by the phrase “with the intent to” in subsection (a).

The term “unlawful” in subsection (b) is removed as unnecessary.

The phrase “into any food, beverage or other consumable that the person knows, or should know, would be consumed by such other person” is removed because the Commission concludes that use of that language excludes a direct injection of the substance into the victim. The Commission determined that the legislature did not wish to create such and exception to the offense.

The Commission determined that the is no conflict between this offense and other criminal offenses such as murder or rape.
21-34-508. Trafficking.

(a) Trafficking is:

(1) Recruiting, harboring, transporting, providing or obtaining, by any means, another person with knowledge knowing that force, fraud, threat or coercion will be used to cause the person to engage in forced labor or involuntary servitude;

(2) benefitting financially or by receiving anything of value from participation in a venture that the person has reason to know has engaged in acts set forth in subsection (a)(1); or

(b) Aggravated trafficking is:

(1) trafficking, as described in subsection (a):

(A) Involving the commission or attempted commission of kidnapping, as defined in K.S.A 21-3420, and amendments thereto;

(B) committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or

(C) resulting in a death; or

(2) recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(c) (1) Trafficking is a severity level 2, person felony;

(2) Except as provided further, aggravated trafficking is a severity level 1, person felony. When the offender is 18 years of age or older, aggravated trafficking, if the victim is less than 14 years of age, is an off-grid person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section incorporates K.S.A. 21-3446 and 21-3447. The Commission recommends a substantive change to this statute in volume two of its final report.
21-34-509. Aggravated trafficking. (a) Aggravated trafficking is:

(1) Trafficking, as defined in K.S.A. 21-3446, and amendments thereto;

(A) Involving the commission or attempted commission of kidnapping, as defined in K.S.A. 21-3420, and amendments thereto;

(B) committed in whole or in part for the purpose of the sexual gratification of the defendant or another; or

(C) resulting in a death; or

(2) recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

(b) Except as provided further, aggravated trafficking is a severity level 1, person felony.

When the offender is 18 years of age or older, aggravated trafficking, if the victim is less than 14 years of age, is an off-grid person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 21-3447 into 21-34-508.

21-34-510. Stalking.

(a) Stalking is:

(1) intentionally or knowingly or recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;

(2) intentionally engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct which the individual knows will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or

(3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, and amendments thereto, that prohibits contact with a targeted person, intentionally or knowingly or recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear.
Upon a first conviction, stalking as described in subsection (a)(1) is a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in subsection (a)(1) is a severity level 7, person felony.

Upon a first conviction, stalking as described in subsection (a)(2) is a class A person misdemeanor. Upon a second or subsequent conviction, stalking as described in subsection (a)(2) is a severity level 5, person felony.

Upon a first conviction, stalking as described in subsection (a)(3) is a severity level 9, person felony. Upon a second or subsequent conviction, stalking as described in subsection (a)(3) is a severity level 5, person felony.

For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a uniformed law enforcement officer, that such person’s actions were in violation of this section, shall be presumed to have acted intentionally knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

As used in this section:

(1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

(A) Threatening the safety of the targeted person or a member of such person’s immediate family.

(B) Following, approaching or confronting the targeted person or a member of such person’s immediate family.

(C) Appearing in close proximity to, or entering the targeted person’s residence, place of employment, school or other place where such person can be found, or the residence, place of employment or school of a member of such person’s immediate family.

(D) Causing damage to the targeted person’s residence or property or that of a member of such person's immediate family.
(E) Placing an object on the targeted person's property or the property of a
member of such person's immediate family, either directly or through a third
person.

(F) Causing injury to the targeted person's pet or a pet belonging to a member of
such person's immediate family.

(G) Any act of communication.

(2) "Communication" means to impart a message by any method of transmission,
including, but not limited to: Telephoning, personally delivering, sending or
having delivered, any information or material by written or printed note or
letter, package, mail, courier service or electronic transmission, including
electronic transmissions generated or communicated via a computer.

(3) "Computer" means a programmable, electronic device capable of accepting
and processing data.

(4) "Conviction" includes being convicted of a violation of this section or being
convicted of a law of another state which prohibits the acts that this section
prohibits.

(5) "Immediate family" means father, mother, stepparent, child, stepchild,
sibling, spouse or grandparent of the targeted person; any person residing in
the household of the targeted person; or any person involved in an intimate
relationship with the targeted person.

(g) If any provision or application of this section is held invalid for any reason, the
invalidity of such provision or application is severable and does not affect other
provisions or applications of this section which can be given effect without the
invalid provisions or applications.

Comment

This section incorporates K.S.A. 21-3438. The term “knowingly” is removed as it is
unnecessary in light of the lesser culpability term, “recklessly.”
propensities, permits or suffers such animal to go at large or keeps such animal without taking ordinary care to restrain it.

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

Comment

This section incorporates K.S.A. 21-3418. No change is recommended.

21-34-512


(a) Blackmail is gaining or attempting to gain anything of value or compelling or attempting to compel another to act against such person’s will, by threatening to communicate accusations or statements about any person that would subject such person or any other person to public ridicule, contempt or degradation.

(b) Blackmail is a severity level 7, nonperson felony.

Comment

This section incorporates K.S.A. 21-3428. The phrase “attempting to compel” is added. The Commission concluded that the legislature intended to include attempted compulsion in this offense in the same way it included attempting to gain things of value.
ARTICLE 35

SEX CRIMES

Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3501</td>
<td>Definitions</td>
<td>21-35-101</td>
</tr>
<tr>
<td>21-3525</td>
<td>Evidence of complaining witness' previous sexual conduct in prosecutions for sex offenses; motions; notice.</td>
<td>21-35-102</td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3502</td>
<td>Rape</td>
<td>21-35-201</td>
</tr>
<tr>
<td>21-3505; 21-3506</td>
<td>Criminal sodomy</td>
<td>21-35-202</td>
</tr>
<tr>
<td>21-3506</td>
<td>Aggravated criminal sodomy</td>
<td>21-35-203</td>
</tr>
<tr>
<td>21-3517; 21-3518</td>
<td>Sexual battery</td>
<td>21-35-204</td>
</tr>
<tr>
<td>21-3518</td>
<td>Aggravated sexual battery</td>
<td>21-35-205</td>
</tr>
</tbody>
</table>

Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3503; 21-3504</td>
<td>Indecent liberties with a child</td>
<td>21-35-301</td>
</tr>
<tr>
<td>21-3504</td>
<td>Aggravated indecent liberties with a child</td>
<td>21-35-302</td>
</tr>
<tr>
<td>21-3522</td>
<td>Unlawful voluntary sexual relations</td>
<td>21-35-303</td>
</tr>
<tr>
<td>21-3510; 21-3511</td>
<td>Indecent solicitation of a child</td>
<td>21-35-304</td>
</tr>
<tr>
<td>21-3511</td>
<td>Aggravated indecent solicitation of a child</td>
<td>21-35-305</td>
</tr>
<tr>
<td>21-3523</td>
<td>Electronic solicitation</td>
<td>21-35-306</td>
</tr>
<tr>
<td>21-3516</td>
<td>Sexual exploitation of a child</td>
<td>21-35-307</td>
</tr>
</tbody>
</table>

Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3507</td>
<td>Adultery</td>
<td>21-35-401</td>
</tr>
<tr>
<td>21-3520</td>
<td>Unlawful sexual relations</td>
<td>21-35-402</td>
</tr>
<tr>
<td>21-3508</td>
<td>Lewd and lascivious behavior</td>
<td>21-35-403</td>
</tr>
</tbody>
</table>
### Section 5

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3512</td>
<td>Prostitution</td>
<td>21-35-501</td>
</tr>
<tr>
<td>21-3513</td>
<td>Promoting prostitution</td>
<td>21-35-502</td>
</tr>
<tr>
<td>21-3515</td>
<td>Patronizing a prostitute</td>
<td>21-35-503</td>
</tr>
<tr>
<td>21-3521</td>
<td>Severability</td>
<td>21-35-504</td>
</tr>
</tbody>
</table>
21-35-101. Definitions. The following definitions apply in this article unless a different meaning is plainly required:

(a) "Sexual intercourse" means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

1. Generally recognized health care practices; or
2. A body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(b) "Sodomy" means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

1. Generally recognized health care practices; or
2. A body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(c) "Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

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

Comment

This section incorporates K.S.A. 21-3501. No change is recommended.

21-35-102.

21-35-102. Evidence of complaining witness' previous sexual conduct in prosecutions for sex offenses; motions; notice.
(a) The provisions of this section shall apply only in a prosecution for:

(1) Rape, as defined by K.S.A. 21-3502, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, and amendments thereto;

(4) criminal sodomy, as defined in subsections (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(5) aggravated criminal sodomy as defined by K.S.A. 21-3506, and amendments thereto;

(6) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, and amendments thereto;

(7) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto;

(8) aggravated sexual battery, as defined in K.S.A. 21-3518, and amendments thereto;

(9) incest, as defined in K.S.A. 21-3602, and amendments thereto;

(10) aggravated incest, as defined in K.S.A. 21-3603, and amendments thereto;

(11) indecent solicitation of a child, as defined in K.S.A. 21-3510 and amendments thereto;

(12) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto, with intent to commit any crime specified above;

(13) sexual battery, as defined in K.S.A. 21-3517, and amendments thereto;

(14) unlawful voluntary sexual relations, as defined in K.S.A. 21-3522, and amendments thereto;

(15) aggravated trafficking, as defined in subsections (a)(1)(B) and (a)(2) of K.S.A. 21-3447, and amendments thereto;

(16) electronic solicitation, as defined in K.S.A. 21-3523, and amendments thereto; or
(17) attempt, as defined in K.S.A. 21-3301, and amendments thereto, or
conspiracy, as defined in K.S.A. 21-3302, and amendments thereto, to commit
any crime specified above.

(b) Except as provided in subsection (c), in any prosecution to which this section applies,
evidence of the complaining witness' previous sexual conduct with any person
including the defendant shall not be admissible, and no reference shall be made
thereto in any proceeding before the court, except under the following conditions:
The defendant shall make a written motion to the court to admit evidence or
testimony concerning the previous sexual conduct of the complaining witness. The
motion must be made at least seven days before the commencement of the
proceeding unless that requirement is waived by the court. The motion shall state
the nature of such evidence or testimony and its relevancy and shall be accompanied
by an affidavit in which an offer of proof of the previous sexual conduct of the
complaining witness is stated. The motion, affidavits and any supporting or
responding documents of the motion shall not be made available for examination
without a written order of the court except that such motion, affidavits and
supporting and responding documents or testimony when requested shall be made
available to the defendant or the defendant's counsel and to the prosecutor. The
defendant, defendant's counsel and prosecutor shall be prohibited from disclosing
any matters relating to the motion, affidavits and any supporting or responding
documents of the motion. The court shall conduct a hearing on the motion in
camera. At the conclusion of the hearing, if the court finds that evidence proposed
to be offered by the defendant regarding the previous sexual conduct of the
complaining witness is relevant and is not otherwise inadmissible as evidence, the
court may make an order stating what evidence may be introduced by the defendant
and the nature of the questions to be permitted. The defendant may then offer
evidence and question witnesses in accordance with the order of the court.

c) In any prosecution for a crime designated in subsection (a), the prosecuting attorney
may introduce evidence concerning any previous sexual conduct of the complaining
witness, and the complaining witness may testify as to any such previous sexual
conduct. If such evidence or testimony is introduced, the defendant may cross-
examine the witness who gives such testimony and offer relevant evidence limited
specifically to the rebuttal of such evidence or testimony introduced by the
prosecutor or given by the complaining witness.

(d) As used in this section, "complaining witness" means the alleged victim of any crime
designated in subsection (a), the prosecution of which is subject to this section.

Comment

This section incorporates K.S.A. 21-3525. No change is recommended.

21-35-201
21-35-201. Rape.

(a) Rape is:

(1) *Knowingly engaging in* sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) When the victim is unconscious or physically powerless; or

(2) *Knowingly engaging in* sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(3) Sexual intercourse with a child who is under 14 years of age;

(4) Sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) Sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b) Except as provided further, rape as described in subsection (a)(1), (2), (3) is a severity level 1, person felony. Rape as described in subsection (a)(2), when the offender is 18 years of age or older, is an off-grid person felony. Rape as described in subsection (a)(3) or (4) is a severity level 2, person felony.

(c) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.

(d) *Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.*

Comment

This section incorporates K.S.A. 21-3502. The term “knowing” is added to subsection (a)(1) and (2) to clarify that general intent is required. Subsection (d) is added to clarify that the offender...
need not know that the victim did not consent, was overcome by force or fear, or was unconscious or physically powerless.


(a) Criminal sodomy is:

(1) Sodomy between persons who are 16 or more years of age and members of the same sex;

(2) sodomy between a person and an animal;

(3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or

(4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.

(b) Aggravated criminal sodomy is:

(1) Sodomy with a child who is under 14 years of age;

(2) causing a child under 14 years of age to engage in sodomy with any person or an animal;

(3) sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with any person or an animal under any of the following circumstances:

   (A) When the victim is overcome by force or fear;

   (B) when the victim is unconscious or physically powerless; or

   (C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Criminal sodomy as defined in subsection (a)(1) and (a)(2) is a class B nonperson misdemeanor,
(2) Criminal sodomy as defined in subsections (a)(4) and (a)(4) is a severity level 3, person felony,

(3) Except as provided further, aggravated criminal sodomy is a severity level 1, person felony. Aggravated criminal sodomy as described in subsection (b)(1) or (b)(2), when the offender is 18 years of age or older, is an off-grid person felony.

(d) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(2), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.

(e) Except as provided in subsection (a)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

Comment

This section merges K.S.A. 21-3505 and 21-3506. Subsections (a)(1) and (2) were one subsection but they have been separated to promote clarity.

Subsection (e) is added to clarify that the offender need not know the that the victim did not consent, was overcome by force or fear, or was unconscious or physically powerless.

The Commission recommends eliminating subsection (a)(1) as it is unconstitutional in light of the U.S. Supreme Court decision in Lawrence v. Texas, 539 U.S. 558 (2003). Please see volume two of the Commission's final report.

21-35-203

21-35-203. Aggravated criminal sodomy. (a) Aggravated criminal sodomy is:
—(1) Sodomy with a child who is under 14 years of age;
—(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or
—(3) sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with any person or an animal, under any of the following circumstances:
—(A) when the victim is overcome by force or fear;
—(B) when the victim is unconscious or physically powerless; or
—(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender.
— (b) It shall be a defense to a prosecution of aggravated criminal sodomy under subsection (a)(1) that the child was married to the accused at the time of the offense.

— (c) Except as provided further, aggravated criminal sodomy is a severity level 1, person felony. Aggravated criminal sodomy as described in subsection (a)(1) or (a)(2), when the offender is 18 years of age or older, is an off-grid person felony.

Comment

This section merges K.S.A. 21-3506 into 21-35-202.

21-35-204. Sexual battery.

(a) Sexual battery is the intentional touching of the person of another who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender or another; or

(b) Aggravated sexual battery is the intentional touching of the person of another who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender or another and under any of the following circumstances:

(1) When the victim is overcome by force or fear;

(2) when the victim is unconscious or physically powerless;

(3) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Sexual battery is a class A person misdemeanor.

(2) Aggravated sexual battery is a severity level 5, person felony.

(d) Except as provided in subsection (b)(3), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the battery, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

Comment
This section merges K.S.A. 21-3517 and 21-3518. Subsection (d) is added to clarify that the offender need not know that the victim did not consent, was overcome by force or fear, or was unconscious or physically powerless.

---

21-35-205

21-35-205. Aggravated sexual battery. (a) Aggravated sexual battery is the intentional touching of the person of another who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another under any of the following circumstances:

— (1) When the victim is overcome by force or fear;
— (2) When the victim is unconscious or physically powerless;
— (3) When the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(b) Aggravated sexual battery is a severity level 5, person felony.

(c) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 21-3518 into 21-35-204.

---

21-35-301

21-35-301. Indecent liberties with a child.

(a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(1) any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) Aggravated indecent liberties with a child is:

(1) sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;
(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent [strict liability language about consent] thereto:

(A) Any lewd fondling or touching of the person 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; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(c) Indecent liberties with a child:

(1) Indecent liberties with a child is a severity level 5, person felony,

(2) Except as provided further, aggravated indecent liberties with a child as described in subsections (b)(1) and (b)(3) is a severity level 3, person felony. Aggravated indecent liberties with a child as described in subsection (a)(2) is a severity level 4, person felony. When the offender is 18 years of age or older, aggravated indecent liberties with a child as described in subsection (a)(3) is an off-grid person felony.

(d) It shall be a defense to a prosecution of indecent liberties with a child, as defined in subsection (a)(1), and aggravated indecent liberties with a child, as defined in subsection (b)(1), (b)(2)(A) and (b)(3)(A) that the child was married to the accused at the time of the offense.

Comment

This section merges K.S.A. 21-3503 and 21-3504. No change is recommended.
21-35-302. Aggravated indecent liberties with a child. (a) Aggravated indecent liberties with a child is:
   — (1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;
   — (2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:
      — (A) Any lewd fondling or touching of the person 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; or
      — (B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another;
   or
   — (3) engaging in any of the following acts with a child who is under 14 years of age:
      — (A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or
      — (B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.
   — (b) It shall be a defense to a prosecution of aggravated indecent liberties with a child as provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A) that the child was married to the accused at the time of the offense.
   — (c) Except as provided further, aggravated indecent liberties with a child as described in subsections (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated indecent liberties with a child as described in subsection (a)(2) is a severity level 4, person felony. When the offender is 18 years of age or older, aggravated indecent liberties with a child as described in subsection (a)(3) is an off-grid person felony.

Comment
This section merges K.S.A. 21-3504 into 21-35-301.

21-35-303. Unlawful voluntary sexual relations.

(a) Unlawful voluntary sexual relations is:
   — (1) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:
      — (A) Voluntary sexual intercourse;
      — (B) voluntary sodomy; or
(C) voluntary lewd fondling or touching;

(2) when the offender is less than 19 years of age;

(3) when the offender is less than four years of age older than the child;

(4) when the child and the offender are the only parties involved; and

(5) when the child and the offender are members of the opposite sex.

(b) Unlawful voluntary sexual relations:

(1) as provided in subsection (a)(1)(A) is a severity level 8, person felony.

(2) as provided in subsection (a)(1)(B) is a severity level 9, person felony.

(3) as provided in subsection (a)(1)(C) is a severity level 10, person felony.

Comment

This section incorporates K.S.A. 21-3522. The statute is reorganized to promote readability.

The Commission recommends eliminating subsection (a)(5) as it is unconstitutional in light of the Kansas Supreme Court decision in State v. Limon, 280 Kan. 275 (2005) and U.S. Supreme Court decision in Lawrence v. Texas, 539 U.S. 558 (2003). Please see volume two of the Commission’s final report.

21-35-304

21-35-304. Indecent solicitation of a child.

(a) Indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to:

(1) commit or to submit to an unlawful sexual act; or

(2) enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Aggravated indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child under the age of 14 years to:

(1) commit or submit to an unlawful sexual act; or
enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(c) (1) Indecent solicitation of a child is a severity level 6, person felony, felony.

(2) Aggravated indecent solicitation of a child is a severity level 5, person felony.

(c) It shall not be a defense that the offender did not know or have reason to know that the sexual act was unlawful.

Comment

This section merges K.S.A. 21-3510 and 21-3511. The term “commanding” is added to (a) because the terms “enticing,” “inviting,” and “persuading” do not clearly encompass a situation where a child is ordered to engage in the prohibited conduct.

Subsection (c) is added to clarify that the offender need not know that the sexual act is unlawful.

21-35-305

21-35-305. Aggravated indecent solicitation of a child. Aggravated indecent solicitation of a child is:

(a) Enticing or soliciting a child under the age of 14 years to commit or to submit to an unlawful sexual act; or

(b) Inviting, persuading or attempting to persuade a child under the age of 14 years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

Aggravated indecent solicitation of a child is a severity level 5, person felony.

Comment

This section merges K.S.A. 21-3511 into 21-35-304.

21-35-306


(a) Electronic solicitation is, by means of communication conducted through the telephone, internet, or by other electronic means, enticing or soliciting a person, whom the offender believes to be a child, to commit or submit to an unlawful sexual act.

(b) Electronic solicitation, as described in subsection (a), is:
(1) a severity level 3 person felony if the offender believes the person to be a child 14 or more years of age but less than 16 years of age;

(2) a severity level 1 person felony if the offender believes the person to be a child under 14 years of age.

(c) For the purposes of this section, "communication conducted through the internet or by other electronic means" includes but is not limited to e-mail, chatroom chats and text messaging.

Comment

This section incorporates K.S.A. 21-3523. No change is recommended.


(a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child to engage in sexually explicit conduct for the purpose of promoting with the intent to promote any performance;

(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person; or the child, under 18 years of age, or another;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

(b) Sexual exploitation of a child is a severity level 5, person felony except that, if the child is under 14 years of age and the offender is 18 years of age or older, sexual exploitation of a child as described in subsections (a)(1) and (a)(4) is an off-grid person felony.

(c) As used in this section:
(1) “Sexually explicit conduct” means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person.

(2) “Promoting” means procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person, the child or another.

(3) “Performance” means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation.

(4) “Nude” means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(5) “Visual depiction” means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

Comment

This section incorporates K.S.A 21-3516. The phrase “the purpose of” is replaced with “with the intent to” to be consistent with the general culpability statute, 21-32-102. The phrase “or any other person” is added to (a)(2) to promote clarity. The terms selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating are removed from subsection (c)(2) as they are duplicative of the term “distribute.”

(a) Adultery is engaging in sexual intercourse or sodomy with a person who is not married to the offender if:

(1) The offender is married; or

(2) The offender is not married and knows that the other person involved in the act is married.

(b) Adultery is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-3507. No change is recommended.

21-35-402. Unlawful sexual relations.

(a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate; or

(2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender; or

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such jail; or

Article 31
(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house; or

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility; or

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is 16 years of age or older and (A) released on conditional release from a juvenile correctional facility under the supervision and control of the juvenile justice authority or juvenile community supervision agency or (B) placed in the custody of the juvenile justice authority under the supervision and control of the juvenile justice authority or juvenile community supervision agency and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide services in a social and rehabilitation services institution and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502, and amendments thereto, lewd fondling or touching, or sodomy, not otherwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments thereto, is a person 16 years of age or older who is a patient in such institution;

(8) the offender is a teacher or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(2) of K.S.A. 21-3502 or subsection (a)(1) of K.S.A. 21-3504, and amendments thereto, lewd fondling or touching, not otherwise subject to K.S.A. 21-3503 or subsection (a)(2) or (a)(3) of K.S.A. 21-3504, and amendments thereto, or sodomy, not otherwise subject to K.S.A. 21-3505 or subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto, is a student enrolled at the school where the offender
is employed. If the offender is the parent of the student, the provisions of
K.S.A. 21-3603, and amendments thereto, shall apply, not this subsection;

(9) the offender is a court services officer or the employee of a contractor who is
under contract to provide supervision services for persons under court
services supervision and the person with whom the offender is engaging in
consensual sexual intercourse, lewd fondling or touching, or sodomy is a
person 16 years of age or older who has been placed on probation under the
supervision and control of court services and the offender has knowledge
that the person with whom the offender is engaging in consensual sexual
intercourse, lewd fondling or touching, or sodomy is currently under the
supervision of court services; or

(10) the offender is a community correctional services officer or the employee of
a contractor who is under contract to provide supervision services for
persons under community corrections supervision and the person with
whom the offender is engaging in consensual sexual intercourse, lewd
fondling or touching, or sodomy is a person 16 years of age or older who has
been assigned to a community correctional services program under the
supervision and control of community corrections and the offender has
knowledge that the person with whom the offender is engaging in
consensual sexual intercourse, lewd fondling or touching, or sodomy is
currently under supervision of community corrections.

(b) Unlawful sexual relations is a severity level 10, person felony.

(c) For purposes of this act:

(1) "Correctional institution" means the same as prescribed by K.S.A. 75-5202,
and amendments thereto;

(2) "inmate" means the same as prescribed by K.S.A. 75-5202, and amendments
thereto;

(3) "parole officer" means the same as prescribed by K.S.A. 75-5202, and
amendments thereto;

(4) "postrelease supervision" means the same as prescribed in the Kansas
sentencing guidelines act in K.S.A. 21-4703, and amendments thereto;

(5) "juvenile detention facility" means the same as prescribed by K.S.A. 2007
Supp. 38-2302, and amendments thereto;

(6) "juvenile correctional facility" means the same as prescribed by K.S.A. 2007
Supp. 38-2302, and amendments thereto;
(7) "sanctions house" means the same as prescribed by K.S.A. 2007 Supp. 38-2302, and amendments thereto; 

(8) "institution" means the same as prescribed by K.S.A. 76-12a01, and amendments thereto; and 

(9) "teacher" means and includes teachers, supervisors, principals, superintendents and any other professional employee in any public or private school offering any of grades kindergarten through 12; 

(10) "community corrections" means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the Kansas juvenile justice code, K.S.A. 38-1601 et seq., and amendments thereto; 

(11) "court services" means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state; 

(12) "law enforcement officer" means the same as prescribed by K.S.A. 21-3110, and amendments thereto; and 

(13) "juvenile community supervision agency" means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the juvenile justice authority. 

Comment 

This section incorporates K.S.A. 21-3520. The term “by lawful custody” is eliminated as unnecessary. 

21-35-403 

21-35-403. Lewd and lascivious behavior. 

(a) Lewd and lascivious behavior is: 

(1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or 

(2) publicly exposing a sex organ or exposing a sex organ in the presence of a person who is not the spouse of the offender and who has not consented
thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(b) (1) Lewd and lascivious behavior if committed in the presence of a person 16 or more years of age is a class B nonperson misdemeanor.

(2) Lewd and lascivious behavior if committed in the presence of a person under 16 years of age is a severity level 9, person felony.

Comment

This section incorporates K.S.A. 21-3508. The Commission recognizes the definition of “presence” in State v. Bryan, 33 Kan. App. 2d 382. There the court held that the illegal activity must be reasonably capable of being perceived. However, the Commission rejects adding that definition to the statute.

21-35-501


Moved to article 43

21-35-502


Moved to article 43

21-35-503

21-35-503. Patronizing a prostitute.

Moved to article 43

21-35-504

21-35-504. Severability clause. If any provision of this act is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

Comment

This section deletes K.S.A. 21-3521 in lieu of the general severability clause in Article 31.

Article 31
### ARTICLE 36

**CRIMES AFFECTING THE FAMILY RELATIONSHIP AND CHILDREN**

#### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3608; 21-3608a</td>
<td>Endangering a child</td>
<td>21-36-101</td>
</tr>
<tr>
<td>21-3608a</td>
<td>Aggravated endangering a child</td>
<td>21-36-101</td>
</tr>
<tr>
<td>21-3609</td>
<td>Abuse of a child</td>
<td>21-36-103</td>
</tr>
<tr>
<td>21-3612</td>
<td>Contributing to a child's misconduct or deprivation</td>
<td>21-36-104</td>
</tr>
</tbody>
</table>

#### Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3602; 21-3603</td>
<td>Incest</td>
<td>21-36-201</td>
</tr>
<tr>
<td>21-3603</td>
<td>Aggravated incest</td>
<td>21-36-202</td>
</tr>
<tr>
<td>21-3604; 21-3604a</td>
<td>Abandonment of a child</td>
<td>21-36-203</td>
</tr>
<tr>
<td>21-3604a</td>
<td>Aggravated abandonment of a child</td>
<td>21-36-204</td>
</tr>
<tr>
<td>21-3605</td>
<td>Criminal nonsupport</td>
<td>21-36-205</td>
</tr>
</tbody>
</table>

#### Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3610; 21-3610b</td>
<td>Furnishing alcoholic liquor or cereal malt beverage to a minor</td>
<td>21-36-301</td>
</tr>
<tr>
<td>21-3610b</td>
<td>Furnishing alcoholic beverages to a minor for illicit purposes</td>
<td>21-36-302</td>
</tr>
<tr>
<td>21-3610c</td>
<td>Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage</td>
<td>21-36-303</td>
</tr>
</tbody>
</table>

#### Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3601</td>
<td>Bigamy</td>
<td>21-36-401</td>
</tr>
</tbody>
</table>

(a) Endangering a child is intentionally knowingly and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered.

(b) Aggravated endangering a child is:

(1) Intentionally causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;

(2) Recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be endangered;

(3) Causing or permitting such child to be in an environment where the person knows or reasonably should know that any person is selling, offering for sale or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, distributing, possessing with intent to distribute, manufacturing, or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(4) Causing or permitting such child to be in an environment where the person knows or reasonably should know that drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine, or analog thereof, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(c) (1) Endangering a child is a class A person misdemeanor,

(2) Aggravated endangering a child is a severity level 9, person felony.

(d) Nothing in subsection (a) shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(e) As used in this section:
Article 3

1 (1) "Manufacture" shall have the meaning ascribed to that term in K.S.A. 65-4101, and amendments thereto; and

(2) "drug paraphernalia" shall have the meaning ascribed to that term in K.S.A. 65-4150, and amendments thereto.

Comment

This section merges K.S.A. 21-3608 and 21-3608a. The term "is injured" is removed to avoid conflict between this statute and other offenses where injury is an element, such as battery. The culpability term in subsection (a) is changed to "knowingly" to convey a general intent requirement. The phrase "selling, offering for sale or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense" is deleted because it is duplicative of the term "distribute."

21-36-102

21-36-102. Aggravated endangering a child. (a) Aggravated endangering a child is:

(1) Intentionally causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;

(2) Recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;

(3) Causing or permitting such child to be in an environment where a person is selling, offering for sale or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture or attempt to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(4) Causing or permitting such child to be in an environment where drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(b) Aggravated endangering a child is a severity level 9, person felony.

(c) As used in this section:

(1) "Manufacture" shall have the meaning ascribed to that term in K.S.A. 65-4101, and amendments thereto; and

(2) "Drug paraphernalia" shall have the meaning ascribed to that term in K.S.A. 65-4150, and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 21-3608a into 21-36-101.

21-36-103
21-36-103. Abuse of a child.

(a) Abuse of a child is intentionally {\textit{knowingly}}:

(1) Torturing, cruelly beating, or shaking any child under the age of 18 years which results in great bodily harm to the child; or

(2) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

(b) Abuse of a child is a severity level 5, person felony.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or murder.

Comment

K.S.A. 21-3609. Changes have been made to the language of the statute and letters and numbers have been added. State v. Escher, 22 Kan. App. 2d 779(1996) indicates this is a general intent offense; therefore, the culpability term has been changed to “knowingly.” Subsection (c) is added to clarify the relationship between this offense and other person offenses.

21-36-104

21-36-104. Contributing to a child's misconduct or deprivation.

(a) Contributing to a child's misconduct or deprivation is:

(1) {\textit{Knowingly}} causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a felony;

(2) sheltering or concealing a runaway with intent to aid the runaway in avoiding detection or apprehension by law enforcement officers;

(3) {\textit{Knowingly}} causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the revised Kansas code for care of children;

(4) {\textit{Knowingly}} causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810 and amendments thereto;
failure to reveal, upon inquiry by a uniformed or properly identified law
enforcement officer engaged in the performance of such officer's duty, any
information one has regarding a runaway, with intent to aid the runaway in
avoiding detection or apprehension; or

knowingly causing or encouraging a child to violate the terms or conditions
of the child's probation or conditional release pursuant to subsection (a)(1)

Contributing to a child's misconduct or deprivation as described:

(1) in subsection (a)(1) is a severity level 7, person felony;
(2) in subsection (a)(2) is a severity level 8, person felony;
(3) in subsections (a)(3), (4), (5) or (6) is a class A nonperson misdemeanor.

A person may be found guilty of contributing to a child's misconduct or deprivation
even though no prosecution of the child whose misconduct or deprivation the
defendant caused or encouraged has been commenced pursuant to the revised
Kansas code for care of children, revised Kansas juvenile justice code or Kansas
criminal code.

As used in this section, "runaway" means a child under 18 years of age who is
willfully and voluntarily absent from:

(1) The child's home without the consent of the child's parent or other
custodian; or
(2) a court ordered or designated placement, or a placement pursuant to court
order, if the absence is without the consent of the person with whom the
child is placed or, if the child is placed in a facility, without the consent of the
person in charge of such facility or such person's designee.

This section incorporates K.S.A. 21-3612. The Commission determined that “knowingly” is the
appropriate culpability standard. The term “willfully” is removed from subsection (d) as it is
unnecessary.
Incest is marriage to or engaging in otherwise lawful sexual intercourse or sodomy, as defined by K.S.A. 21-3501 and amendments thereto, with a person who is 18 or more years of age and who is known to the offender to be related to the offender as any of the following biological relatives: parent, child, grandparent of any degree, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

Aggravated incest is:

(1) Marriage to a person who is under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or

(2) engaging in the acts set forth in subsection (b)(2)(A) and (b)(2)(B) with a person who is 16 or more years of age but under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece:

(A) Otherwise lawful sexual intercourse or sodomy as defined by K.S.A. 21-3501 and amendments thereto; or

(B) any lewd fondling, as described in subsection (a)(1) of K.S.A. 21-3503 and amendments thereto,

Aggravated incest as defined in subsection (b)(2)(A) is a severity level 5, person felony,

Aggravated incest as defined in subsection (b)(1) and (b)(2)(B) is a severity level 7, person felony.

Comment

This section incorporates K.S.A. 21-3602 and 21-3603. No change is recommended for the purpose of recodification. The Commission proposes a policy recommendation to increase the severity of the offense for violations of the parent/child relationship. Please see volume two of the Commission's final report.
of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or

— (2) engaging in: (A) Otherwise lawful sexual intercourse or sodomy as defined by K.S.A. 21-3501 and amendments thereto; or (B) any lewd fondling, as described in subsection (a)(1) of K.S.A. 21-3503 and amendments thereto, with a person who is 16 or more years of age but under 18 years of age and who is known to the offender to be related to the offender as
any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

— (b) Aggravated incest as described in subsection (a)(2)(A) is a severity level 5, person felony. Aggravated incest as described in subsections (a)(1) and (a)(2)(B) is a severity level 7, person felony.

Comment

This section merges K.S.A. 21-3603 into 21-36-201.

21-36-203

21-36-203. Abandonment of a child.

(a) Abandonment of a child is leaving a child, under the age of 16 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.

(b) Aggravated abandonment of a child is abandonment of a child, as described in subsection (a), which results in great bodily harm.

(c) (1) Abandonment of a child is a severity level 8, person felony,

(2) Aggravated abandonment of a child is a severity level 5, person felony;

(c) No parent or other person having lawful custody of an infant shall be prosecuted for a violation of subsection (a), if such parent or person surrenders custody of an infant in the manner provided by K.S.A. 2007 Supp. 38-2282, and amendments thereto, and if such infant has not suffered bodily harm.

(d) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide.

Comment

This section incorporates K.S.A. 21-3604 and 21-3604a. Paragraph (d) is added to emphasize that this offense does not prohibit dual prosecutions for battery or homicide offenses.
21-36-204

21-36-204. Aggravated abandonment of a child. Aggravated abandonment of a child is abandonment of a child, as defined by K.S.A. 21-3604 and amendments thereto, which results in great bodily harm. Aggravated abandonment of a child is a severity level 5, person felony.

Comment

This section merges K.S.A. 21-3604a into 21-36-203.

21-36-205

21-36-205. Criminal nonsupport.

(a) Criminal nonsupport is:

(1) A parent's failure, neglect or refusal without lawful excuse to provide for the support and maintenance of the parent's child in necessitous circumstances; or

(2) a person's failure, without just cause, to provide for the support of such person's spouse in necessitous circumstances.

(b) Criminal nonsupport is a severity level 10, nonperson felony.

(c) As used in this section, "child" means a child under the age of 18 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.

(d) (1) At any time before the trial, upon petition and notice, the court may enter such temporary order as may seem just providing for support of such child or spouse, and may punish for violation of such order as for contempt.

(2) At any stage of the proceeding, instead of or in addition to imposing the penalty provided, the court, in its discretion and having regard for the circumstances and the financial ability or earning capacity of the defendant, may enter an order which shall be subject to change by the court, 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, conservator or custodian of such child or spouse or to an organization or individual approved by the court as trustee. The court shall also have the power to release the defendant on probation for the period so fixed, upon the defendant's entering into a
recognizance, with or without surety, in such sum as the court may order and approve. The condition of the recognizance shall be such that if the defendant shall make a 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 the recognizance shall be of full force and effect.

(3) If the court is 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, the court may forthwith proceed with the trial of the defendant under the original charge, or sentence the defendant under the original conviction, or enforce the suspended sentence as the case may be.

(4) 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.

(e) Failure by a spouse to use resources or income, or both, allowed to the spouse under section 303 of the federal medicare catastrophic coverage act of 1988 or under K.S.A. 39-785 through 39-790, and amendments thereto, as applicable, to provide medical support for the other spouse shall not constitute a violation of subsection (b)(1) so long as the other spouse is receiving medical assistance as defined by K.S.A. 39-702 and amendments thereto.

Comment

This section incorporates K.S.A. 21-3605. Non-support of a spouse and a child are both currently severity 10 nonperson felonies. The proposal merges the two offenses into a single crime of criminal nonsupport.

21-36-301

21-36-301. Furnishing alcoholic liquor or cereal malt beverage to a minor.

(a) Furnishing alcoholic liquor or cereal malt beverage to a minor is recklessly, directly or indirectly, selling to, buying for, giving or furnishing distributing any alcoholic liquor or cereal malt beverage to any minor.

(b) Furnishing alcoholic liquor or cereal malt beverage to a minor is a class B person misdemeanor for which the minimum fine is $200, except that it is a severity level 9, person felony if a person furnishes distributes alcoholic liquor or cereal malt beverage to a child under 18 years of age with the intent to commit against such child, or to encourage or induce such child to commit or participate in, any act
defined as a crime in article 35 of chapter 21 of the Kansas Statutes Annotated or in K.S.A. 21-3602 or 21-3603, and amendments thereto.

(c) As used in this section, terms have the meanings provided by K.S.A. 41-102, 41-2601 and 41-2701, and amendments thereto.

(d) This section shall not apply to wine intended for use and used by any church or religious organization for sacramental purposes.

(e) It shall be a defense to a prosecution under this section if: (1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof; (2) the defendant sold the alcoholic liquor or cereal malt beverage to the minor with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and (3) to purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, that reasonably appears to contain a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

(f) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child or ward's parent or legal guardian.

Comment

This section merges K.S.A. 21-3610 and 21-3610b. The Commission determined that the legislature intended for the recklessness standard to apply. The terms “selling,” “buying for,” “giving,” and “furnishing” are deleted as they are duplicative of the term “distribute.” Subsection (d) is added to reflect the law in K.S.A. 41-105.

21-36-302—Furnishing alcoholic beverages to a minor for illicit purposes. (a) Furnishing alcoholic beverages to a minor for illicit purposes is, either directly or indirectly, buying for or selling, giving or furnishing to a child under 18 years of age any cereal malt beverage or intoxicating liquor with the intent to commit against such child, or to encourage or induce such child to commit or participate in, any act defined as a crime in article 35 of chapter 21 of the Kansas Statutes Annotated or in K.S.A. 21-3602 or 21-3603, and amendments thereto.

—(b) Furnishing alcoholic beverages to a minor for illicit purposes is a severity level 9, person felony.

—(c) As used in this section, "cereal malt beverage" has the meaning provided by K.S.A. 41-2701 and amendments thereto.

—(d) This section shall be part of and supplemental to the Kansas criminal code.
Article 31

21-36-303. Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage.

(a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is intentionally or recklessly permitting a person's residence or any land, building, structure or room owned, occupied or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the unlawful possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor.

(b) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a class A person misdemeanor, for which the minimum fine is $1,000. If the court sentences the offender to perform community or public service work as a condition of probation, as described in subsection (c)(10) of K.S.A. 21-4610, and amendments thereto, the court shall consider ordering the offender to serve the community or public service at an alcohol treatment facility.

(c) As used in this section, terms have the meanings provided by K.S.A. 41-102, and amendments thereto.

(d) The provisions of this section shall not be deemed to create any civil liability for any lodging establishment, as defined in K.S.A. 36-501, and amendments thereto.

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

Comment

K.S.A. 21-3610c. Subsection (d) is deleted as unnecessary. The term “unlawful” is added in subsection (a) to incorporate the exemption for parents and legal guardians in 21-36-301(f). The term intentionally is removed as unnecessary in light of the lesser culpability term, “recklessly.”


(a) Bigamy is any of the following:
(1) Marriage within this state by any person who shall have has another spouse living at the time of such marriage;

(2) marriage within this state by an unmarried person to a person known to such unmarried person to be the spouse of some other person; or

(3) cohabitation within this state after marriage in another state or country under circumstances described in subsection (a)(1) or (a)(2).

(b) Bigamy is a severity level 10, nonperson felony.

(c) 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.

Comment

This section incorporates K.S.A. 21-3601. No change is recommended.
## ARTICLE 37

### PROPERTY CRIMES

#### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3701; 21-3704; 21-3765</td>
<td>Theft</td>
<td>21-37-101</td>
</tr>
<tr>
<td>21-3703</td>
<td>Theft of property lost, mislaid, or delivered by mistake</td>
<td>21-37-102</td>
</tr>
<tr>
<td>21-3705</td>
<td>Criminal deprivation of property</td>
<td>21-37-103</td>
</tr>
<tr>
<td>21-3765</td>
<td>Failing to pay for motor fuel</td>
<td>21-37-104</td>
</tr>
<tr>
<td>21-3702</td>
<td>Prima facie evidence of intent to permanently deprive owner or lessor of possession, use or benefit of property</td>
<td>21-37-105</td>
</tr>
<tr>
<td>21-3764</td>
<td>Unlawful acts involving a theft detection shielding device</td>
<td>21-37-106</td>
</tr>
<tr>
<td>21-3748; 21-3749; 21-3750</td>
<td>Unlawful use of recordings</td>
<td>21-37-107</td>
</tr>
</tbody>
</table>

#### Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3715; 21-3716</td>
<td>Burglary</td>
<td>21-37-201</td>
</tr>
<tr>
<td>21-3721</td>
<td>Criminal trespass</td>
<td>21-37-202</td>
</tr>
<tr>
<td>21-3728</td>
<td>Trespassing on railroad property</td>
<td>21-37-203</td>
</tr>
<tr>
<td>21-3728</td>
<td>Criminal hunting</td>
<td>21-37-204</td>
</tr>
<tr>
<td>21-3759</td>
<td>Commercial fossil hunting</td>
<td>21-37-205</td>
</tr>
</tbody>
</table>

#### Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3718; 21-3719</td>
<td>Arson</td>
<td>21-37-301</td>
</tr>
<tr>
<td>21-3720</td>
<td>Criminal damage to property</td>
<td>21-37-302</td>
</tr>
<tr>
<td>21-3731</td>
<td>Criminal use of an explosive</td>
<td>21-37-303</td>
</tr>
<tr>
<td>21-3722</td>
<td>Criminal littering</td>
<td>21-37-304</td>
</tr>
<tr>
<td>21-3724</td>
<td>Tampering with a landmark</td>
<td>21-37-305</td>
</tr>
<tr>
<td>21-3725</td>
<td>Tampering with a traffic signal</td>
<td>21-37-306</td>
</tr>
<tr>
<td>21-3766</td>
<td>Tampering with a pipeline</td>
<td>21-37-307</td>
</tr>
<tr>
<td>Current K.S.A. Number</td>
<td>Title</td>
<td>KCCRC Section Number</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>21-3707</td>
<td>Giving a worthless check</td>
<td>21-37-401</td>
</tr>
<tr>
<td>21-3709</td>
<td>Causing an unlawful prosecution for giving a worthless check</td>
<td>21-37-402</td>
</tr>
<tr>
<td>21-3710</td>
<td>Forgery</td>
<td>21-37-403</td>
</tr>
<tr>
<td>21-3711</td>
<td>Making false information</td>
<td>21-37-404</td>
</tr>
<tr>
<td>21-3763</td>
<td>Counterfeiting</td>
<td>21-37-405</td>
</tr>
<tr>
<td>21-3712</td>
<td>Destroying a written instrument</td>
<td>21-37-406</td>
</tr>
<tr>
<td>21-3713</td>
<td>Altering a legislative document</td>
<td>21-37-407</td>
</tr>
<tr>
<td>21-3729</td>
<td>Criminal use of a financial card</td>
<td>21-37-408</td>
</tr>
<tr>
<td>21-3730</td>
<td>Unlawful manufacture or disposal of false tokens</td>
<td>21-37-409</td>
</tr>
<tr>
<td>21-3734</td>
<td>Impairing a security interest</td>
<td>21-37-410</td>
</tr>
<tr>
<td>21-3736</td>
<td>Warehouse receipt fraud</td>
<td>21-37-411</td>
</tr>
<tr>
<td>21-3737</td>
<td>Unauthorized delivery of stored goods</td>
<td>21-37-412</td>
</tr>
<tr>
<td>21-3738</td>
<td>Automobile master key violation</td>
<td>21-37-413</td>
</tr>
<tr>
<td>21-3743; 21-3744</td>
<td>Sale of recut or regrooved tires</td>
<td>21-37-414</td>
</tr>
<tr>
<td>21-3757</td>
<td>Odometers; unlawful acts; penalties; definitions</td>
<td>21-37-415</td>
</tr>
<tr>
<td>21-3758</td>
<td>Certificate of titles; failure to show complete chain of title; penalty</td>
<td>21-37-416</td>
</tr>
<tr>
<td>21-3756</td>
<td>Adding dockage or foreign material to grain</td>
<td>21-37-417</td>
</tr>
<tr>
<td>21-3762</td>
<td>Conducting a pyramid promotional scheme</td>
<td>21-37-418</td>
</tr>
<tr>
<td>21-3755</td>
<td>Computer crime; computer password disclosure; computer trespass</td>
<td>21-37-419</td>
</tr>
</tbody>
</table>

(a) Theft is any of the following acts done with intent to permanently deprive the owner of the possession, use or benefit of the owner’s property or services:

(1) Obtaining or exerting unauthorized control over property or services;

(2) Obtaining control over property or services, by deception;

(3) Obtaining control over property or services, by threat;

(4) Obtaining control over stolen property or services knowing the property or services to have been stolen by another; or

(5) Knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel.

(b) (1) Theft of property or services of the value of $100,000 or more is a severity level 5, nonperson felony.

(2) Theft of property or services of the value of at least $25,000 but less than $100,000 is a severity level 7, nonperson felony.

(3) Theft of property or services of the value of at least $1,000 but less than $25,000 is a severity level 9, nonperson felony.

(4) Theft of property or services of the value of less than $1,000 is a class A nonperson misdemeanor.

(5) Theft of property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony.

(6) Theft of property of the value of less than $1,000 is a severity level 9, nonperson felony if committed by a person who has been convicted of theft two or more times.
(c) Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of prior convictions and the classification of the crime under this section.

Comment

This section merges K.S.A. 21-3701, 21-3704, and 21-3765. The proposal merges theft of property, services, and motor fuel into a single statute. The elements of the theft of motor fuel statute remain in subsection (a)(5).

21-37-102 21-37-102. Theft of property lost, mislaid, or delivered by mistake.

(a) Theft of property lost, mislaid, or delivered by mistake is obtaining control of property of another by a person:

(1) who knows or learns the identity of the owner thereof;

(2) who fails to take reasonable measures to restore to the owner lost property, mislaid property, or property delivered under a mistake; and

(3) who intends to permanently deprive the owner of the possession, use or benefit of the property.

(b) (1) Theft of lost or mislaid property of the value of $100,000 or more is a severity level 5, nonperson felony.

(2) Theft of lost or mislaid property of the value of at least $25,000 but less than $100,000 is a severity level 7, nonperson felony.

(3) Theft of lost or mislaid property of the value of at least $1,000 but less than $25,000 is a severity level 9, nonperson felony.

(4) Theft of lost or mislaid property of the value of less than $1,000 is a class A nonperson misdemeanor.

(c) Property delivered by mistake includes, but is not limited to, a mistake:

(1) as to the nature or amount of the property, or

(2) as to the identity of the recipient of the property.

Comment
The section incorporates K.S.A. 21-3703. No change is recommended.


(a) Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to temporarily deprive the owner of the use thereof, without the owner's consent but not with the intent of permanently depriving the owner of the possession, use or benefit of such owner's property.

(b) Criminal deprivation of property is a class A nonperson misdemeanor; except that

(1) (A) If the property is a motor vehicle, as defined in K.S.A. 8-1437, and amendments thereto, upon a first or second conviction of this paragraph, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than $100. Upon a second conviction of this paragraph, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than $200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice; and

(B) upon a third or subsequent conviction is a severity level 9, non-person felony.

(2) If the property is not a motor vehicle, upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than $100. The provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

Comment

The section incorporates K.S.A. 21-3705. No change is recommended except a minor revision to subsection (b)(1)(A).
tank of a motor vehicle by driving away in that motor vehicle without having made due
payment or authorized charge for the motor fuel so dispensed, with the intent to defraud
the retail establishment, upon conviction, shall be guilty of a class A nonperson
misdemeanor and upon any subsequent conviction, the division shall:

- (1) Upon a person’s second conviction, suspend the person’s driving privileges for six
  months; and
- (2) upon a person’s third or subsequent conviction, suspend the person’s driving
  privileges for one year.

(b) The failure to replace or reattach the nozzle and hose of the pump used for the
dispensing of motor fuels or placing such nozzle and hose on the ground or pavement shall
be prima facie evidence of the intent to defraud under the provisions of subsection (a).

(c) Any person whose driving privileges have been suspended under subsection (a),
shall pay a reinstatement fee in the amount of $100 to the division. The division of vehicles
shall, at least monthly, deposit such fees with the state treasurer, who shall credit such
moneys to the state highway fund.

(d) As used in this section:

- (1) “Division” means the division of vehicles of the department of revenue;
- (2) “conviction” means a final conviction without regard whether sentence was
  suspended or probation granted after such conviction. Forfeiture of bail, bond or collateral
  deposited to secure a defendant’s appearance in court, which forfeiture has not been
  vacated, shall be equivalent to a conviction.

Comment

This section merges K.S.A. 21-3765 into 21-37-101.

21-37-105. Prima facie evidence of intent to permanently deprive owner or lessor of
possession, use or benefit of property.

(a) In any prosecution under this article, the following shall be prima facie evidence of
intent to permanently deprive the owner or lessor of property of the possession, use
or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of
employment at the time of obtaining control over the property;

(2) the failure of a person who leases or rents personal property to return the same
within 10 days after the date set forth in the lease or rental agreement for the return
of the property, if notice is given to the person renting or leasing the property to
return the property within seven days after receipt of the notice, in which case the
subsequent return of the property within the seven-day period shall exempt such
transaction from consideration as prima facie evidence as provided in this section;
Article 3

(3) destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property.

(5) the failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) the failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying: (A) The time and place to return the vehicle; and (B) that failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle;

(7) intentionally and without authority removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) Under the provisions of 21-37-101(c) the failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution for a misdemeanor under K.S.A. 21-3701 and amendments thereto in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) The word "notice" as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address.
(d) In a prosecution for theft of services as defined in 21-37-101, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, as defined in 21-37-001, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

(e) If a vehicle described in subsection (a)(6) has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.

Comment

This section incorporates K.S.A. 21-3702. Subsection (d) is taken from K.S.A. 21-3704, theft of services. Subsection (e) is taken from K.S.A. 21-3765, theft of motor fuel, and subsection (a)(7) is moved from K.S.A. 21-3764, theft detection shielding devices.

21-37-106. Unlawful acts involving a theft detection shielding device.

It shall be unlawful to:

(a) Unlawful manufacturing or selling distribution of a theft detection shielding device is intentionally manufacture, selling, offering for sale or distribute in any way a laminated or coated bag or device particular to and intentionally marketed for shielding and intended to shield merchandise from detection by electronic or magnetic theft alarm sensor.

(b) Unlawful possession of a theft detection shielding device is intentionally possess any laminated or coated bag or device particular to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.

(c) Unlawful possession of a theft detection device remover is intentionally possess any tool or device designed to allow the removal of any theft detection device from any merchandise with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding such merchandise.
(d) Unlawful possession of a sales receipt or universal product code label is possesses one or more fraudulent retail sales receipts or universal product code labels, or any combination thereof, or possessing the device which manufactures fraudulent retail sales receipts or universal product code labels with the intent to cheat or defraud a retailer. A person having possession, custody or control of 15 or more such receipts or labels or such device shall be presumed to possess such items with the intent to cheat or defraud a retailer.

(e) Violation of this section is a severity level 9, nonperson felony.

Comment

The proposed statute incorporates K.S.A. 21-3764. Subsection (d) is revised to clarify legislative intent. Under current law the subsection makes possession of 15 or more fraudulent UPC labels, etc., prima fascia evidence of intent to defraud a retailer. However, the offense does not require the intent to defraud a retailer as an element. The Commission revised the offense to accomplish what it determined to be the original legislative intent. Under subsection (d), possession of one or more fraudulent receipts with the intent to defraud a retailer is an offense. Possession of 15 or more such receipts provides a presumption of the intent to defraud a retailer.


(a) Unlawful use of recordings is:

(1) knowingly, and without the consent of the owner, duplicating or causing to be duplicated any sounds recorded on a phonograph record, disc, wire, tape, film or other article on which sounds are recorded, or recording or causing to be recorded any live performance, with the intent to sell, rent or cause to be sold or rented, any such duplicated sounds or any such recorded performance, or to give away such duplicated sounds or recorded performance as part of a promotion for any product or service;
(2) selling, offering for sale, distributing, or possessing for the purpose of sale or distribution with the intent to distribute, any article produced in violation of subsection (a)(1) knowing or having reasonable grounds to know that such article was produced in violation of law; or

(3) knowingly selling, renting, offering for sale or rental, or possessing, transporting or manufacturing for such purposes with intent to sell or rent, any phonograph record, audio or video disc, wire, audio or video tape, film or other article now known or later developed on which sounds, images, or both sounds and images are recorded or otherwise stored, unless the outside cover, box or jacket clearly and conspicuously discloses the name and address of the manufacturer of such recorded article;

(b) Unlawful use of recordings is a severity level 9, nonperson felony; except that

(1) Any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording;

(2) a violation of subsection (a)(2) or (a)(3) is A class A nonperson misdemeanor if the offense involves fewer than seven audio visual recordings, or fewer than 100 sound recordings during a 180-day period.

(c) The provisions of subsection (a)(1) shall not apply to:

(1) Any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording;

(2) any person who duplicates such sounds or such performance, for personal use, and without compensation for such duplication; or

(3) any sounds initially fixed in a tangible medium of expression after February 15, 1972.

(d) The provisions of subsections (a)(1) and (a)(3) shall not apply to any computer program or any audio or visual recording that is part of any computer program.

(e) For purposes of this section:

(1) "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles now known or later developed upon which sound is recorded or otherwise stored, and from which the duplicated recorded sounds are directly or indirectly derived, or the person who owns the right to record such live performance;
(2) "computer program" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

(f) It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of section 21-37-107 and that are possessed for the purpose of selling or renting such recorded devices, and all equipment and components used or intended to be used to knowingly manufacture recorded devices that do not conform to the provisions of such section for the purpose of selling or renting such recorded devices. The nonconforming recorded devices that are possessed for the purpose of selling or renting such recorded devices are contraband and shall be delivered to the district attorney for the county in which the confiscation was made, by court order, and shall be destroyed or otherwise disposed of, if the court finds that the person claiming title to such recorded devices possessed such recorded devices for the purpose of selling or renting such recorded devices. The equipment and components confiscated shall be delivered to the district attorney for the county in which the confiscation was made, by court order upon conviction, and may be given to a charitable or educational organization.

Comment

This section merges K.S.A. 21-3748, 21-3749, and 21-3750. The terms “selling” and “offering for sale” are eliminated because they are duplicative of the term “distribute.” This section is the subject of a policy recommendation. Please see volume two of the Commission’s final report.

21-37-201

21-37-201. Burglary

(a) Burglary is knowingly and without authority entering into or remaining, without authority, within any:

(1) dwelling, with intent to commit a felony, theft or sexual battery therein;

(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexual battery therein; or

(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexual battery therein.

(b) Aggravated burglary is knowingly and without authority entering into or remaining, without authority, within any building, manufactured home, 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 a human being, with
intent to commit a felony, theft or sexual battery therein

(c) (1) Burglary as described in subsection (a)(1) is a severity level 7, person felony,
(2) burglary as described in subsection (a)(2) is a severity level 7, nonperson
felony,
(3) burglary as described in subsection (a)(3) is a severity level 9, nonperson
felony.
(4) aggravated burglary is a severity 5, person felony.

Comment
The proposed statute merges K.S.A. 21-3715 and 21-3716. Burglary is a specific intent crime. 
State v. Miles, 213 Kan. 245 (1973). For that reason the term knowingly is removed from
subsections (a) and (b). The statutory language requires the intent to commit some crime
inside the structure.

The Commission proposes a recommendation to expand the scope of this statute to entering
with intent to commit any sexually motivated crime. Please see volume two of the
Commission’s final report.

21-37-202

(a) Criminal trespass is:
(1) entering or remaining upon or in any land, nonnavigable body of water,
structure, vehicle, aircraft or watercraft by a person who knows such person
is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to
enter or in defiance of an order to leave such premises or property
personally communicated to such person 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 locked or fenced or
otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining
order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106, 60-3107,
(2) entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) (1) Criminal trespass is a class B nonperson misdemeanor; and

(2) Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(c) As used in this section:

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

(2) "Health care provider" means any person:

(A) Licensed to practice a branch of the healing arts;

(B) licensed to practice psychology;

(C) licensed to practice professional or practical nursing;

(D) licensed to practice dentistry;

(E) licensed to practice optometry;

(F) licensed to practice pharmacy;

(G) registered to practice podiatry;

(H) licensed as a social worker; or

(I) registered to practice physical therapy.

(d) This section shall not apply to:
(1) a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters and other premises in the making of a survey;

(2) railroad property as defined in K.S.A. 2006 Supp. 21-3761, and amendments thereto, or nuclear generating facility as defined in K.S.A. 2006 Supp. 66-2302, and amendments thereto.

Comment

This section incorporates K.S.A. 21-3721. Changes are made to the format of the statute.

21-37-203. Trespassing on railroad property; causing derailment of railroad equipment.

(a) Trespassing on railroad property is

(1) entering or remaining on railroad property, without consent of the owner or the owner's agent, knowing that it is railroad property; or

(2) recklessly causing in any manner the derailment of a train, railroad car or rail-mounted work equipment.

(b) (1) Trespassing on railroad property is a class A nonperson misdemeanor; except that

(2) trespassing on railroad property that results in a demonstrable monetary loss, damage or destruction of railroad property valued at more than $1,500 shall be a severity level 8, nonperson felony.

(c) Subsection (a) shall not be construed to interfere with the lawful use of a public or private crossing.

(d) Nothing in this section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the railway labor act (45 U.S.C. 151, et seq.) and other federal labor laws.

(e) As used in this section "railroad property" includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad company.
Comment

This section incorporates K.S.A. 21-3761. Revisions are made to subsection (a) to promote clarity.

21-37-204. Criminal hunting.

(a) Criminal hunting is knowingly

(1) hunting, shooting, fur harvesting, pursuing any bird or animal, or fish:

(A) Upon any land or nonnavigable body of water of another, without having first obtained permission of the owner or person in possession of such premises; or

(B) upon or from any public road, public road right-of-way 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.

(2) hunting, shooting, fur harvesting, pursuing any bird or animal, or fish upon any land or nonnavigable body of water of another by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or

(B) such premises or property are posted in a manner consistent with K.S.A. 32-1013, and amendments thereto.

(b) (1) Criminal hunting described in (a)(1)(A) or (a)(1)(B) is a class C misdemeanor;

(2) criminal hunting described (a)(2)(A) or (a)(2)(B) is a class B misdemeanor.

(c) Upon the first conviction of subsections (a)(1)(A) or (a)(1)(B), and in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from
hunting, fishing or fur harvesting, or all, for up to one year from the date of such conviction. Upon any subsequent conviction thereof, and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or, in any case where such person has a combination license, the court shall require the forfeiture of a part or all of such license and the court shall order such person to refrain from hunting, fishing or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner thereof or other authorized person.

(d) Upon the first conviction or a diversion agreement for a violation of subsections (a)(2)(A) or (a)(2)(B), and in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require forfeiture of the convicted person's hunting, fishing or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years.

(e) The court shall notify the department of wildlife and parks of any conviction or diversion for a violation of this section.

Comment

This section incorporates K.S.A. 21-3728. The term “knowingly” is added to subsection (a) to clarify that this is a general intent offense.
(1) go upon the land of another in search of fossils unless the commercial fossil hunter has obtained the written authorization of the landowner to go upon such land for such purpose and when requesting such written authorization has identified oneself to the landowner as a commercial fossil hunter who intends to explore the land and sell any fossils of value found on the land. The written authorization shall state that the landowner has been informed of such intended activities by the commercial fossil hunter;

(2) remove a fossil from the land of another upon which the fossil is located unless the landowner is first provided with a description of the fossil and the landowner authorizes in writing the removal of the fossil.

(b) (1) Violation of subsection (a)(1) is a class B nonperson misdemeanor;

(2) violation of subsection (a)(2) is a class A nonperson misdemeanor.

(c) As used in this section:

(1) "Commercial fossil hunter" means an individual who goes upon the land of another in search of fossils for the purpose of with the intent to selling fossils of value found upon such land.

(2) "Fossil" means any impression or trace of an animal or plant of a past geological age preserved in the earth's crust.

(3) "Landowner" means the record owner of the fee in real estate or the tenant of such owner who occupies such real estate, if so authorized by the owner.

(4) "Land of another" means all real estate other than that owned or leased by any governmental entity or the commercial fossil hunter.

(d) This section is supplemental to and not in lieu of any other law of this state relating to entering or remaining upon the land of another and relating to the removal of items of value from the property of another.

(e) It shall not be a defense that the person did not know or have reason to know that such person was on the landowner's property.

Comment

This section incorporates K.S.A. 21-3759. The statute reformatted to promote readability. Subsection (e) is added to clarify that element of being on private property is held to strict liability.
21-37-301. Arson.

(a) Arson is:

(1) Knowingly, by means of fire or explosive:

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

(B) damaging any building or property which is a dwelling with intent to injure or defraud an insurer or lienholder;

(C) damaging any building or property which is not a dwelling in which another person has any interest without the consent of such other person; or

(D) damaging any building or property which is not a dwelling with intent to injure or defraud an insurer or lienholder;

(2) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159, and amendments thereto, damaging any building or property which is a dwelling; or

(3) accidentally, by means of fire or explosive as a result of manufacturing or attempting to manufacture a controlled substance in violation of K.S.A. 65-4159, and amendments thereto, damaging any building or property which is not a dwelling.

(b) Aggravated arson is arson, as described in subsection (a),

(1) committed upon a building or property in which there is a human being; or

(2) which results in great bodily harm or disfigurement to a firefighter or law enforcement officer in the course of fighting or investigating the fire.

(c) Arson, as described in subsection (a)(1)(A) or (a)(1)(B), is a severity level 6, person felony,

(2) arson, as described in subsection (a)(1)(C), (a)(1)(D) or (a)(3), is a severity level 7, nonperson felony,

(3) arson, as described in subsection (a)(2), is a severity level 7, person felony,
(4) Except as otherwise provide, aggravated arson as described in subsection (a)(1) resulting in a substantial risk of bodily harm is a severity level 3, person felony.

(5) Aggravated arson as described in subsection (a)(1) resulting in no substantial risk of bodily harm is a severity level 6, person felony.

(6) Aggravated arson as described in subsection (a)(2) is a severity level 3, person felony.

Comment

This section merges K.S.A. 21-3718 and 21-3719. No change is recommended except minor changes to the format.

21-37-302. Criminal damage to property.

(a) Criminal damage to property is by means other than by fire or explosive:

(1) Intentionally Knowingly damaging, destroying, defacing, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or

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

(b) Criminal damage to property as described in subsection (a)(1) or (a)(2) is:

(1) a severity level 7, nonperson felony if the property is damaged to the extent of $25,000 or more;

(2) a severity level 9, nonperson felony if the property is damaged to the extent of at least $1,000 but less than $25,000;

(3) a class B nonperson misdemeanor if the property damaged is of the value of less than $1,000 or is of the value of $1,000 or more.

Comment

This section incorporates K.S.A. 21-3720. Subsection (a)(1) is changed from “intentionally” to “knowingly” because it is a general intent offense. Subsection (a)(2) is specific intent as it requires the intent to injure or defraud a lienholder.

(a) Criminal use of an explosive is knowingly:

(1) possessing, manufacturing or transporting a commercial explosive, whether or not a person knows or has reason to know it is a commercial explosive; or

(2) possessing, creating or constructing a simulated explosive, destructive device, incendiary, radiological, biological or poison gas, bomb, rocket, missile, mine, grenade, dispersal device or similar simulated device, with intent to intimidate or cause alarm to another person.

(b) (1) Criminal use of an explosive as described in subsection (a)(1) is a severity level 6, person felony; except that

(2) criminal use of an explosive as described in subsection (a)(1) is a severity level 5, person felony if:

(A) The possession, manufacture or transportation is intended to be used to commit a crime or is delivered distributed to another with knowledge that such other intends to use such substance to commit a crime;

(B) a public safety officer is placed at risk to defuse such explosive; or

(C) the explosive is introduced into a building in which there is another human being;

(3) criminal use of an explosive as described in subsection (a)(2) is a severity level 8, person felony.

(c) For purposes of subsection (a)(1), an explosive shall not include any legally obtained and transferred commercial explosive by licensed individuals and ammunition and commercially available loading powders and products used as ammunition, and consumer fireworks, as defined in 27 C.F.R. 555.11, in effect on May 17, 2007, unless such consumer fireworks are modified or assembled as a device that deflagrates or explodes when used for a purpose not intended by the manufacturer.

(d) For purposes of this section, “commercial explosive” includes chemical compounds that form an explosive; a combination of chemicals, compounds or materials, including, but not limited to, the presence of an acid, a base, dry ice or aluminum foil, that are placed in a container for the purpose of generating a gas or gases to cause a mechanical failure, rupture or bursting of the container; incendiary or explosive...
material, liquid or solid; detonator; blasting cap; military explosive fuse assembly; squib; electric match or functional improvised fuse assembly; or any completed explosive device commonly known as a pipe bomb or a Molotov cocktail.

(e) The provisions of subsection (a)(1) shall not prohibit law enforcement officials, the United States military, public safety officials, accredited educational institutions or licensed or registered businesses, and associated personnel, from engaging in legitimate public safety training, demonstrations or exhibitions requiring the authorized construction or use of such simulated devices or materials.

Comment

This section incorporates K.S.A. 21-3731. The Commission determined that subsection (a)(1) is supposed to be a strict liability offense; subsection (a)(2) requires the specific intent to intimidate or cause alarm. The term knowingly is removed and the strict liability phrase, “whether or not a person knows or has reason to know it is a commercial explosive” is added to subsection (a)(1).

21-37-304


(a) Criminal littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:

(1) 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

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

(b) Criminal littering is an unclassified misdemeanor punishable:

(1) Upon a first conviction by a fine of not less than $250 nor more than $1,000;

(2) upon a second conviction by a fine of not less than $1,000 nor more than $2,000; and

(3) upon a third or subsequent conviction by a fine of not less than $2,000 nor more than $4,000.

(c) The provisions of K.S.A. 8-15,102, and amendments thereto are excepted from the application of this section.
(d) In addition to the fines in subsection (b), a person convicted of littering shall be required to pick up litter for a time prescribed by and at a place within the jurisdiction of the court.

Comment

The section incorporates K.S.A. 21-3722. The phrase intentionally is removed as unnecessary in light of the lesser culpability term, recklessly.

21-37-305

21-37-305. Tampering with a landmark.

(a) Tampering with a landmark is doing any of the following acts with the intent to fraudulently alter a boundary:

(1) 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

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

(3) cutting down or removing any tree, post or other monument upon which any such marks have been made for such purpose, with intent to destroy such marks; or

(4) defacing or altering any inscription on any such marker or monument; or

(5) altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of K.S.A. 58-2011.

(b) Tampering with a landmark is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-3724. No change is recommended.

21-37-306

21-37-306. Tampering with a traffic signal.
Article 3

(a) Tampering with a traffic signal is intentionally knowingly manipulating, altering, destroying or removing any light, sign, marker, railroad switching device or other signal device erected or installed for the purpose of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft.

(b) Aggravated tampering with a traffic signal is tampering with a traffic signal which creates an unreasonable risk of an accident causing the death or great bodily injury of any person is a severity level 7, nonperson felony. It shall not be necessary that an accident occurs for a person to be charged and convicted pursuant to this subsection.

(c) (1) Tampering with a traffic signal is a class C misdemeanor;

(2) Aggravated tampering with a traffic signal is a severity level 7, nonperson felony.

(d) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for violating 21-37-101 or 21-37-102.

Comment

This section merges K.S.A. 21-3725 and 21-3726. As subsection (a) is a general intent offense, the culpability term is changed from “intentionally” to “knowingly.” Subsection (d) is added to clarify the relationship between this offense and theft.


(a) Tampering with a pipeline is the intentional knowing and unauthorized alteration of or interference with any part of a pipeline.

(b) Tampering with a pipeline is a severity level 6, nonperson felony.

(c) As used in this section:

(1) "Alteration of or interference with any part of a pipeline" includes, but is not limited to, any intentional unauthorized adjustment, opening, removal, change or destruction of any part of any pipeline.

(2) "Pipeline" means any pipeline, and any related facility, building, structure or equipment, used in gathering, transmission or transportation of natural gas, crude oil, petroleum products or anhydrous ammonia. "Pipeline" does not include distribution lines that convey natural gas from a gas main to the ultimate consumer.
Comment

This section incorporates K.S.A. 21-3766. No change is recommended.

21-37-308. Throwing or otherwise casting rocks or other objects onto street, highway or railroad right-of-way or railroad property.

(a) Any person who intentionally recklessly throws, pushes, pitches or otherwise casts any rock, stone or other object, matter or thing onto a street, road, highway, railroad right-of-way, or upon any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock thereon, is guilty of a class B nonperson misdemeanor.

(b) Any person violating subsection (a) who damages any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, highway or railroad right-of-way by the thrown or cast rock, stone or other object is guilty of a class A nonperson misdemeanor.

(c) Any person violating subsection (a) who injures another person on the street, road, highway or railroad right-of-way is guilty of a severity level 7, person felony.

(d) Any person violating subsection (a) who damages a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock and injures a person as a result of the cast or thrown object or from injuries incurred as a result of damage to the vehicle in which a person was a passenger when struck by such object, the person throwing or casting the rock, stone or other object causing the damage and injury is guilty of a severity level 6, person felony.

(e) In any case where a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock is damaged by a person violating subsection (a) the provisions of this section shall not act to bar prosecution of the accused under K.S.A. 21-37-302. An accused may be prosecuted for a violation of KSA 21-37-302 or this section, but not under both.
(f) In any case where a person’s death or bodily injury results from a violation of subsection (a), injuries incurred either as a result of the cast or thrown object or from injuries incurred as a result of damage to the vehicle in which a person was a passenger when struck by such object, the person throwing or casting the rock, stone or other object causing the damage and injury death, death, bodily harm, or property damage may be prosecuted convicted either for a violations of under this section or under the homicide statutes of Article 34 or 37, but not both.

(e) In any case where a vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock is damaged as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in Article 37. An accused may be convicted for a violation of any other offense in Article 37 or this section, but not under both.

(f) In any case where a person dies or sustains bodily injury as a result of a violation of subsection (a), the provisions of this section shall not bar conviction of the accused under any other offense in Article 34. An accused may be convicted for a violation of any other offense in Article 34 or this section, but not under both.

Comment
This section incorporates K.S.A. 21-3742. The Commission determined, in light of the definitions of the culpability terms, that recklessness is the culpability term the legislature would have applied. Reckless conduct requires a conscious disregard for a substantial and unjustifiable risk. This level of culpability seemed more likely the kind of conduct the legislature sought to prohibit.

21-37-309
21-37-309. Posting of political pictures and political advertisements.
(a) Unlawful posting of political pictures and political advertisements is knowingly putting up, affixing, or fastening of either or both a political picture or a political advertisement to a telegraph, telephone, electric light or power pole.

(b) Unlawful posting of political pictures and political advertisements is a class C misdemeanor.

Comment
This section incorporates K.S.A. 21-3739. As this is a general intent offense, the term “knowingly” is added.
21-37-310. Permitting a 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

This section merges K.S.A. 21-3418 into 21-43-301.

21-37-401


(a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check on any financial institution 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 that the maker or drawer has no deposit in or credits with the financial institution or has not sufficient funds in, or credits with, the financial institution for the payment of such check in full upon its presentation.

(b) (1) Giving a worthless check is a severity level 7, nonperson felony:

(A) if the check is drawn for $25,000 or more, or

(B) if more than one worthless check is given within a seven-day period and the combined total of the checks is $25,000 or more.

(2) Giving a worthless check is a severity level 9, nonperson felony:

(A) if the check is drawn for at least $1,000 but less than $25,000.

(B) if more than one worthless check is given within a seven-day period and the combined total of the checks is at least $1,000 but less than $25,000; or

(C) if the person giving the worthless check has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times.
Giving a worthless check is a class A nonperson misdemeanor if the check is
drawn for less than $1,000.

"Check" is any check, order or draft on a financial institution;

"Financial institution" means any bank, credit union, savings and loan
association or depository;

As used in this section, "notice" includes oral or written notice to the person
entitled thereto.

In any prosecution against the maker or drawer of a check, payment of which has
been refused by the financial institution 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, the
financial institution: (1) Unless the maker or drawer pays the holder thereof the
amount due thereon and a service charge not exceeding $30 for each check, within
seven days after notice has been given to the maker or drawer that such check has
not been paid by the financial institution. Written notice shall be presumed to have
been given when deposited as restricted matter in the United States mail, addressed
to the person to be given notice at such person's address as it appears on such
check, draft or order; or (2) if a postdated date is placed on the check, order or draft
without the knowledge or consent of the payee.

It shall not be a defense to a prosecution under this section that the check upon
which such prosecution is based:

Was postdated, unless such check was presented for payment prior to the
postdated date; or

was given to a payee who had knowledge or had been informed, when the
payee accepted such check that the maker did not have sufficient funds in
the hands of the financial institution to pay such check upon presentation,
unless such check was presented for payment prior to the date the maker
informed the payee there would be sufficient funds.

In addition to all other costs and fees allowed by law, each prosecuting attorney who
takes any action under the provisions of this section may collect from the issuer in
such action an administrative handling cost, except in cases filed in a court of
appropriate jurisdiction. The cost shall not exceed $10 for each check. If the issuer of
the check is convicted in district court, the administrative handling costs may be
assessed as part of the court costs in the matter. The moneys collected pursuant to
this subsection shall be deposited into a trust fund which shall be administered by
the board of county commissioners. The funds shall be expended only with the
approval of the board of county commissioners, but may be used to help fund the
normal operating expenses of the county or district attorney's office.
Comment

This section incorporates K.S.A. 21-3707. No change is recommended.

21-37-402

21-37-402. Causing an unlawful prosecution for giving a worthless check.

(a) Causing an unlawful prosecution for giving a 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 upon which such prosecution is based was postdated and such check was presented for payment prior to the postdated date or when the payee had knowledge, when such payee accepted such check, that there were no funds or insufficient funds in the hands of the financial institution to pay such check upon presentation and such check was presented for payment prior to the date the maker informed the payee there would be sufficient funds.

(b) Causing an unlawful prosecution for giving a worthless check is a class A nonperson misdemeanor.

(c) Any person convicted of violating this section shall pay the taxable costs of the prosecution initiated by such person or upon information supplied by such person.

Comment

This section incorporates K.S.A. 21-3709. No change is recommended.

21-37-403


(a) Forgery is, knowingly and with intent to defraud:

(1) Making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed by another person, either real or fictitious, and if a real person without the authority of such person; or altering any written instrument in such manner that it purports to have been made at another time or with different provisions without the authority of the maker thereof; or making, altering or endorsing any written instrument in such manner that it purports to have been made, altered or endorsed with the authority of one who did not give such authority;
Article 3

138

(2) issuing or delivering distributing such written instrument knowing it to have been thus made, altered or endorsed; or

(3) possessing, with intent to issue or distribute, any such written instrument knowing it to have been thus made, altered or endorsed.

(b) (1) Forgery is a severity level 8, nonperson felony.

(2) On a first conviction of a violation of this section, in addition to any other sentence imposed, a person shall be fined the lesser of the amount of the forged instrument or $500.

(3) On a second conviction of a violation of this section, a person shall be required to serve at least 30 days' imprisonment as a condition of probation, and fined the lesser of the amount of the forged instrument or $1,000.

(4) On a third or subsequent conviction of a violation of this section, a person shall be required to serve at least 45 days' imprisonment as a condition of probation, and fined the lesser of the amount of the forged instrument or $2,500.

(5) The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the mandatory sentence as provided herein.

(c) In any prosecution under this section, it may be alleged in the complaint or information that it is not known whether a purported person is real or fictitious, and in such case there shall be a rebuttable presumption that such purported person is fictitious.

Comment

This section incorporates K.S.A. 21-3710. As it is a specific intent offense, the term “knowingly” is removed. The term “delivering” is replaced with distributing to be consistent with other statutes where the same change has been made.

21-37-404


(a) Making false information is making, generating, distributing or drawing, or causing to be made, generated, distributed or drawn, any written instrument, electronic data or entry in a book of account with knowledge that such information falsely states or represents some material matter or is not what it purports to be, and with
intent to defraud, obstruct the detection of a theft or felony offense or induce official action.

(b) Making false information is a severity level 8, nonperson felony.

Comment

This section incorporates K.S.A. 21-3711. No change is recommended.

21-37-405


(a) Counterfeiting is manufacturing, using, displaying, advertising, distributing, offering for sale, selling or possessing with intent to sell or distribute any item or services knowing such item or services bear or are identified by a counterfeit mark.

(b) (1) Counterfeiting of the retail value of less than $1,000 is a class A nonperson misdemeanor.

(2) Counterfeiting of the retail value of at least $1,000 but less than $25,000; that involves more than 100 but less than 1,000 items bearing a counterfeit mark; or on a second violation is a severity level 9, nonperson felony.

(3) Counterfeiting of the retail value of $25,000 or more; that involves 1,000 or more items bearing a counterfeit mark; or on a third or subsequent violation is a severity level 7, nonperson felony.

(c) A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess such items with intent to sell or distribute.

(d) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(e) As used in this section:

(1) "Counterfeit mark" means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) intellectual property affixed to any item knowingly sold, offered for sale, manufactured or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.
"Intellectual property" means any trademark, service mark or trade name as such terms are defined in K.S.A. 2006 Supp. 81-202, and amendments thereto.

"Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses.

Comment
This section incorporates K.S.A. 21-3763. The terms “sell,” “selling,” and “offer for sale” are deleted as they are duplicative of the term distribute.

21-37-406

21-37-406. Destroying a written instrument.

(a) 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.

(b) Destroying a written instrument is a severity level 9, nonperson felony.

Comment
This section incorporates K.S.A. 21-3712. The term “knowingly” is removed as this is a specific intent crime, requiring the intent to defraud.

21-37-407


(a) Altering a legislative document is intentionally knowingly 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.

(b) Altering a legislative document is a severity level 9, nonperson felony.

Comment

This section incorporate K.S.A. 21-3713. As this is a general intent offense, the term “intentionally” is replaced with “knowingly.”

21-37-408

21-37-408. Criminal use of a financial card.

(a) Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of to obtain money, goods, property, or services or communication services:

(1) Using a financial card without the consent of the cardholder; or

(2) knowing using a financial card, or the number or description thereof, which has been revoked or canceled; or

(3) using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.

(b) (1) Criminal use of a financial card is a severity level 7, nonperson felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of $25,000 or more.

(2) Criminal use of a financial card is a severity level 9, nonperson felony if the money, goods, property, services or communication services obtained within any seven-day period are of the value of at least $1,000 but less than $25,000.

(3) Criminal use of a financial card is a class A nonperson misdemeanor if the money, goods, property, services or communication services obtained within a seven-day period are of the value of less than $1,000.

(c) For the purposes of this section:

(1) "Financial card" means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.
(2) "Cardholder" means the person or entity to whom or for whose benefit a financial card is issued.

(d) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company.

Comment

This section incorporates K.S.A. 21-3729. The term “purpose” is removed as it is duplicative of “intent.” The phrase “communication services” is removed as it is duplicative of “services.” The Commission does not intend to exclude communication services from this statute. The term “knowing” is removed from subsection (a)(2) because all of subsection (a) is a specific intent offense requiring the intent to defraud.

---

21-37-409

21-37-409. Unlawful manufacture or disposal of false tokens.

(a) 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.

(b) Unlawful manufacture or disposal of false tokens is a class B nonperson misdemeanor.

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

Comment

This section incorporates K.S.A. 21-3730. No change is recommended.
21-37-410. Impairing a security interest.

(a) Impairing a security interest is, with intent to defraud the secured party:

(1) Damaging, destroying or concealing any personal property subject to a security interest;

(2) selling, exchanging or otherwise disposing of any personal property subject to a security interest without the written 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

(3) failing 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.

(b) (1) Impairing a security interest is a severity level 7, nonperson felony when the personal property subject to the security interest is of the value of $25,000 or more and is subject to a security interest of $25,000 or more.

(2) Impairing a security interest is a severity level 9, nonperson felony when the personal property subject to the security interest is of the value of at least $1,000 and is subject to a security interest of at least $1,000 and either the value of the property or the security interest is less than $25,000.

(3) Impairing a security interest is a class A nonperson misdemeanor when the personal property subject to the security interest is of the value of less than $1,000, or of the value of $1,000 or more but subject to a security interest of less than $1,000.

Comment

This section incorporates K.S.A. 21-3734. No change is recommended.


(a) 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 employee of a warehouseman, of:
Article 31

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

(2) a negotiable receipt for goods with knowledge that the receipt contains a false statement; or

(3) 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. 34-257 or subsection (1) of K.S.A. 84-7-601 and amendments thereto.

(b) Warehouse receipt fraud is a severity level 10, nonperson felony.

Comment

This section incorporates K.S.A. 21-3736. No change is recommended.


(a) Unauthorized delivery of stored goods is delivery of goods out of the possession of a warehouseman by such warehouseman, or any officer, agent or employee 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:

(1) In the case of a lost, stolen or destroyed receipt, after proceedings as provided in subsection (1) of K.S.A. 84-7-601 and amendments thereto;

(2) in the case of delivery in good faith as provided in subsection (2) of K.S.A. 84-7-601 and amendments thereto;

(3) in the case of optional termination of storage as provided in K.S.A. 84-7-206 and amendments thereto;

(4) in the case of a lost or destroyed receipt, after proceedings as provided in K.S.A. 34-257 and amendments thereto; or

(5) in the case of sale as provided in K.S.A. 34-276 and amendments thereto.
(b) Unauthorized delivery of stored goods is a class A nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-3737. No change is recommended.

21-37-413

21-37-413. Automobile master key violation.

(a) Automobile master key violation is either:

(1) Selling or offering to sell a motor vehicle master key knowing it to be 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

(2) possession of a motor vehicle master key designed to fit the ignition switch of more than one motor vehicle by a person knowing it to be such a key who is not regularly carrying on the business of garage proprietor or locksmith or employed as a law enforcement officer.

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

(c) Automobile master key violation is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-3738. The term knowing is added to subsection (a)(1) to clarify that it is general intent.

21-37-414

21-37-414. Sale of recut or regrooved tires.

(a) Sale of recut or regrooved tires is the sale, offer to sell or exposure for sale any passenger vehicle tire which the person knows to have been recut or regrooved, or the sale, offer to sell or exposure for sale of any passenger vehicle equipped with any tire which is known to have been recut or regrooved.
(b) Sale of recut or regrooved tires is a class B nonperson misdemeanor.

(c) For purposes of this section:

(1) a “recut or regrooved” tire is an unretreated or unrecapped tire into which new grooves have been cut or burned;

(2) "passenger vehicle" shall have the meaning ascribed thereto by subsection (x) of K.S.A. 8-126.

Comment

This section merges K.S.A. 21-3743 and 21-3744. The phrase “which the person knows” is added to clarify the intent in subsection (a).

21-37-415

21-37-415. Odometers; unlawful acts; penalties; definitions.

(a) It shall be unlawful for any person:

(1) to knowingly tamper with, adjust, alter, change, set back, disconnect or fail to connect the odometer of any motor vehicle, or cause any of the foregoing to occur to an odometer of a motor vehicle, so as to reflect a lower mileage than the true mileage traveled by the motor vehicle;

(2) to conspire with any other person to violate the provisions of this section;

(3) with the intent to defraud, to operate a motor vehicle on any street or highway knowing that the odometer of the motor vehicle is disconnected or nonfunctional;

(4) to advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which the person knows can cause the odometer to register any mileage other than the true mileage;

(5) to sell or offer to sell, with the intent to defraud, a motor vehicle knowing that the odometer of such motor vehicle was tampered with, adjusted, altered, changed, set back, disconnected or failed to be connected so as to reflect a lower mileage than the true mileage of such motor vehicle.

(b) Nothing in this section shall prevent the service, repair or replacement of an odometer, provided the mileage indicated thereon remains the same as before the service, repair or replacement. If the odometer is incapable of registering the same mileage as before such service, repair or replacement, the odometer shall be
adjusted to read zero and a notice shall be attached permanently to the left door frame of the vehicle by the owner or owner's agent specifying the mileage prior to repair or replacement of the odometer, the date on which it was repaired or replaced and the vehicle identification number except that it shall be unlawful for any person:

(1) to fail to adjust an odometer or affix a notice regarding such adjustment, as required under this subsection; or

(2) It shall be unlawful for any person to remove or alter any notice affixed to a vehicle pursuant to the provisions of this subsection.

(c) The provisions of this section shall not apply to antique motor vehicles which could be registered under the provisions of K.S.A. 8-166 et seq., and amendments thereto, or to special interest vehicles which could be registered under the provisions of K.S.A. 8-194 et seq., and amendments thereto.

(d) Violation of this section is a severity level 9, nonperson felony.

(e) For the purpose of this section, the following words and phrases shall have the following meanings:

(1) "Motor vehicle" means any vehicle other than a motorized bicycle which is self-propelled and is required to be registered under the provisions of article 1 of chapter 8 of Kansas Statutes Annotated.

(2) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, and is required to be registered under the provisions of article 1 of chapter 8 of Kansas Statutes Annotated, except that such term shall not include motorized bicycles or mobile homes.

(3) "True mileage" means the actual mileage the motor vehicle has been driven.

(4) "Person" means an individual, partnership, corporation or association.

(5) "Odometer" means an instrument for measuring and recording the actual distance a motor vehicle travels while in operation, but shall not include any auxiliary odometer designed to be reset by the operator of the motor vehicle for the purpose of recording mileage on trips.

(f) Every action pursuant to this section shall be brought in the district court of any county in which there occurred any act or practice declared to be a violation of this section, or in which the defendant resides or has such person's principal place of business.
21-37-416. Certificate of titles; failure to show complete chain of title; penalty.

(a) It shall be unlawful to transfer ownership to any vehicle, manufactured home or mobile home and knowingly fail to show oneself on the transferred certificate of title.

(b) Violation of subsection (a) is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-3757. No change is recommended.

21-37-417. Adding dockage or foreign material to grain; application of section.

(a) Adding dockage or foreign material to grain is knowingly:

(1) Adding dockage or foreign material to any grain to be marketed; or

(2) recombining any dockage or foreign material once removed from grain with any grain which is to be marketed.

(b) Adding dockage or foreign material to grain is a severity level 9, nonperson felony.

(c) Nothing in subsection (a) shall be construed to prohibit:

(1) The treatment of grain to control insects, dust or fungi injurious to stored grain;

(2) the blending of grain with similar grain of a different quality to adjust the quality of a resulting mixture;

(3) the marketing of dockage or foreign materials removed from grain if such dockage or foreign material is marketed separately;

(4) the recombination of broken corn or broken kernels as defined by the administrator of the federal grain inspection service under the federal grain
quality improvement act of 1986 with grain of the type from which the
broken corn or broken kernels were derived; or

(5) other practices as may be authorized by the United States secretary of
agriculture, as of July 1, 1987, under the federal grain quality improvement
act of 1986.

(d) As used in this section:

(1) "foreign material" means dirt, rock, sand, sticks or manure, or any
combination of such material defined as foreign material by the United
States secretary of agriculture, as of July 1, 1987, under the federal grain
quality improvement act of 1986;

(2) "dockage" means the same as provided by the United States secretary of
agriculture, as of July 1, 1987, under the federal grain quality improvement
act of 1986.

Comment

This section incorporates K.S.A. 21-3756. No change is recommended.


(a) Conducting a pyramid promotional scheme is knowingly establishing, operating,
advertising or promoting any pyramid promotional scheme.

(b) Conducting a pyramid promotional scheme shall be a severity level 9, nonperson
felony.

(c) “Pyramid promotional scheme” means a plan or operation by which a participant
gives consideration for the opportunity to receive compensation which is derived
primarily from any person’s introduction of other persons into participation in the
plan or operation rather than from the sale of goods, services or intangible property
by the participant or other persons introduced into the plan or operation.

(d) A limitation as to the number of persons who may participate or the presence of
additional conditions affecting eligibility for the opportunity to receive
compensation under the plan or operation does not change the identity of the
scheme as a pyramid promotional scheme nor is it a defense under this section that
a participant, on giving consideration, obtains any goods, services or intangible
property in addition to the right to receive compensation.
(e) The attorney general, or county attorney or district attorney, or both, may institute criminal action to prosecute this offense.

Comment

This section incorporates K.S.A. 21-3762. The term “knowingly” is added to clarify the culpability requirement.

21-37-419

21-37-419. Computer crime; computer password disclosure; computer trespass.

(a) It shall be unlawful for any person to:

(1) Intentionally knowingly and without authorization access and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property;

(2) use a computer, computer system, computer network or any other property for the purpose of devising or executing a scheme or artifice with the intent to defraud or for the purpose of obtaining to obtain money, property, services or any other thing of value by means of false or fraudulent pretense or representation;

(3) intentionally knowingly exceed the limits of authorization and damage, modify, alter, destroy, copy, disclose or take possession of a computer, computer system, computer network or any other property;

(4) intentionally, knowingly and without authorization, disclose a number, code, password or other means of access to a computer or computer network; or

(5) intentionally, knowingly and without authorization, access or attempt to access any computer, computer system, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network.

(b) (1) Violation of subsection (a)(1), (a)(2), or (a)(3) is a severity level 8, nonperson felony;

(2) violation of subsection (a)(4) or (a)(5) is a class A nonperson misdemeanor.

(c) As used in this section:
"Access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or computer network.

"Computer" means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic or communication and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network.

"Computer network" means the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals, or a complex consisting of two or more interconnected computers.

"Computer program" means a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.

"Computer software" means computer programs, procedures and associated documentation concerned with the operation of a computer system.

"Computer system" means a set of related computer equipment or devices and computer software which may be connected or unconnected.

"Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, debit card or marketable security.

"Property" includes, but is not limited to, financial instruments, information, electronically produced or stored data, supporting documentation and computer software in either machine or human readable form.

"Services" includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work.

"Supporting documentation" includes, but is not limited to, all documentation used in the construction, classification, implementation, use or modification of computer software, computer programs or data.

In any prosecution for computer crime, it is a defense that the property or services were appropriated openly and avowedly under a claim of title made in good faith.

Comment
This section incorporates K.S.A. 21-3755. As this is a general intent offense, the terms “intentionally” are changed to “knowingly.”
## Article 38

### Crimes Affecting Government Functions

#### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3801</td>
<td>Treason</td>
<td>21-38-101</td>
</tr>
<tr>
<td>21-3802</td>
<td>Sedition</td>
<td>21-23-102</td>
</tr>
</tbody>
</table>

#### Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3805</td>
<td>Perjury</td>
<td>21-38-201</td>
</tr>
<tr>
<td>21-3818; 21-3808</td>
<td>Interference with law enforcement</td>
<td>21-38-202</td>
</tr>
<tr>
<td>21-3817; 21-3815; 21-3816; 21-3807</td>
<td>Interference with the judicial process</td>
<td>21-38-203</td>
</tr>
<tr>
<td>Deleted</td>
<td></td>
<td>21-38-204</td>
</tr>
<tr>
<td>Deleted</td>
<td></td>
<td>21-38-205</td>
</tr>
<tr>
<td>Deleted</td>
<td></td>
<td>21-38-206</td>
</tr>
<tr>
<td>21-3827</td>
<td>Criminal disclosure of a warrant</td>
<td>21-38-207</td>
</tr>
<tr>
<td>21-3820</td>
<td>Simulating legal process</td>
<td>21-39-208</td>
</tr>
</tbody>
</table>

#### Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3831</td>
<td>Witness or victim intimidation; definitions</td>
<td>21-38-301</td>
</tr>
<tr>
<td>21-3832; 21-3833</td>
<td>Intimidation of a witness or victim</td>
<td>21-38-302</td>
</tr>
<tr>
<td>21-3833</td>
<td>Aggravated intimidation of a witness or victim</td>
<td>21-38-303</td>
</tr>
<tr>
<td>21-3834; 21-3835; 21-3836; 21-3837</td>
<td>Civil remedies, court orders authorized, violation of court orders, penalties</td>
<td>21-38-304</td>
</tr>
</tbody>
</table>

#### Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3809; 21-3810</td>
<td>Escape from custody</td>
<td>21-38-401</td>
</tr>
<tr>
<td>21-3810</td>
<td>Aggravated escape from custody</td>
<td>21-38-402</td>
</tr>
<tr>
<td>21-3811</td>
<td>Aiding escape</td>
<td>21-38-403</td>
</tr>
<tr>
<td>Current K.S.A. Number</td>
<td>Title</td>
<td>KCCRC Section Number</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>21-3812</td>
<td>Obstructing Apprehension or Prosecution</td>
<td>21-38-404</td>
</tr>
<tr>
<td>21-3826</td>
<td>Traffic in contraband in a correctional institution or care and treatment facility</td>
<td>21-38-405</td>
</tr>
<tr>
<td>21-3813; 21-3814</td>
<td>Failure to appear</td>
<td>21-38-406</td>
</tr>
<tr>
<td>21-3814</td>
<td>Aggravated failure to appear</td>
<td>21-38-407</td>
</tr>
</tbody>
</table>

### Section 5

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3823</td>
<td>False signing of a petition</td>
<td>21-38-501</td>
</tr>
<tr>
<td>22-3824; 21-3825</td>
<td>False impersonation</td>
<td>21-38-502</td>
</tr>
<tr>
<td>21-3825</td>
<td>Aggravated false impersonation</td>
<td>21-38-503</td>
</tr>
<tr>
<td>21-3830</td>
<td>Dealing in false identification documents</td>
<td>21-38-504</td>
</tr>
<tr>
<td>21-3819</td>
<td>Performance of an unauthorized official act</td>
<td>21-38-505</td>
</tr>
</tbody>
</table>

### Section 6

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3821</td>
<td>Tampering with a public record</td>
<td>21-38-601</td>
</tr>
<tr>
<td>21-3821</td>
<td>Tampering with public notice</td>
<td>21-38-602</td>
</tr>
<tr>
<td>21-3828; 21-3829</td>
<td>Interference with the conduct of public business in public buildings</td>
<td>21-38-603</td>
</tr>
<tr>
<td>21-3829</td>
<td>Aggravated interference with the conduct of public business in public buildings</td>
<td>21-38-604</td>
</tr>
<tr>
<td>21-3838</td>
<td>Unlawful disclosure of authorized interception of wire, oral or electronic communications</td>
<td>21-38-605</td>
</tr>
<tr>
<td>21-3839</td>
<td>Harassment by telefacsimile communication</td>
<td>21-38-606</td>
</tr>
<tr>
<td>21-3843</td>
<td>Violation of a protective order</td>
<td>21-38-607</td>
</tr>
</tbody>
</table>

### Section 7

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3844</td>
<td>Kansas medicaid fraud control act; citation.</td>
<td>21-38-701</td>
</tr>
<tr>
<td>21-3845</td>
<td>Definitions.</td>
<td>21-38-702</td>
</tr>
<tr>
<td>21-3846</td>
<td>Making a false claim to the medicaid program.</td>
<td>21-38-703</td>
</tr>
<tr>
<td>21-3847</td>
<td>Unlawful acts relating to the medicaid program.</td>
<td>21-38-704</td>
</tr>
<tr>
<td>21-3848</td>
<td>Failure to maintain adequate records.</td>
<td>21-38-705</td>
</tr>
<tr>
<td>21-3849</td>
<td>Destruction or concealment of records.</td>
<td>21-38-706</td>
</tr>
<tr>
<td>21-3850</td>
<td>Defense of actions.</td>
<td>21-38-707</td>
</tr>
<tr>
<td>Current K.S.A. Number</td>
<td>Title</td>
<td>KCCRC Section Number</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>21-3840</td>
<td>Failure to register an aircraft.</td>
<td>21-38-801</td>
</tr>
<tr>
<td>21-3841</td>
<td>Fraudulent aircraft registration.</td>
<td>21-38-802</td>
</tr>
<tr>
<td>21-3842</td>
<td>Fraudulent acts relating to aircraft identification numbers.</td>
<td>21-38-803</td>
</tr>
</tbody>
</table>

Section 8

(a) Treason is *intentionally* levying war against the state, adhering to its enemies, or giving them aid and comfort.

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

(c) Treason is an off-grid person felony.

Comment

This section incorporates K.S.A. 21-3801. The Commission determined that this is a specific intent offense, so the term intentionally is added.


(a) 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.

(b) Sedition is a severity level 7, nonperson felony.

Comment

This section incorporates K.S.A. 21-3802. The term “selling” is removed as it is duplicative of the term “distributing.”

21-38-201. Perjury.

(a) Perjury is intentionally, knowingly and falsely:

(1) 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;
(2) subscribing as true and correct under penalty of perjury any material matter in any declaration, verification, certificate or statement as permitted by K.S.A. 53-601 and amendments thereto; or

(3) subscribing as true and correct under penalty of perjury any statement as required by K.S.A. 75-5743, and amendments thereto.

(b) (1) Perjury is a severity level 7, nonperson felony if the false statement is made upon the trial of a felony charge.

(2) Perjury is a severity level 9, nonperson felony if the false statement is made in a cause, matter or proceeding other than the trial of a felony charge or is made under penalty of perjury in any declaration, verification, certificate or statement as permitted by K.S.A. 53-601 and amendments thereto.

Comment

This section incorporates K.S.A. 21-3805. As this is a specific intent offense, the term “knowingly” is removed from subsection (a).

21-38-202 Interference with law enforcement

(a) Interference with law enforcement is:

(1) Falsely reporting to a law enforcement officer or state investigative agency that a crime has been committed, knowing that such information is false and intending that the officer or agency shall act in reliance upon such information; or

(2) knowingly 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.

(b) (1) Interference with law enforcement as defined in (a)(1) is a class A misdemeanor.

(2) (A) Interference with law enforcement as defined in (a)(2) in the case of a felony, or resulting from parole or any authorized disposition for a felony, is a severity level 9, nonperson felony;
Interference with law enforcement as defined in (a)(2) in a case of misdemeanor, or resulting from any authorized disposition for a misdemeanor, or a civil case is a class A nonperson misdemeanor.

Comment

This section merges K.S.A. 21-3818, falsely reporting a crime and 21-3808, obstructing legal process or official duty.

The Commission found several problems with this statute, including the fact that there is no penalty for providing false information to law enforcement other than falsely reporting a crime. Therefore, the Commission recommends changes to this statute. Please see volume two of the Commission’s final report.

21-38-203

Interference with the judicial process

(a) Interference with the judicial process is:

(1) 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;

(2) committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecuting attorney on any matter then pending before the officer or prosecuting attorney:

(A) communicating in any manner a threat of violence to any judicial officer or any prosecuting attorney;

(B) harassing a judicial officer or a prosecuting attorney by repeated vituperative communication; or

(C) picketing, parading or demonstrating near such officer’s or prosecuting attorney’s residence or place of abode,

(3) picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecuting attorney with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecuting attorney on any matter then pending before the officer or prosecuting attorney.
(4) knowingly accepting or agreeing to accept anything of value as
consideration for a promise:

(A) Not to initiate or aid in the prosecution of a person who has
committed a crime; or

(B) to conceal or destroy evidence of a crime.

(5) when performed by a person summoned or sworn as a juror in any case:

(A) intentionally soliciting, accepting or agreeing to accept from another
any benefit as consideration to wrongfully give a verdict for or
against any party in any proceeding, civil or criminal;

(B) intentionally promising or agreeing to wrongfully give a verdict for or
against any party in any proceeding, civil or criminal; or

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

(b) (1) Interference with the judicial process as described in subsection (a)(1) is a
severity level 9, nonperson felony.

(2) Interference with the judicial process as described in subsections (a)(2) and
(a)(3) is a class A nonperson misdemeanor.

(3) Interference with the judicial process as described in subsection (a)(4) is:

(A) a severity level 8, nonperson felony if the crime is a felony; or

(B) a class A nonperson misdemeanor if the crime is a misdemeanor.

(4) Interference with the judicial process as described in subsection (a)(5)(A) is a
severity level 7, nonperson felony.

(5) Interference with the judicial process as described in subsection (a)(5)(B) or
(a)(5)(C) is a severity level 9, nonperson felony.

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

(d) As used in this section, "prosecuting attorney" has the meaning ascribed thereto in
K.S.A. 22-2202, and amendments thereto.
Comment

This statute combines K.S.A. 21-3817, corrupt conduct by a juror, 21-3815, attempting to influence a judicial officer, 21-3816, interference with the administration of justice, and 21-3807, and compounding a crime.

Subsection (a)(2) and (3) are separated to avoid a U.S. Constitutional violation. Subsection (a)(2) includes acts done with the intent to influence the decision of a prosecutor. The Commission found that it is permissible to criminalize threatening, harassing, or picketing outside the home of a judicial officer or prosecutor. However, the Commission found that there would likely be a First Amendment violation to criminalize demonstrating at an office with the intent to influence the decision of a public official.

As with 21-38-202, the Commission found several areas where this statute could be improved. For example, under subsection (a)(4) it is not illegal to destroy evidence of a crime unless the offender accepts something of value to do so. If an offender destroys evidence of their own crime they cannot be charged under this section. Please see volume two of the Commission’s final report.

21-38-204

Deleted

21-38-205

Deleted

21-38-206

Deleted

21-38-207

21-38-207. Criminal disclosure of a warrant.

(a) Criminal disclosure of a warrant is recklessly making public in any way, prior to the execution of such warrant:

(1) the fact that a search warrant or warrant for arrest has been applied for or issued; or

(2) the contents of the affidavit or testimony on which such warrant is based.
(b) Criminal disclosure of a warrant is a class B nonperson misdemeanor.

(c) Criminal disclosure of a warrant shall not apply:

(1) when disclosure of the warrant is made at the request of a law enforcement officer for the purpose of assisting in the execution of such warrant;

(2) to personnel of a law enforcement agency disclosing a warrant for the purpose of encouraging the person named in the warrant to voluntarily surrender; or

(3) to personnel of a law enforcement agency disclosing a warrant issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant.

Comment

This section incorporates K.S.A. 22-3827. This statute lacked a culpability term so the Commission added the term “recklessly” as that seemed to be the level of culpability the legislature intended.

21-38-208. Simulating legal process.

(a) Simulating legal process is:

(1) Sending or delivering Distributing to another any document which simulates or purports to be, or is 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

(2) printing or distributing or offering for sale any such document, knowing or intending that it shall be so used.

(b) Simulating legal process is a class A nonperson misdemeanor.

(c) Subsection (a) does not apply to the printing or distribution of sale of blank forms of legal documents intended for actual use in judicial proceedings.

Comment

This section incorporates K.S.A. 21-3820. The terms “selling,” “delivering,” and “offering for sale” are replaced with “distributing” to be consistent with other statutes. The term
“intending” is removed from subsection (a)(2) as it unnecessary in light of the lesser degree of culpability required by the term “knowing.”

The Commission determined that the wording of this statute may criminalize innocent conduct. A recommendation to change the statute can be found in volume two of the Commission’s final report.

21-38-301

21-38-301. Witness or victim intimidation; definitions. As used in K.S.A. 21-3831 through 21-3836, and amendments thereto:

(a) "Civil injury or loss" means any injury or loss for which a civil remedy is provided under the laws of this state, any other state or the United States.

(b) "Malice" means an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice.

(b) "Victim" means any individual:

(1) Against whom any crime under the laws of this state, any other state or the United States is being, has been or is attempted to be committed; or

(2) who suffers a civil injury or loss.

(c) "Witness" means any individual:

(1) Who has knowledge of the existence or nonexistence of facts relating to any civil or criminal trial, proceeding or inquiry authorized by law;

(2) whose declaration under oath is received or has been received as evidence for any purpose;

(3) who has reported any crime or any civil injury or loss to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;

(4) who has been served with a subpoena issued under the authority of a municipal court or any court or agency of this state, any other state or the United States; or

(5) who would be is believed by the offender by any reasonable person to be an individual described in this subsection.
This section incorporates K.S.A. 22-3831. The original subsection (b) is moved to 21-38-302. Subsection (c)(5) is changed to emphasize that the offender, not a reasonable person, must believe the person is a witness.

**Comment**

**21-38-302**

**21-38-302. Intimidation of a witness or victim.**

(a) Intimidation of a witness or victim is knowingly and maliciously preventing or dissuading, or attempting to prevent or dissuade, with an intent to vex, annoy, harm or injure in any way another person or an intent to thwart or interfere in any manner with the orderly administration of justice:

1. Any witness or victim from attending or giving testimony at any civil or criminal trial, proceeding or inquiry authorized by law; or
2. any witness, victim or person acting on behalf of a victim from:
   1. Making any report of the victimization of a victim to any law enforcement officer, prosecutor, probation officer, parole officer, correctional officer, community correctional services officer or judicial officer;
   2. causing a complaint, indictment or information to be sought and prosecuted, or causing a violation of probation, parole or assignment to a community correctional services program to be reported and prosecuted, and assisting in its prosecution;
   3. causing a civil action to be filed and prosecuted and assisting in its prosecution; or
   4. arresting or causing or seeking the arrest of any person in connection with the victimization of a victim.

(b) Aggravated intimidation of a witness or victim is intimidation of a witness or victim, as described in subsection (a), when:

1. the act is accompanied by an expressed or implied threat of force or violence against a witness, victim or other person or the property of any witness, victim or other person;
2. the act is in furtherance of a conspiracy;
(3) the act is committed by a person who has been previously convicted of
  corruptly influencing a witness or has been convicted of a violation of this act
  or any federal or other state's statute which, if the act prosecuted was
  committed in this state, would be a violation of this act;

(4) the witness or victim is under 18 years of age; or

(5) the act is committed for pecuniary gain or for any other consideration by a
  person acting upon the request of another person.

(c) (1) Intimidation of a witness or victim is a class B person misdemeanor,

(2) Aggravated intimidation of a witness or victim is a severity level 6, person
  felony.

Comment

This section merges K.S.A. 22-3832 and 21-3833. The definition of malice from 21-38-301 is
incorporated into the culpability provision of subsection (a). The term “knowingly” is removed
to convey that this is a specific intent crime.

### 21-38-303

**21-38-303.** Aggravated intimidation of a witness or victim. (a) Aggravated intimidation of a
  witness or victim is intimidation of a witness or victim, as defined by K.S.A. 21-3832 and
  amendments thereto, when:
  — (1) The act is accompanied by an expressed or implied threat of force or violence against
  a witness, victim or other person or the property of any witness, victim or other person;
  — (2) the act is in furtherance of a conspiracy;
  — (3) the act is committed by a person who has been previously convicted of corruptly
  influencing a witness or has been convicted of a violation of this act or any federal or other
  state's statute which, if the act prosecuted was committed in this state, would be a violation
  of this act;
  — (4) the witness or victim is under 18 years of age; or
  — (5) the act is committed for pecuniary gain or for any other consideration by a person
  acting upon the request of another person.
  — (b) Aggravated intimidation of a witness or victim is a severity level 6, person felony.

Comment

This section merges K.S.A. 22-3833 into 21-38-302.

### 21-38-304

In its discretion and upon good cause (which may include but is not limited to the
declaration of a party’s attorney) to believe that intimidation or dissuasion of any
victim or witness has occurred or is reasonably likely to occur, any court having
jurisdiction over any civil or criminal matter may issue any reasonable order
necessary to remedy or prevent the intimidation or dissuasion, including but not
limited to an order that:

(a) Any person before the court, including but not limited to a party,
   subpoenaed witness or other person entering the courtroom of the court,
   not violate any provision of this act;

   (1) any person described in this section maintain a prescribed geographic
distance from any specified witness or victim;

   (2) any person described in this section have no communication whatsoever
   with any specified witness or victim, except through an attorney under such
   reasonable restrictions as the court imposes;

   (3) calls for a hearing to determine if an order described in subsection (a)(1),
   (a)(2) or (a)(3) should be issued; or

   (5) a particular law enforcement agency within the jurisdiction of the court
   provide protection for a victim or witness.

(b) Actions by a law enforcement agency pursuant to an order issued under subsection
   (a)(5) shall be considered to be police protection within the exemption from liability
   under the Kansas tort claims act for damages resulting from the failure to provide, or
   the method of providing, police protection.

(c) Violation of an order entered pursuant to K.S.A. 21-3834 subsection (a) may be
   punished in any of the following ways:

   (1) In the manner provided by K.S.A. 21-3832 or 21-3833, when applicable.

   (2) As a contempt of the court making the order. No finding of contempt shall
   be a bar to prosecution for a violation of K.S.A. 21-3832 or 21-3833, but:

   (A) Any person held in contempt shall be entitled to have any
   punishment imposed for contempt to be credited against any
   sentence imposed upon conviction of a violation of K.S.A. 21-3832 or
   21-3833; and

   (B) any conviction or acquittal of a violation of K.S.A. 21-3832, 21-3833
   or 21-3834 subsection (a) shall be a bar to subsequent punishment
   for contempt arising out of the same act.
(3) By revocation of any form of pretrial release of a criminal defendant or by the forfeiture of bail and the issuance of a bench warrant for the defendant's arrest or remanding the defendant into custody. After a hearing and upon a showing by clear and convincing evidence, the court, in its sound discretion, may order the revocation whether the violation was committed by the defendant personally or in any way caused or encouraged it to be committed.

(d) (1) Any pretrial release of any criminal defendant, whether on bail or under another form of recognizance, shall be considered as a matter of law to include a condition that the defendant will not commit, cause to be committed or knowingly permit to be committed, on the defendant's behalf, any violation of this act. Willful Knowing violation of that condition is subject to the sanction provided by subsection (c)(3) of K.S.A. 21-3835, and amendments thereto, whether or not the defendant was the subject of an order under K.S.A. 21-3834, and amendments thereto subsection (a).

(2) Any receipt for any bail or bond given by any court, or by any surety or bondsman and any written promise to appear on one's own recognizance shall contain notice of the provisions of subsection (a) (d)(1) in a conspicuous location.

(3) Any pretrial release of any criminal defendant whether on bail or under another form of recognizance who requests and is entitled to the assistance of counsel under the provisions of K.S.A. 22-4503, and amendments thereto, shall be considered as a matter of law to include a condition that the defendant shall pay the application fee prescribed by K.S.A. 22-4529, and amendments thereto, and the failure to pay such fee shall constitute a violation of this act. Willful Knowing violation of such condition is subject to the sanction provided by subsection (c) of K.S.A. 21-3835, and amendments thereto, (c)(3) whether or not the defendant was the subject of an order under K.S.A. 21-3834, and amendments thereto.

K.S.A. 21-3831 through 21-3836 shall be part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 22-3834, 21-3835, 21-3836, and 21-3837. No change is recommended except minor changes to correct references.

21-38-401

(a) Escape from custody is escaping while held in lawful custody:

(1) on a charge or conviction of a misdemeanor;

(2) on a charge or adjudication as a juvenile offender, as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto, where the act, if committed by an adult, would constitute a misdemeanor; or

(3) on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a misdemeanor or by a person 18 years of age or over who is being held in lawful custody on an adjudication of a misdemeanor.

(b) Aggravated escape from custody is:

(1) Escaping while held in lawful custody:

(A) upon a charge or conviction of a felony;

(B) upon a charge or adjudication as a juvenile offender as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto, where the act, if committed by an adult, would constitute a felony;

(C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto;

(D) upon commitment to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq. and amendments thereto;

(E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a felony;

(F) by a person 18 years of age or over who is being held on an adjudication of a felony; or

(G) upon incarceration at a state correctional institution as defined in K.S.A. 75-5202 and amendments thereto, while in the custody of the secretary of corrections.

(2) Escaping effected or facilitated by the use of violence or the threat of violence against any person while held in lawful custody:
(A) on a charge or conviction of any crime;

(B) on a charge or adjudication as a juvenile offender as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto, where the act, if committed by an adult, would constitute a felony;

(C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto;

(D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq. and amendments thereto;

(E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime;

(F) by a person 18 years of age or over who is being held on a charge or adjudication of a misdemeanor or felony;

(G) upon incarceration at a state correctional institution as defined in K.S.A. 75-5202 and amendments thereto, while in the custody of the secretary of corrections.

(c) (1) Escape from custody is a class A nonperson misdemeanor.

(2) Aggravated escape from custody as described in subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F) is a severity level 8, nonperson felony.

(3) Aggravated escape from custody as described in subsection (b)(1)(B) or (b)(1)(G) is a severity level 5, nonperson felony.

(4) Aggravated escape from custody as described in subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F) is a severity level 8, nonperson felony.

(5) Aggravated escape from custody as described in subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, nonperson felony.

(d) As used in this section and K.S.A. 21-3810 and 21-3811, and amendments thereto:

(1) "Custody" means arrest; detention in a facility for holding persons charged with or convicted of crimes or charged or adjudicated as a juvenile offender, as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto, where the act, if committed by an adult, would constitute a misdemeanor; detention in
a facility for holding persons adjudicated as juvenile offenders; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto; or any other detention for law enforcement purposes. "Custody" does not include general supervision of a person on probation or parole or constraint incidental to release on bail.

(2) "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.

Comment

This section merges K.S.A. 21-3809 and 21-3810. The term "lawful" is removed because the Commission determined that the legislature did not intend to make the lawfulness of custody an element of the offense.

The phrase "where the act, if committed by an adult, would constitute a misdemeanor; detention in a facility for holding persons adjudicated as juvenile offenders" is removed from subsection (d)(1) as unnecessary.

Under current law, this offense does not apply unless the offender is under a formal, written charge. And offender who escapes from arrest, prior to a formal charge, may not be charged under this statute. The Commission recommends a change to this statute that would permit an offender to be charged if such offender escaped from arrest. Please see volume two of the Commission’s final report.

21-38-402

21-38-402. Aggravated escape from custody. Aggravated escape from custody is:

— (a) Escaping while held in lawful custody (1) upon a charge or conviction of a felony or (2) upon a charge or adjudication as a juvenile offender as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto, where the act, if committed by an adult, would constitute a felony or (3) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto or (4) upon commitment to a treatment facility as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et seq. and amendments thereto or (5) upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting a felony or (6) by a person 18 years of age or over who is being held on an adjudication of a felony or (7) upon incarceration at a state correctional institution as defined in K.S.A. 75-5202 and amendments thereto, while in the custody of the secretary of corrections; or
(b) Escaping effected or facilitated by the use of violence or the threat of violence against any person while held in lawful custody, (1) on a charge or conviction of any crime or (2) on a charge or adjudication as a juvenile offender as defined in K.S.A. 2007 Supp. 38-2302, and amendments thereto, where the act, if committed by an adult, would constitute a felony or (3) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto or (4) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a05 and amendments thereto or (5) upon a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime or (6) by a person 18 years of age or over who is being held on a charge or adjudication of a misdemeanor or felony or (7) upon incarceration at a state correctional institution as defined in K.S.A. 75-5202 and amendments thereto, while in the custody of the secretary of corrections.

— (c) (1) Aggravated escape from custody as described in subsection (a)(1), (a)(3), (a)(4), (a)(5) or (a)(6) is a severity level 8, nonperson felony.

— (2) Aggravated escape from custody as described in subsection (a)(2) or (a)(7) is a severity level 5, nonperson felony.

— (3) Aggravated escape from custody as described in subsection (b)(1), (b)(3), (b)(4), (b)(5) or (b)(6) is a severity level 6, person felony.

— (4) Aggravated escape from custody as described in subsection (b)(2) or (b)(7) is a severity level 5, person felony.

Comment
This section merges K.S.A. 21-3810 into 21-38-401.
services to the department of corrections, is a severity level 4, nonperson felony.

(c) As used in this section “lawful custody” includes custody on a charge or conviction of crime, on a charge or adjudication of a misdemeanor or felony or on a commitment to the state security hospital as provided in K.S.A. 22-3428 and amendments thereto based on a finding that the person committed an act constituting any crime.

Comment

This section incorporates K.S.A. 21-3811. As in 21-38-401 the term “lawful” is removed so that the lawfulness of the custody shall not be an element of the offense.

21-38-404. Obstructing Apprehension or Prosecution.

(a) Obstructing apprehension or prosecution is knowingly:

(1) harboring, concealing or aiding any person who has committed or who has been charged with committing a felony or misdemeanor under the laws of this state, other than a violation of K.S.A. 22-4903, and amendments thereto, 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 or misdemeanor; or

(2) harboring, concealing or aiding any person who is required to register under the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, and who is not in compliance with the requirements of the act with intent that such person shall avoid or escape from registration, arrest, trial, conviction, punishment or any criminal charges arising from the person's failure to comply with the requirements of the act.

(b) (1) Obstructing apprehension or prosecution as defined in subsection (a)(1) is a severity level 8, nonperson felony if the person who is harbored, concealed or aided has committed or has been charged with committing a felony.

(2) Obstructing apprehension or prosecution as defined in subsection (a)(1) is a Class C misdemeanor if the person who is harbored, concealed or aided has committed or has been charged with committing a misdemeanor.

(3) Obstructing apprehension or prosecution as defined in subsection (a)(2) is a severity level 5, person felony.

Comment
This section incorporates K.S.A. 21-3812. The language of the statute is revised to add clarity.

### 21-38-405

**21-38-405. Traffic in contraband in a correctional institution or care and treatment facility.**

(a) **Traffic in contraband in a correctional institution or care and treatment facility is, without the consent of the administrator of the correctional institution or care and treatment facility,**:

1. Introducing or attempting to introduce any item into or upon the grounds of any correctional institution or care and treatment facility;
2. Taking, sending, attempting to take or attempting to send any item from any correctional institution or care and treatment facility;
3. Any unauthorized possession of any item while in any correctional institution or care and treatment facility;
4. Distributing any item within any correctional institution or care and treatment facility.
5. Supplying to another who is in lawful custody any object or thing adapted or designed for use in making an escape, with intent that it shall be so used; or
6. Introducing into an institution in which a person is confined any object or thing adapted or designed for use in making any escape, with intent that it shall be so used.

(b) (1) **Traffic in contraband in a correctional institution or care and treatment facility of firearms, ammunition, explosives or a controlled substance which is defined in subsection (e) of K.S.A. 65-4101, section 1 of 2009 House Bill No. 2236 and amendments thereto, is a severity level 5, nonperson felony. This paragraph subsection shall not apply to the possession of a firearm or ammunition by a person licensed under the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto, in a parking lot open to the public if the firearm or ammunition is carried on the person while in a vehicle or while securing the firearm or ammunition in the vehicle, or stored out of plain view in a locked but unoccupied vehicle.

(2) Traffic in any contraband, as defined by rules and regulations adopted by the secretary, in a correctional institution by an employee of a correctional institution is a severity level 5, nonperson felony, except a violation of
subsection (a)(5) or (a)(6) by an employee or volunteer of the department of
corrections, or the employee or volunteer of a contractor who is under
contract to provide services to the department of corrections, is a severity
level 4, nonperson felony.

(3) Traffic in any contraband, as defined by rules and regulations adopted by the
secretary of social and rehabilitation services, in a care and treatment facility
by an employee of a care and treatment facility is a severity level 5, nonperson
felony.

(4) Except as provided in subsections (b)(1) and (b)(2), traffic in contraband in a
correctional institution or care and treatment facility is a severity level 6,
nonperson felony.

(c) For purposes of this section:

(1) "correctional institution" means any state correctional institution or facility,
conservation camp, state security hospital, juvenile correctional facility,
community correction center or facility for detention or confinement,
juvenile detention facility or jail.

(2) “Care and treatment facility” means the state security hospital provided for
under K.S.A. 76-1305 et seq., and amendments thereto, and a facility operated
by the department of social and rehabilitation services for the purposes provided
for under K.S.A. 59-29a02 et seq., and amendments thereto.

(3) “lawful custody” includes custody on a charge or conviction of crime, on a
charge or adjudication of a misdemeanor or felony or on a commitment to the
state security hospital as provided in K.S.A. 22-3428 and amendments thereto
based on a finding that the person committed an act constituting any crime.

Comment

This section incorporates K.S.A. 21-3826. The changes from the latest legislative session are
included.


(a) Failure to appear is intentionally knowingly incurring a forfeiture of an appearance
bond and failing to surrender oneself within 30 days following the date of such
forfeiture by one who is charged with a misdemeanor and has been released on
bond for appearance before any court of this state, other than the municipal court of
a city, for trial or other proceeding prior to conviction, or intentionally knowingly
incurs a forfeiture of an appearance bond and failing to surrender oneself within 30 days after such person’s conviction of a misdemeanor has become final by one who has been released on an appearance bond by any court of this state.

(b) Aggravated failure to appear is willfully knowingly incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days after the date of such forfeiture by one who is charged with a felony and has been released on bond for appearance before any court of this state, or willfully knowingly incurring a forfeiture of an appearance bond and failing to surrender oneself within 30 days after oneself’s conviction of a felony has become final by one who has been released on an appearance bond by any court of this state.

(c) (1) Failure to appear is a class B nonperson misdemeanor,

(2) Aggravated failure to appear is a severity level 10, nonperson felony.

(d) The provisions of subsection (a) shall not apply to any person who forfeits a cash bond supplied pursuant to law upon an arrest for a traffic offense infraction or cigarette or tobacco infraction.

(e) Any person who is released upon the person’s own recognizance, without surety, or who fails to appear in response to a summons or traffic citation, shall be deemed a person released on bond for appearance within the meaning of subsection (a).

Comment

This section merges K.S.A. 21-3813 and 21-3814. As this is a general intent offense, the culpability terms are removed and the term “knowingly” is added to subsections (a) and (b).

(a) False signing of a petition is the knowingly 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.

(b) False signing of an official petition is a class C misdemeanor.

Comment

This section incorporates K.S.A. 22-3823. As this is a general intent offense, the term “knowingly” is added.


(a) False impersonation is representing oneself to be a public officer or public 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.

(b) Aggravated false impersonation is falsely representing or impersonating another and in such falsely assumed character:

1. 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;

2. confessing any judgment;

3. acknowledging the execution of any conveyance of property, or any other instrument which by law may be recorded; or

4. 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 such person's rights or interests may be in any manner affected.

(c) (1) False impersonation is a class B nonperson misdemeanor,

(2) aggravated false impersonation is a severity level 9, nonperson felony.
Comment

This section incorporates K.S.A. 22-3824 and 21-3825. No change is recommended.

21-38-503

21-38-503. Aggravated false impersonation. (a) Aggravated false impersonation is falsely representing or impersonating another and in such falsely assumed character:

— (1) 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;

— (2) confessing any judgment;

— (3) acknowledging the execution of any conveyance of property, or any other instrument which by law may be recorded; or

— (4) 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 such person's rights or interests may be in any manner affected.

(b) Aggravated false impersonation is a severity level 9, nonperson felony.

(c) —

Comment

This section merges K.S.A. 22-3825 into 21-38-502.

21-38-504


(a) Dealing in false identification documents is knowingly reproducing, manufacturing, selling or offering for sale any identification document which:

(1) Simulates, purports to be or is designed so as to cause others reasonably to believe it to be an identification document; and

(2) bears a fictitious name or other false information.

(b) As used in this section, "identification document" means any card, certificate or document or banking instrument including, but not limited to, credit or debit card, which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, certified copies of birth, death, marriage and divorce certificates, social security cards and employee identification cards.
(c) Dealing in false identification documents is a severity level 8, nonperson felony.

(d) Vital records identity fraud related to birth, death, marriage and divorce certificates is:

(1) Willfully and knowingly supplying false information intending that the information be used to obtain a certified copy of a vital record;

(2) making, counterfeiting, altering, amending or mutilating any certified copy of a vital record:
   (A) Without lawful authority; and
   (B) with the intent to deceive; or

(3) willfully and knowingly obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another for any purpose of deception a certified copy of a vital record, with the intent to deceive.

(e) Vital records identity fraud is a severity level 8, nonperson felony.

(f) The prohibitions in subsections (a) and (d) do not apply to:

(1) A person less than 21 years of age who uses the identification document of another person to acquire an alcoholic beverage, as defined in K.S.A. 8-1599, and amendments thereto;

(2) a person less than 18 years of age who uses the identification documents of another person to acquire:
   (A) Cigarettes or tobacco products, as defined in K.S.A. 79-3301, and amendments thereto;
   (B) a periodical, videotape or other communication medium that contains or depicts nudity;
   (C) admittance to a performance, live or film, that prohibits the attendance of the person based on age; or
   (D) an item that is prohibited by law for use or consumption by such person.

(g) This section shall be part of and supplemental to the Kansas criminal code.
This section incorporates K.S.A. 22-3830. The terms “willfully” and “knowingly” are removed from subsection (d) as unnecessary.

21-38-505


(a) Performance of an unauthorized official act is knowingly and without lawful authority:

(1) conducting a marriage ceremony; or

(2) certifying an acknowledgment of the execution of any document which by law may be recorded.

(b) Performance of an unauthorized official act is a class B nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-3819. No change is recommended.

21-38-601

21-38-601. Tampering with a public record.

(a) Tampering with a public record is knowingly and without lawful authority altering, destroying, defacing, removing or concealing any public record.

(b) Tampering with a public record is a class A nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-3821. No change is recommended.

21-38-602

21-38-602. Tampering with public notice.

(a) 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.

(b) Tampering with public notice is a class C misdemeanor.
Comment

This section incorporates K.S.A. 21-3822. No change is recommended.

21-38-603. Interference with the conduct of public business in public buildings.

(a) Interference with the conduct of public business in public buildings is:

(1) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to intentionally knowingly deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities or to leave any such public building;

(2) intentionally knowingly impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof;

(3) intentionally knowingly refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or such officer’s designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures or functions being carried on in such public building;

(4) intentionally knowingly impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body or any official engaged in the performance of duties at such meeting or session; or

(5) intentionally knowingly impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official.

(b) Aggravated interference with the conduct of public business is interference with the conduct of public business, as described in subsection (a), when in possession of any firearm or weapon as described in K.S.A. 21-4201 and amendments thereto.
(c) (1) Interference with the conduct of public business in public buildings is a class
1 A nonperson misdemeanor,
3
4 (2) aggravated interference with the conduct of public business is a severity
5 level 6, person felony.
7
Comment
9 This section merges K.S.A. 22-3828 and 21-3829. As this is a general intent crime, the term
10 “intentionally” has been replaced with the term “knowingly.”

21-38-604

21-38-604. Aggravated interference with the conduct of public business. Aggravated interference with the conduct of public business is interference with the conduct of public business as defined in K.S.A. 21-3828, when in possession of any firearm or weapon as described in K.S.A. 21-4201 and amendments thereto.

Comment
This section merges K.S.A. 22-3829 into 21-38-603.

21-38-605

21-38-605. Unlawful disclosure of authorized interception of wire, oral or electronic communications.

(a) Unlawful disclosure of authorized interception of wire, oral or electronic communications is, with the intent to obstruct, impede or prevent such authorized interception, communicating to any person or making public in any way, other than as provided by law;:

(1) the existence of an application or order for such interception issued pursuant to K.S.A. 22-2516 and amendments thereto, or

(2) the resulting investigation.

(b) Unlawful disclosure of authorized interception of wire, oral or electronic communications is a severity level 10, nonperson felony.

Comment
This section incorporates K.S.A. 22-3838. The language of the statute is changed to add clarity.
21-38-606. Harassment by telefacsimile communication.

(a) Harassment by telefacsimile communication is the use of telefacsimile communication to send or transmit such communication to a court in the state of Kansas for a use other than court business.

(b) Harassment by telefacsimile communication is a class A nonperson misdemeanor.

(c) As used in this section, telefacsimile communication means the use of electronic equipment to send or transmit a copy of a document via telephone line.

Comment

This section merges K.S.A. 22-3839 into 21-41-302.

21-38-607. Violation of a protective order.

(a) Violation of a protective order is knowingly or intentionally violating:

(1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106 and 60-3107, and amendments thereto;

(2) a protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;

(3) a restraining order issued pursuant to K.S.A. 2007 Supp. 38-2243, 38-2244 and 38-2255 and K.S.A. 60-1607, and amendments thereto;

(4) an order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person;

(5) an order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person; or
(6) a protection from stalking order issued pursuant to K.S.A. 60-31a05 or 60-31a06, and amendments thereto.

(b) As used in this section, "order" includes any order issued by a municipal or district court.

(c) No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in any civil or criminal proceeding, from contacting the protected party for a legitimate purpose within the scope of the civil or criminal proceeding. The attorney, or person acting on the attorney's behalf, shall be identified in any such contact.

(d) Violation of a protective order is a class A person misdemeanor.

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

Comment

This section incorporates K.S.A. 21-3843. As this is a general intent crime, the term intentionally is removed. Proof of intentional conduct would fulfill the culpability requirement because it is a higher degree of culpability than knowing conduct.

21-38-701

21-38-701. Kansas medicaid fraud control act; citation. K.S.A. 21-3844 to 21-3855, inclusive, and amendments thereto shall be known and may be cited as the Kansas medicaid fraud control act. The Kansas medicaid fraud control act shall be part of and supplemental to the Kansas criminal code.

Comment

This section incorporates K.S.A. 21-3844. Unnecessary language is removed and the proper statutory citations are added.

21-38-702

21-38-702. Definitions. As used in this act:

(a) "Attorney general" means the attorney general, employees of the attorney general or authorized representatives of the attorney general.

(b) "Benefit" means the receipt of money, goods, items, facilities, accommodations or anything of pecuniary value.
(c) "Claim" means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic or written communication that is utilized to identify any goods, service, item, facility or accommodation as reimbursable to the Kansas medicaid program, or its fiscal agents, or which states income or expense and is or may be used to determine a rate of payment by the Kansas medicaid program, or its fiscal agent.

(d) "Fiscal agent" means any corporation, firm, individual, organization, partnership, professional association or other legal entity which, through a contractual relationship with the department of social and rehabilitation services and thereby, the state of Kansas, receives, processes and pays claims under the Kansas medicaid program.

(e) "Family member" means spouse, child, grandchild of any degree, parent, mother-in-law, father-in-law, grandparent of any degree, brother, brother-in-law, sister, sister-in-law, half-brother, half-sister, uncle, aunt, nephew or niece, whether biological, step or adoptive.

(f) "Medicaid program" means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended as administered by the department of social and rehabilitation services, or its fiscal agent, or any successor federal or state, or both, health insurance program or waiver granted thereunder.

(g) "Medically necessary" means for the purposes of this act only, any goods, service, item, facility, or accommodation, that a reasonable and prudent provider under similar circumstances would believe is appropriate for diagnosing or treating a recipient's condition, illness or injury.

(h) "Person" means any agency, association, corporation, firm, limited liability company, limited liability partnership, natural person, organization, partnership or other legal entity, the agents, employees, independent contractors, and subcontractors, thereof, and the legal successors thereto, and any official, employee or agent of a state or federal agency having regulatory or administrative authority over the medicaid program.

(i) "Provider" means a person who has applied to participate in, who currently participates in, who has previously participated in, who attempts or has attempted to participate in the medicaid program, by providing or claiming to have provided goods, services, items, facilities or accommodations.

(j) "Recipient" means an individual, either real or fictitious, in whose behalf any person claimed or received any payment or payments from the medicaid program, or its fiscal agent, whether or not any such individual was eligible for benefits under the medicaid program.
(k) "Records" mean all written documents and electronic or magnetic data, including, but not limited to, medical records, X-rays, professional, financial or business records relating to the treatment or care of any recipient; goods, services, items, facilities or accommodations provided to any such recipient; rates paid for such goods, services, items, facilities or accommodations; and goods, services, items, facilities, or accommodations provided to nonmedicaid recipients to verify rates or amounts of goods, services, items, facilities or accommodations provided to medicaid recipients, as well as any records that the medicaid program, or its fiscal agents require providers to maintain.

(l) "Sign" means to affix a signature, directly or indirectly, by means of handwriting, typewriter, stamp, computer impulse or other means.

(m) "Statement or representation" means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic, or written communication that is utilized to identify any goods, service, item, facility or accommodation as reimbursable to the medicaid program, or its fiscal agent, or that states income or expense and is or may be used to determine a rate of payment by the medicaid program, or its fiscal agent.

Comment

This section incorporates K.S.A. 21-3845. No change is recommended.

21-38-703. Making a false claim to the medicaid program.

(a) Making a false claim, statement, or representation to the medicaid program is, knowingly and with intent to defraud, engaging in a pattern of making, presenting, submitting, offering or causing to be made, presented, submitted or offered:

(1) Any false or fraudulent claim for payment for any goods, service, item, facility, accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(2) any false or fraudulent statement or representation for use in determining payments which may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(3) any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;
(4) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(5) any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claim is allowed or allowable;

(6) any claim for payment, for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable; or

(7) any wholly or partially false or fraudulent book, record, document, data or instrument, which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation or of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation for which payment is, has been, or can be sought, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable.

(8) Any wholly or partially false or fraudulent book, record, document, data or instrument to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the department of social and rehabilitation services, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program.

(9) Any false or fraudulent statement or representation made, with the intent to influence any acts or decision of any official, employee or agent of a state or federal agency having regulatory or administrative authority over the Kansas medicaid program.

(b) (1) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is $25,000 or more is a severity level 7, nonperson felony.
Article 3

186

(2) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is at least $1,000 but less than $25,000 is a severity level 9, nonperson felony.

(3) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is less than $1,000 is a class A misdemeanor.

(4) As defined by subsections (a)(8) and (a)(9), making a false claim, statement or representation to the medicaid program is a severity level 9, nonperson felony.

(c) In determining what is medically necessary pursuant to subsection (a)(6) of this section the attorney general may contract with or consult with qualified health care providers and other qualified individuals to identify professionally recognized parameters for the diagnosis or treatment of the recipient's condition, illness or injury.

Comment

This section incorporates K.S.A. 21-3846. The term “knowingly” is removed as this offense requires the intent to defraud. The phrase “engaging in a pattern of” is removed. The Commission also found that the phrase “engaging in a pattern of” is used in the Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. 1961 – 1968. The meaning of the phrase in that act has been the source of substantial litigation. As the phrase makes the meaning of this offense vague, it is removed.

21-38-704

21-38-704. Unlawful acts relating to the medicaid program.

(a) No recipient of medicaid benefits, family member of such recipient, or provider of medicaid services shall:

(1) knowingly and intentionally solicit or receive any remuneration, including but not limited to any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring or refraining from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or
(B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(2) Knowingly and Intentionally offer or pay any remuneration, including, but not limited to, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(A) To refer or refrain from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(3) Knowingly Intentionally divide or share any funds illegally obtained from the medicaid program.

(b) No medicaid recipient shall knowingly and intentionally trade a medicaid number for money or other remuneration, sign for services that are not received by the medicaid recipient or sell or exchange for value goods purchased or provided under the medicaid program.

(c) A violation of this section is a severity level 7, nonperson felony.

(d) This section shall not apply to a refund, discount, copayment, deductible, incentive or other reduction obtained by a provider in the ordinary course of business, and appropriately reflected in the claims or reports submitted to the medicaid program, or its fiscal agent, nor shall it be construed to prohibit deductibles, copayments or any other cost or risk sharing arrangements which are a part of any program operated by or pursuant to contracts with the medicaid program.

Comment

This section incorporates K.S.A. 21-3847. As this is a specific intent offense, the term “knowingly” is removed.

21-38-705

21-38-705. Failure to maintain adequate records.
(a) Failure to maintain adequate records is negligently failing to maintain:

(1) such records as are necessary to disclose fully the nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program, or

(2) such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based under the medicaid program.

(b) Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall maintain adequate records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received.

(c) Failure to maintain adequate records is a class A, nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-3848. Changes are made to the format of the statute to add clarity.

21-38-706

21-38-706. Destruction or concealment of records.

(a) Destruction or concealment of records is intentionally destroying or concealing:

(1) such records as are necessary to disclose fully the nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program; or

(2) such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based under the medicaid program.

(b) Destruction or concealment of records is a severity level 9, nonperson felony.

(c) Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall not destroy or conceal any records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received.

Comment
This section incorporates K.S.A. 21-3849. Changes are made to the format of the statute to add clarity.

21-38-707

21-38-707. Defense of actions. Offers of repayment, or repayment occurring after the filing of criminal charges, of payments, goods, services, items, facilities or accommodations wrongfully obtained shall not constitute a defense to or ground for dismissal of criminal charges brought pursuant to sections 21-38-701 through 21-38-713.

Comment

This section incorporates K.S.A. 21-3850. The proper statutory citations are added.

21-38-708

21-38-708. Penalties; medicaid fraud reimbursement fund; medicaid fraud prosecution revolving fund.

(a) Any person convicted of a violation of this act, may be liable, in addition to any other criminal penalties provided by law, for all of the following:

(1) Payment of full restitution of the amount of the excess payments;

(2) payment of interest on the amount of any excess payments at the maximum legal rate in effect on the date the payment was made to the person for the period from the date upon which payment was made, to the date upon which repayment is made;

(3) payment of all reasonable expenses that have been necessarily incurred in the enforcement of this act, including, but not limited to, the costs of the investigation, litigation and attorney fees.

(b) All moneys recovered pursuant to subsection (a)(1) and (2), shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the medicaid fraud reimbursement fund, which is hereby established in the state treasury. Moneys in the medicaid fraud reimbursement fund shall be divided and payments made from such fund to the federal government and affected state agencies for the refund of moneys falsely obtained from the federal and state governments.

(c) All moneys recovered pursuant to subsection (a)(3) shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the
entire amount in the state treasury to the credit of the medicaid fraud prosecution
relying fund, which is hereby established in the state treasury. Moneys in the
medicaid fraud prosecution revolving fund may be appropriated to the attorney
genral, or to any county or district attorney who has successfully prosecuted an
action for a violation of this act and been awarded such costs of prosecution, in
order to defray the costs of the attorney general and any such county or district
attorney in connection with their duties provided by this act. No moneys shall be
paid into the medicaid fraud prosecution revolving fund pursuant to this section
unless the attorney general or appropriate county or district attorney has
commenced a prosecution pursuant to this section, and the court finds in its
discretion that payment of attorney fees and investigative costs is appropriate under
all the circumstances, and the attorney general, or county or district attorney has
proven to the court that the expenses were reasonable and necessary to the
investigation and prosecution of such case, and the court approves such expenses as
being reasonable and necessary.

Comment

This section incorporates K.S.A. 21-3851. No change is recommended.

21-38-709. Medicaid fraud and abuse division in the office of the attorney general.

(a) There is hereby created within the office of the attorney general a medicaid fraud
and abuse division.

(b) The medicaid fraud and abuse division shall be the same entity to which all cases of
suspected medicaid fraud shall be referred by the department of social and
rehabilitation services, or its fiscal agent, for the purpose of investigation, criminal
prosecution or referral to the district or county attorney for criminal prosecution.

(c) In carrying out these responsibilities, the attorney general shall have:

(1) all the powers necessary to comply with the federal laws and regulations
relative to the operation of the medicaid fraud and abuse division;

(2) the power to investigate and criminally prosecute violations of this act;

(3) the power to cross-designate assistant United States attorneys as assistant
attorneys general;

(4) the power to issue, serve or cause to be issued or served subpoenas or other
process in aid of investigations and prosecutions;
(5) the power to administer oaths and take sworn statements under penalty of perjury;

(6) the power to serve and execute in any county, search warrants which relate to investigations authorized by this act; and

(7) the powers of a district or county attorney.

Comment

This section incorporates K.S.A. 21-3852. No change is recommended.

21-38-710. Access to records by the attorney general.

(a) The attorney general shall be allowed access to all records which are held by a provider:

(1) that are directly related to an alleged violation of this act and which are necessary for the purpose of investigating whether any person may have violated this act; or

(2) for use or potential use in any legal, administrative or judicial proceeding pursuant to the Kansas medicaid fraud control act.

(b) No person holding such records may refuse to provide the attorney general with access to such records on the basis that release would violate:

(1) any recipient's right of privacy;

(2) any recipient's privilege against disclosure or use, or

(3) any professional or other privilege or right.

(c) The disclosure of patient information as required by this act shall not subject any provider to liability for breach of any confidential relationship between a patient and a provider.

(d) Notwithstanding K.S.A. 60-427 and amendments thereto, there shall be no privilege preventing the furnishing of such information or reports as required by this act by any person.

Comment
This section incorporates K.S.A. 21-3853. Changes are made to the format of the statute to add clarity.

21-38-711

21-38-711. Other remedies available as provided by law. The provisions of this act are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy.

Comment

This section incorporates K.S.A. 21-3854. No change is recommended.

21-38-712

21-38-712. Severability clause. If any section, subsection, paragraph or provision of this act shall be held to be invalid by any court for any reason, it shall be presumed that this act would have been passed by the legislature without such invalid section, subsection, paragraph or provision, and such finding or construction shall not in any way affect the remainder of this act.

Comment

This section eliminates K.S.A. 21-3855 in lieu of the general severability clause in Article 31.

21-38-712

21-38-713. Obstruction of a medicaid fraud investigation.

(a) Obstruction of a medicaid fraud investigation is knowingly and intentionally engaging in one or more of the following during an investigation of any matter pursuant to K.S.A. 21-3844 et seq., and amendments thereto:

(1) Falsifying, concealing or covering up a material fact by any trick, misstatement, scheme or device; or

(2) making or causing to be made any materially false writing or document knowing that such writing or document contains any false, fictitious or fraudulent statement or entry.

(b) Obstruction of a medicaid fraud investigation is a severity level 9, nonperson felony.

(c) This section shall be part of and supplemental to the Kansas medicaid fraud control act.
Comment

This section incorporates K.S.A. 21-3856. As this is a specific intent offense, the term “knowingly” is removed.

21-38-801

21-38-801. Failure to register an aircraft.

(a) Failure to register an aircraft is knowingly possessing an aircraft knowing that it is not registered in accordance with the regulations of the federal aviation administration contained in title 14, chapter 1, parts 47-49 of the code of federal regulations.

(b) Failure to register an aircraft is a severity level 8, nonperson felony.

(c) The provisions of this section do not apply to any aircraft registration or information supplied by a governmental entity in the course and scope of performing its lawful duties.

Comment

This section incorporates K.S.A. 22-3840. Changes are made to the format to add clarity.

21-38-802

21-38-802. Fraudulent aircraft registration.

(a) Fraudulent aircraft registration is:

(1) Presence, possession or operation Owning, possessing, or operating of any aircraft in this state that is found to be knowing that it is registered to a nonexistent person, firm, business or corporation or to a firm, business or corporation which that is no longer a legal entity is in violation of this section. Any firm, business or corporation that has no physical location or corporate officers or that has lapsed into an inactive state or been dissolved by order of the secretary of state for a period of at least 90 days with no documented attempt to reinstate the firm, business or corporation or to register its aircraft in the name of a real person or legal entity in accordance with federal aviation administration regulations;

(2) knowingly supplying false information by any person to a governmental entity in regard to the name, address, business name or business address of the owner of an aircraft in or operated in the state; and or
knowingly supplying false information by any person, firm, business or corporation to any governmental entity in regard to ownership by such person, firm, business or corporation of an aircraft in or operated in this state if it is determined that such firm, business or corporation:

(A) is not, or has never been, a legal entity in this state;

(B) is not, or has never been, a legal entity in any other state; or

(C) has lapsed into a state of no longer being a legal entity in this state, and no documented attempt has been made to correct such information with the governmental entity for a period of 90 days after the date on which such lapse took effect with the secretary of state.

(b) Fraudulent aircraft registration is a severity level 8, nonperson felony.

(c) This section does not apply to any aircraft registration or information supplied by a governmental entity in the course and scope of performing its lawful duties.

(d) For purposes of this section, a firm, business, or corporation that is no longer a legal entity includes any firm, business or corporation that has:

(1) no physical location;

(2) no corporate officers; or

(3) has lapsed into an inactive state or been dissolved by order of the secretary of state for a period of at least 90 days with and during such period no documented attempt is made to either to reinstate the firm, business or corporation or to register its aircraft in the name of a real person or legal entity in accordance with federal aviation administration regulations.

Comment

This section incorporates K.S.A. 21-3841. The term “presence” has been replaced with “owning” as the “presence” of aircraft in the state is an inadequate criminal act. Material from subsection (a) is moved to a new subsection (d) as a definition to promote readability.
(1) Knowingly buying, selling, offering for sale, receiving, disposing of, distributing, concealing, operating, or having in possession or endeavoring attempting to buy, sell, offer for sale, receive, dispose of, distribute, conceal, operate, or possess, by any person, firm, business or corporation of any aircraft or part thereof on which the assigned identification numbers do not meet the requirements of the federal aviation regulations. Such aircraft may not be knowingly sold or operated from any airport, landing field or other property or body of water where aircraft may land or take off in this state unless the federal aviation administration has issued the aircraft a replacement identification number which shall thereafter be used for identification purposes; and or

(2) knowingly possessing, manufacturing, or distributing selling or exchanging, offering for sale or exchange, supplying in blank or giving away any counterfeit manufacturer's aircraft identification number plate or decal used for the purpose of identification of any aircraft or authorizing, directing, aiding in exchange or giving away any such counterfeit manufacturer's aircraft identification number plate or decal.

(b) Fraudulent acts relating to aircraft identification numbers is a severity level 8, nonperson felony.

(c) The failure to have aircraft identification numbers clearly displayed on the aircraft and in compliance with federal aviation regulations is probable cause for any law enforcement officer in this state to make further inspection of the aircraft in question to ascertain its true identity. A law enforcement officer is authorized to inspect an aircraft for identification numbers:

(1) When it is located on public property;

(2) upon consent of the owner of the private property on which the aircraft is stored; or

(3) when otherwise authorized by law.

Comment

This section incorporates K.S.A. 21-3842. Changes are made to the format to add clarity. The phrases “selling,” “exchanging,” “offering for sale or exchange,” “supplying in blank,” and “giving away” are removed as they are duplicative of the term “distribute.” Subsection (a)(1) is amended to remove unnecessary language. Subsection (c)(3) is added to ensure authority to search when there is a warrant, exigent circumstances, etc.
**ARTICLE 39**

**CRIMES AFFECTING PUBLIC TRUSTS**

Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3901</td>
<td>Bribery</td>
<td>21-39-101</td>
</tr>
<tr>
<td>21-3902</td>
<td>Official misconduct</td>
<td>21-39-102</td>
</tr>
<tr>
<td>21-3903</td>
<td>Compensation for past official acts</td>
<td>21-39-103</td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3904</td>
<td>Presenting a false claim</td>
<td>21-39-201</td>
</tr>
<tr>
<td>21-3905</td>
<td>Permitting a false claim</td>
<td>21-39-202</td>
</tr>
<tr>
<td>21-3910</td>
<td>Misuse of public funds</td>
<td>21-39-203</td>
</tr>
<tr>
<td>21-3911</td>
<td>Unlawful use of state postage</td>
<td>21-39-204</td>
</tr>
<tr>
<td>21-3912</td>
<td>Same; imprinting of warning on mail</td>
<td>21-39-205</td>
</tr>
</tbody>
</table>
(a) Bribery is:
(1) Offering, giving or promising to give, directly or indirectly, to any person who is a public officer, candidate for public office or public employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person with respect to the performance of the person's powers or duties as a public officer or employee; or
(2) the act of a person who is a public officer, candidate for public office or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with intent that the person will be so influenced.
(b) Bribery is a severity level 7, nonperson felony. Upon conviction of bribery, a public officer or public employee shall forfeit the person's office or employment. Notwithstanding an expungement of the conviction pursuant to K.S.A. 21-4619, and amendments thereto, any person convicted of bribery under the provisions of this section shall be forever disqualified from holding public office or public employment in this state.

Comment
This section incorporates K.S.A. 21-3901. The Commission found that this statute could be improved through revision. Please see volume two of the Commission’s final report.

(a) Official misconduct is any of the following acts committed by a public officer or employee in the officer or employee's public capacity or under color of the officer or employee's office or employment:
(1) knowingly using or authorizing the use of any aircraft, as defined by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A. 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102, and amendments thereto, under the officer's or employee's control or direction, or in the officer's or employee's custody, exclusively for the private benefit or gain of the officer or employee or another.
(2) Knowingly and willfully failing to serve civil process when required by law.

(3) Using confidential information acquired in the course of and related to the officer's or employee's office or employment for the private benefit or gain of the officer or employee or another or to maliciously intentionally cause harm to another. As used in this section, "confidential" means any information that is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and amendments thereto.

(4) Except as authorized by law, knowingly, willfully and with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) altering any bid or proposal submitted by a bidder on a contract or proposed contract.

(4) Except as authorized by law, knowingly, willfully and with the intent to reduce or eliminate competition among bidders or prospective bidders on any contract or proposed contract:

(A) Disclosing confidential information regarding proposals or communications from bidders or prospective bidders on any contract or proposed contract;

(B) accepting any bid or proposal on a contract or proposed contract after the deadline for acceptance of such bid or proposal; or

(C) altering any bid or proposal submitted by a bidder on a contract or proposed contract.

(5) Except as authorized by law, knowingly destroying, tampering with or concealing evidence of a crime.

(6) Knowingly and willfully submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity.

(b) (1) Official misconduct as defined in subsections (a)(1) through (a)(4) is a class A nonperson misdemeanor.

(2) Official misconduct as defined in subsection (a)(5) is: (A) A severity level 8, nonperson felony if the evidence is evidence of a crime which is a felony; and (B) a class A nonperson misdemeanor if the evidence is evidence of a crime which is a misdemeanor.
(3) Official misconduct as defined in subsection (a)(6) is: (A) A severity level 7, nonperson felony if the claim is for $25,000 or more; (B) a severity level 9, nonperson felony if the claim is for at least $1,000 but less than $25,000; and (C) a class A nonperson misdemeanor for a claim of less than $1,000.

(4) Upon conviction of official misconduct a public officer or employee shall forfeit such officer or employee’s office or employment.

(c) The provisions of subsection (a)(1) shall not apply to any use of persons or property which:

(1) At the time of the use, is authorized by law or by formal written policy of the governmental entity; or

(2) constitutes misuse of public funds, as defined in K.S.A. 21-3910 and amendments thereto.

Comment

This section incorporates K.S.A. 21-3902. The term “willfully” is removed throughout the statute as unnecessary. The term “knowingly is added to subsection (a)(1) to convey that it is a general intent offense. The term “knowingly” is removed from subsection (a)(d) as unnecessary.

21-39-103


(a) Compensation for past official acts is intentionally giving or offering to give to any public officer or employee any benefit, reward or consideration for having given, in such official capacity as 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.

(b) Compensation for past official acts is a class B nonperson misdemeanor.

(c) Subsection (a) shall not apply to the following:

(1) 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

(2) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.
Comment

This section incorporates K.S.A. 21-3903. The Commission determined that this is a specific intent offense, like bribery. The term “intentionally” is added.

21-39-201

21-39-201. Presenting or permitting a false claim.

(a) Presenting a false claim is, knowingly and with the 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.

(b) 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 public employee who knows such claim or demand is false or fraudulent in whole or in part.

(c) (1) Presenting or permitting a false claim for $25,000 or more is a severity level 7, nonperson felony.

(2) Presenting or permitting a false claim for at least $1,000 but less than $25,000 is a severity level 9, nonperson felony.

(3) Presenting or permitting a false claim for less than $1,000 is a class A nonperson misdemeanor.

(d) Upon conviction of permitting a false claim, a public officer or public employee shall forfeit the officer or employee’s office or employment.

Comment

This section merges K.S.A. 21-3904 and 21-3905. The term “knowingly” is removed from subsection (a) as that subsection is a specific intent offense.

21-39-202

21-39-202. Permitting a false claim. (a) 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 public employee who knows such claim or demand is false or fraudulent in whole or in part.

(b) (1) Permittting a false claim for $25,000 or more is a severity level 7, nonperson felony.
--- (2) Permitting a false claim for at least $1,000 but less than $25,000 is a severity level 9, nonperson felony.
--- (3) Permitting a false claim for less than $1,000 is a class A nonperson misdemeanor.
--- (4) Upon conviction of permitting a false claim, a public officer or public employee shall forfeit the officer or employee's office or employment.

Comment

This section merges K.S.A. 21-3905 into 21-39-201.


(a) Misuse of public funds is knowingly 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 such person's official position.

(b) As used in this section, "public money" means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.

(c) (1) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is $100,000 or more is a severity 5 level nonperson felony.

(2) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is at least $25,000 but less than $100,000 is a severity level 7, nonperson felony.

(3) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is at least $1,000 but less than $25,000 is a severity level 9, nonperson felony.

(4) Misuse of public funds where the aggregate amount of money paid or claimed in violation of this section is less than $1,000 is a class A nonperson misdemeanor.

(c) Upon conviction of misuse of public funds, the convicted person shall forfeit the person's official position.

(d) As used in this section, "public money" means any money or negotiable instrument which belongs to the state of Kansas or any political subdivision thereof.

Comment
This section incorporates K.S.A. 21-3910. Changes are made to the format to add clarity.

21-39-204. Unlawful use of state postage.

(a) It shall be unlawful for any person to use such person's personal use, or to allow any unauthorized person to use, any form of postage knowing such postage to have been paid for with state funds.

(b) Violation of subsection (a) shall constitute a class C misdemeanor.

(c) Each state agency, department, board, commission or state educational institution shall imprint by postage meter stamp on all state mail that is stamped by a postage meter that:

(1) such mail carried by such postage is official state of Kansas mail; and

(2) that there is a penalty for the unlawful use of state postage for private purposes.

Comment

This section incorporates K.S.A. 21-3911 and 21-3912. Changes are made to the format to add clarity.

21-39-205. Same; imprinting of warning on mail. Each state agency, department, board, commission or state educational institution shall imprint by postage meter stamp on all state mail that is stamped by a postage meter that (a) such mail carried by such postage is official state of Kansas mail and (b) that there is a penalty for the unlawful use of state postage for private purposes.

Comment

This section merges K.S.A. 21-3912 into 21-39-205.
## ARTICLE 40

### CRIMES INVOLVING VIOLATIONS OF PERSONAL RIGHTS

#### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4001</td>
<td>Eavesdropping</td>
<td>21-40-101</td>
</tr>
<tr>
<td>21-4002</td>
<td>Breach of privacy</td>
<td>21-40-102</td>
</tr>
<tr>
<td>21-4003</td>
<td>Denial of civil rights</td>
<td>21-40-103</td>
</tr>
<tr>
<td>21-4004</td>
<td>Criminal false communication</td>
<td>21-40-104</td>
</tr>
<tr>
<td>21-4005</td>
<td>Maliciously circulating false rumors concerning financial status</td>
<td>21-40-105</td>
</tr>
<tr>
<td>21-3430</td>
<td>Unlawful disclosure of tax information</td>
<td>21-40-106</td>
</tr>
<tr>
<td>21-4006</td>
<td>Unjustifiably exposing a convicted or charged person</td>
<td>21-40-107</td>
</tr>
<tr>
<td>21-4015a</td>
<td>Unlawful public demonstration at a funeral</td>
<td>21-40-108</td>
</tr>
</tbody>
</table>

#### Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4009</td>
<td>Smoking in a public place; definitions</td>
<td>21-40-201</td>
</tr>
<tr>
<td>21-4010</td>
<td>Unlawful smoking in a prohibited place</td>
<td>21-40-202</td>
</tr>
<tr>
<td>21-4011</td>
<td>Failure to post smoking related signs</td>
<td>21-40-203</td>
</tr>
<tr>
<td>21-4012</td>
<td>Same; unlawful acts; penalties; action to enjoin repeated violations</td>
<td>21-40-204</td>
</tr>
<tr>
<td>21-4013</td>
<td>Same; local regulation of smoking</td>
<td>21-40-205</td>
</tr>
<tr>
<td>21-4014</td>
<td>Same; severability</td>
<td>21-40-206</td>
</tr>
<tr>
<td>21-4016</td>
<td>Smoking in the state capitol prohibited, exceptions</td>
<td>21-40-207</td>
</tr>
<tr>
<td>21-4017</td>
<td>Smoking in a medical care facility, exceptions</td>
<td>21-40-208</td>
</tr>
</tbody>
</table>

#### Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4018</td>
<td>Identity theft; identity fraud</td>
<td>21-40-301</td>
</tr>
<tr>
<td>21-4019</td>
<td>Unlawful possession of a scanning device or reencoder</td>
<td>21-40-302</td>
</tr>
</tbody>
</table>
21-40-101. Eavesdropping. (a) Eavesdropping is knowingly and without lawful authority:
— (1) 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;
— (2) 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;
— (3) 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; or
— (4) installing or using a concealed camcorder, motion-picture camera or photographic
camera of any type, to secretly videotape, film, photograph or record by electronic means,
another, identifiable person under or through the clothing being worn by that other person
or another, identifiable person who is nude or in a state of undress, for the purpose of
viewing the body of, or the undergarments worn by, that other person, without the consent
or knowledge of that other person, with the intent to invade the privacy of that other
person, under circumstances in which the other person has a reasonable expectation of
privacy.
— (b) 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.
— (c) It shall not be unlawful for an operator of a switchboard, or any officer, employee, or
agent of any public utility providing telephone communications service, whose facilities are
used in the transmission of a communication, to intercept, disclose or use that
communication in the normal course of employment while engaged in any activity which is
incident to the rendition of public utility service or to the protection of the rights of property
of such public utility.
— (d) Eavesdropping is a class A nonperson misdemeanor.

Comment

This section merges K.S.A. 21-4001 into 21-40-102.


(a) Breach of privacy is knowingly and without lawful authority:

(1) (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 such person illegally learned
of the message in the course of employment with an agency in
transmitting it;

(2) 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;

(3) 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;

(4) 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; or

(5) installing or using a concealed camcorder, motion picture camera or
photographic camera of any type, to secretly videotape, film, photograph or
record by electronic means, another, identifiable person under or through
the clothing being worn by that other person or another, identifiable person
who is nude or in a state of undress, for the purpose of viewing the body of,
or the undergarments worn by, that other person, without the consent or
knowledge of that other person, with the intent to invade the privacy of that
other person, under circumstances in which the other person has a
reasonable expectation of privacy.

(b) Breach of privacy is a class A nonperson misdemeanor.

(b) Subsection (a)(1) shall not apply to messages overheard through a regularly installed
instrument on a telephone party line or on an extension.

(c) Breach of privacy is a class A nonperson misdemeanor.

(d) 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.

(e) It shall not be unlawful for an operator of a switchboard, or any officer, employee,
or agent of any public utility providing telephone communications service, whose
facilities are used in the transmission of a communication, to intercept, disclose or
use that communication in the normal course of employment while engaged in any
activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility.

Comment

This section merges K.S.A. 21-4002 and 21-4001. Changes are made to the format to add clarity.

21-40-103

21-40-103. Denial of civil rights.

(a) Denial of civil rights is intentionally denying to another, on account of the race, color, ancestry, national origin or religion of such other:

(1) 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;

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

(3) the full and equal use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods;

(4) 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

(5) the full and equal exercise of the right to vote in any election held pursuant to the laws of Kansas.

(b) Denial of civil rights is a class A nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-4003. The Commission found that, to be consistent with federal law, this should be a specific intent offense. The term “intentionally” is added.

21-40-104

21-40-104. Criminal false communication defamation.
(a) **Criminal defamation** *Criminal false communication* is:

(1) with actual malice, communicating to any person, by any means, information that the person communicating such information knows to be false and knows will:

(A) tend to expose another living person to public hatred, contempt or ridicule;

(B) tend to deprive such person of the benefits of public confidence and social acceptance; or

(C) tend to degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends.

(2) maliciously and without probable cause recklessly:

(A) circulating or causing to be circulated any false 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

(B) making any statement or circulating or assisting in circulating any false rumor or report for the purpose of injuring with the intent to injure the financial standing of any bank, financial or business institution or of any individual in this state.

(b) **Criminal false communication defamation** is a class A nonperson misdemeanor.

(b)(c) 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 false communication defamation if it is found that such matter was true.

(c) **Criminal defamation is a class A nonperson misdemeanor.**

**Comment**

This section merges K.S.A. 21-4004 and 21-4005. Changes are made to the formant to add clarity. The offense is renamed criminal false communication to avoid confusion between the elements of this offense and the tort of defamation.
21-40-105. Maliciously circulating false rumors concerning financial status. (a) Maliciously circulating false rumors concerning financial status is maliciously and without probable cause circulating or causing to be circulated any false 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, financial or business institution or of any individual in this state.

(b) Maliciously circulating false rumors concerning financial status is a class A nonperson misdemeanor.

Comment

This section merges K.S.A. 21-4005 into 21-40-104.

21-40-106. Income tax returns; disclosure or use for commercial purposes information obtained in preparing. Unlawful disclosure of tax information. Unlawful disclosure of tax information is:

(a) It shall be unlawful for any person, including an individual, firm, corporation, association, partnership or joint venture, or any employee or agent thereof, to recklessly disclosing or using for commercial purposes any information obtained in the business of preparing federal or state income tax returns or in the business of assisting taxpayers in preparing such returns, unless such disclosure is:

1. Consented to by the taxpayer in a separate, written document;
2. expressly authorized by state or federal law;
3. necessary to the preparation of the return; or
4. pursuant to an order of any court of competent jurisdiction.

(b) Any person violating any provision of this section shall be guilty of a class A nonperson misdemeanor.

(c) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or in the business of assisting taxpayers in preparing such returns if the person does either of the following:

1. Advertises or gives publicity to the effect that such person prepares or assists others in the preparation of state or federal income tax returns; or
(2) prepares or assists others in the preparation of state or federal income tax
returns for compensation.

(d) Contacting a taxpayer to obtain the taxpayer's written consent to disclosure does
not constitute a violation of this section.

Comment

This section incorporates K.S.A. 21-3430. The format and name of the offense are changed to
add clarity. The offense is given the name unlawful disclosure of tax information so that it may
be written in the standard format for criminal offenses.

21-40-107

21-40-107. Maliciously Unjustifiably exposing a convicted or charged paroled or discharged
person.

(a) Maliciously Unjustifiably exposing a convicted or charged paroled or discharged
person is unjustifiably 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. The above shall not apply to any
person or organization who furnishes information about a person to another person
or organization requesting the same.

(b) Maliciously Unjustifiably exposing a convicted or charged paroled or discharged
person is a class B nonperson misdemeanor.

(c) This section shall not apply to any person or organization who furnishes information
about a person to another person or organization requesting the same.

Comment

This section incorporates K.S.A. 21-4006. The term “maliciously” is removed as it is an
antiquated and vague culpability standard. The Commission considered the original legislative
intent behind this offense was to prohibit unjustifiable communications so the term
“unjustifiably” is used. The Commission recognizes there are numerous instances where
exposure of this information is done under a legal obligation or otherwise in a way that should
not trigger criminal liability. Use of the term “unjustifiably” is meant to protect those people
from criminal liability. For example, an employee background check would not unjustifiably
disclose a charge or conviction. The Commission recommends repealing this offense. Please
see volume two of the Commission’s final report.
21-40-108. Funeral privacy; unlawful acts unlawful public demonstration at a funeral;
penalty.

(b) The legislature finds that:

(1) Family members have a personal stake in honoring and mourning their dead
and objecting to unwarranted public exploitation that, by intruding upon
their own grief, tends to degrade the rites and respect they seek to accord to
the deceased person who was once their own.

(2) The state has a substantial interest in protecting the legitimacy of funerals
and ensuring freedom from disturbance.

(3) Due to the nature of funerals, the funeral attendees constitute a captive
audience.

(4) Full opportunity exists under the terms and provisions of this section for the
exercise of freedom of speech and other constitutional rights at times other
than within one hour prior to, the scheduled commencement of a funeral,
during a funeral, or within two hours following the completion of a funeral.

(c) The purposes of this section are to:

(1) Protect the privacy of grieving families; and

(2) preserve the substantial privacy interest in funerals.

(a) It is unlawful for any person to unlawful public demonstration at a funeral is:

(1) Engaging in a public demonstration at any public location within 150 feet of
any entrance to any cemetery, church, mortuary or other location where a
funeral is held or conducted, within one hour prior to the scheduled
commencement of a funeral, during a funeral or within two hours following
the completion of a funeral;

(2) knowingly obstructing, hindering, impeding or blocking another person’s
entry to or exit from a funeral; or

(3) knowingly impeding vehicles which are part of a funeral procession.

(b) unlawful public demonstration at a funeral is A violation of subsection (e) is a class B
person misdemeanor. Each day on which a violation of subsection (e) occurs shall
constitute a separate offense.

(c) As used in this section:
(1) "Funeral" means the ceremonies, processions and memorial services held in connection with the burial or cremation of a person.

(2) "Public demonstration" means:

(A) Any picketing or similar conduct, or

(B) any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral.

(d) If any provision of this section or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or application. To this end the provisions of this section are severable.

(e) This section may be cited as the Kansas funeral privacy act.

Comment

This section incorporates K.S.A. 21-4015a. The legislative findings are removed as no longer necessary. Although the legislative findings will not be changed, it is no longer necessary for them to be part of the criminal code. Other changes to this section are made to add clarity.
(E) health care institutions or any other place where health care services are provided to the public,
(F) educational facilities,
(G) libraries,
(H) courtrooms,
(I) state, county or municipal buildings,
(J) restrooms,
(K) grocery stores,
(L) school buses,
(M) museums,
(N) theaters,
(O) auditoriums,
(P) arenas, and
(Q) recreational facilities.

(b) "Public meeting" includes all meetings open to the public.

(c) "Smoking" means possession of a lighted cigarette, cigar, pipe, lighted smoking equipment or burning tobacco in any other form or device designed for the use of tobacco.

(d) "Smoking area" or "designated smoking area" means a place within a public building where smoking is allowed as designated by proprietors or other persons in charge of public places, except that no such areas may be designated in passenger elevators, school buses, public means of mass transportation or any other place in which smoking is prohibited by the fire marshal or by other law, ordinance or regulation. No area of the state capitol shall be established as a designated smoking area. The proprietors or persons in charge of the public place shall have the authority to establish the percentage of area in the public place which shall be posted and designated as a smoking area. Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

Comment
This section incorporates K.S.A. 21-4009. Definitions of “medical care facility,” “smoking area,” and “designated smoking area” are added.

21-40-202. Smoking in public place prohibited, exceptions; designated smoking areas; penalty; local regulation of smoking. Unlawful smoking in a prohibited place.

(a) Unlawful smoking in a prohibited place is smoking in:

(1) a public place or at a public meeting except in designated smoking areas;

(2) in a medical care facility except that a smoking area may be established within a licensed long-term care unit of a medical care facility if such smoking area is well-ventilated; or

(3) any area, room, hallway, or other place in the state capitol.

(b) Any person found guilty of unlawful smoking in a prohibited place violation of subsection (a) is guilty of a misdemeanor punishable by a fine of not more than $20 for each violation.

(c) Nothing in this section shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this section. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and this section.

Comment

This section merges K.S.A. 21-4010, 21-4017, 21-4016, and KSA 21-4012. This section is reformatted to add clarity. The Commission recommends changing this offense from a misdemeanor to an infraction. Please see volume two of the Commission’s final report.

21-40-203. Smoking in public place prohibited; posting smoking prohibited signs and designated smoking area signs. Failure to post smoking related signs is

(a) Failure to post smoking related signs is:

(1) failure by the proprietor, or other person in charge of the premises of a public place, to shall post or cause to be posted:
(A) in a conspicuous place, signs clearly stating that smoking is prohibited by state law; or

(B) in any designated smoking area, signs stating that smoking is permitted in such room or area.

(2) failure by the chief administrative officer of each medical care facility shall to post or cause to be posted, in conspicuous places, signs stating that smoking in the medical care facility is prohibited by state law.

(c) Failure to post smoking related signs is Any person found guilty of failing to post signs as required by this act section, is guilty of a misdemeanor punishable by a fine of not more than $50.

(d) The department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act section.

Comment

This section merges K.S.A. 21-4011, 21-4017, 21-4016, and KSA 21-4012. This section is reformatted to add clarity.

21-40-204

21-40-204. Same; unlawful acts; penalties; action to enjoin repeated violations. Any person found guilty of smoking in violation of this act is guilty of a misdemeanor punishable by a fine of not more than $20 for each violation. Any person found guilty of failing to post signs as required by this act, is guilty of a misdemeanor punishable by a fine of not more than $50. In addition, the department of health and environment, or local department of health, may institute an action in any court of competent jurisdiction to enjoin repeated violations of this act.

Comment

This section merges K.S.A. 21-4012 into 21-40-202 and 21-40-203.

21-40-205

21-40-205. Same; local regulation of smoking. Nothing in this act shall prevent any city or county from regulating smoking within its boundaries, so long as such regulation is at least as stringent as that imposed by this act. In such cases the more stringent local regulation shall control to the extent of any inconsistency between such regulation and this act.

Comment
This section merges K.S.A. 21-4013 into 21-40-202 and 21-40-203.

### 21-40-206

**21-40-206.** Same; severability. If any provision of this act or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions of application of this act that can be given effect without the invalid provision or application, and to this end the provisions of the act are declared to be severable.

Comment

This section merges K.S.A. 21-4014 into 21-40-202 and 21-40-203.

### 21-40-207

**21-40-207.** Smoking in the state capitol prohibited, exceptions. Prior to July 1, 1995, no person shall smoke in any area, room or hallway in the state capitol except in offices occupied as office space by state officers and employees which have been designated as smoking areas in accordance with K.S.A. 21-4009 et seq. and amendments thereto. On and after July 1, 1995, no person shall smoke in any area, room, hallway, or other place in the state capitol and no area of the state capitol shall be established as a designated smoking area under K.S.A. 21-4010 and amendments thereto.

Comment

This section merges K.S.A. 21-4016 into 21-40-202 and 21-40-203.

### 21-40-208

**21-40-208.** Smoking in a medical care facility, exceptions; penalties. (a) As used in this section:

— (1) "Medical care facility" means a general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425 and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b and amendments thereto; and

— (2) "Smoking" means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco.

— (b) On and after July 1, 1994, smoking in a medical care facility is hereby prohibited except that a smoking area may be established within a licensed long-term care unit of a medical care facility if such smoking area is well-ventilated. On and after July 1, 1994, the chief administrative officer of each medical care facility shall cause to be posted in conspicuous places signs stating that smoking in the medical care facility is prohibited by state law.

— (c) Any person found guilty of smoking in violation of subsection (b) of this section is guilty of a misdemeanor punishable by a fine of not more than $20 for each violation. Any
person found guilty of failing to post signs as required by subsection (b) of this section, is
guilty of a misdemeanor punishable by a fine of not more than $50. In addition, the
department of health and environment, or local department of health, may institute an
action in any court of competent jurisdiction to enjoin repeated violations of subsection (b)
of this section.

Comment

This section merges K.S.A. 21-4017 into 21-40-202 and 21-40-203.

21-40-301. Identity theft; identity fraud.

(a) Identity Theft is obtaining, possessing, transferring, using, selling, or purchasing any
personal identifying information, or document containing the same, belonging to or
issued to another person, with the intent to defraud that person, or any one else, in
order to receive any benefit;

(b) Identity Fraud is:

(1) Using or supplying information the person knows to be false in
order to obtain a document containing any personal
identifying information; or

(2) Altering, amending, counterfeiting, making, manufacturing, or
otherwise replicating any document containing personal
identifying information with the intent to deceive;

(c) (1) Except as provided further, identity theft is a severity level 8, nonperson
felony.

(2) If the monetary loss to the victim or victims is more than $100,000, identity
theft is a severity level 5, nonperson felony.

(3) Identity fraud is a severity level 8, nonperson felony.

(d) “Personal identifying information” includes, but is not limited to, the following:

(1) name;

(2) birth date;

(3) address;
(4) telephone number;
(5) drivers license number or card or non-drivers identification number or card;
(6) social security number or card;
(7) place of employment;
(8) employee identification numbers or other personal identification numbers or cards;
(9) mother’s maiden name;
(10) birth, death, or marriage certificates;
(11) electronic identification numbers;
(12) electronic signatures;
(13) any financial number, or password that can be used to access a person’s financial resources, including, but not limited to, checking or savings accounts, credit or debit card information, demand deposit, or medical information;

(e) It is not a defense that the person did not know that such personal identifying information belongs to another person, or that the person to whom such personal identifying information belongs or was issued is deceased.

Comment

This section incorporates K.S.A. 21-4018. The Commission determined that several revisions were necessary to clarify the statute in light of the U.S. Supreme Court decision in Flores-Figueroa v. United States, 556 U.S. ___ (2009). There the court held that the "knowingly" requirement for the federal crime of aggravated identify theft requires that the defendant knew that the false identification he used actually belonged to another person. The Commission determined that the holding in Flores-Figueroa was not the result the legislature intended for the Kansas statute. In order to clarify that point the term "knowingly" is removed from subsection (a). Also, subsection (e) states that it is not a defense that the offender did not know that the personal information belonged to another. The definition in subsection (d) is added for clarity.
(a) It shall be unlawful for any person, to knowingly and with the intent to defraud to:

(1) possess or use a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(2) possess or use a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur.

(b) Violation of subsection (a) is a severity level 6, nonperson felony.

(c) As used in this section:

(1) "Scanning device" means a scanner, reader or any other electronic device that is used to access, read, scan, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card.

(2) "Reencoder" means an electronic device that places encoded information from the computer chip, magnetic strip or stripe of a payment card onto the computer chip, magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(3) "Payment card" means a credit card, debit card or any other card that is issued to an authorized user and that allows the user to obtain, purchase or receive goods, services, money or anything else of value.

(d) Violation of this section shall be a severity level 6, nonperson felony.

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

Comment

This section incorporates K.S.A. 21-4019. As this is a specific intent offense, the term "knowingly" is removed.
**ARTICLE 41**

**CRIMES AGAINST THE PUBLIC PEACE**

Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4104</td>
<td>Riot</td>
<td>21-41-101</td>
</tr>
<tr>
<td>21-4105</td>
<td>Incitement to riot</td>
<td>21-41-102</td>
</tr>
<tr>
<td>21-4102</td>
<td>Unlawful assembly</td>
<td>21-41-103</td>
</tr>
<tr>
<td>21-4103</td>
<td>Remaining at an unlawful assembly</td>
<td>21-41-104</td>
</tr>
<tr>
<td>21-4101</td>
<td>Disorderly conduct</td>
<td>21-41-105</td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4106</td>
<td>Maintaining a public nuisance</td>
<td>21-41-201</td>
</tr>
<tr>
<td>21-4106a</td>
<td>Reporting nuisance convictions to licensing authorities</td>
<td>21-41-202</td>
</tr>
<tr>
<td>21-4107</td>
<td>Permitting a public nuisance</td>
<td>21-41-203</td>
</tr>
</tbody>
</table>

Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4111</td>
<td>Criminal desecration</td>
<td>21-41-301</td>
</tr>
<tr>
<td>21-4113</td>
<td>Harassment by telecommunication device</td>
<td>21-41-302</td>
</tr>
<tr>
<td>21-4110</td>
<td>Giving a false alarm</td>
<td>21-41-303</td>
</tr>
</tbody>
</table>
21-41-101

21-41-101. Riot; Incitement to riot; penalties.

(a) Riot is five or more persons acting together and without authority of law engaging in either or both of the following acts:

(1) any use of force or violence which produces a breach of the public peace, or

(2) any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution by five or more persons acting together and without authority of law.

(b) Incitement to riot is by words or conduct knowingly urging others to engage in riot as defined in subsection (a) by K.S.A. 21-4104 and amendments thereto under circumstances which produce a clear and present danger of injury to persons or property or a breach of the public peace.

(c) (1) Riot is a class A person misdemeanor.

(2) Incitement to riot is a severity level 8, person felony.

Comment

This section incorporates K.S.A. 21-4104 and 21-4105. Changes are made to the format to add clarity.

21-41-102

21-41-102. Incitement to riot.

(a) Incitement to riot is by words or conduct urging others to engage in riot as defined by K.S.A. 21-4104 and amendments thereto under circumstances which produce a clear and present danger of injury to persons or property or a breach of the public peace.

(b) Incitement to riot is a severity level 8, person felony.

Comment

21-41-103 Unlawful assembly; remaining at an unlawful assembly.

(a) Unlawful assembly is:

(1) the meeting or coming together of not less than five persons for the purpose of engaging with the intent to engage in conduct constituting either:

(A) disorderly conduct, as defined by K.S.A. 21-4101 and amendments thereto, or

(B) a riot, as defined by K.S.A. 21-4104 and amendments thereto; or

(2) when in a lawful assembly of not less than five persons, agreeing to engage in such conduct constituting disorderly conduct or riot.

(b) Remaining at an unlawful assembly is intentionally failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.

(c) (1) Unlawful assembly is a class B nonperson misdemeanor.

(2) Remaining at an unlawful assembly is a class A nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-4102 and 21-4103. The culpability phrase, “with the intent to engage,” in (a)(1) is reworded to be consistent with the general culpability statute. Subsection (a)(2) is reworded for clarity.

21-41-104

21-41-104. Remaining at an unlawful assembly.

(a) Remaining at an unlawful assembly is intentionally failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer.

(b) Remaining at an unlawful assembly is a class A nonperson misdemeanor.

Comment

The section merges K.S.A. 21-4103 into 21-41-103.

21-41-105

21-41-105. Disorderly conduct.
Disorderly conduct is one or more of the following acts that the person knows or should know, 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:

1. Engaging in Brawling or fighting;
2. Disturbing an assembly, meeting, or procession, not unlawful in its character; or
3. Using offensive, obscene, or abusive language fighting words or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

Disorderly conduct is a class C misdemeanor.

“Fighting words” means words that by their very utterance inflicts injury or tend to incite the listener to an immediate breach of the peace.

Comment
This section incorporates K.S.A. 21-4101. The Commission recognized that the phrase “offensive, obscene, or abusive language” in subsection (a)(3) is limited by case law to “fighting words.” The definition of “fighting words” in subsection (c) comes from PIK Crim. 3d 63.01.

21-41-201. Maintaining a public nuisance; permitting a public nuisance; penalty; reporting nuisance convictions to licensing authorities of clubs, drinking establishments and cereal malt beverage retailers.

(a) Maintaining a public nuisance is by act, or by failure to perform a legal duty, intentionally knowingly causing or permitting a condition to exist which injures or endangers the public health, safety or welfare.

(b) 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 21-4106 subsection (a).

(c) Maintaining a public nuisance or permitting a public nuisance is a class C misdemeanor.

(d) (1) Upon a conviction of a violation of K.S.A. 21-4106 or 21-4607, and amendments thereto, this section for maintaining or permitting a public nuisance on the premises of a club or drinking establishment licensed under
the club and drinking establishment act, the court shall report such conviction to the director of alcoholic beverage control.

(2) Upon a conviction of a violation of K.S.A. 21-4106 or 21-4607, and amendments thereto, this section for maintaining or permitting a public nuisance on the premises of a retailer licensed under K.S.A. 41-2701 et seq., and amendments thereto, the court shall report such conviction to the governing body of the city or county which issued the license.

Comment

This section incorporates K.S.A. 21-4106, 21-4106a, and 21-4107. The phrase “by act, or by failure to perform a legal duty” is removed because that provision is duplicated in the new general provision, 21-32-101. The culpability term in subsection (a)(1) is changed from “intentionally” to “knowingly” to convey that the subsection requires general intent.

21-41-202 — Reporting nuisance convictions to licensing authorities of clubs, drinking establishments and cereal malt beverage retailers.

(a) Upon a conviction of a violation of K.S.A. 21-4106 or 21-4607, and amendments thereto, for maintaining or permitting a public nuisance on the premises of a club or drinking establishment licensed under the club and drinking establishment act, the court shall report such conviction to the director of alcoholic beverage control.

(b) Upon a conviction of a violation of K.S.A. 21-4106 or 21-4607, and amendments thereto, for maintaining or permitting a public nuisance on the premises of a retailer licensed under K.S.A. 41-2701 et seq., and amendments thereto, the court shall report such conviction to the governing body of the city or county which issued the license.

Comment

The section merges K.S.A. 21-4106a into 21-41-201.

21-41-203 — 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 21-4106.

Permitting a public nuisance is a class C misdemeanor.

Comment
This section merges K.S.A. 21-4107 into 21-41-201.

21-41-301. Criminal desecration.

(a) Criminal desecration is:

(1) Knowingly obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being; or

(2) recklessly, by means other than by fire or explosive:

(A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;

(B) damaging, defacing or destroying any public monument or structure;

(C) damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or

(D) damaging, defacing or destroying any place of worship.

(b) (1) Criminal desecration as described in subsections (a)(2)(B), (a)(2)(C) and (a)(2)(D) is:

(A) A severity level 7, nonperson felony if the property is damaged to the extent of $25,000 or more;

(B) a severity level 9, nonperson felony if the property is damaged to the extent of at least $1,000 but less than $25,000; and

(C) a class A nonperson misdemeanor if the property is damaged to the extent of less than $1,000.

(2) Criminal desecration as described in subsections (a)(1) and (a)(2)(A) is a class A nonperson misdemeanor.

Comment
This section incorporates K.S.A. 21-4111. Culpability terms are added. The term “knowingly” is added to subsection (a)(1). The term “recklessly” is added to subsection (a)(2) because this offense is often committed in the form of a random act of vandalism. Also, under the general culpability statute, when no culpability term is designated, the default provision is recklessness.

Desecration of a human body is punished less severely that desecration of a public monument. The Commission recommends that the legislature consider elevating the severity of the desecration of a body in subsection (a) from a misdemeanor to a felony. Please see volume two of the Commission’s final report.

21-41-302. Harassment by telephone telecommunication device.

(a) Harassment by telephone telecommunication device is:

(1) use of telephone communication to: for any of the following purposes

(A) Knowingly make or transmit any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy or indecent;

(B) make a telephone call, whether or not conversation ensues, or transmit a telefacsimile communication with intent to abuse, threaten or harass any person at the called number;

(C) make or cause the telephone of another ring repeatedly to ring, with intent to harass any person at the called number;

(D) make repeated telephone calls, during which conversation ensues, or repeatedly transmit a telefacsimile communication solely with intent to harass any person at the called number;

(E) Knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or

(F) knowingly permit any telephone or telefacsimile communication machine under one’s control to be used in violation of the above subsection for any of the purposes mentioned herein in this section.

(2) the use of telefacsimile communication to send or transmit such communication to a court in the state of Kansas for a use other than court business, with no requirement of a culpable mental state.
(b) *Harassment by telecommunication device is a class A nonperson misdemeanor.*

(c) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of 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."

(d) *As used in this section, telefacsimile communication means the use of electronic equipment to send or transmit a copy of a document via telephone line.*

Comment

This section incorporates K.S.A. 21-4113 and 21-3839. Because these statutes are merged, the Commission proposes a new name for the offense, “Harassment by telecommunication device.” The Commission determined that the phrase, in subsection (a)(1)(D), “communication solely to harass any person at the called number” indicated purposeful action; therefore, the subsection is reworded to include the culpability term “intent.” The term “knowingly” is added to subsections (a)(1)(A) and (a)(1)(E) as the Commission determined that these were general intent offenses.

21-41-303

21-41-303. Giving a false alarm.

(a) Giving a false alarm is:

(1) 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; or

(2) making a call in any manner for emergency service assistance including police, fire, medical or other emergency service provided under K.S.A. 12-5301 et seq., and amendments thereto, knowing at the time of such call that there is no reasonable ground for believing such assistance is needed.

(b) Giving a false alarm is a class A nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-4110. No change is recommended.
### Article 42

**Crimes Against the Public Safety**

#### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4201</td>
<td>Criminal use of weapons</td>
<td>21-42-101</td>
</tr>
<tr>
<td>21-4201</td>
<td>Criminal carrying of a weapon</td>
<td>21-42-102</td>
</tr>
<tr>
<td>21-4203</td>
<td>Criminal distribution of firearms to a felon</td>
<td>21-42-103</td>
</tr>
<tr>
<td>21-4204</td>
<td>Criminal possession of a firearm by a convicted felon</td>
<td>21-42-104</td>
</tr>
<tr>
<td>21-4202</td>
<td>Aggravated weapons violation by a convicted felon</td>
<td>21-42-105</td>
</tr>
<tr>
<td>21-4204a</td>
<td>Criminal possession of a firearm by a juvenile</td>
<td>21-42-106</td>
</tr>
<tr>
<td>21-4205</td>
<td>Defacing identification marks of a firearm</td>
<td>21-42-106a</td>
</tr>
<tr>
<td>21-4206</td>
<td>Confiscation and disposition of weapons; use of proceeds of sale</td>
<td>21-42-107</td>
</tr>
<tr>
<td>21-4217</td>
<td>Criminal discharge of a firearm</td>
<td>21-42-108</td>
</tr>
<tr>
<td>21-4219</td>
<td>Criminal discharge of a firearm at an unoccupied dwelling; criminal discharge of a firearm at an occupied</td>
<td>21-42-109</td>
</tr>
<tr>
<td>21-4218</td>
<td>Unauthorized possession of a firearm on the grounds of or within certain state-owned or leased buildings</td>
<td>21-42-110</td>
</tr>
<tr>
<td>21-4220</td>
<td>Unlawful endangerment</td>
<td>21-42-111</td>
</tr>
</tbody>
</table>

#### Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4207; 21-4208</td>
<td>Failure to register explosives</td>
<td>21-42-201</td>
</tr>
<tr>
<td>21-4208</td>
<td>Failure to register receipt of explosives</td>
<td>21-42-202</td>
</tr>
</tbody>
</table>
## Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4225</td>
<td>Criminal street gang prevention</td>
<td>21-42-301</td>
</tr>
<tr>
<td>21-4226</td>
<td>Same; definitions.</td>
<td>21-42-302</td>
</tr>
<tr>
<td>21-4227</td>
<td>Recruiting criminal street gang membership</td>
<td>21-42-303</td>
</tr>
<tr>
<td>21-4228</td>
<td>Criminal street gang intimidation</td>
<td>21-42-304</td>
</tr>
<tr>
<td>21-4229</td>
<td>Criminal street gang member; bail, exceptions</td>
<td>21-42-305</td>
</tr>
<tr>
<td>21-4230</td>
<td>Supplemental to the Kansas criminal code</td>
<td>21-42-306</td>
</tr>
<tr>
<td>21-4231</td>
<td>Severability</td>
<td>21-42-307</td>
</tr>
</tbody>
</table>

## Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4221; 21-4222</td>
<td>Endangering the food supply</td>
<td>21-42-401</td>
</tr>
<tr>
<td>21-4222</td>
<td>Aggravated endangering the food supply</td>
<td>21-42-402</td>
</tr>
<tr>
<td>21-4212</td>
<td>Creating a hazard</td>
<td>21-42-403</td>
</tr>
<tr>
<td>21-4213</td>
<td>Unlawful failure to report a wound</td>
<td>21-42-404</td>
</tr>
<tr>
<td>21-4216</td>
<td>Selling beverage containers with detachable tabs</td>
<td>21-42-405</td>
</tr>
<tr>
<td>21-4224</td>
<td>Alcohol without liquid machine; unlawful acts</td>
<td>21-42-406</td>
</tr>
<tr>
<td>21-4232</td>
<td>Tampering with electronic monitoring equipment</td>
<td>21-42-407</td>
</tr>
<tr>
<td>21-4211</td>
<td>Refusal to yield a telephone party line</td>
<td>21-42-408</td>
</tr>
<tr>
<td>21-4223</td>
<td>Unlawful possession or use of traffic control signal preemption devices; exemptions</td>
<td>21-42-409</td>
</tr>
</tbody>
</table>
## Section 5

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-3416</td>
<td>Unlawful interference with a firefighter</td>
<td>21-42-501</td>
</tr>
<tr>
<td>21-3444</td>
<td>Unlawful interference with an emergency medical services attendant</td>
<td>21-42-502</td>
</tr>
</tbody>
</table>

(a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing, or possessing or carrying any bludgeon, sandclub, metal knuckles or throwing star, 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;

(2) carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that 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;

(3) 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 bomb or projector or any object containing a noxious liquid, gas or substance;

(4) carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business;

(5) setting a spring gun;

(6) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(7) selling, manufacturing, purchasing, or possessing or carrying a shotgun with a barrel less than 18 inches in length, or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically;

(8) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60%
lead by weight, whether the person knows or has reason to know that the
plastic-coated bullet has a core of less than 60% lead by weight;

(7) selling, giving or otherwise transferring any firearm with a barrel less than 12
inches long to any person under 18 years of age whether the person knows or
has reason to know the length of the barrel;

(8) selling, giving or otherwise transferring any firearms to any person who is
both addicted to and an unlawful user of a controlled substance;

(9) selling, giving or otherwise transferring any firearm to any person who is or
has been a mentally ill person subject to involuntary commitment for care and
treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person
with an alcohol or substance abuse problem subject to involuntary
commitment for care and treatment as defined in K.S.A. 59-29b46, and
amendments thereto, and such person has not received a certificate of
restoration pursuant to K.S.A. 2007 Supp. 75-7c26, and amendments thereto;

(10) Possession of any firearm by a person who is both addicted to and an unlawful
user of a controlled substance;

(11) possession of any firearm by any person, other than a law enforcement officer,
in or on any school property or grounds upon which is located a building or
structure used by a unified school district or an accredited nonpublic school for
student instruction or attendance or extracurricular activities of pupils enrolled
in kindergarten or any of the grades 1 through 12 or at any regularly
scheduled school sponsored activity or event whether the person knows or has
reason to know that such person was in or on any such property or grounds;

(12) refusal to surrender or immediately remove from school property or grounds
or at any regularly scheduled school sponsored activity or event any firearm in
the possession of any person, other than a law enforcement officer, when so
requested or directed by any duly authorized school employee or any law
enforcement officer;

(13) possession of any firearm by a person who is or has been a mentally ill person
subject to involuntary commitment for care and treatment, as defined in K.S.A.
59-2946, and amendments thereto, or persons with an alcohol or substance
abuse problem subject to involuntary commitment for care and treatment as
defined in K.S.A. 59-29b46, and amendments thereto; or

(14) possessing a firearm with a barrel less than 12 inches long by any person less
than 18 years of age whether the person knows or has reason to know the
length of the barrel.
(b) Violation of subsections (a)(1) through (a)(5), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), or (a)(12) is a class A nonperson misdemeanor. Violation of subsection (a)(6), (a)(7), or (a)(8) is a severity level 9, nonperson felony. Violation of subsection (a)(10) or (a)(11) is a class B nonperson select misdemeanor; violation of subsection (a)(13) is a severity level 8, nonperson felony; violation of (a)(14) is a class A nonperson misdemeanor except that a second or subsequent violation is a severity level 8, nonperson felony.

(b) (c) Subsections (a)(1), (2), (3), (4) and (7) (a)(5) shall not apply to or affect any of the following:

1. 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;
2. Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
3. 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; or
4. Manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(c)(1), (2) and (3) to possess such weapons.

(c) Subsection (a)(4) shall not apply to or affect the following:

1. Watchmen, while actually engaged in the performance of the duties of their employment;
2. Licensed hunters or fishermen, while engaged in hunting or fishing;
3. Private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;
4. Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;
5. The state fire marshal, the state fire marshal’s deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto; or
6. Special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto; or
7. The United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions
of this paragraph shall not apply to any person not in compliance with section 4, and amendments thereto.

New Sec. 4. Any person not subject to the provisions of subsection (a) of K.S.A. 21-4201, and amendments thereto, under the authority of paragraph (7) of subsection (c) of K.S.A. 21-4201, and amendments thereto, shall obtain at their own expense, and maintain a license to carry concealed weapons permit as authorized by K.S.A. 75-7c01 through 75-7c17, and amendments thereto. In addition, such person shall complete a firearms training course as determined by the director of police training of the law enforcement training center.

(d) Subsections (a)(1), (6) and (7) (a)(4) and (a)(5) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee’s name by the transferor.

(e) Subsection (a)(8) (a)(6) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(6) (a)(4) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer’s law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer’s law enforcement agency to possess devices described in subsection (a)(4); and

(3) in possession of commercially manufactured devices which are:

(A) Owned by the law enforcement agency;

(B) in such officer’s possession only during specific operations; and

(C) approved by the bureau of alcohol, tobacco, firearms and explosives of the United States department of justice.

(g) Subsections (a)(6), (7) and (8) (a)(4), (a)(5), and (a)(6) shall not apply to any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsections (a)(6), (7) and (8) (a)(4), (a)(5), and (a)(6) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory.

(h) Subsection (a)(4) shall not apply to any person carrying a concealed weapon as authorized by K.S.A. 2008 Supp. 75-7c01 through 75-7c17, and amendments thereto.
(i) (h) Subsections (a)(6) and (7) (a)(4) and (a)(5) shall not apply to or affect any person or entity in compliance with the national firearms act, 26 U.S.C. 5801 et seq.

(i) (i) It shall be a defense that the defendant is within an exemption.

(k) Violation of subsections (a)(1) through (a)(5), (a)(6), (a)(7), or (a)(11) is a class A nonperson misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8), (a)(3), (a)(4), or (a)(5) is a severity level 9, nonperson felony. Violation of subsection (a)(9) or (a)(10) is a class B nonperson select misdemeanor; violation of subsection (a)(12) is a severity level 8, nonperson felony;

(i) Subsection (a)(11) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person’s behalf who is delivering or collecting a student; or

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day.

(j) Subsection (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2008 Supp. 75-7c26, and amendments thereto.

(k) Subsection (a)(14) shall not apply if such person, less than 18 years of age, was:

(1) In attendance at a hunter’s safety course or a firearms safety course;

(2) engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located;

(3) engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;
Article 3

1. (4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated and amendments thereto;

2. (5) traveling with any such firearm in such person's possession being unloaded to or from any activity described in paragraphs (1) through (4), only if such firearm is secured, unloaded and outside the immediate access of such person;

3. (6) on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

4. (7) at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. 21-3211, 21-3212 or 21-3213 and amendments thereto.

(4) (l) As used in this section, “throwing star” means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

Comment

K.S.A. 21-4201. KSA 21-4201 provides the basis for the proposed statute. Subsections are added from KSA 21-4203, -4204, and -4204a.

Proposed statutes 21-42-101 through 21-42-105 incorporate provisions from present statutes KSA 21-4201 through KSA 21-4204a. Various weapons violations are described throughout the five statutes. The proposed statutes categorize the violations. Proposed 21-42-101, Criminal use of weapons, defines violations involving manufacturing, purchasing, selling, or possessing weapons. Proposed 21-42-102, Criminal carrying of a weapon, defines weapons crimes where carrying and concealment are involved.

The next three statutes define weapons violations involving convicted felons. Proposed 21-42-103, Criminal distribution of firearms to a felon, includes provisions that prohibit selling, giving, or otherwise transferring any firearm to a felon. Proposed 21-42-104, Criminal possession of a firearm by a convicted felon, defines violations where a felon illegally possesses a firearm.

Proposed 21-42-105, Weapons violation by a convicted felon is patterned after present KSA 21-4202, Aggravated weapons violation. This statute prohibits weapons violations by a convicted felon that are in addition to the firearms violations described in 21-42-103 and 21-42-104.

(a) Criminal carrying of a weapon is knowingly:

(1) Selling, manufacturing, purchasing or carrying any bludgeon, sandclub, metal knuckles or throwing star, 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;

(2) carrying concealed on one’s person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, stiletto or any other dangerous or deadly weapon or instrument of like character, except that 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;

(3) 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 bomb or projector or any object containing a noxious liquid, gas or substance; or

(4) carrying any pistol, revolver or other firearm concealed on one’s person except when on the person’s land or in the person’s abode or fixed place of business.

(5) setting a spring gun;

(6) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(7) selling, manufacturing, purchasing or carrying a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger whether the person knows or has reason to know the length of the barrel; or

(8) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight.

(b) Violation of subsections (a)(1), (a)(2), (a)(3), or (a)(4) through (a)(5) is a class A nonperson misdemeanor. Violation of subsection (a)(5) is a severity level 9, nonperson felony.
(b) (c) Subsection (a) and (2) shall not apply to or affect any of the following:

(1) 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;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) 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; or

(4) manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(1), (c)(1), (2) and (3) to possess such weapons.

c (d) Subsection (a)(4) shall not apply to or affect the following:

(1) Watchmen, while actually engaged in the performance of the duties of their employment;

(2) licensed hunters or fishermen, while engaged in hunting or fishing;

(3) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(4) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(5) the state fire marshal, the state fire marshal’s deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto; or

(6) special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.; or

(7) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any
assistant district attorney or assistant county attorney if authorized by the
district attorney or county attorney by whom such assistant is employed. The
provisions of this paragraph shall not apply to any person not in compliance
with K.S.A. 75-7c19, and amendments thereto.

New Sec. 4. (B) Any person not subject to the provisions of subsection (a) of K.S.A. 21-4201,
and amendments thereto, under the authority of paragraph (7)(A) of subsection (c) of K.S.A.
21-4201, and amendments thereto, shall obtain at their own expense, and maintain a license
to carry concealed weapons permit as authorized by K.S.A. 75-7c01 through 75-7c17, and
amendments thereto. In addition, such person shall complete a firearms training course as
determined by the director of police training of the law enforcement training center.

(d) Subsections (a)(1), (6) and (7) shall not apply to any person who sells, purchases, possesses
or carries a firearm, device or attachment which has been rendered unserviceable by steel
weld in the chamber, and marriage weld of the barrel to the receiver and which has been
registered in the national firearms registration and transfer record in compliance with 26
U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm,
device or attachment to another person, has been so registered in the transferee’s name by
the transferor.

(e) Subsection (a)(8) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(6) shall not apply to a law enforcement officer who is:
(1) Assigned by the head of such officer’s law enforcement agency to a tactical unit which
receives specialized, regular training;
(2) designated by the head of such officer’s law enforcement agency to possess devices
described in subsection (a)(6); and
(3) in possession of commercially manufactured devices which are:
(A) Owned by the law enforcement agency; (B) in such officer’s possession only during specific
operations; and (C) approved by the bureau of alcohol, tobacco, firearms and explosives of the
United States department of justice.

(g) Subsections (a)(6), (7) and (8) shall not apply to any person employed by a laboratory
which is certified by the United States department of justice, national institute of justice,
while actually engaged in the duties of their employment and on the premises of such
certified laboratory. Subsections (a)(6), (7) and (8) shall not affect the manufacture of,
transportation to or sale of weapons to such certified laboratory.

(4) Subsection (a)(4) shall not apply to any person carrying a concealed weapon as
authorized by K.S.A. 2008 Supp. 75-7c01 through 75-7c17, and amendments thereto.

(i) Subsections (a)(6) and (7) shall not apply to or affect any person or entity in compliance
with the national firearms act, 26 U.S.C. 5801 et seq.
(j) It shall be a defense that the defendant is within an exemption.
(k) Violation of subsections (a)(1), (a)(2), or (a)(3) through (a)(5) is a class A nonperson
misdemeanor. Violation of subsection (a)(6), (a)(7) or (a)(8) is a severity level 9, nonperson
felony.
(l) As used in this section, “throwing star” means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

(f) Subsection (a)(5) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee’s name by the transferor.

(g) Subsection (a)(5) shall not apply to any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsection (a)(5) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory.

(h) Subsection (a)(5) shall not apply to or affect any person or entity in compliance with the national firearms act, 26 U.S.C. 5801 et seq.

Comment


21-42-103

21-42-103. Criminal disposal-distribution of firearms to a felon.

(a) Criminal disposal distribution of firearms to a felon is knowingly:

(1) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;

(2) Selling, giving or otherwise transferring any firearms to any person who is both addicted to and unlawful user of a controlled substance;

(3) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (b), (c), under the laws of this or any other jurisdiction.
or has been released from imprisonment for a felony and was not found to have been in possession of a firearm at the time of the commission of the offense felony;

(4) (2) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, but was not found to have been in possession of a firearm at the time of the commission of the offense felony, or has been released from imprisonment for such a crime felony, and has not had the conviction of such felony crime expunged or been pardoned for such crime felony; or

(5) (3) selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was not found to have been in possession of a firearm at the time of the commission of the offense felony; or

(6) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto, and such person has not received a certificate of restoration pursuant to K.S.A. 2007 Supp. 75-7c26, and amendments thereto.

(c) Criminal disposal of firearms is a class A nonperson misdemeanor.

(b) (c) Subsection (a){4}(2) shall apply to a felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, or 65-4160 through 65-4164, 21-36a05, 21-36a06 and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(c) Criminal disposal of firearms is a class A nonperson misdemeanor.

(d) It is not a defense that the distributor did not know or have reason to know (1) the precise felony the recipient committed, (2) that the recipient was in possession of a firearm at the time of the commission of the recipient’s prior felony, or (3) that the convictions for such felony have not been expunged or pardoned.

Comment

K.S.A. 21-4203. Proposed 21-42-103, Criminal distribution of firearms to a felon, includes provisions from KSA 21-4203 that prohibit selling, giving, or otherwise transferring any firearm to a felon. See Comment to 21-42-101.

The terms “offense” and “crime” are changed to “felony” to clarify that they refer to the underlying felony. Comports with State Gillon 25 Kan App 2nd 809 (1999).
21-42-104. Criminal possession of a firearm by a convicted felon.

(a) Criminal possession of a firearm by a convicted felon is:

(1) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(2)(1) Possession of any firearm by a person who has been convicted of a person felony or a violation of any provision of the uniform controlled substances act under the laws of Kansas K.S.A. 21-36a01 through 21-36a17, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of any provision of the uniform controlled substances act K.S.A. 21-36a01 through 21-36a17, and amendments thereto, and was found to have been in possession of a firearm at the time of the commission of the offense;

(3)(2) possession of any firearm by a person who, within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(3)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was not found to have been in possession of a firearm at the time of the commission of the offense; or

(4)(3) possession of any firearm by a person who, within the preceding 10 years, has been convicted of:

(A) A felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, or 65-4160 through 65-4164, 21-36a05, 21-36a06, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such felony, was not found to have been in possession of a firearm at the time of the commission of the offense, and has not had the conviction of such crime expunged or been pardoned for such crime; or
Article 31

(B) a nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such nonperson felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the offense;

(5) possession of any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event;

(6) refusal to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer; or

(7) possession of any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto.

(b) Subsection (a)(5) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person’s behalf who is delivering or collecting a student; or

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day.

(c) Subsection (a)(7) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2008 Supp. 75-7c26, and amendments thereto.

(d) (b) Violation Criminal possession of a firearm by a convicted felon of subsection (a)(1) or (a)(5) is a class B nonperson select misdemeanor; violation of subsection (a)(2), (a)(3),
(a)(4) or (a)(7) (a)(1), (a)(2), or (a)(3) is a severity level 8, nonperson felony; . violation of subsection (a)(6) is a class A nonperson misdemeanor.

Comment


(a) Aggravated weapons violation by a convicted felon is a violation of any of the provisions of K.S.A. 21-4201 and amendments thereto 21-42-101 (a)(1)-(a)(6) or 21-42-102 (a) and amendments thereto by a person who:

(1) Within five years preceding such violation has been convicted of a nonperson felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for such nonperson felony; or

(2) has been convicted of a person felony pursuant to the Kansas laws or in any other jurisdiction which is substantially the same as such crime or has been released from imprisonment for such crime, and has not had the conviction of such crime expunged or been pardoned for such crime.

(b) (1) Aggravated weapons violation by a convicted felon is a severity level 9, nonperson felony for a violation of subsections (a)(1) through (a)(5) or (a)(2) of 21-42-101 or subsection (a)(9) of K.S.A. 21-4201 and amendments thereto subsections (a)(1)-(a)(3) of 21-42-102.

(2) Aggravated weapons violation by a convicted felon is a severity level 8, nonperson felony for a violation of subsections (a)(6), (a)(7) and (a)(8) of K.S.A. 21-4201 and amendments thereto (a)(3)-(a)(5) of 21-42-101.

Comment

K.S.A. 21-4202. Proposed 21-42-105, Weapons violation by a convicted felon is patterned after present KSA 21-4202, Aggravated weapons violation. This statute prohibits weapons violations by a convicted felon that are in addition to the firearms violations described in 21-42-103 and 21-42-104. See Comment to 21-42-101.
21-42-106. — Criminal possession of firearm by a juvenile. (a) Criminal possession of a firearm by a juvenile is knowingly possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age.

(b) Criminal possession of a firearm by a juvenile is a class A nonperson misdemeanor. A second or subsequent violation is a severity level 8, nonperson felony.

(c) It shall be a defense to a prosecution of criminal possession of a firearm by a juvenile if such person less than 18 years of age was:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) engaged in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located;

(3) engaged in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;

(4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated and amendments thereto;

(5) traveling with any such firearm in such person's possession being unloaded to or from any activity described in paragraphs (1) through (4), only if such firearm is secured, unloaded and outside the immediate access of such person;

(6) on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

(7) at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. 21-3211, 21-3212 or 21-3213 and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Comment


(a) Defacing identification marks of a firearm is intentionally changing, altering, removing or obliterating the name of the maker, model, manufacturer's number or other mark of identification of any firearm.
(b) **Defacing identification marks of a firearm is a severity level 10, nonperson felony.**

(b) (c) Possession of any firearm upon which any such mark shall have been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same.

(c) **Defacing identification marks of a firearm is a severity level 10, nonperson felony.**

Comment

This section incorporates K.S.A. 12-4205. Changes are made to the format to add clarity.

---

**21-42-107**


(a) Upon conviction of a violation or upon adjudication as a juvenile offender for a violation of K.S.A. 21-4201, 21-4202, 21-4204, 21-4204a or 21-4219, and amendments thereto, any weapon seized in connection therewith shall remain in the custody of the trial court.

(b) 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:

(1) **Destroyed;**

(2) forfeited to the law enforcement agency seizing the weapon for use within such agency, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency's use; or

(3) forfeited to the Kansas bureau of investigation for law enforcement, testing, comparison or destruction by the Kansas bureau of investigation forensic laboratory.

(c) If weapons are sold as authorized by subsection (2), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency

Comment
This section incorporates K.S.A. 21-4206. Portions of this statute are included in 21-42-101(o), 21-42-104(f) and 21-42-108(e).


(a) Criminal discharge of a firearm is:

(1) the malicious, intentional reckless and unauthorized discharge of any firearm:

(A) at a dwelling, building, or structure in which there is a human being whether the person discharging the firearm knows or has reason to know that there is a human being present;

(B) at a motor vehicle, aircraft, watercraft, train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock or other means of conveyance of persons or property in which there is a human being whether the person discharging the firearm knows or has reason to know that there is a human being present; or

(2) the malicious, intentional reckless and unauthorized discharge of any firearm at an unoccupied dwelling in which there is no human being.

(3) the discharge of any firearm:

(A) Upon any land or nonnavigable body of water of another, without having obtained permission of the owner or person in possession of such land; or

(B) upon or from any public road, public road right-of-way or railroad right-of-way that adjoins land of another without having first obtained permission of the owner or person in possession of such land.

(b) (1) Criminal discharge of a firearm as described in subsection (a)(1) which results in great bodily harm to a person during the commission thereof is a severity level 3, person felony.

(2) Criminal discharge of a firearm as described in subsection (a)(1) which results in bodily harm to a person during the commission thereof is a severity level 5, person felony.

(3) Except as provided in subsection (b)(1) and (b)(2), Criminal discharge of a firearm as described in subsection (a)(1) is a severity level 7, person felony.
Except as provided in subsection (b)(1) and (b)(2), Criminal discharge of a firearm as described in subsection (a)(2) is a severity level 8, person felony.

Except as provided in subsection (b)(1) and (b)(2), Criminal discharge of a firearm as described in subsection (a)(3) is a class C misdemeanor.

Subsection (a)(1) shall not apply if the act is a violation of K.S.A. 21-3411.

Subsection (a)(3) shall not apply to any of the following:

1. 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;
2. Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
3. Members of the armed services or reserve forces of the United States or the national guard while in the performance of their official duty;
4. Watchmen, while actually engaged in the performance of the duties of their employment;
5. Private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;
6. Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment; or
7. The state fire marshal, the state fire marshal’s deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto; or
8. The United States attorney for the district of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant United States attorney if authorized by the United States attorney for the district of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and
while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with section 4, and amendments thereto.

(a) Upon conviction of a violation or upon adjudication as a juvenile offender for a violation of subsection (a)(1) or (a)(2) K.S.A. 21-4201, 21-4202, 21-4204, 21-4204a or 21-4219, and amendments thereto, any weapon seized in connection therewith shall remain in the custody of the trial court. Any weapon so seized and detained, when no longer needed for evidentiary purposes, shall be disposed of as provided in subsection (a) of 21-42-101.

Comment

This section merges K.S.A. 21-4217, 21-4219, and 21-4206. The Commission determined that correct culpability level for subsections (a)(1) and (2) is recklessness. The phrase “whether the person discharging the firearm knows or has reason to know that there is a human being present” is added to clarity that element of a human being’s presence is held to strict liability. The Commission proposes a policy recommendation for this offense. Please see volume two of the Commission’s final report.

21-42-109

21-42-109. Criminal discharge of a firearm at an unoccupied dwelling; criminal discharge of a firearm at an occupied building or occupied vehicle. (a) Criminal discharge of a firearm at an unoccupied dwelling is the malicious, intentional and unauthorized discharge of any firearm at an unoccupied dwelling.

— Criminal discharge of a firearm at an unoccupied dwelling is a severity level 8, person felony.

— (b) Except as provided in K.S.A. 21-3411, and amendments thereto, criminal discharge of a firearm at an occupied building or occupied vehicle is the malicious, intentional and unauthorized discharge of a firearm at a dwelling, building, structure, motor vehicle, aircraft, watercraft, train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock or other means of conveyance of persons or property in which there is a human being.

— Criminal discharge of a firearm at an occupied building or occupied vehicle is a severity level 7, person felony.

— Criminal discharge of a firearm at an occupied building or occupied vehicle which results in bodily harm to a person during the commission thereof is a severity level 5, person felony.

— Criminal discharge of a firearm at an occupied building or occupied vehicle which results in great bodily harm to a person during the commission thereof is a severity level 3, person felony.

— (c) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section merges K.S.A. 21-4219 into 21-42-108.
21-42-110. Unauthorized possession of a firearm on the grounds or within a government building.

(a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm on the grounds of or in:

(1) the state capitol building, any building located within the capitol complex,

(2) within the governor’s residence,

(3) on the grounds of or in any building on the grounds of the governor’s residence,

(4) within the state office building at 915 Harrison known as the Docking state office building,

(5) within the state office building at 900 Jackson known as the Landon state office building,

(6) within the Kansas judicial center at 301 West 10th,

(4) within any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building, or

(5) within any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse.

(b) Violation of subsection (a) is a class A misdemeanor.

(c) This section shall not apply to:

(1) a commissioned law enforcement officer,

(2) a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state,

(3) any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer, or
(4) a member of the military of this state or the United States engaged in the performance of duties.

(d) It is not a violation of this section for the governor, the governor’s immediate family, or specifically authorized guests of the governor to possess a firearm within the governor’s residence or on the grounds of or in any building on the grounds of the governor’s residence.

(e) It is not a violation of this section for the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a firearm within any county courthouse and court-related facility, subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person not in compliance with section 4, and amendments thereto.

(f) Notwithstanding the provisions of this section, any county may elect by passage of a resolution that the provisions of subsection (e) shall not apply to such county’s courthouse or court-related facilities if:

(1) Such facilities have adequate security measures to ensure that no weapons are permitted to be carried into such facilities. For the purposes of this section, “adequate security measures” means the use of electronic equipment and personnel to detect and restrict the carrying of any weapons into the facility, including, but not limited to, metal detectors, metal detector wands or any other equipment used for similar purposes;

(2) such facilities have adequate measures for storing and securing lawfully carried weapons, including, but not limited to, the use of gun lockers or other similar storage options;

(3) such county also has a policy or regulation requiring all law enforcement officers to secure and store such officer’s firearm upon entering the courthouse or court-related facility. Such policy or regulation may provide that it does not apply to court security or sheriff’s office personnel for such county; and

(4) such facilities have a sign conspicuously posted at each entryway into such facility stating that the provisions of subsection (e) do not apply to such facility.

(g) As used in this section:
(1) “possession” means having joint or exclusive control over a firearm or having a firearm in a place where the person has some measure of access and right of control.

(2) “capitol complex” shall have the same meaning as under K.S.A. 75-4514.

(e) Violation of subsection (a) is a class A misdemeanor.

(ff) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section incorporates K.S.A. 21-4218. The phrase “with no requirement of a culpable mental state” indicates that this is a strict liability offense. Subsection (a)(1) is amended to include any building within the capitol complex. Subsection (g)(2) defines capitol complex with the same definition as under K.S.A. 75-4514. This revision is meant to expand the scope of this statute whenever the capitol complex expands, without the legislature having to amend the statute.

21-42-111. Unlawful endangerment.

(a) Unlawful endangerment is, while engaged in or as a part of the production manufacture of a controlled substance, knowingly protecting or attempting to protect the production manufacture or cultivation of a controlled substance by creating, setting up, building, erecting or using any device or weapon:

(1) which causes serious physical injury great bodily harm;

(2) which causes physical injury bodily harm; or

(3) which causes or is intended to cause damage or injury bodily harm to another person.

(b) (1) Unlawful endangerment as described in subsection (a)(1) is a severity level 5, person felony.

(2) Unlawful endangerment as described in subsection (a)(2) is a severity level 7, person felony.

(3) Unlawful endangerment as described in subsection (a)(3) is a severity level 8, nonperson felony.
(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for battery.

[(d) Cross reference definition of manufacture in drug code.]

Comment

This section incorporates K.S.A. 21-4220. Several terms are revised to be consistent with similar terms in other parts of the code. The term “production” is replaced with “manufacture and cultivation” to be consistent with the drug code. The phrase “physical injury” and “serious physical injury” are replaced with “bodily injury” and “great bodily harm” to be consistent with the battery statute. Subsection (c) clarifies that an offender may be charged with this offense and battery.

21-42-201. Failure to register explosives.

(a) Failure to register explosives is, with no requirement of a culpable mental state, the omission:

(1) by the seller of any explosive or detonating substance, to keep a register of every sale or other disposition of such explosives made by the seller as required by this section; or

(2) 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 the person’s name in the register provided in subsection (a)(1) section 21-4207(2) on the page where the record of such delivery is entered.

(b) (1) Failure to register explosives as described in subsection (a)(1) is a class B nonperson misdemeanor.

(2) Failure to register explosives as described in subsection (a)(2) is a class C misdemeanor.

(c) The register of sales required by this section subsection (a)(1) 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. Such register and 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 the sale or other disposition.

Comment
This section merges K.S.A. 21-4207 and 21-4208. The phase “no requirement of a culpable mental state” is added to clarify that this is a strict liability offense.

**21-42-202**

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 21-4207 (2) on the page where the record of such delivery is entered.

— Failure to register receipt of explosives is a class C misdemeanor.

**Comment**

This section merges K.S.A. 21-4207 into 21-42-201.

**21-42-203**

Criminal disposal of explosives; criminal possession of explosives; carrying concealed explosives; "explosives" defined.

(a) Criminal possession of explosives is the knowing possession of any explosive or detonating substance by a person who, within five years preceding such possession, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(b) Criminal disposal of explosives is knowingly selling, giving or otherwise transferring *distributing* any explosive or detonating substance to:

(1) A person under 21 years of age; or

(2) a person who is both addicted to and an unlawful user of a controlled substance; or

(3) a person who, within the preceding five years, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

(c) Carrying concealed explosives is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner.

(d) (1) Criminal possession of explosives is a severity level 7, person felony.

(2) Criminal disposal of explosives is a severity level 10, person felony.
(3) Carrying concealed explosives is a class C misdemeanor.

(e) As used in subsections (a) and (b) K.S.A. 21-4209 and 21-4209a, "explosives" means any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes but is not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

Comment

This section merges K.S.A. 21-4209, 21-4209a, 21-4209b and 21-4210. The term "knowingly" is deleted from subsection (a) as the term "knowingly" is part of the definition of possession. The terms "selling," "giving" and "otherwise transferring" are removed as they are duplicative of the term "distribute. The Commission recommends increasing the severity of this offense. Please see volume two of the Commission's final report.

21-42-301

21-42-301. Criminal street gang prevention. K.S.A. 21-4225 through 21-4229, and amendments thereto, shall be known and may be cited as the criminal street gang prevention act.

Comment

This section is deletes K.S.A. 21-4225 as it is unnecessary.

21-42-302

21-42-302. Same; definitions. As used in K.S.A. 21-4225 through 21-4229, and amendments thereto:

(a) "Criminal street gang" means any organization, association or group, whether formal or informal:

(1) Consisting of three or more persons;

(2) having as one of its primary activities the commission of one or more person felonies, person misdemeanors, felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., sections 1 through 17, and amendments thereto, or the comparable juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors;

(3) which has a common name or common identifying sign or symbol; and

Article 31
(4) whose members, individually or collectively, engage in or have engaged in the
commission, attempted commission, conspiracy to commit or solicitation of
two or more person felonies, person misdemeanors, felony violations of the
uniform controlled substances act, K.S.A. 65-4101 et seq. sections 1 through
17, and amendments thereto, the comparable juvenile offenses, which if
committed by an adult would constitute the commission of such felonies or
misdemeanors or any substantially similar offense from another jurisdiction.

(b) "Criminal street gang member" is a person who:

(1) Admits to criminal street gang membership; or

(2) meets three or more of the following criteria:

   (A) Is identified as a criminal street gang member by a parent or guardian.

   (B) Is identified as a criminal street gang member by a state, county or city
       law enforcement officer or correctional officer or documented reliable
       informant.

   (C) Is identified as a criminal street gang member by an informant of
       previously untested reliability and such identification is corroborated
       by independent information.

   (D) Resides in or frequents a particular criminal street gang’s area and
       adopts such gang’s style of dress, color, use of hand signs or tattoos,
       and associates with known criminal street gang members.

   (E) Has been arrested more than once in the company of identified
       criminal street gang members for offenses which are consistent with
       usual criminal street gang activity.

   (F) Is identified as a criminal street gang member by physical evidence
       including, but not limited to, photographs or other documentation.

   (G) Has been stopped in the company of known criminal street gang
       members two or more times.

   (H) Has participated in or undergone activities self-identified or identified
       by a reliable informant as a criminal street gang initiation ritual.

(c) "Criminal street gang activity" means the commission or attempted commission of, or
solicitation or conspiracy to commit, one or more person felonies, person
misdemeanors, felony violations of the uniform controlled substances act, K.S.A. 65-
4101, et seq. sections 1 through 17, and amendments thereto, or the comparable
juvenile offenses, which if committed by an adult would constitute the commission of such felonies or misdemeanors on separate occasions.

(d) “Criminal street gang associate” means a person who:

(1) Admits to criminal street gang association; or

(2) meets two or more defining criteria for criminal street gang membership described in subsection (b)(2).

(e) For purposes of law enforcement identification and tracking only “gang-related incident” means an incident that, upon investigation, meets any of the following conditions:

(1) The participants are identified as criminal street gang members or criminal street gang associates, acting, individually or collectively, to further any criminal purpose of the gang;

(2) a state, county or city law enforcement officer or correctional officer or reliable informant identifies an incident as criminal street gang activity; or

(3) an informant of previously untested reliability identifies an incident as criminal street gang activity and it is corroborated by independent information.

Comment

This section incorporates K.S.A. 21-4226. No change is made except to add the proper references to the drug code.

21-42-303


(a) Recruiting criminal street gang membership is intentionally causing, encouraging, soliciting or recruiting another person to join a criminal street gang that requires, as a condition of membership or continued membership, the commission of any crime or membership initiation by submission to a sexual or physical assault that is criminal in nature, or would be criminal absent consent by the initiated.

(b) Recruiting criminal street gang membership is a severity level 6, person felony.

Comment
This section incorporates K.S.A. 21-4227. As this is a specific intent offense, the term “intentionally” is added.

**21-42-304**


(a) Criminal street gang intimidation is the communication, directly or indirectly with another, any threat of personal injury or actual personal injury to another or any threat of damage or actual damage to property of another with the intent to:

(1) Deter such person from assisting a criminal street gang member or associate to withdraw from such criminal street gang; or

(2) punish or retaliate against such person for having withdrawn from a criminal street gang.

(b) Criminal street gang intimidation is a severity level 5, person felony.

Comment

This section incorporates K.S.A. 21-4228. No change is recommended.

**21-42-305**

21-42-305. Criminal street gang member; bail, exceptions. When a criminal street gang member, as defined in K.S.A. 21-4226, and amendments thereto, is arrested for a person felony, bail shall be at least $50,000 cash or surety, unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pre-trial supervision program is available and the defendant agrees to comply with the mandate of such pre-trial supervision.

Comment

This section incorporates K.S.A. 21-4229. No change is recommended.

**21-42-306**

21-42-306. Supplemental to the Kansas criminal code. K.S.A. 21-4225 through 21-4229, and amendments thereto, shall be a part of and supplemental to the Kansas criminal code.

Comment

This section deletes K.S.A. 21-4230 as unnecessary.
21-42-307

21-42-307. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Comment

This section deletes K.S.A. 21-4231 in lieu of the general severability provision in Article 31.

21-42-401

21-42-401. Endangering the food supply.

(a) Endangering the food supply is knowingly:

(1) Except as provided in subsection (d) (b), bringing into this state any domestic animal which is affected with any contagious or infectious disease or any animal which has been exposed to any contagious or infectious disease;

(2) except as provided in subsection (d) (b), exposing any animal in this state to any contagious or infectious disease;

(3) except as permitted under K.S.A. 2-2112 et seq., and amendments thereto, bringing or releasing into this state any plant pest as defined in K.S.A. 2-2113, and amendments thereto, or exposing any plant to a plant pest; or

(4) except as provided in subsection (d) (b), exposing any raw agricultural commodity, animal feed or processed food to any contaminant or contagious or infectious disease.

(b) Aggravated endangering the food supply is endangering the food supply, as provided in K.S.A. 21-4221, and amendments thereto, when done with the:

(1) Intent to cause damage to plants or animals or to cause economic harm or social unrest; or

(2) Intent to cause illness or injury or death to a human being or beings.

(c) (1) Except as otherwise provided, endangering the food supply is a class A nonperson misdemeanor.
(2) Endangering the food supply when the contagious or infectious disease is foot-and-mouth disease is a severity level 4, nonperson felony.

(3) Except as otherwise provided, aggravated endangering the food supply as provided in subsection (b)(1) is a severity level 3, nonperson felony.

(4) Aggravated endangering the food supply as provided in subsection (b)(2) is a severity level 3, person felony.

(b) (d) The provisions of this section shall not apply to bona fide experiments and actions related thereto carried on by commonly recognized research facilities.

(c) (e) As used in this section:

(1) "Animal feed" means an article which is intended for use for food for animals other than humans and which is intended for use as a substantial source of nutrients in the diet of the animal, and is not limited to a mixture intended to be the sole ration of the animal;

(2) "contagious or infectious disease" means any disease which can be spread from one subject to another by direct or indirect contact or by an intermediate agent, including, but not limited to, anthrax, all species of brucellosis, equine infectious anemia, hog cholera, pseudorabies, psoroptic mange, rabies, tuberculosis, vesicular stomatitis, avian influenza, pullorum, fowl typhoid, psittacosis, viscerotropic velogenic Newcastle disease, foot and mouth disease, rinderpest, African swine fever, piroplasmosis, vesicular exanthema, Johne's disease, scabies, scrapies, bovine leukosis and bovine spongiform encephalopathy;

(3) "processed food" means any food other than a raw agricultural commodity and includes any raw agricultural commodity that has been subject to processing, such as canning, cooking, freezing, dehydration or milling; and

(4) "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(d) (1) Endangering the food supply is a class A nonperson misdemeanor.

(2) Endangering the food supply when the contagious or infectious disease is foot-and-mouth disease is a severity level 4, nonperson felony.

(e) The provisions of this section shall be part of and supplemental to the Kansas criminal code.

Comment
This section merges K.S.A. 21-4221 and 21-4222. Changes are made to the format to add clarity.

21-42-402

21-42-402. Aggravated endangering the food supply. (a) Aggravated endangering the food supply is endangering the food supply, as provided in K.S.A. 21-4221, and amendments thereto, when done with the: (1) Intent to cause damage to plants or animals or to cause economic harm or social unrest; or
— (2)—intent to cause illness or injury or death to a human being or beings.
— (b) (1) Aggravated endangering the food supply as provided in subsection (a)(1) is a severity level 3, nonperson felony.
— (2) Aggravated endangering the food supply as provided in subsection (a)(2) is a severity level 3, person felony.
— (c) The provisions of this section shall be part of and supplemental to the Kansas criminal code.

Comment
This section merges K.S.A. 21-4222 into 21-42-401.

21-42-403

21-42-403. Creating a hazard.

(a) Creating a hazard is recklessly:

(1) 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;

(2) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located, and knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or

(3) Exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children.

(b) Creating a hazard is a class B nonperson misdemeanor.

Comment
This section incorporates K.S.A. 21-4212. The Commission determined that the proper culpability for this offense is recklessness. The term “recklessly” is added to subsection (a) and the term “knowingly” is removed from subsection (a)(2).

21-42-404

21-42-404. Unlawful failure to report a wound. (1)

(a) Unlawful failure to report a wound is, with no requirement of a culpable mental state, the failure by an attending physician or other person to report his such person’s treatment of any wound, described in paragraphs (a) and (b)(1) and (2) hereafter, to the office of the chief of police of the city or the office of the sheriff of the county in which such treatment took place:

   (a) (1) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or

   (b) (2) 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) (b) Unlawful failure to report a wound is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-4213. The phrase “with no requirement of a culpable mental state” is added to convey that this is a strict liability offense.

21-42-405

21-42-405. Selling beverage containers with detachable tabs.

(a) Selling beverage containers with detachable tabs is knowingly selling or offering for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container.

(b) Selling beverage containers with detachable tabs is a class C misdemeanor.

(a)(c) As used in this section:

(1) "Beverage container" means any sealed can containing beer, cereal malt beverages, mineral waters, soda water and similar soft drinks so designated by the director of alcoholic beverage control, in liquid form and intended for human consumption.
"In this state" means within the exterior limits of the state of Kansas and includes all territory within these limits owned by or ceded to the United States of America.

(b) No person shall sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container.

(c) Any person violating the provisions of subsection (b) shall be guilty of a class C misdemeanor.

Comment
This section incorporates K.S.A. 21-4216. Subsection (a) is revised to add clarity. The Commission recommends repealing this offense. Please see volume two of the Commission’s final report.

21-42-406

21-42-406. Alcohol without liquid machine; unlawful acts.

(a) It shall be unlawful for any person to knowingly:

(1) Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or

(2) purchase, sell or offer for sale an alcohol without liquid machine.

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

(c) As used in this section, "alcohol without liquid machine" means a device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

Comment
This section incorporates K.S.A. 21-4224. The culpability term “knowingly” is added as this is a general intent offense.

21-42-407


(a) Unlawfully tampering with electronic monitoring equipment is, knowingly and without authorization, intentionally removing, disabling, altering, tampering with,
Article 31

21-42-408. Refusal to yield a telephone party line.

(a) Refusal to yield a telephone party line is willfully intentionally 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 (2) 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.

(b) No person shall request the use of a party line on the pretext that an emergency exists, knowing that no emergency in fact exists.
(c) Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of 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.

(d) Violation of any subsection of this section is a class C misdemeanor.

(e) As used in this section:

(1) “Party line” means a subscriber’s line telephone circuit, consisting of two (2) or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(2) “Emergency” means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential.

Comment

This section incorporates K.S.A. 21-4211. The term “willfully” is replaced with the term “intentionally.” The Commission recommends eliminating this offense. Please see volume two of the Commission’s final report.

21-42-409

21-42-409. Unlawful possession or use of traffic control signal preemption devices; exemptions.

(a) Unlawful possession or use of a traffic control signal preemption device is knowingly:

(1) Possessing a traffic control signal preemption device;

(2) using a traffic control signal preemption device;

(3) selling a traffic control signal preemption device to a person other than a person specified in subsection (g); or

(4) purchasing a traffic control signal preemption device for use other than a duty described in subsection (g).

(b) A person convicted of violating subsection (a)(1) shall be guilty of a class B misdemeanor.
(c) Except as provided in subsections (d) and (e), a person convicted of violating subsection (a)(2) shall be guilty of a severity level 9, nonperson felony.

(d) A person convicted of violating subsection (a)(2), which violation results in a traffic accident causing injury to any person or damage to any vehicle or other property, shall be guilty of a severity level 7, person felony.

(e) A person convicted of violating subsection (a)(2), which violation results in a traffic accident causing the death of any person, shall be guilty of a severity level 5, person felony.

(f) A person convicted of violating subsection (a)(2), which violation results in a traffic accident causing the death of any person, shall be guilty of a severity level 9, nonperson felony.

(g) The provisions of this section shall not apply to the operator, passenger or owner of any of the following authorized emergency vehicles, in the course of such person's emergency duties:

(1) Publicly owned fire department vehicles;

(2) publicly owned police vehicles; or

(3) motor vehicles operated by ambulance services permitted by the emergency medical services board under the provisions of K.S.A. 65-6101 et seq., and amendments thereto.

(h) As used in this section "traffic control signal preemption device" means any device, instrument or mechanism designed, intended or used to interfere with the operation or cycle of a traffic-control signal, as defined in K.S.A. 8-1478, and amendments thereto.

(i) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for battery or any homicide offense.

Comment

This section incorporates K.S.A. 21-4223. Subsection (a) is reordered for clarity. As this is a general intent offense, the term “knowingly” is added. Subsection (i) is added to clarify that an offender may be convicted of this offense and battery or a homicide offense.
interfering with, molesting or assaulting, as defined in 21-34-301(a)(1) and amendments thereto, any firefighter while engaged in the performance of such firefighter's duties; or

(2) knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire or other emergency.

(b) Unlawful interference with a firefighter is a class B person misdemeanor.

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.

Comment

This section incorporates K.S.A. 21-3416. As this is a general intent offense, the term “intentionally” is removed. The phrase “molesting or assaulting, as defined in 21-34-301(a)(1) and amendments thereto,” is removed to avoid a statutory conflict with the assault statute. Subsection (c) is added to allow simultaneous prosecution for assault or battery.


(a) Unlawful interference with an emergency medical services attendant is knowingly and intentionally:

(1) interfering with, molesting or assaulting, as defined in K.S.A. 21-3408 and amendments thereto, any attendant while engaged in the performance of such attendant's duties, or

(2) knowingly and intentionally obstructing, interfering with or impeding the efforts of any attendant to reach the location of an emergency.

(b) As used in this section, "attendant" shall have the meaning ascribed to such term under K.S.A. 65-6112 and amendments thereto.

(c) Unlawful interference with an emergency medical services attendant is a class B person misdemeanor.

(d) This section shall be part of and supplemental to the Kansas criminal code.

(d) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for assault or battery.
Comment

K.S.A. 21-3444. As this is a general intent offense, the term “intentionally” is removed. The phrase “molesting or assaulting, as defined in 21-34-301(a)(1) and amendments thereto,” is removed to avoid a statutory conflict with the assault statute. Subsection (d) is added to allow simultaneous prosecution for assault or battery.
# Article 43

## Crimes Against the Public Morals

### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4301; 21-4301a</td>
<td>Promoting obscenity; promoting obscenity to minors</td>
<td>21-43-101</td>
</tr>
<tr>
<td>21-4301a</td>
<td>Promoting obscenity to minors</td>
<td>21-43-102</td>
</tr>
<tr>
<td>21-4301b</td>
<td>Severability</td>
<td>21-43-103</td>
</tr>
<tr>
<td>21-4301c</td>
<td>Promotion to minors of obscenity harmful to minors</td>
<td>21-43-104</td>
</tr>
</tbody>
</table>

### Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4302</td>
<td>Gambling; definitions</td>
<td>21-43-201</td>
</tr>
<tr>
<td>21-4303</td>
<td>Gambling</td>
<td>21-43-202</td>
</tr>
<tr>
<td>21-4303a</td>
<td>Illegal bingo operation</td>
<td>21-43-203</td>
</tr>
<tr>
<td>21-4304; 21-4305</td>
<td>Commercial gambling</td>
<td>21-43-204</td>
</tr>
<tr>
<td>21-4305</td>
<td>Permitting premises to be used for commercial gambling</td>
<td>21-43-205</td>
</tr>
<tr>
<td>21-4306</td>
<td>Dealing in gambling devices</td>
<td>21-43-206</td>
</tr>
<tr>
<td>21-4307</td>
<td>Possession of a gambling device</td>
<td>21-43-207</td>
</tr>
<tr>
<td>21-4308</td>
<td>Installing communication facilities for gamblers</td>
<td>21-43-208</td>
</tr>
<tr>
<td>21-4309</td>
<td>False membership claim</td>
<td>21-43-209</td>
</tr>
</tbody>
</table>

### Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4313</td>
<td>Definitions</td>
<td>21-43-300</td>
</tr>
<tr>
<td>21-4310; 21-4311; 21-3727</td>
<td>Cruelty to animals; custody of animal; disposition; damages for killing, when; expenses of care assessed owner, when; duty of county or district attorney</td>
<td>21-43-301</td>
</tr>
<tr>
<td>Current K.S.A. Number</td>
<td>Title</td>
<td>KCCRC Section Number</td>
</tr>
<tr>
<td>----------------------</td>
<td>--------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>21-3512</td>
<td>Prostitution</td>
<td>21-43-401</td>
</tr>
<tr>
<td>21-3513</td>
<td>Promoting prostitution</td>
<td>21-43-402</td>
</tr>
<tr>
<td>21-3515</td>
<td>Patronizing a prostitute</td>
<td>21-43-403</td>
</tr>
<tr>
<td>21-3521</td>
<td>Severability clause</td>
<td>21-43-404</td>
</tr>
</tbody>
</table>
21-43-101. Promoting obscenity; promoting obscenity to minors.

(a) Promoting obscenity is knowingly or recklessly:

(1) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device;

(2) Possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material or obscene device;

(3) 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 obscene device; or

(4) Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(b) Promoting obscenity to minors is promoting obscenity, as defined by subsection (a), where a recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.

(c) (1) Promoting obscenity is a class A nonperson misdemeanor on conviction of a first offense.

(2) Promoting obscenity to minors is a class A nonperson misdemeanor on conviction of a first offense.

(3) Promoting obscenity is a severity level 9, person felony on conviction of a second or subsequent offense.

(4) Promoting obscenity to minors is a severity level 8, person felony on conviction of a second or subsequent offense.

(5) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity or promoting obscenity to minors shall be considered a conviction of promoting obscenity or promoting obscenity to minors for the purpose of determining the number of prior convictions and the classification of the crime under this section.
Upon any conviction of promoting obscenity or promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed $50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance.

Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:

or

(2) the person is not a wholesaler and promotes the materials or devices in the course of the person's business.

Any material or performance is "obscene" if:

(A) The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;

(B) the average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of (i) ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy, or (ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and

(C) taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value.

"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.

"Obscene device" means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.

"Performance" means any play, motion picture, dance or other exhibition performed before an audience.
"Sexual intercourse" and "sodomy" have the meanings provided by K.S.A. 21-3501 and amendments thereto.

"Wholesaler" means a person who sells, distributes or offers for sale or distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.

(g) It is a defense to a prosecution for obscenity that promoting obscenity and promoting obscenity to minors:

(1) The persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;

(2) the defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or

(3) the allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

(h) Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:

(1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.

(2) The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
(3) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(i) The provisions of this section and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.

Comment

This section merges K.S.A. 21-4301 and K.S.A. 21-4301a. In light of the lesser degree of culpability required by recklessness, the term “knowingly” is removed as unnecessary. The terms “issue,” “sell,” “give,” “provide,” “lend,” “deliver,” and “transfer” are removed as they are duplicative of the term “distribute.” Changes are made to the format to add clarity.

21-43-102

21-43-102. Promoting obscenity to minors. (a) Promoting obscenity to minors is promoting obscenity, as defined by K.S.A. 21-4301 and amendments thereto, where the recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.

— (b) Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section that:

— (1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.

— (2) The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.

— (3) The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

— (4) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

— (c) (1) Promoting obscenity to minors is a class A nonperson misdemeanor on conviction of the first offense.
— (2) Promoting obscenity to minors is a severity level 8, person felony on conviction of a second or subsequent offense.

— (3) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity to minors shall be considered a conviction of promoting obscenity to minors for the purpose of determining the number of prior convictions and the classification of the crime under this section.

— (d) Upon any conviction of promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed $50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such conviction, the defendant shall forfeit the recognizance.

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

Comment

This section merges K.S.A. 21-4301a into 21-43-101.

21-43-103

21-43-103. Severability of 21-43-101, 21-4301a. If any provision of this act is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

Comment

This section deletes K.S.A. 21-4301b in lieu of the general severability provision in Article 31.

21-43-104

21-43-104. Promotion to minors of obscenity harmful to minors.

(a) No person having custody, control or supervision of any commercial establishment shall knowingly:

(1) Display any material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device;

(2) Sell, furnish, present or distribute or disseminate to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or
(3) present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

(b) Violation of subsection (a) is a class B nonperson misdemeanor.

(c) Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section that:

(1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.

(2) The defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.

(3) An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.

(4) With respect to a prosecution for an act described by subsection (a)(1), the allegedly harmful material was kept behind blinder racks.

(5) With respect to a prosecution for an act described by subsection (a)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.

(6) With respect to a prosecution for an act described by subsection (a)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) As used in this section:

(1) "Blinder rack" means a device in which material is displayed in such a manner that the lower 2/3 of the material is not exposed to view.

(2) "Harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or
performance, taken as a whole or, with respect to a prosecution for an act described by subsection (a)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:

(A) The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;

(B) the average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) a reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors.

(3) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape.

(4) "Minor" means any unmarried person under 18 years of age.

(5) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement.

(6) "Performance" means any motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.

(7) "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(8) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.
(9) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) The provisions of this act shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting, distributing or disseminating such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.

(f) If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(g) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section incorporates K.S.A. 21-4301c. The terms "sell," "furnish," and "disseminate" are removed as they are duplicative of the term "distribute."

21-43-201. Gambling; definitions.

(a) "Bet" means 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:

(1) 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;

(2) 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;

(3) a lottery as defined in this section;
(4) any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;

(5) a lottery operated by the state pursuant to the Kansas lottery act;

(6) any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(7) tribal gaming.

(b) "Lottery" means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include:

(1) A lottery operated by the state pursuant to the Kansas lottery act; or

(2) tribal gaming.

(c) "Consideration" means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

As used in this subsection, consideration does not include:

(1) Sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701 and amendments thereto;

(2) sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas lottery act;
Article 3

(3) sums of money paid by or for participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(4) sums of money paid by or for a person to participate in tribal gaming.

(d) (1) "Gambling device" means:

(A) Any so-called "slot machine" or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and (i) which when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

(B) any other machine, mechanical device, electronic device or other contrivance (including, but not limited to, roulette wheels and similar devices) which is equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and (i) which when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

(C) any subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or

(D) 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.

(2) Gambling device does not include:

(A) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery...
retailers as authorized by law and rules and regulations adopted by
the Kansas lottery commission;

(B) any machine, mechanical device, electronic device or other
contrivance, such as a coin-operated bowling alley, shuffleboard,
marble machine (a so-called pinball machine), or mechanical gun,
which is not designed and manufactured primarily for use in
connection with gambling, and (i) which when operated does not
deliver, as a result of chance, any money, or (ii) by the operation of
which a person may not become entitled to receive, as the result of
the application of an element of chance, any money;

(C) any so-called claw, crane, or digger machine and similar devices
which are designed and manufactured primarily for use at carnivals
or county or state fairs; or

(D) any machine, mechanical device, electronic device or other
contrivance used in tribal gaming.

(e) 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.

(f) "Tribal gaming" has the meaning provided by K.S.A. 74-9802 and amendments
thereto.

(g) "Tribal gaming commission" has the meaning provided by K.S.A. 74-9802 and
amendments thereto.

Comment
This section incorporates K.S.A. 21-4302. No change is recommended.
(2) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

(b) Gambling is a class B nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-4303. No change is recommended.

21-43-203

21-43-203. Illegal bingo operation.

(a) Illegal bingo operation is the knowing management, operation or conduct of games of bingo in violation of the laws of the state of Kansas pertaining to the regulation, licensing and taxing of games of bingo or rules and regulations adopted pursuant thereto.

(b) Illegal bingo operation is a class A nonperson misdemeanor.

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

Comment

This section incorporates K.S.A. 21-4303a. The Commission recommends moving this statute to the bingo act in Chapter 79.

21-43-204

21-43-204. Commercial gambling.

(a) Commercial gambling is knowingly:

(1) (A) Operating or receiving all or part of the earnings of a gambling place;

(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;

(C) For gain, becoming a custodian of anything of value bet or offered to be bet;

(D) Conducting a lottery, or with intent to conduct a lottery possessing facilities to do so;
(E) Setting up for use or collecting the proceeds of any gambling device

(2) (A) Intentionally granting the use or allowing the continued use of a place as a gambling place; or

(B) Intentionally permitting another to set up a gambling device for use in a place under the offender's control.

(b) (1) Commercial gambling as defined in subsection (a)(1) is a severity level 8, nonperson felony.

(2) Commercial gambling as defined in subsection (a)(2) is a class B nonperson misdemeanor.

Comment

This section merges K.S.A. 21-4304 and 21-4305. As this is a general intent offense, the term “intentionally” is removed and the term “knowingly” is added.

21-43-205

21-43-205. 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 nonperson misdemeanor.

Comment

This section merges K.S.A. 21-4305 into 21-43-205.

21-43-206


(a) Dealing in gambling devices is manufacturing, transferring or possessing with intent to transfer distribute any gambling device or sub-assembly or essential part thereof.

(b) Dealing in gambling devices is a severity level 8, nonperson felony.

(c) Proof of possession of any device designed exclusively for gambling purposes, which device is not set up for use or which is not in a gambling place, creates a presumption of possession with intent to transfer distribute.
(d) It shall be a defense to a prosecution under this section that:

(1) the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950; or

(2) the gambling device or sub-assembly or essential part thereof is manufactured, transferred or possessed by a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to transfer distribute for use:

(A) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(B) by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;

(C) in a state other than the state of Kansas; or

(D) in tribal gaming.

Comment

This section incorporates K.S.A. 21-4306. The term “transfer” is replaced with the term “distribute” in order to be consistent with other statutes and because it has the same meaning.
defendant's possession. A slot machine shall be deemed an antique slot
machine if it was manufactured prior to the year 1950.

(2) the gambling device is possessed or under custody or control of a
manufacturer registered under the federal gambling devices act of 1962 (15
U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer
with intent to transfer distribute for use:

(A) By the Kansas lottery or Kansas lottery retailers as authorized by law
and rules and regulations adopted by the Kansas lottery commission;

(B) by a licensee of the Kansas racing commission as authorized by law
and rules and regulations adopted by the commission;

(C) in a state other than the state of Kansas; or

(D) in tribal gaming.

Comment

This section incorporates K.S.A. 21-4307. The term “transfer” is replaced with the term
“distribute” in order to be consistent with other statutes and because it has the same
meaning. Changes are made to the format to add clarity.

21-43-208

21-43-208. Installing communication facilities for gamblers.

(a) Installing communication facilities for gamblers is:

(1) Installing communication facilities in a place known to the installer to be a
gambling place which the person who installs the facilities knows is a
gambling place;

(2) 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

(3) allowing the continued use of communication facilities knowing that such
facilities are being used principally for the purpose of transmitting
information to be used in making or settling bets.

(b) Installing communications facilities for gamblers is a severity level 8, nonperson
felony.
(c) (1) When any public utility providing telephone communications service is notified in writing by a state or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used principally for the purpose of transmitting or receiving gambling information, it shall discontinue or refuse the furnishing service to such facility, after reasonable notice to the subscriber. No damages, penalty or forfeiture, civil or criminal, shall be found against any such public utility for any act done in compliance with any notice received from a law enforcement agency.

(2) Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a court of competent jurisdiction, that such facility should not be discontinued or removed, or should be restored.

Comment

This section incorporates K.S.A. 21-4308. Subsection (a) is reworded to add clarity.

21-43-209

21-43-209. False membership claim.

(a) A false membership claim is knowingly and falsely representing oneself to be a member of a fraternal or veteran's organization.

(b) False membership claim is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-4309. As this is a general intent offense, the term "knowingly" is added. The Commission recommends eliminating this offense. Please see volume two of the Commission's final report.

21-43-300

21-43-300. Definitions. As used in this act, unless the context otherwise requires;

(a) "Animal" means every living vertebrate except a human being.

(b) "Farm animal" means an animal raised on a farm or ranch and used or intended for use as food or fiber.

(c) "Retailer" means a person regularly engaged in the business of selling tangible personal property, services or entertainment for use or consumption and not for resale.
(d) "Wild animal" means a living mammal or marsupial which is normally found in the wild state, but shall not include a farm animal.

(e) "Domestic pet" means any domesticated animal which is kept for pleasure rather than utility.

Comment

This section incorporates K.S.A. 21-4313. No change is recommended.

21-43-301

21-43-301. Cruelty to animals; custody of animal; disposition; damages for killing, when; expenses of care assessed owner, when; duty of county or district attorney.

(a) Cruelty to animals is:

(1) Intentionally knowingly and maliciously killing, injuring, maiming, torturing, burning or mutilating any animal;

(2) intentionally knowingly abandoning or leaving any animal in any place without making provisions for its proper care;

(3) having physical custody of any animal and intentionally knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal;

(4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;

(5) intentionally knowingly but not maliciously killing or injuring any animal causing any physical injury other than the acts described in subsection (a)(1).

(6) Administering any poison to any domestic animal

(b) (1) Cruelty to animals as described in subsection (a)(1) and (a)(6) is a nonperson felony. Upon conviction of this subsection, a person shall be sentenced to not less than 30 days or more than one year's imprisonment and be fined not less than $500 nor more than $5,000. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. During the mandatory 30 days imprisonment, such
offender shall have a psychological evaluation prepared for the court to
assist the court in determining conditions of probation or parole. Such
conditions shall include, but not be limited to, the completion of an anger
management program.

(2) The first conviction of cruelty to animals as described in subsection (a)(2),
(a)(3), (a)(4) and (a)(5) is a class A nonperson misdemeanor. The second or
subsequent conviction of cruelty to animals as described in subsection (a)(2),
(a)(3), (a)(4) and (a)(5) is a non-person felony. Upon such conviction, a
person shall be sentenced to not less than five days or more than one year’s
imprisonment and be fined not less than $500 nor more than $2,500. The
person convicted shall not be eligible for release on probation, suspension or
reduction of sentence or parole until the person has served the minimum
mandatory sentence as provided herein.

(b) (c) The provisions of this section shall not apply to:

(1) Normal or accepted veterinary practices;

(2) bona fide experiments carried on by commonly recognized research
facilities;

(3) killing, attempting to kill, trapping, catching or taking of any animal in
accordance with the provisions of chapter 32 or chapter 47 of the Kansas
Statutes Annotated;

(4) rodeo practices accepted by the rodeo cowboys' association;

(5) the humane killing of an animal which is diseased or disabled beyond
recovery for any useful purpose, or the humane killing of animals for
population control, by the owner thereof or the agent of such owner residing
outside of a city or the owner thereof within a city if no animal shelter,
pound or licensed veterinarian is within the city, or by a licensed
veterinarian at the request of the owner thereof, or by any officer or agent
of an incorporated humane society, the operator of an animal shelter or
pound, a local or state health officer or a licensed veterinarian three
business days following the receipt of any such animal at such society,
shelter or pound;

(6) with respect to farm animals, normal or accepted practices of animal
husbandry, including the normal and accepted practices for the slaughter of
such animals for food or by-products and the careful or thrifty management
of one's herd or animals, including animal care practices common in the
industry or region;
(7) the killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;

(8) an animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;

(9) laying an equine down for medical or identification purposes;

(10) normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or

(11) accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.

(d) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, as defined in this section K.S.A. 21-4310 and amendments thereto. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of this section K.S.A. 21-4310 and amendments thereto, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the animal for adoption or euthanize the animal at any time after 20 days after the owner or custodian is notified or, if the owner or custodian is not known or reasonably ascertainable after 20 days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the county clerk of the county where the animal is being held, in an amount equal to not less than the cost of care and treatment of the animal for 30 days. Upon receiving such petition, the court shall determine whether the animal may be placed for adoption or euthanized. The board of county commissioners in the county where the animal was taken into custody shall review the cost of care and treatment being charged by the animal shelter maintaining the animal.
(e) Subsection (a)(6) shall not apply to any person exposing poison upon their premises for the purpose of destroying wolves, coyotes or other predatory animals.

(f) The owner or custodian of an animal placed for adoption or killed pursuant to subsection (d) shall not be entitled to recover damages for the placement or killing of such animal unless the owner proves that such placement or killing was unwarranted.

(f) Expenses incurred for the care, treatment or boarding of any animal, taken into custody pursuant to subsection (d), pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime.

(g) Upon the filing of a sworn complaint by any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility alleging the commission of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto, the county or district attorney shall determine the validity of the complaint and shall forthwith file charges for the crime if the complaint appears to be valid.

(h) If a person is adjudicated guilty of the crime of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.

(i) As used in this section:

(1) "Equine" means a horse, pony, mule, jenny, donkey or hinny.

(2) "Maliciously" means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse.

(3) "Animal" shall have the meaning ascribed to it in K.S.A. 21-4313, and amendments thereto.
(2) The first conviction of cruelty to animals as described in subsection (a)(2), (a)(3), (a)(4) and (a)(5) is a class A non-person misdemeanor. The second or subsequent conviction of cruelty to animals as described in subsection (a)(2), (a)(3), (a)(4) and (a)(5) is a non-person felony. Upon such conviction, a person shall be sentenced to not less than five days or more than one year's imprisonment and be fined not less than $500 nor more than $2,500.

(e) For purposes of this section, "animal" shall have the meaning ascribed to it in K.S.A. 21-4313, and amendments thereto.

Comment

This section merges K.S.A. 21-4310, 21-4311, and 21-3727. Subsection (a)(6) is added from K.S.A. 21-3727. In order to avoid creating offenses with identical elements, subsection (a)(1) is defined as knowing and malicious conduct; subsection (a)(5) is defined as knowing but not malicious conduct. The term malice remains intact in this offense as it is specifically defined.

The new language in (b)(1) and (2) is added to clarify the legislative intent that 30 day sentence is mandatory. Under current case law, without such language an offender may be sentenced to probation without serving the 30 days sentence.

The Commission recommends eliminating the provisions that requires prosecutors to bring charges under this statute in subsection (g). Please see volume two of the Commission’s final report.

21-43-302

21-43-302. Same; custody of animal; disposition; damages for killing, when; expenses of care assessed owner, when; duty of county or district attorney. (a) Any public health officer, law enforcement officer, licensed veterinarian or officer or agent of any incorporated humane society, animal shelter or other appropriate facility may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, as defined in K.S.A. 21-4310 and amendments thereto. Such officer, agent or veterinarian may inspect, care for or treat such animal or place such animal in the care of a duly incorporated humane society or licensed veterinarian, for treatment, boarding or other care or, if an officer of such humane society or such veterinarian determines that the animal appears to be diseased or disabled beyond recovery for any useful purpose, for humane killing. If the animal is placed in the care of an animal shelter, the animal shelter shall notify the owner or custodian, if known or reasonably ascertainable. If the owner or custodian is charged with a violation of K.S.A. 21-4310, and amendments thereto, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the animal for adoption or euthanize the animal at any time after 20 days after the owner or custodian is notified or, if the owner or custodian is not known or reasonably ascertainable after 20 days after the animal is taken into custody, unless the owner or custodian of the animal files a renewable cash or performance bond with the
county clerk of the county where the animal is being held, in an amount equal to not less
than the cost of care and treatment of the animal for 30 days. Upon receiving such petition,
the court shall determine whether the animal may be placed for adoption or euthanized.
The board of county commissioners in the county where the animal was taken into custody
shall review the cost of care and treatment being charged by the animal shelter maintaining
the animal.

— (b) The owner or custodian of an animal placed for adoption or killed pursuant to
subsection (a) shall not be entitled to recover damages for the placement or killing of such
animal unless the owner proves that such placement or killing was unwarranted.

— (c) Expenses incurred for the care, treatment or boarding of any animal, taken into
custody pursuant to subsection (a), pending prosecution of the owner or custodian of such
animal for the crime of cruelty to animals, as defined in K.S.A. 21-4310 and amendments
thereto, shall be assessed to the owner or custodian as a cost of the case if the owner or
custodian is adjudicated guilty of such crime.

— (d) Upon the filing of a sworn complaint by any public health officer, law enforcement
officer, licensed veterinarian or officer or agent of any incorporated humane society, animal
shelter or other appropriate facility alleging the commission of cruelty to animals, as defined
in K.S.A. 21-4310 and amendments thereto, the county or district attorney shall determine
the validity of the complaint and shall forthwith file charges for the crime if the complaint
appears to be valid.

— (e) If a person is adjudicated guilty of the crime of cruelty to animals, as defined in K.S.A.
21-4310 and amendments thereto, and the court having jurisdiction is satisfied that an
animal owned or possessed by such person would be in the future subjected to such crime,
such animal shall not be returned to or remain with such person. Such animal may be turned
over to a duly incorporated humane society or licensed veterinarian for sale or other
disposition.

Comment
This section merges K.S.A. 21-4311 into 21-43-301.

21-43-303. Unlawful disposition of animals. (1)

(a) Unlawful disposition of animals is knowingly raffling, giving as a prize or premium or
using as an advertising device or promotional display living rabbits or chickens,
ducklings or goslings, but shall not include the giving of such animals to minors for
use in agricultural projects under the supervision of commonly recognized youth
farm organizations.

(2) (b) Unlawful disposition of animals is a class C misdemeanor.
(c) Unlawful disposition of animals as defined in subsection (a) shall not include the giving of such animals to minors for use in agricultural projects under the supervision of commonly recognized youth farm organizations.

Comment

This section incorporates K.S.A. 21-4312. As this is a general intent offense, the term “knowingly” is added. Changes to the format are made to add clarity. The Commission recommends revising this offense to eliminate the provisions regarding use of an animal as an advertising device or promotional display. Please see volume two of the Commission’s final report.

21-43-304

21-43-304. Definitions. As used in this act [*], unless the context otherwise requires;
—(1) “Animal” means every living vertebrate except a human being.
—(2) “Farm animal” means an animal raised on a farm or ranch and used or intended for use as food or fiber.
—(3) “Retailer” means a person regularly engaged in the business of selling tangible personal property, services or entertainment for use or consumption and not for resale.
—(4) “Wild animal” means a living mammal or marsupial which is normally found in the wild state, but shall not include a farm animal.
—(5) “Domestic pet” means any domesticated animal which is kept for pleasure rather than utility.

Comment

This section merges K.S.A. 21-4313 into 21-43-300.

21-43-305

21-43-305. Sections part of criminal code. K.S.A. 21-4311, 21-4312 and 21-4313 shall be supplemental to and a part of the Kansas criminal code.

Comment

This section eliminates K.S.A. 21-4314 as unnecessary.

21-43-306

21-43-306. Unlawful conduct of dog fighting; unlawful possession of dog fighting paraphernalia; attending the unlawful conduct of dog fighting.

(a) Unlawful conduct of dog fighting is:
(1) Causing, for amusement or gain, any dog to fight with or injure another dog,

(2) knowingly permitting such fighting or injuring on premises under one’s ownership, charge or control, or

(3) training, owning, keeping, transporting or selling any dog for the purpose or with the intent of having it fight with or injure another dog.

(b) Unlawful possession of dog fighting paraphernalia is possession, with the intent to use in the unlawful conduct of dog fighting, any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia, together with evidence that the paraphernalia that is being used or is intended for use in the unlawful conduct of dog fighting.

(c) Unlawful attendance of dog fighting is, entering or remaining on the premises where the unlawful conduct of dog fighting is occurring, whether the person knows or has reason to know that dog fighting is occurring on the premises.

(d) Unlawful conduct of dog fighting is a severity level 10, nonperson felony.

(e) Unlawful possession of dog fighting paraphernalia is a class A nonperson misdemeanor.

(f) Unlawful attendance of dog fighting is a class B nonperson misdemeanor.

(g) This section and K.S.A. 21-4316 and 21-4317, and amendments thereto, shall be part of and supplemental to the Kansas criminal code.

(g) When a person is arrested under K.S.A. 21-4315 and amendments thereto, this section a law enforcement agency may take into custody any dog on the premises where the dog fight is alleged to have occurred and any dog owned or kept on the premises of any person arrested for unlawful conduct of dog fighting, unlawful attendance of dog fighting, or unlawful possession of dog fighting paraphernalia under K.S.A. 21-4315, and amendments thereto.

(h) When a law enforcement agency takes custody of a dog under this section, such agency may place the dog in the care of a duly incorporated humane society or licensed veterinarian for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is diseased or disabled beyond recovery for any useful purpose, such dog may be humanely killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian determines it to be in the best interest of the dog, other animals at the animal shelter or personnel of the animal shelter. If the dog is placed in the care of an animal shelter, the board of county commissioners in the county where the animal was taken into custody shall establish and approve procedures whereby the animal shelter may petition the district court to be allowed to place the dog for adoption or euthanize the dog at any time after 20 days after the
1. dog is taken into custody, unless the owner or custodian of the dog files a renewable
2. cash or performance bond with the county clerk of the county where the dog is being
3. held, in an amount equal to not less than the cost of care and treatment of the dog for
4. 30 days. Upon receiving such petition, the court shall determine whether the dog may
5. be placed for adoption or euthanized. The board of county commissioners in the
6. county where the animal was taken into custody shall review the cost of care and
7. treatment being charged by the animal shelter maintaining the animal. Except as
8. provided in subsection (i), if it appears to the licensed veterinarian by physical
9. examination that the dog has not been trained for aggressive conduct or is a type of
10. dog that is not commonly bred or trained for aggressive conduct, the district or county
11. attorney shall order that the dog be returned to its owner when the dog is not needed
12. as evidence in a case filed under K.S.A. 21-4315 this section or K.S.A. 21-4310, and
13. amendments thereto. The owner or keeper of a dog placed for adoption or humanely
14. killed under this subsection (b) shall not be entitled to damages unless the owner or
15. keeper proves that such placement or killing was unwarranted.

16 (i) If a person is convicted of unlawful conduct of dog fighting unlawful attendance of
17. dog fighting or unlawful possession of dog fighting paraphernalia under K.S.A. 21-
18. 4315, and amendments thereto, a dog taken into custody pursuant to subsection (g)
19. shall not be returned to such person and the court shall order the owner or keeper to
20. pay to the animal shelter all expenses incurred for the care, treatment and boarding of
21. such dog, including any damages caused by such dog, prior to conviction of the owner
22. or keeper. Disposition of such dog shall be in accordance with K.S.A. 21-4311, and
23. amendments thereto. If no such conviction results, the dog shall be returned to the
24. owner or keeper and the court shall order the county where the dog was taken into
25. custody to pay to the animal shelter all expenses incurred by the shelter for the care,
26. treatment and boarding of such dog, including any damages caused by such dog, prior
27. to its return.

28 (j) A person who violates the provisions of this section may also be prosecuted for,
29. convicted of, and punished for cruelty to animals.

Comment

This section merges K.S.A. 21-4315 and 21-4316. The phrase “with the intent to use in the
unlawful conduct of dog fighting” is added to subsection (b) to clarity the intent required. The
phrase “whether the person knows or has reason to know that dog fighting is occurring on the
premises” is added to subsection (c) to clarity that attendance at a dog fight is a strict liability
offense. Subsection (j) is added to allow dual prosecution for this offense and cruelty to
animals.

21-43-307

21-43-307. Same; disposition of dogs; assessment of expenses of care. (a) When a person is
arrested under K.S.A. 21-4315 and amendments thereto, a law enforcement agency may take
Article 3

1. into custody any dog on the premises where the dog fight is alleged to have occurred and any
dog owned or kept on the premises of any person arrested for unlawful conduct of dog
fighting, unlawful attendance of dog fighting, or unlawful possession of dog fighting
paraphernalia under K.S.A. 21-4315, and amendments thereto.
(b) When a law enforcement agency takes custody of a dog under this section, such agency
may place the dog in the care of a duly incorporated humane society or licensed veterinarian
for boarding, treatment or other care. If it appears to a licensed veterinarian that the dog is
diseased or disabled beyond recovery for any useful purpose, such dog may be humanely
killed. The dog may be sedated, isolated or restrained if such officer, agent or veterinarian
determines it to be in the best interest of the dog, other animals at the animal shelter or
personnel of the animal shelter. If the dog is placed in the care of an animal shelter, the board
of county commissioners in the county where the animal was taken into custody shall
establish and approve procedures whereby the animal shelter may petition the district court
to be allowed to place the dog for adoption or euthanize the dog at any time after 20 days
after the dog is taken into custody, unless the owner or custodian of the dog files a renewable
cash or performance bond with the county clerk of the county where the dog is being held, in
an amount equal to not less than the cost of care and treatment of the dog for 30 days. Upon
receiving such petition, the court shall determine whether the dog may be placed for adoption
or euthanized. The board of county commissioners in the county where the animal was taken
into custody shall review the cost of care and treatment being charged by the animal shelter
maintaining the animal. Except as provided in subsection (c), if it appears to the licensed
veterinarian by physical examination that the dog has not been trained for aggressive conduct
or is a type of dog that is not commonly bred or trained for aggressive conduct, the district or
county attorney shall order that the dog be returned to its owner when the dog is not needed
as evidence in a case filed under K.S.A. 21-4315 or 21-4310, and amendments thereto. The
owner or keeper of a dog placed for adoption or humanely killed under this subsection (b)
shall not be entitled to damages unless the owner or keeper proves that such placement or
killing was unwarranted.
(c) If a person is convicted of unlawful conduct of dog fighting unlawful attendance of dog
fighting or unlawful possession of dog fighting paraphernalia under K.S.A. 21-4315, and
amendments thereto, a dog taken into custody pursuant to subsection (a) shall not be
returned to such person and the court shall order the owner or keeper to pay to the animal
shelter all expenses incurred for the care, treatment and boarding of such dog, including any
damages caused by such dog, prior to conviction of the owner or keeper. Disposition of such
dog shall be in accordance with K.S.A. 21-4311, and amendments thereto. If no such
conviction results, the dog shall be returned to the owner or keeper and the court shall order
the county where the dog was taken into custody to pay to the animal shelter all expenses
incurred by the shelter for the care, treatment and boarding of such dog, including any
damages caused by such dog, prior to its return.

Comment

This section merges K.S.A. 21-4316 into 21-43-306.
21-43-308. Illegal ownership or keeping of an animal.

(a) Illegal ownership or keeping of an animal is, with no requirement of a culpable mental state, owning, or keeping on one's premises, an animal by a person convicted of unlawful conduct of dog fighting under K.S.A. 21-4315, and amendments thereto, or cruelty to animals as defined in subsection (a)(1) of K.S.A. 21-4310, and amendments thereto, within five years of the date of such conviction.

(b) Illegal ownership or keeping of an animal is a class B nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-4317. The phrase “with no requirement of a culpable mental state” is added to clarify that this is a strict liability offense.

21-43-309. Harming or killing certain dogs.

(a) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is knowingly and intentionally, and without lawful cause or justification poisoning, inflicting great bodily harm, permanent disability or death, upon a police dog, arson dog, assistance dog, game warden dog or search and rescue dog.

(b) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is a nonperson felony. Upon conviction of this subsection, a person shall be sentenced to not less than 30 days or more than one year's imprisonment and be fined not less than $500 nor more than $5,000. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program.

(b) (c) As used in this section:

(1) "Arson dog" means any dog which is owned, or the service of which is employed, by the state fire marshal or a fire department for the principal purpose of aiding in the detection of liquid accelerants in the investigation of fires.

(2) "Assistance dog" has the meaning provided by K.S.A. 2007 Supp. 39-1113, and amendments thereto.
"Fire department" means a public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district.

"Game warden dog" means any dog which is owned, or the service of which is employed, by the department of wildlife and parks for the purpose of aiding in detection of criminal activity, enforcement of laws, apprehension of offenders or location of persons or wildlife.

"Police dog" means any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders.

"Search and rescue dog" means any dog which is owned or the service of which is employed, by a law enforcement or emergency response agency for the purpose of aiding in the location of persons missing in disasters or other times of need.

(c) Inflicting harm, disability or death to a police dog, arson dog, assistance dog, game warden dog or search and rescue dog is a nonperson felony. Upon conviction of this subsection, a person shall be sentenced to not less than 30 days or more than one year’s imprisonment and be fined not less than $500 nor more than $5,000. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Comment

This section incorporates K.S.A. 21-4318. Changes to the format are made to add clarity.
(2) knowingly permitting such fighting or injuring on premises under one’s
ownership, charge or control; or

(3) training, grooming, preparing or medicating any gamecock for the purpose of
with the intent of having it fight with or injure or kill another gamecock.

(b) Unlawful possession of cockfighting paraphernalia is possession of spurs, gaffs,
swords, leather training spur covers or anything worn by a gamecock during a fight to
further the killing power of such gamecock.

(c) Unlawful attendance of cockfighting is entering or remaining on the premises where
the unlawful conduct of cockfighting is occurring, whether or not the person knows or
has reason to know that cockfighting is occurring on the premises.

(d) Unlawful conduct of cockfighting is a level 10 nonperson felony.

(e) Unlawful possession of cockfighting paraphernalia is a class A nonperson
misdemeanor.

(f) Unlawful attendance of cockfighting is a class B nonperson misdemeanor.

(g) As used in this section, “gamecock” means a domesticated fowl that is bred, reared or
trained for the purpose of fighting with other fowl.

(h) A person who violates the provisions of this section may also be prosecuted for,
convicted of, and punished for cruelty to animals.

(h) The provisions of this section shall be part of and supplemental to the Kansas criminal
code.

Comment

This section incorporates K.S.A. 21-4319. The phrase “whether or not the person knows or has
reason to know that cockfighting is occurring on the premises” is added to clarity that
attendance at a cock fight is a strict liability offense. Subsection (h) is added to allow dual
prosecution for this offense and cruelty to animals.
exposing any poisonous substance with the intent that the same shall be taken or swallowed by any domestic animal; or

killing, maiming or wounding any domestic animal of another without the consent of the owner.

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

Injury to a domestic animal is a class A nonperson misdemeanor.

This section merges 21-3727 into 21-43-301.

Prostitution.

(a) Prostitution is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

(1) Sexual intercourse;

(2) sodomy; or

(3) manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

(b) Prostitution is a class B nonperson misdemeanor.

This section incorporates K.S.A. 21-3512. No change is recommended.

Promoting prostitution.

(a) Promoting prostitution is knowingly:

(1) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance, or management thereof;
(2) permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;

(3) procuring a prostitute for a house of prostitution;

(4) inducing another to become a prostitute;

(5) soliciting a patron for a prostitute or for a house of prostitution;

(6) procuring a prostitute for a patron;

(7) 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

(8) being employed to perform any act which is prohibited by this section.

(b) (1) Except as provided in paragraph (2), promoting prostitution is a class A person misdemeanor when the prostitute is 16 or more years of age.

(2) Promoting prostitution when the prostitute is 16 or more years of age is a severity level 7, person felony if committed by a person who has, prior to the commission of the crime, been convicted of promoting prostitution.

(3) Except as provided in paragraph (4), promoting prostitution is a severity level 6, person felony when the prostitute is under 16 years of age.

(4) Promoting prostitution is an off-grid person felony when the offender is 18 years of age or older and the prostitute is less than 14 years of age.

Comment

This section incorporates K.S.A. 21-3513. As this is a general intent offense, the term “knowingly” is added.
(2) knowingly hiring a prostitute to engage in sexual intercourse, sodomy or any unlawful sexual act.

(b) Patronizing a prostitute is a class C misdemeanor.

Comment

This section incorporates K.S.A. 21-3515. No change is recommended.

21-43-404

21-35-504. Severability clause. If any provision of this act is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

Comment

This section eliminates K.S.A. 21-3521 in lieu of the general severability clause in Article 31.
### Article 44

**Crimes Affecting Business**

**Section 1**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4401</td>
<td>Extortion</td>
<td>21-44-101</td>
</tr>
<tr>
<td>21-4402</td>
<td>Debt adjusting</td>
<td>21-44-102</td>
</tr>
<tr>
<td>21-4403</td>
<td>Deceptive commercial practice</td>
<td>21-44-103</td>
</tr>
<tr>
<td>21-4410</td>
<td>Equity skimming</td>
<td>21-44-104</td>
</tr>
<tr>
<td>21-4404</td>
<td>Tie-in magazine sale</td>
<td>21-44-105</td>
</tr>
</tbody>
</table>

**Section 2**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4405</td>
<td>Commercial bribery</td>
<td>21-44-201</td>
</tr>
<tr>
<td>21-4406; 21-4407</td>
<td>Sports bribery</td>
<td>21-44-202</td>
</tr>
<tr>
<td>21-4407</td>
<td>Receiving a sports bribe</td>
<td>21-44-203</td>
</tr>
<tr>
<td>21-4408</td>
<td>Tampering with a sports contest</td>
<td>21-44-204</td>
</tr>
</tbody>
</table>

**Section 3**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4409</td>
<td>Knowingly employing an alien illegally within the territory of the United States</td>
<td>21-44-301</td>
</tr>
</tbody>
</table>

(a) Racketeering Extortion is:

(1) intentionally and wrongfully demanding, soliciting or receiving anything of value from the owner, proprietor, or other person having a financial interest in a business, and

(2) 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;

(B) Cause the price of 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.

(b) Racketeering is a severity level 7, nonperson felony.

Comment

This section incorporates K.S.A. 21-4401. The term “wrongfully” is added to exempt legitimate acts from criminal liability. Such acts include demands made in the course of business or settlement negotiations. The name of the offense is changed to extortion because the nature of the offense is more clearly related to extortion than racketeering. The term “racketeering” might cause confusion because the federal racketeering offense requires a pattern or scheme and that is not an element of this offense.

21-44-102. Debt adjusting.

(a) Debt adjusting is knowingly 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.
(b) **Debt adjusting is a class B nonperson misdemeanor.**

(b) (c) The provisions of this act shall not apply to those situations involving debt adjusting, as defined here, which is incidental to the lawful practice of law in this state or to any person registered as a credit services organization under the Kansas credit services organization act.

---

**Comment**

This section incorporates K.S.A. 21-4402. As this is a general intent offense, the term knowingly is added.

### 21-44-103

21-44-103. **Deceptive commercial practice.**

(a) A deceptive commercial practice is the knowing act, use or employment by any person of any deception, fraud, false pretense, false promise, or knowing misrepresentation of a 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.

(b) **A deceptive commercial practice is a class B nonperson misdemeanor.**

(c) **It shall not be a defense to a charge of deceptive commercial practice that no person has in fact been misled, deceived or damaged thereby.**

(b) (d) The following definitions shall be applicable to this section:

(1) "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate or services.

(2) "Person" means any natural person, or his such person's 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.

(3) "Sale" means any sale, offer for sale, or attempt to sell any merchandise for any consideration.
(c) (e) 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 or purpose of the advertisement.

(d) A deceptive commercial practice is a class B nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-4403. The term knowingly is moved in subsection (a) to clarify that that culpability applies to the deception, fraud, false pretense, false promise, and misrepresentation elements. Subsection (c) is added to clarify that a false or deceptive practice need not succeed in order to create criminal liability.

21-44-104

21-44-104. Equity skimming.

(a) Equity skimming is, with the intent to defraud, intentionally engaging in a pattern or practice of: It shall be unlawful for any person who, with intent to defraud, willfully intentionally engages in a pattern or practice of:

1. Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including but not limited to an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage;

2. Failing to deliver to the holder of the mortgage before a sheriff’s sale or holder of the certificate of purchase during the period of redemption all rent proceeds received from rental of the property to the holder of the mortgage before a sheriff’s sale or holder of the certificate of purchase during the period of redemption, not to exceed the monthly payment of principal and interest required by the note and mortgage; and

3. Applying or authorizing the application of rents from such dwellings for such person’s own use.

(b) Violation of subsection (a) is a class A nonperson misdemeanor.

(c) Each purchase of a dwelling pursuant to subsection (a) shall be deemed a separate offense.

Comment
This section incorporates K.S.A. 21-4410. The format is changed to add clarity. The culpability term “willfully” is removed in lieu of the term “intentionally.”

21-44-105. Tie-in magazine sale.

(a) A tie-in magazine sale is a knowingly sale selling, offering for sale, or consigning 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.

(b) A tie-in magazine sale is a class B nonperson misdemeanor.

(b) (c) As used in this section:

(1) "Retailer" means a person who sells magazines or periodicals at retail;

(2) "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.

(3) "Sell," in addition to its ordinary meaning, means offer to sell, distribute, deliver or sell on consignment.

(c) A tie-in magazine sale is a class B nonperson misdemeanor.

Comment

This section incorporates K.S.A. 21-4404. As this is a general intent offense, the term “knowingly” is added.

21-44-201. Commercial bribery.

(a) 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:

(1) An agent or employee of another;

(2) A person acting in a fiduciary capacity;
(3) A lawyer, physician, accountant, appraiser or other professional adviser;  

(4) An officer, director, partner, manager, or other participant in the affairs of a corporation, partnership or unincorporated association; or  

(5) An arbitrator or other purportedly disinterested adjudicator or referee.  

(b) Commercial bribery is a severity level 8, nonperson felony.  

(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for theft.  

Comment  

This section incorporates K.S.A. 21-4405. Subsection (c) is added to clarify the relationship between this offense and theft. The Commission concluded that the legislature did not intent to supplant prosecution for theft when this offense may be charged.  

21-44-202  


(a) Sports bribery is:  

(1) Conferring, or offering or agreeing to confer, any benefit upon a sports participant with intent to influence such participant not to give such participant's best efforts in a sports contest; or  

(2) conferring or offering or agreeing to confer, any benefit upon a sports official with intent to influence such official to perform such official's duties improperly.  

(3) 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 such participant's best efforts in a sports contest; or  

(4) Accepting, agreeing to accept or soliciting by a sports official any benefit from another person upon an understanding that such official will perform such official's duties improperly.  

(b) (1) Sports bribery as defined in (a)(1) or (a)(2) is a severity level 9, nonperson felony.
(2) Sports bribery as defined in (a)(3) or (a)(4) is a class A nonperson misdemeanor.

(b) (c) The following definitions are applicable to this section and to K.S.A. 21-4407 and 21-4408 and amendments thereto.

(1) "Sports contest" means any professional or amateur sports or athletic game or contest viewed by the public.

(2) "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.

(3) "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.

(c) Sports bribery is a severity level 9, nonperson felony.

Comment

This section merges K.S.A. 21-4406 and 21-4407. Changes are made to the format to add clarity.

21-44-203

21-44-203. 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 such participant's 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 such official will perform such official's duties improperly.

— Receiving a sports bribe is a class A nonperson misdemeanor.

Comment

This section merges K.S.A. 21-4407 into 21-44-202.

21-44-204

21-44-204. Tampering with a sports contest.
(a) 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 known to be contrary to the rules and usages governing such contest and with intent to influence the outcome of such contest.

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

Comment
This section incorporates K.S.A. 21-4408. Changes are made to the format to add clarity.

21-44-301

21-44-301. Knowingly employing an alien illegally within the territory of the United States.

(a) Knowingly employing an alien illegally within the territory of the United States is the employment of such alien within the state of Kansas by an employer who knows such person to be illegally within the territory of the United States. The provisions of this section shall not apply to aliens who have entered the United States illegally and thereafter are permitted to remain within the United States, temporarily or permanently, pursuant to federal law.

(b) Knowingly employing an alien illegally within the territory of the United States is a class C misdemeanor.

(c) The provisions of this section shall not apply to aliens who have entered the United States illegally and thereafter are permitted to remain within the United States, temporarily or permanently, pursuant to federal law.

Comment
This section incorporates K.S.A. 21-4409. Subsection (c) is added to make the offense consistent with federal immigration law.
**ARTICLE 45**

**SENTENCING**

Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4601</td>
<td>Construction</td>
<td>21-45-101</td>
</tr>
<tr>
<td>21-4502</td>
<td>Classification of misdemeanors and terms of confinement; possible disposition</td>
<td>21-45-102</td>
</tr>
<tr>
<td>21-4602</td>
<td>Definitions. As used in K.S.A. 21-4601 through 21-4621, and amendments thereto</td>
<td>21-45-103</td>
</tr>
</tbody>
</table>

Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4603d</td>
<td>Authorized dispositions, crimes committed on or after July 1, 1993</td>
<td>21-45-201</td>
</tr>
</tbody>
</table>

Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4632</td>
<td>Defendants sentenced to custody of secretary of corrections; judgment form, content; presentence investigation and other diagnostic reports to accompany defendant; crimes committed on or after July 1, 1993</td>
<td>21-45-301</td>
</tr>
<tr>
<td>21-4609</td>
<td>Custody of persons sentenced to confinement; notice of modification of sentence</td>
<td>21-45-302</td>
</tr>
<tr>
<td>21-4608</td>
<td>Multiple sentences; defendant subject to or under sentence in federal court or court of another state</td>
<td>21-45-303</td>
</tr>
</tbody>
</table>

Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4610; 21-4610a</td>
<td>Conditions of probation or suspended sentence</td>
<td>21-45-401</td>
</tr>
<tr>
<td>Current K.S.A. Number</td>
<td>Title</td>
<td>KCCRC Section Number</td>
</tr>
<tr>
<td>----------------------</td>
<td>----------------------------------------------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>21-4611</td>
<td>Period of suspension of sentence, probation or assignment to community corrections; parole of misdemeanant; duration of probation in felony cases, modification or extension</td>
<td>21-45-402</td>
</tr>
<tr>
<td>21-4603b</td>
<td>House arrest program; eligibility; methods; notice to law enforcement officers; administration</td>
<td>21-45-403</td>
</tr>
<tr>
<td>21-4610a</td>
<td>Probation or community correctional services fee</td>
<td>21-45-404</td>
</tr>
<tr>
<td>21-4613</td>
<td>Transfer of supervision of person paroled, on probation, assigned to community corrections or under suspended sentence</td>
<td>21-45-405</td>
</tr>
</tbody>
</table>

**Section 5**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4503a</td>
<td>Fines, crimes committed on or after July 1, 1993</td>
<td>21-45-501</td>
</tr>
<tr>
<td>21-4607</td>
<td>Criteria for imposing fines</td>
<td>21-45-502</td>
</tr>
</tbody>
</table>

**Section 6**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4615</td>
<td>Rights of imprisoned persons; restoration</td>
<td>21-45-601</td>
</tr>
<tr>
<td>21-4619</td>
<td>Expungement of certain convictions, arrest records and diversion agreements</td>
<td>21-45-602</td>
</tr>
</tbody>
</table>

**Section 7**

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4614</td>
<td>Deduction of time spent in confinement, a residential facility, conservation camp, or community correctional residential services program</td>
<td>21-45-701</td>
</tr>
<tr>
<td>21-4614a</td>
<td>Deduction of time spent in residential facility, conservation camp or community correctional residential services program</td>
<td>21-45-702</td>
</tr>
<tr>
<td>21-4612</td>
<td>Parole from sentence imposed by district magistrate judge</td>
<td>21-45-703</td>
</tr>
</tbody>
</table>

**Section 8**

**Article 31**

311
<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4624</td>
<td>Persons convicted of capital murder; proceeding to determine if person shall be sentenced to death; notice; trial judge; jury; imprisonment for life without the possibility of parole</td>
<td>21-45-801</td>
</tr>
<tr>
<td>21-4622</td>
<td>Persons convicted of capital murder, sentencing</td>
<td>21-45-802</td>
</tr>
<tr>
<td>21-4627</td>
<td>Same; automatic review by and appeal to supreme court</td>
<td>21-45-803</td>
</tr>
<tr>
<td>21-4635</td>
<td>Sentencing of certain persons to mandatory term of imprisonment of 40 or 50 years or life without the possibility of parole; determination; evidence presented; balance of aggravating and mitigating circumstances</td>
<td>21-45-804</td>
</tr>
<tr>
<td>21-4633</td>
<td>Sentencing of certain persons to mandatory term of imprisonment of 40 years; juveniles prosecuted as adults</td>
<td>21-45-805</td>
</tr>
<tr>
<td>21-4623; 21-4634</td>
<td>Persons convicted of capital murder, sentencing of certain persons to mandatory term of imprisonment of 40 or 50 years or life without the possibility of parole; persons determined to be mentally retarded</td>
<td>21-45-806</td>
</tr>
<tr>
<td>21-4638</td>
<td>Same; imposition of sentence of mandatory imprisonment of 40 or 50 years</td>
<td>21-45-807</td>
</tr>
<tr>
<td>21-4625; 21-4636</td>
<td>Same; aggravating circumstances. Aggravating circumstances shall be limited to the following</td>
<td>21-45-808</td>
</tr>
<tr>
<td>21-4626; 21-4637</td>
<td>Persons convicted of capital murder, sentencing of certain persons to mandatory term of imprisonment of 40 or 50 years or life without the possibility of parole; mitigating circumstances</td>
<td>21-45-809</td>
</tr>
<tr>
<td>21-4642</td>
<td>Aggravated habitual sex offender; sentence to imprisonment for life without parole</td>
<td>21-45-810</td>
</tr>
<tr>
<td>21-4643</td>
<td>Mandatory term of imprisonment of 25 or 40 years for certain sex offenders; exceptions</td>
<td>21-45-811</td>
</tr>
<tr>
<td>21-4644</td>
<td>Modification of sentence previously determined under act; when</td>
<td>21-45-812</td>
</tr>
</tbody>
</table>

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, fine or assignment to a community correctional services program 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 at least a minimum term within the limits provided by law.

Comment

KSA 21-4601. No changes are recommended. This section is to be moved to article 46.

21-45-102. Classification of misdemeanors and terms of confinement; possible disposition.

(a) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:

(1) 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.

(2) 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.

(3) 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.

(4) 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 the same penalty as provided herein for a class C misdemeanor.

(b) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in K.S.A. 21-4503 and amendments thereto, instead of or in addition to confinement, as provided in this section.
(c) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

(d) Except as provided in subsection (5), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under the uniform controlled substances act (K.S.A. 65-4101 et seq. and amendments thereto), K.S.A. 41-719, 41-727, 65-4152, 65-4153, 65-4154 or 65-4155 or 8-1599, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008 and amendments thereto and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.

(e) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (4) are permissive and not mandatory.

Comment

KSA 21-4502. No change is recommended.

21-45-103

21-45-103 Definitions. As used in K.S.A. 21-4601 through 21-4621, and amendments thereto:

(a) "Court" means any court having jurisdiction and power to sentence offenders for violations of the laws of this state.

(b) "Community correctional services program" means a program which operates under the community corrections act and to which a defendant is assigned for supervision, confinement, detention, care or treatment, subject to conditions imposed by the court. A defendant assigned to a community correctional services program shall be subject to the continuing jurisdiction of the court and in no event shall be considered to be in the custody of or under the supervision of the secretary of corrections.

(c) "Correctional institution" means any correctional institution established by the state for the confinement of offenders, and under control of the secretary of corrections.
(d) "House arrest" is an individualized program in which the freedom of an inmate is restricted within the community, home or noninstitutional residential placement and specific sanctions are imposed and enforced. House arrest may include:

(1) Electronic monitoring which requires a transmitter to be strapped to worn by the defendant or inmate which broadcasts an encoded signal to the receiver located in the defendant's or inmate's home. The receiver is connected to a central office computer and is notified of any absence of the defendant or inmate; or

(2) voice identification-encoder which consists of an encoder worn by the defendant or inmate. A computer is programmed to randomly call the defendant or inmate and such defendant or inmate is required to provide voice identification and then insert the encoder into the verifier box, confirming identity.

(e) "Parole" means the release of a prisoner to the community by the Kansas parole board prior to the expiration of such prisoner's term, subject to conditions imposed by the board and to the secretary of correction's supervision. Parole also means 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 such person's 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 Kansas parole board or paroling court may release the prisoner on parole to answer the warrant of such court or authority.

(f) "Postrelease supervision," for crimes committed on or after July 1, 1993, means the same as provided in K.S.A. 21-4703 and amendments thereto.

(g) "Probation" means a procedure under which a defendant, convicted of a crime, is released by the court after imposition of sentence, without imprisonment except as provided in felony cases, subject to conditions imposed by the court and subject to the supervision of the probation service of the court or community corrections. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence pursuant to subsection (b)(3) of K.S.A. 21-4603 and amendments thereto.

(h) "Suspension of sentence" means a procedure under which a defendant, convicted of a crime, is released by the court without imposition of sentence. The release may be with or without supervision in the discretion of the court. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence pursuant to subsection (b)(4) of K.S.A. 21-4603 and amendments thereto.

Comment
KSA 21-4602. Changes made to the statute include placing the definitions in alphabetical order and adding the definition of “house arrest” moved to this section from 21-45-403, currently KSA 21-4603(b).

21-45-201. Authorized dispositions, crimes committed on or after July 1, 1993.

(a) Whenever any person has been found guilty of a crime, the court may adjudge any of the following:

(1) Commit the defendant to the custody of the secretary of corrections if the current crime of conviction is a felony and the sentence presumes imprisonment, or the sentence imposed is a dispositional departure to imprisonment; or, if confinement is for a misdemeanor, to jail for the term provided by law;

(2) impose the fine applicable to the offense;

(3) release the defendant on probation if the current crime of conviction and criminal history fall within a presumptive nonprison category or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate. In felony cases except for violations of K.S.A. 8-1567, and amendments thereto, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence, or community corrections placement;

(4) assign the defendant to a community correctional services program as provided in K.S.A. 75-5291, and amendments thereto, or through a departure for substantial and compelling reasons subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

(5) assign the defendant to a conservation camp for a period not to exceed six months as a condition of probation followed by a six-month period of follow-up through adult intensive supervision by a community correctional services program, if the offender successfully completes the conservation camp program;

(6) assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;
(7) order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502, and amendments thereto;

(8) order the defendant to repay the amount of any reward paid by any crime stoppers chapter, individual, corporation or public entity which materially aided in the apprehension or conviction of the defendant; repay the amount of any costs and expenses incurred by any law enforcement agency in the apprehension of the defendant, if one of the current crimes of conviction of the defendant includes escape, as defined in K.S.A. 21-3809, and amendments thereto, or aggravated escape, as defined in K.S.A. 21-3810, and amendments thereto; repay expenses incurred by a fire district, fire department or fire company responding to a fire which has been determined to be arson under K.S.A. 21-3718 or 21-3719, and amendments thereto, if the defendant is convicted of such crime; repay the amount of any public funds utilized by a law enforcement agency to purchase controlled substances from the defendant during the investigation which leads to the defendant's conviction; or repay the amount of any medical costs and expenses incurred by any law enforcement agency or county. Such repayment of the amount of any such costs and expenses incurred by a county, law enforcement agency, fire district, fire department or fire company or any public funds utilized by a law enforcement agency shall be deposited and credited to the same fund from which the public funds were credited to prior to use by the county, law enforcement agency, fire district, fire department or fire company;

(9) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529, and amendments thereto, unless waived by the court;

(10) order the defendant to pay a domestic violence special program fee authorized by K.S.A. 20-369, and amendments thereto;

(11) impose any appropriate combination of (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10); or

(12) suspend imposition of sentence in misdemeanor cases.

(b) (1) In addition to or in lieu of any of the above, the court shall order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances which would render a plan of restitution unworkable. In regard to a violation of K.S.A. 21-4018, and amendments thereto, such damage or loss shall include, but not be limited to, attorney fees and costs incurred to repair the credit history or rating of the person whose personal identification documents were obtained and used in violation of such section, and to satisfy a debt, lien or other obligation
incurred by the person whose personal identification documents were
obtained and used in violation of such section. If the court finds a plan of
restitution unworkable, the court shall state on the record in detail the
reasons therefor.

(2) If the court orders restitution, the restitution shall be a judgment against the
defendant which may be collected by the court by garnishment or other
execution as on judgments in civil cases. If, after 60 days from the date
restitution is ordered by the court, a defendant is found to be in
noncompliance with the plan established by the court for payment of
restitution, and the victim to whom restitution is ordered paid has not
initiated proceedings in accordance with K.S.A. 60-4301 et seq., and
amendments thereto, the court shall assign an agent procured by the
attorney general pursuant to K.S.A. 75-719, and amendments thereto, to
collect the restitution on behalf of the victim. The administrative judge of
each judicial district may assign such cases to an appropriate division of the
court for the conduct of civil collection proceedings.

(c) In addition to or in lieu of any of the above, the court shall order the defendant to
submit to and complete an alcohol and drug evaluation, and pay a fee therefor,
when required by subsection (4) of K.S.A. 21-4502, and amendments thereto.

(d) In addition to any of the above, the court shall order the defendant to reimburse the
county general fund for all or a part of the expenditures by the county to provide
counsel and other defense services to the defendant. Any such reimbursement to
the county shall be paid only after any order for restitution has been paid in full. In
determining the amount and method of payment of such sum, the court shall take
account of the financial resources of the defendant and the nature of the burden
that payment of such sum will impose. A defendant who has been required to pay
such sum and who is not willfully in default in the payment thereof may at any time
petition the court which sentenced the defendant to waive payment of such sum or
any unpaid portion thereof. If it appears to the satisfaction of the court that
payment of the amount due will impose manifest hardship on the defendant or the
defendant's immediate family, the court may waive payment of all or part of the
amount due or modify the method of payment.

(e) In imposing a fine the court may authorize the payment thereof in installments. In
releasing a defendant on probation, the court shall direct that the defendant be
under the supervision of a court services officer. If the court commits the defendant
to the custody of the secretary of corrections or to jail, the court may specify in its
order the amount of restitution to be paid and the person to whom it shall be paid if
restitution is later ordered as a condition of parole, conditional release or
postrelease supervision.

(f) (1) When a new felony is committed while the offender is incarcerated and
serving a sentence for a felony, or while the offender is on probation, assignment to a community correctional services program, parole, conditional release, or postrelease supervision for a felony, a new sentence shall be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(2) When a new felony is committed while the offender is incarcerated in a juvenile correctional facility pursuant to K.S.A. 38-1671 prior to its repeal or K.S.A. 2007 Supp. 38-2373, and amendments thereto, for an offense, which if committed by an adult would constitute the commission of a felony, upon conviction, the court shall sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure. The conviction shall operate as a full and complete discharge from any obligations, except for an order of restitution, imposed on the offender arising from the offense for which the offender was committed to a juvenile correctional facility.

(3) When a new felony is committed while the offender is on release for a felony pursuant to the provisions of article 28 of chapter 22 of the Kansas Statutes Annotated, or similar provisions of the laws of another jurisdiction, a new sentence may be imposed pursuant to the consecutive sentencing requirements of K.S.A. 21-4608, and amendments thereto, and the court may sentence the offender to imprisonment for the new conviction, even when the new crime of conviction otherwise presumes a nonprison sentence. In this event, imposition of a prison sentence for the new crime does not constitute a departure.

(g) Prior to imposing a dispositional departure for a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, prior to sentencing a defendant to incarceration whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, prior to revocation of a nonprison sanction of a defendant whose offense is classified in grid blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and whose offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, or prior to revocation of a nonprison sanction of a defendant whose offense is classified in the presumptive nonprison grid block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G of the sentencing guidelines grid for nondrug crimes or

Article 31 319
in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug
crimes, the court shall consider placement of the defendant in the Labette
correctional conservation camp, conservation camps established by the secretary of
corrections pursuant to K.S.A. 75-52,127, and amendment thereto or a community
intermediate sanction center. Pursuant to this paragraph the defendant shall not be
sentenced to imprisonment if space is available in a conservation camp or a
community intermediate sanction center and the defendant meets all of the
conservation camp's or a community intermediate sanction center's placement
criteria unless the court states on the record the reasons for not placing the
defendant in a conservation camp or a community intermediate sanction center.

(h) The court in committing a defendant to the custody of the secretary of corrections
shall fix a term of confinement within the limits provided by law. In those cases
where the law does not fix a term of confinement for the crime for which the
defendant was convicted, the court shall fix the term of such confinement.

(i) In addition to any of the above, the court shall order the defendant to reimburse the
state general fund for all or a part of the expenditures by the state board of
indigents' defense services to provide counsel and other defense services to the
defendant. In determining the amount and method of payment of such sum, the
court shall take account of the financial resources of the defendant and the nature of
the burden that payment of such sum will impose. A defendant who has been
required to pay such sum and who is not willfully in default in the payment thereof
may at any time petition the court which sentenced the defendant to waive
payment of such sum or any unpaid portion thereof. If it appears to the satisfaction
of the court that payment of the amount due will impose manifest hardship on the
defendant or the defendant's immediate family, the court may waive payment of all
or part of the amount due or modify the method of payment. The amount of
attorney fees to be included in the court order for reimbursement shall be the
amount claimed by appointed counsel on the payment voucher for indigents'
defense services or the amount prescribed by the board of indigents' defense
services reimbursement tables as provided in K.S.A. 22-4522, and amendments
thereto, whichever is less.

(j) This section shall not deprive the court of any authority conferred by any other
Kansas statute 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 of
conviction of crime.

(k) An application for or acceptance of probation or assignment to a community
correctional services program shall not constitute an acquiescence in the judgment
for purpose of appeal, and any convicted person may appeal from such conviction,
as provided by law, without regard to whether such person has applied for
probation, suspended sentence or assignment to a community correctional services
program.
The secretary of corrections is authorized to make direct placement to the Labette correctional conservation camp or a conservation camp established by the secretary pursuant to K.S.A. 75-52,127, and amendments thereto, of an inmate sentenced to the secretary's custody if the inmate: (1) Has been sentenced to the secretary for a probation revocation, as a departure from the presumptive nonimprisonment grid block of either sentencing grid, for an offense which is classified in grid blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes, or for an offense which is classified in gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes and such offense does not meet the requirements of K.S.A. 21-4729, and amendments thereto, and (2) otherwise meets admission criteria of the camp. If the inmate successfully completes a conservation camp program, the secretary of corrections shall report such completion to the sentencing court and the county or district attorney. The inmate shall then be assigned by the court to six months of follow-up supervision conducted by the appropriate community corrections services program. The court may also order that supervision continue thereafter for the length of time authorized by K.S.A. 21-4611 and amendments thereto.

When it is provided by law that a person shall be sentenced pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of this section shall not apply.

Except as provided by subsection (f) of K.S.A. 21-4705, and amendments thereto, in addition to any of the above, for felony violations of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall require the defendant who meets the requirements established in K.S.A. 21-4729, and amendments thereto, to participate in a certified drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto, including but not limited to, an approved aftercare plan. If the defendant fails to participate in or has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding, the defendant shall be subject to revocation of probation and the defendant shall serve the underlying prison sentence as established in K.S.A. 21-4705, and amendments thereto. For those offenders who are convicted on or after the effective date of this act, upon completion of the underlying prison sentence, the defendant shall not be subject to a period of postrelease supervision. The amount of time spent participating in such program shall not be credited as service on the underlying prison sentence.

Comment

KSA 21-4603d. No change is recommended.
21-45-301. Defendants sentenced to custody of secretary of corrections; judgment form, content; presentence investigation and other diagnostic reports to accompany defendant; crimes committed on or after July 1, 1993. (a) If the defendant is to be sentenced to the custody of the secretary of corrections, the court may prepare a judgment form which shall be signed by the court and filed with the clerk. If prepared, the judgment form shall reflect the conviction, the sentence and the commitment, and shall contain the following:

(1) The pronouncement of guilt including:
(A) The title of the crime;
(B) the statute violated; and
(C) the date the offense occurred.

(2) The sentence imposed including:
(A) The severity level of the crime of conviction, criminal history designation and grid block or departure sentence;
(B) if applicable, a description of any increase in sentence because of departure criteria;
(C) if applicable, a statement that this defendant has been convicted of severity levels 1 through 5 by reason of aiding, abetting, advising or counseling another to commit a crime, or by reason of the principle provided in subsection (2) of K.S.A. 21-3205 and amendments thereto;
(D) a statement of the effective date of the sentence indicating whether it is the date of imposition or some date earlier to give credit for time confined pending disposition of the case pursuant to K.S.A. 21-4614 and amendments thereto or credit for time on probation or assignment to community corrections pursuant to K.S.A. 21-4614a and amendments thereto.

(3) The order of commitment to the custody of the secretary, if not issued as a separate order.

(b) The court may attach to or include in the judgment form any of the following:
(1) A statement of reasons for imposing a departure sentence;
(2) a description of aggravating or mitigating circumstances the court took into consideration when ordering the commitment;
(3) the copy of the evidence from trial or part thereof transmitted pursuant to K.S.A. 75-5219 and amendments thereto.

(c) The court shall forward a copy of all presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the Topeka correctional facility--east or the state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

Comment

KSA 21-4632. This section is to be eliminated except for subsection (c) which is to be moved to KSA 22-3427.
Custody of persons sentenced to confinement; notice of modification of sentence.

(a) When a person is sentenced to imprisonment upon conviction of a felony, 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 secretary of corrections. When such person is sentenced to the custody of the secretary of corrections and such sentence is subsequently modified in any respect, including discharge of such defendant from custody, by a court of this state having jurisdiction of such matter, such court shall thereupon notify the secretary of corrections of the nature of such modification.

(b) The secretary of corrections may designate as the place of confinement any available and suitable correctional institution or facility maintained by the state of Kansas or a political subdivision thereof.

(c) Any person serving a sentence of imprisonment may be transferred from one institution to another by order of the secretary of corrections.

Comment

KSA 21-4609. No change is recommended.

Multiple sentences; defendant subject to or under sentence in federal court or court of another state.

(a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. 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, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.
(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole, on conditional release or on postrelease supervision for a felony shall serve the sentence consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release.

(d) Any person who is convicted and sentenced for a crime committed while on release for a felony pursuant to article 28 of chapter 22 of the Kansas Statutes Annotated shall serve the sentence consecutively to the term or terms under which the person was released.

(e) (1) Any person who is convicted and sentenced for a crime committed while such person is incarcerated and serving a sentence for a felony in any place of incarceration shall serve the sentence consecutively to the term or terms under which the person was incarcerated.

(2) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while the person was imprisoned for an offense committed prior to July 1, 1993, and the person is not eligible for the retroactive application of the sentencing guidelines act, the new sentence shall not be aggregated with the old sentence but shall begin when the person is paroled or reaches the conditional release date on the old sentence, whichever is earlier. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of post incarceration supervision shall be based on the longest term of post incarceration supervision imposed for all crimes upon which sentence was imposed or until discharged from supervision by the Kansas parole board. The term of post incarceration supervision imposed by this paragraph shall apply retroactively to crimes committed prior to the effective date of this act.

(3) As used in this subsection, “post incarceration supervision” includes parole and postrelease supervision.

(f) The provisions of this subsection relating to parole eligibility shall be applicable to persons convicted of crimes committed prior to January 1, 1979, but shall be applicable to persons convicted of crimes committed on or after that date only to the extent that the terms of this subsection are not in conflict with the provisions of K.S.A. 22-3717 and amendments thereto. In calculating the time to be served on concurrent and consecutive sentences, the following rules shall apply:
(1) 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 conditional release or discharge on the longest maximum term if the terms are imposed on the same date.

(2) When concurrent terms are imposed on different dates, computation will be made to determine which term or terms require the longest period of imprisonment to reach parole eligibility, conditional release and maximum dates, and that sentence will be considered the controlling sentence. The parole eligibility date may be computed and projected on one sentence and the conditional release date and maximum may be computed and projected from another to determine the controlling sentence.

(3) When indeterminate terms imposed on the same date are to be served 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.

(4) When indeterminate sentences are imposed to be served consecutively to sentences previously imposed in any other court or the sentencing court, the aggregated minimums and maximums shall be computed from the effective date of the subsequent sentences which have been imposed as consecutive. For the purpose of determining the sentence begins date and the parole eligibility and conditional release dates, the inmate shall be given credit on the aggregate sentence for time spent imprisoned on the previous sentences, but not exceeding an amount equal to the previous minimum sentence less the maximum amount of good time credit that could have been earned on the minimum sentence. For the purpose of computing the maximum date, the inmate shall be given credit for all time spent imprisoned on the previous sentence. This method for computation of the maximum sentence shall be utilized for all sentences computed pursuant to this subsection after July 1, 1983.

Nothing in this subsection (f)(4) shall affect the authority of the Kansas parole board to determine the parole eligibility of inmates pursuant to subsection (d) of K.S.A. 22-3717 and amendments thereto.

(5) When consecutive sentences are imposed which are to be served consecutive to sentences for which a prisoner has been on probation, assigned to a community correctional services program, on parole or on conditional release, the amount of time served on probation, on assignment to a community correctional services program, on parole or on conditional release shall not be credited as service on the aggregate sentence in determining the parole eligibility, conditional release and maximum dates,
except that credit shall be given for any amount of time spent in a residential
facility while on probation or assignment to a community correctional
residential services program.

(g) 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. The provisions of
this subsection shall not apply to crimes committed on or after July 1, 1993.

(h) When a defendant is sentenced in a state court and is also under sentence from a
federal court or other state court or is subject to sentence in a federal court or other
state court for an offense committed prior to the defendant's sentence in a Kansas
state court, the court may direct that custody of the defendant may be relinquished
to federal or other state authorities and that such state sentences as are imposed
may run concurrently with any federal or other state sentence imposed.

Comment

KSA 21-4608. No change is recommended.

---

21-45-401

21-45-401. Conditions of probation or suspended sentence.

(a) Except as required by subsection (c), nothing in this section shall be construed to
limit the authority of the court to impose or modify any general or specific
conditions of probation, suspension of sentence or assignment to a community
correctional services program. The court services officer or community correctional
services officer may recommend, and the court may order, the imposition of any
conditions of probation, suspension of sentence or assignment to a community
correctional services program. For crimes committed on or after July 1, 1993, in
presumptive nonprison cases, the court services officer or community correctional
services officer may recommend, and the court may order, the imposition of any
conditions of probation or assignment to a community correctional services
program. The court may at any time order the modification of such conditions, after
notice to the court services officer or community correctional services officer and an
opportunity for such officer to be heard thereon. The court shall cause a copy of any
such order to be delivered to the court services officer and the probationer or to the
community correctional services officer and the community corrections participant,
as the case may be.

(b) The court may impose any conditions of probation, suspension of sentence or
assignment to a community correctional services program that the court deems
proper, including but not limited to requiring that the defendant:
(1) Avoid such injurious or vicious habits, as directed by the court, court services officer or community correctional services officer;

(2) avoid such persons or places of disreputable or harmful character, as directed by the court, court services officer or community correctional services officer;

(3) report to the court services officer or community correctional services officer as directed;

(4) permit the court services officer or community correctional services officer to visit the defendant at home or elsewhere;

(5) work faithfully at suitable employment insofar as possible;

(6) remain within the state unless the court grants permission to leave;

(7) pay a fine or costs, applicable to the offense, in one or several sums and in the manner as directed by the court;

(8) support the defendant's dependents;

(9) reside in a residential facility located in the community and participate in educational, counseling, work and other correctional or rehabilitative programs;

(10) perform community or public service work for local governmental agencies, private corporations organized not for profit, or charitable or social service organizations performing services for the community;

(11) perform services under a system of day fines whereby the defendant is required to satisfy fines, costs or reparation or restitution obligations by performing services for a period of days determined by the court on the basis of ability to pay, standard of living, support obligations and other factors;

(12) participate in a house arrest program pursuant to K.S.A. 21-4603b, and amendments thereto;

(13) order the defendant to pay the administrative fee authorized by K.S.A. 22-4529 and amendments thereto, unless waived by the court; or

(14) in felony cases, except for violations of K.S.A. 8-1567 and amendments thereto, be confined in a county jail not to exceed 60 days, which need not be served consecutively.
In addition to any other conditions of probation, suspension of sentence or assignment to a community correctional services program, the court shall order the defendant to comply with each of the following conditions:

(1) the defendant shall obey all laws of the United States, the state of Kansas and any other jurisdiction to the laws of which the defendant may be subject,

(2) Make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant's crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable. If the court finds a plan of restitution unworkable, the court shall state on the record in detail the reasons therefor,

(3) (A) pay a probation or community correctional services fee of $25 if the person was convicted of a misdemeanor or a fee of $50 if the person was convicted of a felony. In any case the amount of the probation or community correctional services fee specified by this section may be reduced or waived by the judge if the person is unable to pay that amount,

(B) The probation or community correctional services fee imposed by this section shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this section from probation or community correctional services fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund,

(C) This subsection shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision; and

(4) reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant...
defendant or the defendant's immediate family, the court may waive
payment of all or part of the amount due or modify the method of payment.
The amount of attorney fees to be included in the court order for
reimbursement shall be the amount claimed by appointed counsel on the
payment voucher for indigents' defense services or the amount prescribed
by the board of indigents' defense services reimbursement tables as
provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

Comment

KSA 21-4610. No substantive change is made. Paragraph (c)(3)(A)-(C) is added. It is formerly
KSA 21-4610a. Subsection (b) of -4610 is moved to subsection (a).

21-45-402

21-45-402. Period of suspension of sentence, probation or assignment to community
corrections; parole of misdemeanant; duration of probation in felony cases, modification
or extension.

(a) The period of suspension of sentence, probation or assignment to community
corrections fixed by the court shall not exceed two years in misdemeanor cases,
subject to renewal and extension for additional fixed periods of two years.
Probation, suspension of sentence or assignment to community corrections may be
terminated by the court at any time and upon such termination or upon termination
by expiration of the term of probation, suspension of sentence or assignment to
community corrections, an order to this effect shall be entered by the court.

(b) The district court having jurisdiction of the offender may parole any misdemeanant
sentenced 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.

(c) For all crimes committed on or after July 1, 1993, the duration of probation in felony
cases sentenced for the following severity levels on the sentencing guidelines grid
for nondrug crimes and the sentencing guidelines grid for drug crimes is as follows:

(1) For nondrug crimes the recommended duration of probations is:

(A) Thirty-six months for crimes in crime severity levels 1 through 5; and

(B) 24 months for crimes in crime severity levels 6 and 7.

(2) For drug crimes the recommended duration of probation is 36 months for
crimes in crime severity levels 1 and 2.
(3) In felony cases sentenced at severity levels 9 and 10 on the sentencing guidelines grid for nondrug crimes and severity level 4 on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to a community correctional services program as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to 12 months in length.

(4) In felony cases sentenced at severity level 8 on the sentencing guidelines grid for nondrug crimes and severity level 3 on the sentencing guidelines grid for drug crimes, if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to a community correctional services program, as provided under K.S.A. 75-5291 et seq., and amendments thereto, of up to 18 months in length.

(5) If the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by the length of the probation terms provided in subsections (c)(3) and (c)(4), the court may impose a longer period of probation. Such an increase shall not be considered a departure and shall not be subject to appeal.

(6) Except as provided in subsections (c)(7) and (c)(8), the total period in all cases shall not exceed 60 months, or the maximum period of the prison sentence that could be imposed whichever is longer. Nonprison sentences may be terminated by the court at any time.

(7) If the defendant is convicted of nonsupport of a child, the period may be continued as long as the responsibility for support continues. If the defendant is ordered to pay full or partial restitution, the period may be continued as long as the amount of restitution ordered has not been paid.

(8) The court may modify or extend the offender’s period of supervision, pursuant to a modification hearing and a judicial finding of necessity. Such extensions may be made for a maximum period of five years or the maximum period of the prison sentence that could be imposed, whichever is longer, inclusive of the original supervision term.

Comment

KSA 21-4611. Paragraph (a) is changed so that it has application to misdemeanors only.
21-45-403. House arrest program; eligibility; methods; notice to law enforcement officers; administration.

(a) The court or the secretary of corrections may implement a house arrest program for defendants or inmates being sentenced by the court or in the custody of the secretary of corrections, except:

(1) No defendant shall be placed by the court under house arrest if found guilty of:

   (A) Any crime designated as a class A or B felony in article 34 or 35;

   (B) K.S.A. 21-3603, and amendments thereto; or

   (C) K.S.A. 21-3609, and amendments thereto;

(2) no inmate shall be placed under house arrest if such inmate's security status is greater than minimum security; or

(3) no inmate shall be placed under house arrest who has been denied parole by the parole board within the last 6 months. Any inmate who, while participating in the house arrest program, is denied parole by the parole board shall be allowed to remain under house arrest until the completion of the sentence or until the inmate is otherwise removed from the program.

(b) Prior to the placement of an inmate under house arrest, the court or secretary shall provide written notification to the sheriff and district or county attorney of the county in which any person under house arrest is to be placed and to the chief law enforcement officer of any incorporated city or town in which such person is to be placed of the placement of the person under house arrest within the county or incorporated city or town.

(c) House arrest sanctions shall be administered by the court and the secretary of corrections, respectively, through rules and regulations, and may include, but are not limited to, rehabilitative restitution in money or in kind, curfew, revocation or suspension of the driver's license, community service, deprivation of nonessential activities or privileges, or other appropriate restraints on the inmate's liberty.

Comment
KSA 21-4603b. No substantive change is made. The language of (a)(1)(A) is modified. Subsection (b) is moved to the definitions section, 21-45-103.
Article 3

-45-401. Probation or community correctional services fee. (a) Each person placed under the probation supervision of a court services officer or other officer or employee of the judicial branch by a judge of the district court under K.S.A. 21-4610, and amendments thereto, and each person assigned to a community correctional services program shall pay a probation or community correctional services fee. If the person was convicted of a misdemeanor, the amount of the probation services fee is $25 and if the person was convicted of a felony, the amount of the probation or community correctional services fee is $50, except that in any case the amount of the probation or community correctional services fee specified by this section may be reduced or waived by the judge if the person is unable to pay that amount.

(b) The probation or community correctional services fee imposed by this section shall be charged and collected by the district court. The clerk of the district court shall remit all revenues received under this section from probation or community correctional services fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(c) This section shall not apply to persons placed on probation or released on parole to reside in Kansas under the uniform act for out-of-state parolee supervision.

Comment

KSA 21-4610a. This statute is merged into KSA 21-4610 as an additional mandatory condition.

-45-405

21-45-405. Transfer of supervision of person paroled, on probation, assigned to community corrections or under suspended sentence.

(a) When a defendant is placed on parole by the district court, on probation, assigned to a community correctional services program by a district court or under suspended sentence and such defendant is permitted to go from the judicial district of that court, supervision over the defendant may be transferred from that judicial district to another with the concurrence of the receiving chief court services officer, or if in a community corrections services program, by the concurrence of the director of the receiving program.

(b) The district court from which the defendant is on parole, probation, community correctional services program or suspended sentence may retain jurisdiction of the defendant.

Comment

KSA 21-4613. Letters are added to the paragraphs and a minor change is made in (b).

(a) A person who has been convicted of a felony may, in addition to the sentence authorized by law, be ordered to pay a fine which shall be fixed by the court as follows:

(1) For any off-grid felony crime or any felony ranked in severity level 1 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding $500,000.

(2) For any felony ranked in severity levels 1 through 5 of the nondrug grid as provided in K.S.A. 21-4704 and amendments thereto or in severity levels 2 or 3 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding $300,000.

(3) For any felony ranked in severity levels 6 through 10 of the nondrug grid as provided in K.S.A. 21-4704 and amendments thereto or in severity level 4 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding $100,000.

(b) A person who has been convicted of a misdemeanor, in addition to or instead of the imprisonment authorized by law, may be sentenced to pay a fine which shall be fixed by the court as follows:

(1) For a class A misdemeanor, a sum not exceeding $2,500.

(2) For a class B misdemeanor, a sum not exceeding $1,000.

(3) For a class C misdemeanor, a sum not exceeding $500.

(4) 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 the fine provided herein for a class C misdemeanor.

(c) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(d) A person who has been convicted of a traffic infraction may be sentenced to pay a fine which shall be fixed by the court, not exceeding $500.

(e) A person who has been convicted of a cigarette or tobacco infraction shall be sentenced to pay a fine of $25.
(f) The provisions of this section shall apply to crimes committed on or after July 1, 1993.

Comment

KSA 21-4503a. No change is recommended.


(a) 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 finds that the fine alone suffices for the protection of the public.

(b) The court shall not sentence a defendant to pay a fine in addition to a sentence of imprisonment, probation or assignment to a community correctional services program unless:

   (1) The defendant has derived a pecuniary gain from the crime; or

   (2) the court finds that a fine is adapted to deterrence of the crime involved or to the correction of the offender.

(c) 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.

(d) If a fine is ordered pursuant to subsection (b), the court’s findings regarding the requirements of subsections (b) and (c) shall be stated on the record.

Comment

KSA 21-4607. Subsection (d) is added. The requirement that the court’s findings be placed on the record is a statement of current Kansas case law. State v. Bastian, 37 Kan. App. 2d 156, 164 (Kan. Ct. App. 2007)


(a) A person who has been convicted in any state or federal court of a felony shall, by reason of such conviction, be ineligible to hold any public office under the laws of
the state of Kansas, 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.

(b) The ineligibilities imposed by this section shall attach upon conviction and shall
continue until such person has completed the terms of the authorized sentence.

(c) The ineligibilities imposed upon a convicted person by this section shall be in
addition to such other penalties as may be provided by law.

Comment
KSA 21-4615. No change is recommended.

21-45-602

21-45-602. Expungement of certain convictions, arrest records and diversion agreements.

(a) (1) Except as provided in subsections (b) and (c), any person convicted in this
state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a
class D or E felony, or for crimes committed on or after July 1, 1993, nondrug
crimes ranked in severity levels 6 through 10 or any felony ranked in severity
level 4 of the drug grid, may petition the convicting court for the
expungement of such conviction or related arrest records if three or more
years have elapsed since the person: (A) Satisfied the sentence imposed; or
(B) was discharged from probation, a community correctional services
program, parole, postrelease supervision, conditional release or a suspended
sentence.

(2) Except as provided in subsections (b) and (c), any person who has fulfilled
the terms of a diversion agreement may petition the district court for the
expungement of such diversion agreement and related arrest records if three
or more years have elapsed since the terms of the diversion agreement were
fulfilled.

(b) Except as provided in subsection (c), no person may petition for expungement until
five or more years have elapsed since the person satisfied the sentence imposed, the
terms of a diversion agreement or was discharged from probation, a community
correctional services program, parole, postrelease supervision, conditional release or
a suspended sentence, if such person was convicted of a class A, B or C felony, or for
crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any
nondrug crime ranked in severity levels 1 through 5 or any felony ranked in severity
levels 1 through 3 of the drug grid, or:
Article 3

(1) Vehicular homicide, as defined by K.S.A. 21-3405, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of the fifth clause of K.S.A. 8-142, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603 or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(c) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape as defined in K.S.A. 21-3502, and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503, and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504, and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) or (a)(3) of K.S.A. 21-3505, and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506, and amendments thereto;
(6) indecent solicitation of a child as defined in K.S.A. 21-3510, and amendments thereto;

(7) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511, and amendments thereto;

(8) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto;

(9) aggravated incest as defined in K.S.A. 21-3603, and amendments thereto;

(10) endangering a child as defined in K.S.A. 21-3608, and amendments thereto;

(11) aggravated endangering a child, as defined in K.S.A. 21-3608a, and amendments thereto;

(12) abuse of a child as defined in K.S.A. 21-3609, and amendments thereto;

(13) capital murder as defined in K.S.A. 21-3439, and amendments thereto;

(14) murder in the first degree as defined in K.S.A. 21-3401, and amendments thereto;

(15) murder in the second degree as defined in K.S.A. 21-3402, and amendments thereto;

(16) voluntary manslaughter as defined in K.S.A. 21-3403, and amendments thereto;

(17) involuntary manslaughter as defined in K.S.A. 21-3404, and amendments thereto;

(18) involuntary manslaughter while driving under the influence of alcohol or drugs as defined in K.S.A. 21-3442, and amendments thereto;

(19) sexual battery as defined in K.S.A. 21-3517, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(20) aggravated sexual battery as defined in K.S.A. 21-3518, and amendments thereto;

(21) a violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation;

(22) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or
(23) any conviction for any offense in effect at any time prior to the effective date of this act, that is comparable to any offense as provided in this subsection.

(d) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state:

(1) The defendant's full name;

(2) the full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime for which the defendant was arrested, convicted or diverted;

(5) the date of the defendant's arrest, conviction or diversion; and

(6) the identity of the convicting court, arresting law enforcement authority or diverting authority. There shall be no docket fee for filing a petition pursuant to this section. All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the Kansas parole board.

(e) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(f) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. After the
order of expungement is entered, the petitioner shall be treated as not having been
arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was
expunged may be considered as a prior conviction in determining the
sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred
if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private
detective agency, certification as a firearms trainer pursuant to
K.S.A. 2007 Supp. 75-7b21, and amendments thereto, or
employment as a detective with a private detective agency, as
defined by K.S.A. 75-7b01, and amendments thereto; as security
personnel with a private patrol operator, as defined by K.S.A. 75-
7b01, and amendments thereto; or with an institution, as defined in
K.S.A. 76-12a01, and amendments thereto, of the department of
social and rehabilitation services;

(B) in any application for admission, or for an order of reinstatement, to
the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment
with the Kansas lottery or for work in sensitive areas within the
Kansas lottery as deemed appropriate by the executive director of
the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive
director of the Kansas racing and gaming commission, for
employment with the commission or for work in sensitive areas in
parimutuel racing as deemed appropriate by the executive director
of the commission, or to aid in determining qualifications for
licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following
under the Kansas expanded lottery act: (i) Lottery gaming facility
manager or prospective manager, racetrack gaming facility manager
or prospective manager, licensee or certificate holder; or (ii) an
officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-
2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an
employee of the state gaming agency;
to aid in determining the petitioner’s qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto; or

in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;

for applications received on and after July 1, 2006, to aid in determining the petitioner’s qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto;

the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

Subject to the disclosures required pursuant to subsection (f), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime, but the expungement of a felony conviction does not relieve an individual of complying with any state or federal law relating to the use or possession of firearms by persons convicted of a felony.

Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former
Article 31

statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the department of social and rehabilitation services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the
executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto; or

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act.

Comment

KSA 21-4619. No change is recommended.
21-45-701. Deduction of time spent in confinement, a residential facility, conservation camp, or community correctional residential services program.

(a) In any criminal action in which the defendant is convicted, the judge, if the judge sentences the defendant to confinement, shall direct that for the purpose of computing defendant's sentence and 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 sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent incarcerated 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 shall be used as the date of sentence and all good time allowances as are authorized by the Secretary of Corrections 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 correctional system.

(b) In any criminal action in which probation, assignment to a conservation camp or assignment to community corrections is revoked and the defendant is sentenced to confinement, for the purpose of computing the defendant's sentence and release date, the defendant's sentence is to be computed from a date, hereafter to be specifically designated in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent in a residential facility while on probation, assignment to a conservation camp or assignment to community correctional residential services program. The commencing date of such sentence shall be used as the date of sentence and all good time allowances as are authorized by law are to be allowed on such sentence from such date as though the defendant were actually incarcerated in a correctional institution.

(c) Such credit is not to be considered to reduce the minimum or maximum terms of confinement authorized by law for the offense of which the defendant has been convicted.

Comment

KSA 21-4614 and KSA 21-4614a. The two statutes are merged. No substantive change is recommended.
revoked and the defendant is sentenced to confinement, for the purpose of computing the defendant's sentence and release date, the defendant's sentence is to be computed from a date, hereafter to be specifically designated in the sentencing order of the journal entry of judgment. Such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent in a residential facility while on probation, assignment to a conservation camp or assignment to community correctional residential services program. The commencing date of such sentence shall be used as the date of sentence and all good time allowances as are authorized by law are to be allowed on such sentence from such date as though the defendant were actually incarcerated in a correctional institution. Such credit is not to be considered to reduce the minimum or maximum terms of confinement authorized by law for the offense of which the defendant has been convicted.

Comment

KSA 21-4614a. No change is recommended.

21-45-703. Parole from sentence imposed by district magistrate judge. Any person confined in jail under judgment of conviction before a district magistrate judge may be paroled, such person's parole terminated and absolute discharge granted by a district judge having jurisdiction of appeals from such district magistrate judge 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 such district judge.

Comment

KSA 21-4612. No change is recommended.

21-45-801. Persons convicted of capital murder; proceeding to determine if person shall be sentenced to death; notice; trial judge; jury; imprisonment for life without the possibility of parole.

(a) If a defendant is charged with capital murder, the county or district attorney shall file written notice if such attorney intends, upon conviction of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death. Such notice shall be filed with the court and served on the defendant or the defendant's attorney not later than five days after the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of capital murder, shall be sentenced to life without the possibility of parole, and no sentence of death shall be imposed hereunder.
(b) Except as provided in K.S.A. 21-4622 and 21-4623, and amendments thereto, upon conviction of a defendant of capital murder, the court, upon motion of the county or district attorney, shall conduct a separate sentencing proceeding to determine whether the defendant shall be sentenced to death. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a sentence of death shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403 and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 21-4625 and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death; otherwise, the defendant shall be sentenced to life without the possibility of parole. The jury, if its verdict is a unanimous recommendation of a sentence of death, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to
reach a verdict, the judge shall dismiss the jury and impose a sentence of life without
the possibility of parole and shall commit the defendant to the custody of the
secretary of corrections. In nonjury cases, the court shall follow the requirements of
this subsection in determining the sentence to be imposed.

(f) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict
imposing a sentence of death hereunder to ascertain whether the imposition of such
sentence is supported by the evidence. If the court determines that the imposition
of such a sentence is not supported by the evidence, the court shall modify the
sentence and sentence the defendant to life without the possibility of parole, and no
sentence of death shall be imposed hereunder. Whenever the court enters a
judgment modifying the sentencing verdict of the jury, the court shall set forth its
reasons for so doing in a written memorandum which shall become part of the
record.

(g) A defendant who is sentenced to imprisonment for life without the possibility of
parole shall spend the remainder of the defendant's natural life incarcerated and in
the custody of the secretary of corrections. A defendant who is sentenced to
imprisonment for life without the possibility of parole shall not be eligible for parole,
probation, assignment to a community correctional services program, conditional
release, postrelease supervision, or suspension, modification or reduction of
sentence. Upon sentencing a defendant to imprisonment for life without the
possibility of parole, the court shall commit the defendant to the custody of the
secretary of corrections and the court shall state in the sentencing order of the
judgment form or journal entry, whichever is delivered with the defendant to the
correctional institution, that the defendant has been sentenced to imprisonment for
life without the possibility of parole.

Comment

KSA 21-4624. No change is recommended.

21-45-802

21-45-802. Persons convicted of capital murder, sentencing. Upon conviction of a
defendant of capital murder and a finding that the defendant was less than 18 years of age
at the time of the commission thereof, the court shall sentence the defendant as otherwise
provided by law, and no sentence of death or life without the possibility of parole shall be
imposed hereunder.

Comment

KSA 21-4622. No change is recommended
21-45-803. Same; automatic review by and appeal to supreme court.

(a) A judgment of conviction resulting in a sentence of death shall be subject to automatic review by an appeal to the supreme court of Kansas in the manner provided by the applicable statutes and rules of the supreme court governing appellate procedure. The review and appeal shall be expedited in every manner consistent with the proper presentation thereof and given priority pursuant to the statutes and rules of the supreme court governing appellate procedure.

(b) The supreme court of Kansas shall consider the question of sentence as well as any errors asserted in the review and appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.

(c) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor; and

(2) whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances.

(d) The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the review and appeal.

Comment

KSA 21-4627. No change is recommended.

21-45-804

21-45-804. Sentencing of certain persons to mandatory term of imprisonment of 40 or 50 years or life without the possibility of parole; determination; evidence presented; balance of aggravating and mitigating circumstances.

(a) Except as provided in K.S.A. 21-4622, 21-4623 and 21-4634 and amendments thereto, if a defendant is convicted of the crime of capital murder and a sentence of death is not imposed pursuant to subsection (e) of K.S.A. 21-4624, and amendments thereto, or requested pursuant to subsection (a) or (b) of K.S.A. 21-4624, and amendments thereto, the defendant shall be sentenced to life without the possibility of parole.

(b) If a defendant is convicted of murder in the first degree based upon the finding of premeditated murder, the court shall determine whether the defendant shall be
required to serve a mandatory term of imprisonment of 40 years or for crimes committed on and after July 1, 1999, a mandatory term of imprisonment of 50 years or sentenced as otherwise provided by law.

(c) In order to make such determination, the court may be presented evidence concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 21-4636 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing shall be admissible and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the time of sentencing shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(d) If the court finds that one or more of the aggravating circumstances enumerated in K.S.A. 21-4636 and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced pursuant to K.S.A. 21-4638 and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The court shall designate, in writing, the statutory aggravating circumstances which it found. The court may make the findings required by this subsection for the purpose of determining whether to sentence a defendant pursuant to K.S.A. 21-4638 and amendments thereto notwithstanding contrary findings made by the jury or court pursuant to subsection (e) of K.S.A. 21-4624 and amendments thereto for the purpose of determining whether to sentence such defendant to death.

Comment

KSA 21-4635. No change is recommended.

21-45-805. Sentencing of certain persons to mandatory term of imprisonment of 40 years; juveniles prosecuted as adults. If the court authorizes prosecution as an adult of a juvenile pursuant to K.S.A. 2007 Supp. 38-2347, and amendments thereto, the county or district attorney may proceed pursuant to K.S.A. 21-4634 through 21-4638 and amendments thereto.

Comment
KSA 21-4633. No change is recommended

21-45-806. Persons convicted of capital murder, sentencing of certain persons to mandatory
term of imprisonment of 40 or 50 years or life without the possibility of parole; persons
determined to be mentally retarded.

(a) If, under K.S.A. 21-4624 and amendments thereto, the county or district attorney has
filed a notice of intent to request a separate sentencing proceeding to determine
whether the defendant should be sentenced to death and the defendant is convicted
of the crime of capital murder, the defendant's counsel or the warden of the
correctional institution or sheriff having custody of the defendant may request a
determination by the court of whether the defendant is mentally retarded. If the court
determines that there is not sufficient reason to believe that the defendant is
mentally retarded, the court shall so find and the defendant shall be sentenced in
accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631 and
amendments thereto. If the court determines that there is sufficient reason to believe
that the defendant is mentally retarded, the court shall conduct a hearing to
determine whether the defendant is mentally retarded.

(b) If a defendant is convicted of the crime of capital murder and a sentence of death is
not imposed, or if a defendant is convicted of the crime of murder in the first degree
based upon the finding of premeditated murder, the defendant's counsel or the
director of the correctional institution or sheriff having custody of the defendant
may request a determination by the court of whether the defendant is mentally
retarded. If the court determines that there is not sufficient reason to believe that
the defendant is mentally retarded, the court shall so find and the defendant shall
be sentenced in accordance with K.S.A. 21-4635 through 21-4638. If the court
determines that there is sufficient reason to believe that the defendant is mentally
retarded, the court shall conduct a hearing to determine whether the defendant is
mentally retarded.

(c) At the hearing, the court shall determine whether the defendant is mentally
retarded. The court shall order a psychiatric or psychological examination of the
defendant. For that purpose, the court shall appoint two licensed physicians or
licensed psychologists, or one of each, qualified by training and practice to make
such examination, to examine the defendant and report their findings in writing to
the judge within 10 days after the order of examination is issued. The defendant
shall have the right to present evidence and cross-examine any witnesses at the
hearing. No statement made by the defendant in the course of any examination
provided for by this section, whether or not the defendant consents to the
examination, shall be admitted in evidence against the defendant in any criminal
proceeding.
(d) If, at the conclusion of a hearing pursuant to subsection (a), the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631 and amendments thereto.

(e) If, at the conclusion of a hearing pursuant to subsection (b), the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with K.S.A. 21-4635 through 21-4638.

(f) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is mentally retarded, the court shall sentence the defendant as otherwise provided by law, and no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed hereunder.

(g) Unless otherwise ordered by the court for good cause shown, the provisions of subsection (b) shall not apply if it has been determined, pursuant to a hearing granted under the provisions of subsection (a), that the defendant is not mentally retarded.

(h) As used in this section, "mentally retarded" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01 and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

Comment

The proposed statute merges two existing statutes, KSA 21-4623 and 21-4634.

21-45-807

21-45-807. Same; imposition of sentence of mandatory imprisonment of 40 or 50 years. When it is provided by law that a person shall be sentenced pursuant to this section, such person shall be sentenced to imprisonment for life and shall not be eligible for probation or suspension, modification or reduction of sentence. Except as otherwise provided, in addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 40 years' imprisonment, and such 40 years' imprisonment shall not be reduced by the application of good time credits. For crimes committed on and after July 1, 1999, a person sentenced pursuant to this section shall not be eligible for parole prior to serving 50 years' imprisonment, and such 50 years' imprisonment shall not be reduced by the application of good time credits. For crimes committed on or after July 1, 2006, a mandatory minimum term of imprisonment of 50 years shall not apply if the court finds that the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 600 months. In such case, the defendant is required to
serve a mandatory minimum term equal to the sentence established pursuant to the
sentencing range. Upon sentencing a defendant pursuant to this section, the court shall
commit the defendant to the custody of the secretary of corrections and the court shall state
in the sentencing order of the judgment form or journal entry, whichever is delivered with
the defendant to the correctional institution, that the defendant has been sentenced
pursuant to K.S.A. 21-4638 and amendments thereto.

Comment

KSA 21-4638. No change is recommended.

21-45-808

21-45-808. Same; aggravating circumstances. Aggravating circumstances shall be limited to
the following:

(a) The defendant was previously convicted of a felony in which the defendant inflicted
great bodily harm, disfigurement, dismemberment or death on another.

(b) The defendant knowingly or purposely killed or created a great risk of death to more
than one person.

(c) The defendant committed the crime for the defendant's self or another for the
purpose of receiving money or any other thing of monetary value.

(d) The defendant authorized or employed another person to commit the crime.

(e) The defendant committed the crime in order to avoid or prevent a lawful arrest or
prosecution.

(f) The defendant committed the crime in an especially heinous, atrocious or cruel
manner. A finding that the victim was aware of such victim's fate or had conscious
pain and suffering as a result of the physical trauma that resulted in the victim's
death is not necessary to find that the manner in which the defendant killed the
victim was especially heinous, atrocious or cruel. Conduct which is heinous,
atrocious or cruel may include, but is not limited to:

(1) Prior stalking of or criminal threats to the victim;

(2) preparation or planning, indicating an intention that the killing was meant to
be especially heinous, atrocious or cruel;

(3) infliction of mental anguish or physical abuse before the victim's death;
(4) torture of the victim;
(5) continuous acts of violence begun before or continuing after the killing;
(6) desecration of the victim's body in a manner indicating a particular depravity of mind, either during or following the killing; or
(7) any other conduct the court expressly finds is especially heinous.

(g) The defendant committed the crime while serving a sentence of imprisonment on conviction of a felony.

(h) The victim was killed while engaging in, or because of the victim's performance or prospective performance of, the victim's duties as a witness in a criminal proceeding.

Comment

This statute combines KSA 21-4625 and KSA 21-4636. Subsection (f) is from subsection (f) of KSA 21-4636.

21-45-809

21-45-809. Persons convicted of capital murder, sentencing of certain persons to mandatory term of imprisonment of 40 or 50 years or life without the possibility of parole; mitigating circumstances.

(a) Mitigating circumstances shall include, but are not limited to, the following:

(1) The defendant has no significant history of prior criminal activity.
(2) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.
(3) The victim was a participant in or consented to the defendant's conduct.
(4) The defendant was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.
(5) The defendant acted under extreme distress or under the substantial domination of another person.
(6) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.
(7) The age of the defendant at the time of the crime.
At the time of the crime, the defendant was suffering from posttraumatic stress syndrome caused by violence or abuse by the victim.

Pursuant to hearing under KSA 21-4624 mitigating circumstances shall include circumstances where a term of imprisonment is found to be sufficient to defend and protect the people's safety from the defendant.

Comment

KSA 21-4637. The proposed statute combines KSA 21-4626 and KSA 21-4637.

21-45-810. Aggravated habitual sex offender; sentence to imprisonment for life without parole.

(a) An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender's natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) "Aggravated habitual sex offender" means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in paragraphs (3)(A) through (3)(J) or (3)(L); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted on at least two prior conviction events of any sexually violent crime.

(2) "Prior conviction event" means one or more felony convictions of a sexually violent crime occurring on the same day and within a single count. These convictions may result from multiple counts within an information or from more than one information. If a person crosses a county line and commits
felony as part of the same criminal act or acts, such felony, if such person is convicted, shall be considered part of the prior conviction event.

(3) "Sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505, and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, and amendments thereto;

(K) any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(L) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(M) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.
21-45-811. Mandatory term of imprisonment of 25 or 40 years for certain sex offenders; exceptions.

(a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in paragraph (2):

(A) Aggravated trafficking, as defined in K.S.A. 21-3447, and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and amendments thereto;

(C) aggravated indecent liberties with a child, as defined in subsection (a)(3) of K.S.A. 21-3504, and amendments thereto;

(D) aggravated criminal sodomy, as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-3506, and amendments thereto;

(E) promoting prostitution, as defined in K.S.A. 21-3513, and amendments thereto, if the prostitute is less than 14 years of age;

(F) sexual exploitation of a child, as defined in subsection (a)(5) or (a)(6) of K.S.A. 21-3516, and amendments thereto; and

(G) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an offense defined in paragraphs (A) through (F).

(2) The provision of paragraph (1) requiring a mandatory minimum term of imprisonment of not less than 25 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 21-4642, and amendments thereto; or
(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to the effective date of this act which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under K.S.A. 21-3522, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as K.S.A. 21-3522, and amendments thereto.

(2) The provision of paragraph (1) requiring a mandatory minimum term of imprisonment of not less than 40 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 21-4642, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 480 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(c) When a person is sentenced pursuant to subsection (a) or (b), such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years, 40 years or be sentenced as determined in subsection (a)(2) or subsection (b)(2), whichever is applicable, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving such mandatory term of imprisonment, and such imprisonment shall not be reduced by the application of good time credits.

(d) On or after July 1, 2006, for a first time conviction of an offense listed in paragraph (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a
departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the sentencing guidelines act, K.S.A. 21-4701 et seq., and amendments thereto, and no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder. As used in this subsection, mitigating circumstances shall include, but are not limited to, the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The crime was committed while the defendant was under the influence of extreme mental or emotional disturbances.

(3) The victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor.

(4) The defendant acted under extreme distress or under the substantial domination of another person.

(5) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.

(6) The age of the defendant at the time of the crime.

Comment

KSA 21-4643. No change is recommended.

21-45-812

21-45-812. Modification of sentence previously determined under act; when. In the event the term of imprisonment for life without the possibility of parole or any provision of K.S.A. 21-4642 or K.S.A. 21-4643 authorizing such term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no term of imprisonment for life without the possibility of parole and shall sentence the defendant to the maximum term of imprisonment otherwise provided by law.

Comment

KSA 21-4644. The statute refers to “this act”. The statutes in the act have been inserted.
21-45-813. Same; provisions of act held unconstitutional; modification of sentence previously determined under this act. In the event a sentence of death or any provision of this act authorizing such sentence is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence and resentence the defendant as otherwise provided by law.

Comment

K.S.A. 21-4629.

21-45-814. Same; severability. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Comment

K.S.A. 21-4630

21-45-815. Same; provisions of K.S.A. 21-4622 through 21-4630 supplemental to Kansas criminal code; application of such provisions.

(a) K.S.A. 21-4622 through 21-4630, and amendments thereto, shall be supplemental to and a part of the Kansas criminal code.

(b) The provisions of K.S.A. 21-4622 through 21-4630, as they existed immediately prior to July 1, 1994, shall be applicable only to persons convicted of crimes committed on or after July 1, 1990, and before July 1, 1994.

(c) The provisions of K.S.A. 21-4622 through 21-4629 and 21-4630, as amended by this act, shall be applicable only to persons convicted of crimes committed on or after July 1, 1994.

Comment
21-45-816. Same; provisions of act held unconstitutional; modification of sentence previously determined under this act. In the event the mandatory term of imprisonment or any provision of this act authorizing such mandatory term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no mandatory term of imprisonment and shall sentence the defendant as otherwise provided by law.

Comment

K.S.A. 21-4639. No change is recommended.

21-45-817. Same; severability. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Comment

K.S.A. 21-4640. This statute is replaced by the general severability clause.

21-45-818. Same; provisions of K.S.A. 21-4633 through 21-4640 supplemental to Kansas criminal code; application of such provisions.

(a) K.S.A. 21-4633 through 21-4640 shall be supplemental to and a part of the Kansas criminal code.

(b) K.S.A. 21-4633 through 21-4640 shall be applicable only to persons convicted of crimes committed on or after July 1, 1994.

Comment

K.S.A. 21-4641. No change is recommended.
21-45-819. Severability. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Comment

K.S.A. 21-4645. This statute is replaced by the general severability clause.
### Article 46

**Sentencing: Crimes Committed Before July 1, 1993**

#### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4501</td>
<td>Classes of felonies and terms of imprisonment; crimes committed prior to July 1, 1993. For the purpose of sentencing, the following classes of felonies and terms of imprisonment authorized for each class are established</td>
<td>21-46-101</td>
</tr>
<tr>
<td>21-4501a</td>
<td>Application of certain penalties; review and reduction of previous sentences</td>
<td>21-46-102</td>
</tr>
</tbody>
</table>

#### Section 2

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4603</td>
<td>Authorized dispositions; crimes committed prior to July 1, 1993</td>
<td>41-46-201</td>
</tr>
<tr>
<td>21-4604</td>
<td>Presentence investigation and report</td>
<td>41-46-202</td>
</tr>
<tr>
<td>21-4605</td>
<td>Availability of reports to counsel; exception</td>
<td>41-46-203</td>
</tr>
</tbody>
</table>

#### Section 3

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4606</td>
<td>Criteria for fixing minimum terms; crimes committed prior to July 1, 1993</td>
<td>41-46-301</td>
</tr>
<tr>
<td>21-4504</td>
<td>Conviction of second and subsequent felonies; exceptions</td>
<td>41-46-302</td>
</tr>
<tr>
<td>21-4618</td>
<td>Mandatory imprisonment for crimes involving firearms; crimes committed prior to July 1, 1993</td>
<td>41-46-303</td>
</tr>
</tbody>
</table>
### Section 4

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4606a</td>
<td>Presumptive sentence of probation for certain class D or E felons; crimes committed prior to July 1, 1993</td>
<td>21-46-401</td>
</tr>
<tr>
<td>21-4606b</td>
<td>Presumptive sentence of assignment to community correctional services program for certain class D or E felons; aggravating circumstances to be considered; crimes committed prior to July 1, 1993</td>
<td>21-46-402</td>
</tr>
</tbody>
</table>

### Section 5

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4503</td>
<td>Fines; crimes committed prior to July 1, 1993</td>
<td>21-46-501</td>
</tr>
</tbody>
</table>

### Section 6

No Statutes

### Section 7

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4620</td>
<td>Defendants sentenced to custody of secretary of corrections; judgment form and contents; diagnostic reports to accompany defendant; crimes committed prior to July 1, 1993</td>
<td>21-46-701</td>
</tr>
<tr>
<td>21-4621</td>
<td>Same; order transferring custody to corrections</td>
<td>21-46-702</td>
</tr>
</tbody>
</table>
21-46-101. Classes of felonies and terms of imprisonment; crimes committed prior to July 1, 1993. 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 imprisonment for life.

(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 15 years and the maximum of which shall be fixed by the court at not less than 20 years nor more than 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 three years nor more than five years and the maximum of which shall be fixed by the court at not less than 10 years nor more than 20 years.

(d) Class D, the sentence for which shall be an indeterminate term of imprisonment fixed by the court as follows:

(1) For a crime specified in article 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, a minimum of not less than two years nor more than three years and a maximum of not less than five years nor more than 10 years; and

(2) for any other crime, a minimum of not less than one year nor more than three years and a maximum of not less than five years nor more than 10 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 fixed by the court at not less than two years nor more than 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 the statute, the offender shall be sentenced as for a class E felony.

(g) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.
KSA 21-4501. No change is recommended.

21-46-102

21-46-102. Application of certain penalties; review and reduction of previous sentences; crimes committed prior to July 1, 1993. (a) The minimum term of imprisonment established by subsection (e) of K.S.A. 21-4501 and amendments thereto shall apply retrospectively to individuals sentenced on or after May 17, 1984, for a class E felony.

(b) If an individual has been sentenced to a minimum term of imprisonment of more than one year for a class E felony and the sentence was imposed on or after May 17, 1984, such minimum sentence is hereby reduced to one year.

(c) If an individual's minimum term of imprisonment is reduced by this section, the individual shall be eligible for parole as provided by K.S.A. 22-3717 and amendments thereto, based upon the individual's reduced minimum term of imprisonment.

(d) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

Comment

KSA 21-4501a. The Commission suggests repeal of this statute

21-46-201

21-46-201. Authorized dispositions; crimes committed prior to July 1, 1993.

(a) Whenever any person has been found guilty of a crime and the court finds that an adequate presentence investigation cannot be conducted by resources available within the judicial district, including mental health centers and mental health clinics, the court may require that a presentence investigation be conducted by the Topeka correctional facility or by the state security hospital. If the offender is sent to the Topeka correctional facility or the state security hospital for a presentence investigation under this section, the correctional facility or hospital may keep the offender confined for a maximum of 60 days, except that an inmate may be held for a longer period of time on order of the secretary, or until the court calls for the return of the offender. While held at the Topeka correctional facility or the state security hospital the defendant may be treated the same as any person committed to the secretary of corrections or secretary of social and rehabilitation services for purposes of maintaining security and control, discipline, and emergency medical or psychiatric treatment, and general population management except that no such person shall be transferred out of the state or to a federal institution or to any other location unless the transfer is between the correctional facility and the state security hospital. The correctional facility or the state security hospital shall compile a complete mental and physical evaluation of such offender and shall make its findings and recommendations known to the court in the presentence report.
Except as provided in subsection (c), whenever any person has been found guilty of a crime, the court may adjudge any of the following:

1. Commit the defendant to the custody of the secretary of corrections or, if confinement is for a term less than one year, to jail for the term provided by law;

2. impose the fine applicable to the offense;

3. release the defendant on probation subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of an original probation sentence and up to 60 days in a county jail upon each revocation of the probation sentence;

4. suspend the imposition of the sentence subject to such conditions as the court may deem appropriate, including orders requiring full or partial restitution. In felony cases, the court may include confinement in a county jail not to exceed 60 days, which need not be served consecutively, as a condition of suspension of sentence;

5. assign the defendant to a community correctional services program subject to the provisions of K.S.A. 75-5291, and amendments thereto, and such conditions as the court may deem appropriate, including orders requiring full or partial restitution;

6. assign the defendant to a conservation camp for a period not to exceed six months;

7. assign the defendant to a house arrest program pursuant to K.S.A. 21-4603b and amendments thereto;

8. order the defendant to attend and satisfactorily complete an alcohol or drug education or training program as provided by subsection (3) of K.S.A. 21-4502 and amendments thereto;

9. order the defendant to pay the administrative fee authorized by K.S.A. 22-4529 and amendments thereto, unless waived by the court; or

10. impose any appropriate combination of subsections (b)(1) through (b)(9).

In addition to or in lieu of any of the above, the court shall order the defendant to submit to and complete an alcohol and drug evaluation, and pay a fee therefor, when required by subsection (4) of K.S.A. 21-4502 and amendments thereto.
In addition to any of the above, the court shall order the defendant to reimburse the state general fund for all or a part of the expenditures by the state board of indigents' defense services to provide counsel and other defense services to the defendant. In determining the amount and method of payment of such sum, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of such sum will impose. A defendant who has been required to pay such sum and who is not willfully in default in the payment thereof may at any time petition the court which sentenced the defendant to waive payment of such sum or any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may waive payment of all or part of the amount due or modify the method of payment. The amount of attorney fees to be included in the court order for reimbursement shall be the amount claimed by appointed counsel on the payment voucher for indigents' defense services or the amount prescribed by the board of indigents' defense services reimbursement tables as provided in K.S.A. 22-4522, and amendments thereto, whichever is less.

In imposing a fine the court may authorize the payment thereof in installments. In releasing a defendant on probation, the court shall direct that the defendant be under the supervision of a court services officer. If the court commits the defendant to the custody of the secretary of corrections or to jail, the court may specify in its order the amount of restitution to be paid and the person to whom it shall be paid if restitution is later ordered as a condition of parole or conditional release.

The court in committing a defendant to the custody of the secretary of corrections shall fix a maximum term of confinement within the limits provided by law. In those cases where the law does not fix a maximum term of confinement for the crime for which the defendant was convicted, the court shall fix the maximum term of such confinement. In all cases where the defendant is committed to the custody of the secretary of corrections, the court shall fix the minimum term within the limits provided by law.

(c) Whenever any juvenile felon, as defined in K.S.A. 38-16,112, prior to its repeal, has been found guilty of a class A or B felony, the court shall commit the defendant to the custody of the secretary of corrections and may impose the fine applicable to the offense.

(d) Except when an appeal is taken and determined adversely to the defendant as provided in subsection (d)(2), at any time within 120 days after a sentence is imposed, after probation or assignment to a community correctional services program has been revoked, the court may modify such sentence, revocation of probation or assignment to a community correctional services program by directing that a less severe penalty be imposed in lieu of that originally adjudged within statutory limits and shall modify such sentence if
recommended by the Topeka correctional facility unless the court finds and
sets forth with particularity the reasons for finding that the safety of
members of the public will be jeopardized or that the welfare of the inmate
will not be served by such modification.

(2) 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 or court of
appeals.

(e) The court shall modify the sentence at any time before the expiration thereof when
such modification is recommended by the secretary of corrections unless the court
finds and sets forth with particularity the reasons for finding that the safety of
members of the public will be jeopardized or that the welfare of the inmate will not
be served by such modification. The court shall have the power to impose a less
severe penalty upon the inmate, including the power to reduce the minimum below
the statutory limit on the minimum term prescribed for the crime of which the
inmate has been convicted. The recommendation of the secretary of corrections, the
hearing on the recommendation and the order of modification shall be made in open
court. Notice of the recommendation of modification of sentence and the time and
place of the hearing thereon shall be given by the inmate, or by the inmate’s legal
counsel, at least 21 days prior to the hearing to the county or district attorney of the
county where the inmate was convicted. After receipt of such notice and at least 14
days prior to the hearing, the county or district attorney shall give notice of the
recommendation of modification of sentence and the time and place of the hearing
thereon to any victim of the inmate's crime who is alive and whose address is known
to the county or district attorney or, if the victim is deceased, to the victim’s next of
kin if the next of kin’s address is known to the county or district attorney. Proof of
service of each notice required to be given by this subsection shall be filed with the
court.

(f) After such defendant has been assigned to a conservation camp but prior to the end
of 180 days, the chief administrator of such camp shall file a performance report and
recommendations with the court. The court shall enter an order based on such
report and recommendations modifying the sentence, if appropriate, by sentencing
the defendant to any of the authorized dispositions provided in subsection (b),
except to reassign such person to a conservation camp as provided in subsection
(b)(6).

(g) This section shall not deprive the court of any authority conferred by any other
Kansas statute 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 of
conviction of crime.

(h) An application for or acceptance of probation, suspended sentence or assignment to
a community correctional services program shall not constitute an acquiescence in
the judgment for purpose of appeal, and any convicted person may appeal from such conviction, as provided by law, without regard to whether such person has applied for probation, suspended sentence or assignment to a community correctional services program.

(i) When it is provided by law that a person shall be sentenced pursuant to K.S.A. 21-4628, and amendments thereto, the provisions of this section shall not apply.

(j) The provisions of this section shall apply to crimes committed before July 1, 1993.

Comment

KSA 21-4603. No change is recommended.


(a) Whenever a defendant is convicted of a misdemeanor, the court before which the conviction is had may request a presentence investigation by a court services officer. Whenever a defendant is convicted of a felony, the court shall require that a presentence investigation be conducted by a court services officer or in accordance with K.S.A. 21-4603, and amendments thereto, unless the court finds that adequate and current information is available in a previous presentence investigation report or from other sources.

(b) Whenever a presentence report is requested, the court services officer, with the assistance of the county or district attorney, shall secure, except for good cause shown, information concerning:

(1) The circumstances of the offense and any mitigating or aggravating factors involved in the defendant's behavior;

(2) the attitude of the complainant or victim and, if possible in homicide cases, the victim's immediate family;

(3) the criminal record, social history and present condition of the defendant; and

(4) any other facts or circumstances that may aid the court in sentencing, which may include, but is not limited to, the financial, social, psychological, physical or other harm or loss suffered by victims of the offense and the restitution needs of such victims. Except where specifically prohibited by law, all local governmental and state agencies shall furnish to the officer conducting the presentence investigation any records requested by the
officer. If ordered by the court, the presentence investigation shall include a physical and mental examination of the defendant.

(c) Presentence investigation reports shall be in the form and contain the information prescribed by rule of the supreme court, and shall contain any other information prescribed by the district court.

(d) The judicial administrator of the courts shall confer and consult with the secretary of corrections when considering changes or revisions in the form and content of presentence investigation reports so that the reports will be in such form and contain such information as will be of assistance to the secretary in exercising or performing the secretary’s functions, powers and duties.

(e) The provisions of this section shall not apply to felony crimes committed on or after July 1, 1993.

Comment

KSA 21-4604. No change is recommended.

21-46-203. Availability of reports to counsel; exception.

(a) (1) The judge shall make available to the attorney for the state or counsel for the defendant the presentence report, any report that may be received from the Topeka correctional facility or the state security hospital and other diagnostic reports and shall allow the attorney or counsel a reasonable time to review the report before sentencing the defendant.

(2) The court shall permit the attorney for the state or the counsel for the defendant to copy and retain any of the reports under subsection (a)(1). Any reports copied and retained shall be kept in the records of the attorney for the state or the counsel for the defendant. All costs of copying such reports shall be paid by the office of the attorney for the state or the counsel for the defendant making the request.

(b) The presentence report shall become part of the court record and shall be accessible to the public, except that the official version, the defendant’s version, the victim's statement, any psychological reports and any drug and alcohol reports shall be accessible only to the attorney for the state and the counsel for the defendant, the sentencing judge, the department of corrections and if requested, the Kansas sentencing commission. If the offender is committed to the custody of the secretary of corrections, the report shall be sent to the secretary and, in accordance with

Article 31

369
K.S.A. 75-5220 and amendments thereto, to the warden of the state correctional
institution to which the defendant is conveyed.

(c) For felony crimes committed on or after July 1, 1993, the provisions of this section
are not applicable to the presentence investigation report.

Comment

KSA 21-4605. No change is recommended.

21-46-301

21-46-301. Criteria for fixing minimum terms; crimes committed prior to July 1, 1993.

(a) 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 such court, is
consistent with the public safety, the needs of the defendant, and the seriousness of
the defendant's crime.

(b) The following factors, while not controlling, shall be considered by the court in fixing
the minimum term of imprisonment:

(1) The defendant's history of prior criminal activity;

(2) The extent of the harm caused by the defendant's criminal conduct;

(3) Whether the defendant intended that the defendant's criminal conduct
would cause or threaten serious harm;

(4) The degree of the defendant's provocation;

(5) Whether there were substantial grounds tending to excuse or justify the
defendant's criminal conduct, though failing to establish a defense;

(6) Whether the victim of the defendant's criminal conduct induced or
facilitated its commission;

(7) Whether the defendant has compensated or will compensate the victim of
the defendant's criminal conduct for the damage or injury that the victim
sustained.

(c) The provisions of this section shall not apply to crimes committed on or after July 1,
1993.
Comment

KSA 21-4606. No change is recommended.

21-46-302


(a) If a defendant is convicted of a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated, the punishment for which is confinement in the custody of the secretary of corrections after having previously been convicted of any such felony or comparable felony under the laws of another state, the federal government or a foreign government, the trial judge may sentence the defendant as follows, upon motion of the prosecuting attorney:

(1) The court may fix a minimum sentence of not less than the least nor more than twice the greatest minimum sentence authorized by K.S.A. 21-4501 and amendments thereto, for the crime for which the defendant is convicted; and

(2) the court may fix a maximum sentence of not less than the least nor more than twice the greatest maximum sentence provided for the crime by K.S.A. 21-4501 and amendments thereto.

(b) If a defendant is convicted of a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated; having been convicted at least twice before for any such felony offenses or comparable felony offenses under the laws of another state, the federal government or a foreign government, the trial judge shall sentence the defendant as follows, upon motion of the prosecuting attorney:

(1) The court shall fix a minimum sentence of not less than the greatest nor more than three times the greatest minimum sentence authorized for the crime for which the defendant is convicted by K.S.A. 21-4501 and amendments thereto; and

(2) the court may fix a maximum sentence of not less than the least nor more than three times the greatest maximum sentence provided for the crime by K.S.A. 21-4501 and amendments thereto.

(c) If a defendant is convicted of a felony other than a felony specified in article 34, 35 or 36 of chapter 21 of Kansas Statutes Annotated, having been convicted at least twice before for any such felony offenses or comparable felony offenses under the laws of another state, the federal government or a foreign government, the trial judge shall sentence the defendant as follows, upon motion of the prosecuting attorney:
(1) The court shall fix a minimum sentence of not less than the greatest nor
more than two times the greatest minimum sentence authorized for the
crime for which the defendant is convicted by K.S.A. 21-4501 and
amendments thereto; and

(2) the court may fix a maximum sentence of not less than the least nor more
than two times the greatest maximum sentence provided for the crime by
K.S.A. 21-4501 and amendments thereto.

(d) If any portion of a sentence imposed under K.S.A. 21-107a, and amendments
thereto, or under this section, is determined to be invalid by any court because a
prior felony conviction is itself invalid, upon resentencing the court may consider
evidence of any other prior felony conviction that could have been utilized under
K.S.A. 21-107a, and amendments thereto, or under this section, at the time the
original sentence was imposed, whether or not it was introduced at that time,
except that if the defendant was originally sentenced as a second offender, the
defendant shall not be resentenced as a third offender.

(e) The provisions of this section shall not be applicable to:

(1) Any person convicted of a felony of which a prior conviction of a felony is a
necessary element;

(2) any person convicted of a felony for which a prior conviction of such felony is
considered in establishing the class of felony for which the person may be
sentenced; or

(3) any felony committed on or after July 1, 1993.

(f) A judgment may be rendered pursuant to this section only after the court finds from
competent evidence the fact of former convictions for felony committed by the
prisoner, in or out of the state.

Comment

KSA 21-4504. No change is recommended.

21-46-303. Mandatory imprisonment for crimes involving firearms; crimes committed prior
to July 1, 1993.

(a) Except as provided in subsection (c), probation, assignment to a community
correctional services program or suspension of sentence shall not be granted to any
defendant who is convicted of the commission of the crime of rape, the crime of
aggravated sodomy or any crime set out in article 34 of chapter 21 of the Kansas
Statutes Annotated in which the defendant used any firearm in the commission
thereof and such defendant shall be sentenced to not less than the minimum
sentence of imprisonment authorized by law for that crime. This section shall not
apply to any crime committed by a person under 18 years of age.

(b) When a court has sentenced a defendant as provided above, the court shall state in
the sentencing order of the judgment form or journal entry, whichever is delivered
with the defendant to the correctional institution, that the defendant has been
sentenced pursuant to this K.S.A. 21-4618 and amendments thereto based on a
finding by the court that a firearm was so used.

(c) The provisions of this section shall not apply to any crime committed by a person
where such application would result in a manifest injustice.

(d) The provisions of this section shall not apply to any crime committed on or after July
1, 1993.

Comment

KSA 21-4618. No change is recommended.

21-46-401

21-46-401. Presumptive sentence of probation for certain class D or E felons; crimes
committed prior to July 1, 1993. The presumptive sentence for a person who has never
before been convicted of a felony, but has now been convicted of a class D or E felony or
convicted of an attempt to commit a class D felony shall be probation, unless the conviction
is of a crime or of an attempt to commit a crime specified in article 34, 35 or 36 of chapter 21
of Kansas Statutes Annotated or in the uniform controlled substances act or the person
convicted is a juvenile offender in the custody of the department of social and rehabilitation
services. In determining whether to impose the presumptive sentence, the court shall
consider any prior record of the person's having been convicted or having been adjudicated
to have committed, while a juvenile, an offense which would constitute a felony if
committed by an adult. If the presumptive sentence provided by this section is not imposed,
the provisions of K.S.A. 21-4606b and amendments thereto shall apply. The provisions of
this section shall not apply to crimes committed on or after July 1, 1993.

Comment

KSA 21-4606a. No change is recommended.
21-46-024. Presumptive sentence of assignment to community correctional services
program for certain class D or E felons; aggravating circumstances to be considered; crimes
committed prior to July 1, 1993.

(a) If probation is not granted pursuant to K.S.A. 21-4606a, and amendments thereto,
subject to the provisions of K.S.A. 75-5291, and amendments thereto, the
presumptive sentence for a person convicted of a class D or E felony shall be
assignment to a community correctional services program on terms the court
determines.

(b) In determining whether to impose the presumptive sentence provided by this
section, the court shall consider whether any of the following aggravating
circumstances existed:

(1) Whether the crime is a felony violation of the uniform controlled substances
act or an attempt to commit such an offense;

(2) whether the crime is a crime specified in article 34, 35 or 36 of chapter 21 of
the Kansas Statutes Annotated or an attempt to commit such an offense; or

(3) any prior record of the person's having been convicted of a felony or having
been adjudicated to have committed, while a juvenile, an offense which
would constitute a felony if committed by an adult.

(c) The provisions of this section shall not apply to crimes committed on or after July 1,
1993.

Comment

KSA 21-4606b. No change is recommended.

21-46-015. Fines; crimes committed prior to July 1, 1993.

(a) Except as provided in subsection (b), 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:

(1) For a class B or C felony, a sum not exceeding $15,000.

(2) For a class D or E felony, a sum not exceeding $10,000.

(b) A person who has been convicted of a felony violation of or any attempt or
conspiracy to commit a felony violation of any provision of the uniform controlled
substances act 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:

1. For a class A felony, a sum not exceeding $500,000.
2. For a class B or C felony, a sum not exceeding $300,000.
3. For a class D or E felony, a sum not exceeding $100,000.

(c) 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:

1. For a class A misdemeanor, a sum not exceeding $2,500.
2. For a class B misdemeanor, a sum not exceeding $1,000.
3. For a class C misdemeanor, a sum not exceeding $500.
4. 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 the fine provided herein for a class C misdemeanor.

(d) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(e) A person who has been convicted of a traffic infraction may be sentenced to pay a fine which shall be fixed by the court not exceeding $500.

(f) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

Comment

KSA 21-4503. No change is recommended.
the clerk. If prepared, the judgment form shall reflect the conviction, the sentence and the commitment, and shall contain the following:

(1) The pronouncement of guilt including:

(A) The title of the crime;
(B) the statute violated; and
(C) the date the offense occurred.

(2) The sentence imposed including:

(A) The terms as required by subsection (2) of K.S.A. 21-4603 and amendments thereto;
(B) if applicable, a description of any increase in sentence because of previous felony conviction pursuant to K.S.A. 21-4504 and amendments thereto;
(C) if applicable, a statement that this defendant has been convicted of a class A, B or C felony by reason of aiding, abetting, advising, or counseling another to commit a crime, or by reason of the principle provided for in subsection (2) of K.S.A. 21-3205 and amendments thereto;
(D) if applicable, a statement that this defendant, age 18 or over, has been mandatorily sentenced pursuant to K.S.A. 21-4618 and amendments thereto for use of a firearm in a crime under article 34 of chapter 21, or the crime of rape or aggravated sodomy; and
(E) a statement of the effective date of the sentence indicating whether it is the date of imposition or some date earlier to give credit for time confined pending disposition of the case pursuant to K.S.A. 21-4614 and amendments thereto or credit for time on probation or assignment to community corrections pursuant to K.S.A. 21-4614a and amendments thereto.

(3) The order of commitment to the custody of the secretary, if not issued as a separate order.

(b) The court may attach to or include in the judgment form any of the following:

(1) A statement of reasons for imposing the sentence as ordered other than those reasons required above to be stated;
(2) a description of aggravating or mitigating circumstances the court took into consideration when ordering the commitment;

(3) recommendations on a program of rehabilitation for the offender, based on presentence investigation reports and any other information available. Such recommendations may include desirable treatment for corrections of physical deformities or disfigurement that may, if possible, be corrected by medical or surgical procedures or by prosthesis;

(4) a recommendation for further evaluation at the Topeka correctional facility, even though defendant was committed for presentence investigation;

(5) the copy of the evidence from trial or part thereof transmitted pursuant to K.S.A. 75-5219 and amendments thereto.

(c) The court shall forward a copy of all presentence investigation reports and other diagnostic reports on the offender received by the district court, including any reports received from the Topeka correctional facility or the state security hospital, to the officer having the offender in custody for delivery with the offender to the correctional institution.

(d) The provisions of this section shall not apply to crimes committed on or after July 1, 1993.

Comment

KSA 21-4620. No change is recommended.

21-46-702. Same; order transferring custody to corrections. If the defendant is to be sentenced to the secretary of corrections, the court shall issue an order of commitment to cause the transfer of custody of the defendant over to the secretary. Such order may be made part of the sentencing document whether that be the judgment form or the journal entry. The commitment order shall be supported by the record of judgment of conviction and sentence, whether by judgment form or by journal entry, and delivered with the defendant to the correctional institution.

Comment

KSA 21-4621. No change is recommended.
### Article 47

## Sentencing Guidelines

### Section 1

<table>
<thead>
<tr>
<th>Current K.S.A. Number</th>
<th>Title</th>
<th>KCCRC Section Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>21-4701</td>
<td>Citation of act</td>
<td>21-47-101</td>
</tr>
<tr>
<td>21-4702; 21-4723; 21-4728</td>
<td>Basis for applying sentencing guidelines and prosecuting standards; determination of time when crime committed; law applicable</td>
<td>21-47-102</td>
</tr>
<tr>
<td>21-4703</td>
<td>Definitions</td>
<td>21-47-103</td>
</tr>
<tr>
<td>21-4704</td>
<td>Sentencing guidelines; grid for nondrug crimes; authority and responsibility of sentencing court; presumptive disposition; nongrid crime</td>
<td>21-47-104</td>
</tr>
<tr>
<td>21-4705</td>
<td>Same; grid for drug crimes applied in felony cases under uniform controlled substances act; authority and responsibility of sentencing court; presumptive disposition</td>
<td>21-47-105</td>
</tr>
<tr>
<td>21-4706</td>
<td>Sentencing guidelines; imprisonment, good time; pronouncement of sentence in felony cases; off-grid crimes</td>
<td>21-47-106</td>
</tr>
<tr>
<td>21-4107</td>
<td>Same; crime severity scale for nondrug crimes, application to specific crimes; ranking offenses, provision; unranked offenses; unclassified felonies; prior convictions discovered after the plea</td>
<td>21-47-107</td>
</tr>
<tr>
<td>21-4708</td>
<td>Same; crime severity scale for drug offenses, application; sentencing rules for certain crimes</td>
<td>21-47-108</td>
</tr>
<tr>
<td>Article</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>21-4709</td>
<td>Criminal history categories in criminal history scale</td>
<td></td>
</tr>
<tr>
<td>21-4710</td>
<td>Sentencing; criminal history categories, basis; determination of offenders classification; decay factors; prior convictions</td>
<td></td>
</tr>
<tr>
<td>21-4711</td>
<td>; determination of offender's criminal history classification in presumptive sentencing guidelines grids</td>
<td></td>
</tr>
<tr>
<td>21-4712</td>
<td>Blank</td>
<td></td>
</tr>
<tr>
<td>21-4713</td>
<td>Actions which prosecutors may take under agreements with defendants for plea; exceptions relating to prior convictions</td>
<td></td>
</tr>
<tr>
<td>21-4714</td>
<td>Presentence investigation report; information included; part of court record; confidential information, disclosure to certain parties; report format</td>
<td></td>
</tr>
<tr>
<td>21-4715</td>
<td>Offenders criminal history; admission in court or determined by judge; burden of proof; notice of error by offender</td>
<td></td>
</tr>
<tr>
<td>21-4716</td>
<td>Imposition of presumptive sentence; jury requirements; departure sentencing; substantial and compelling reasons for departure; mitigating and aggravating factors</td>
<td></td>
</tr>
<tr>
<td>21-4717</td>
<td>Departure sentencing for drug crimes; finding substantial and compelling reasons for departure; aggravating factors considered in determining if reasons exist</td>
<td></td>
</tr>
<tr>
<td>21-4718</td>
<td>Departure sentencing; hearing; notice; findings of fact and conclusions of law; order; upward durational departure sentencing, procedures and jury requirements</td>
<td></td>
</tr>
<tr>
<td>21-4719</td>
<td>Same; limitations</td>
<td></td>
</tr>
<tr>
<td>21-4720</td>
<td>Sentencing in multiple conviction cases; discretion of judge to impose concurrent or consecutive sentences; requirements applicable; departure sentencing based on aggravating factors</td>
<td>21-47-120</td>
</tr>
<tr>
<td>21-4721</td>
<td>Departure sentence subject to appeal; confinement or release of defendant pending review; scope of review; action by court; written opinion, when; summary disposition; correction of arithmetic or clerical errors</td>
<td>21-47-121</td>
</tr>
<tr>
<td>21-4722</td>
<td>Good time and program credits; calculation; forfeiture; rules and regulations of secretary</td>
<td>21-47-122</td>
</tr>
<tr>
<td>21-4723</td>
<td>Determination of time when crime committed; law applicable</td>
<td>21-47-123</td>
</tr>
<tr>
<td>21-4724</td>
<td>Sentencing; application of guidelines to persons who committed crimes prior to July 1, 1993; modification and conversion of certain sentences; review of sentences of persons in custody; department to determine criminal history classification and prepare sentencing guideline report on inmates; filing of reports; request for hearing; determination by court; crimes committed prior to July 1, 1993, but sentence imposed after such date</td>
<td>21-47-124</td>
</tr>
<tr>
<td>21-4725</td>
<td>Sentencing guidelines; changes in; duties of sentencing commission and secretary of corrections; submission to legislature</td>
<td>21-47-125</td>
</tr>
<tr>
<td>21-4726</td>
<td>Invalidity of part of act; presumption</td>
<td>21-47-126</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>21-4727</td>
<td>Costs and expenses associated with postconviction sanctions for felony convictions; consolidation of probation, parole and community corrections services</td>
<td>21-47-127</td>
</tr>
<tr>
<td>21-4728</td>
<td>Sentencing court to consider alternatives determining appropriate sentence</td>
<td>21-47-128</td>
</tr>
<tr>
<td>21-4729</td>
<td>Nonprison sanction; certified drug abuse treatment programs; assessment; supervision by community corrections; discharge from program; exceptions to placement in program</td>
<td>21-47-129</td>
</tr>
</tbody>
</table>
21-47-101

21-47-101. Citation of act. This act shall be known and may be cited as the Kansas sentencing guidelines act.

Comment

KSA 21-4701. No change is recommended

21-47-102

21-47-102. Basis for applying sentencing guidelines and prosecuting standards; determination of time when crime committed; law applicable.

(a) The sentencing guidelines and prosecuting standards, as contained in this act or as subsequently enacted, shall apply equally to all offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous criminal record of the defendant.

(b) The sentencing court should consider in all cases a range of alternatives with gradations of supervisory, supportive and custodial facilities at its disposal so as to permit a sentence appropriate for each individual case, consistent with these guidelines and the permitted dispositional and durational departures contained in this act.

(c) Except as otherwise provided, the sentencing guidelines and prosecuting standards shall be applicable to felony crimes committed on or after July 1, 1993 and shall have no application to crimes committed prior to July 1, 1993. If it cannot be determined whether the crime was committed on or after July 1, 1993, the person convicted of committing such crime shall be sentenced as if such crime had been committed prior to July 1, 1993. A crime is committed prior to July 1, 1993, if any of the essential elements of the crime as then defined occurred before July 1, 1993. Except as provided in K.S.A. 21-4724, prosecutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.

Comment

KSA 21-4702, KSA 21-4723 and KSA 21-4728. Subsection (a) is KSA 21-4702 revised as shown; subsection (b) is KSA 21-4728; and, subsection (c) is a revised version of KSA 21-4723.

21-47-103

21-47-103. Definitions. As used in this act:

Article 31
(a) "Aggravating factor" means a substantial and compelling reason justifying an exception outside the standard sentencing range for a crime. An aggravating factor may result in a dispositional or durational departure and shall be stated on the record by the court; The sentencing court shall state on the record the aggravating factors supporting the departure sentence;

(b) "commission" means the Kansas sentencing commission;

(c) "criminal history" means and includes an offender’s criminal record of adult felony, class A misdemeanor, class B person misdemeanor, or select misdemeanor convictions and comparable juvenile adjudications possessed by an offender at the time such offender is sentenced;

(d) "criminal history score" means the summation of the convictions described as criminal history that place an offender in one of the criminal history score categories listed on the horizontal axis of the sentencing guidelines grids for nondrug crimes and the sentencing guidelines grid for drug crimes;

(e) "decay factor" means prior convictions that are no longer considered as part of an offender's criminal history score;

(f) "departure" means a sentence which is inconsistent with the presumptive sentence for an offender;

(g) "dispositional departure" means a departure sentence which is inconsistent with the presumptive sentence by imposing a nonprison sanction when the presumptive sentence is prison or prison when the presumptive sentence is nonimprisonment;

(h) "dispositional line" means the solid black line on the sentencing guidelines grids for nondrug crimes and the sentencing guidelines grid for drug crimes which separates the grid blocks in which the presumptive sentence is a term of imprisonment and postrelease supervision from the grid blocks in which the presumptive sentence is nonimprisonment which may include local custodial sanctions;

(i) "durational departure" means a departure sentence which is inconsistent with the presumptive sentence as to term of imprisonment, or term of nonimprisonment;

(j) "good time" means a method of behavior control or sanctions utilized by the department of corrections. Good time can result in a decrease of up to 20% of the prison part of the sentence.

(k) "grid" means the sentencing guidelines grid for nondrug crimes as provided in K.S.A. 21-4704 or the sentencing guidelines grid for drug crimes as provided in K.S.A. 21-4705, or both;
“grid block” means a box on the grid formed by the intersection of the crime severity ranking of a current crime of conviction and an offender's criminal history classification;

“imprisonment” means imprisonment in a facility operated by the Kansas department of corrections;

“mitigating factor” means a substantial and compelling reason justifying an exceptional sentence whereby the sentencing court may impose a departure sentence outside of the standard sentencing range for a crime. A mitigating factor may result in a dispositional or durational departure and shall be stated on the record by the court; The sentencing court shall state on the record the aggravating factors supporting the departure sentence;

“nonimprisonment,” ”nonprison” or ”nonprison sanction” means probation, community corrections, conservation camp, house arrest or any other community based disposition;

“postrelease supervision” means the release of a prisoner to the community after having served a period of imprisonment or equivalent time served in a facility where credit for time served is awarded as set forth by the court, subject to conditions imposed by the Kansas parole board and to the secretary of correction's supervision;

“presumptive sentence” means the sentence provided in a grid block for an offender classified in that grid block by the combined effect of the crime severity ranking of the offender's current crime of conviction and the offender's criminal history;

“prison” means a facility operated by the Kansas department of corrections; and

“sentencing range” means the sentencing court’s discretionary range in imposing a nonappealable sentence.

Comment

KSA 21-4703. Definitions are revised as shown. No substantive change is made.

21-47-104.

21-47-104. Sentencing guidelines; grid for nondrug crimes; authority and responsibility of sentencing court; presumptive disposition; nongrid crime.

(a) For purposes of sentencing, The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines
grid for nondrug crimes shall be applied applicable to in felony cases for nondrug felony crimes committed on or after July 1, 1993:

SENTENCING GRID - NONDRUG OFFENSES

(b) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. Sentences expressed in the sentencing guidelines grid for nondrug crimes such grid represent months of imprisonment.

c) The sentencing guidelines grid is a two-dimensional crime severity and criminal history classification tool. The grid’s vertical axis is the crime severity scale which classifies current crimes of conviction. The grid’s horizontal axis is the criminal history scale which classifies criminal histories.

d) The sentencing guidelines grid for nondrug crimes as provided in this section defines presumptive punishments for felony convictions, subject to the sentencing court’s judicial discretion to enter a departure sentence deviate for substantial and compelling reasons and impose a different sentence in recognition of aggravating and mitigating factors as provided in this act. The appropriate punishment for a felony conviction should depend on the severity of the crime of conviction when compared to all other crimes and the offender’s criminal history.

e) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include:

(A) the prison sentence,

(B) the maximum potential reduction to such sentence as a result of good time, and

(C) the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(f) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense
is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an offense is classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional nonprison sentence as provided in subsection (q). upon making the following findings on the record:

1. An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and

2. the recommended treatment program is available and the offender can be admitted to such program within a reasonable period of time; or

3. the nonprison sanction will serve community safety interests by promoting offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or 6-G shall not be considered a departure and shall not be subject to appeal.

(g) The sentence for the violation of K.S.A. 21-3415, and amendments thereto, aggravated battery against a law enforcement officer committed prior to July 1, 2006, or a violation of K.S.A. 21-3411, and amendments thereto, aggravated assault against a law enforcement officer, which places the defendant’s sentence in grid block 6-H or 6-I shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q). upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence, if the offense is classified in grid block 6-H or 6-I, shall not be considered a departure and shall not be subject to appeal.

(h) When a firearm is used to commit any person felony, the offender’s sentence shall be presumed imprisonment. The court may impose an optional nonprison sentence as provided in subsection (q). upon making a finding on the record that the nonprison sanction will serve community safety interests by promoting offender reformation. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal.

(i) The sentence for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall be as provided by the specific mandatory sentencing requirements of that section and shall not be subject to the provisions of this section or K.S.A. 21-4707 and amendments thereto. If because of the offender’s criminal history classification the offender is subject to presumptive imprisonment or if the judge departs from a presumptive probation sentence and the
offender is subject to imprisonment, the provisions of this section and K.S.A. 21-4707, and amendments thereto, shall apply and the offender shall not be subject to the mandatory sentence as provided in K.S.A. 21-3710, and amendments thereto.

Notwithstanding the provisions of any other section, the term of imprisonment imposed for the violation of the felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a, subsections (b)(3) and (b)(4) of K.S.A. 21-3710, K.S.A. 21-4310 and K.S.A. 21-4318, and amendments thereto, shall not be served in a state facility in the custody of the secretary of corrections, except that the term of imprisonment for felony violations of K.S.A. 8-1567, and amendments thereto, may be served in a state correctional facility designated by the secretary of corrections if the secretary determines that substance abuse treatment resources and facility capacity is available. The secretary’s determination regarding the availability of treatment resources and facility capacity shall not be subject to review.

(j) (1) The sentence for any persistent sex offender whose current convicted crime carries a presumptive term of imprisonment shall be double the maximum duration of the presumptive imprisonment term. The sentence for any persistent sex offender whose current conviction carries a presumptive nonprison term shall be presumed imprisonment and shall be double the maximum duration of the presumptive imprisonment term.

(2) Except as otherwise provided in this subsection, as used in this subsection, “persistent sex offender” means a person who:

(A) (i) Has been convicted in this state of a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto; and

(ii) at the time of the conviction under paragraph (A) (i) has at least one conviction for a sexually violent crime, as defined in K.S.A. 22-3717 and amendments thereto in this state or comparable felony under the laws of another state, the federal government or a foreign government; or

(B) (i) has been convicted of rape, K.S.A. 21-3502, and amendments thereto; and

(ii) at the time of the conviction under paragraph (B) (i) has at least one conviction for rape in this state or comparable felony under the laws of another state, the federal government or a foreign government.

(3) Except as provided in paragraph (2)(B), the provisions of this subsection shall not apply to any person whose current convicted crime is a severity level 1 or 2 felony.
(k) (1) If it is shown at sentencing that the offender committed any felony violation for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further or assist in any criminal conduct by gang members, the offender’s sentence shall be presumed imprisonment. Any decision made by the court regarding the imposition of the optional nonprison sentence shall not be considered a departure and shall not be subject to appeal. The court may impose an optional nonprison sentence as provided in subsection (q).

(2) As used in this subsection, “criminal street gang” means any organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities:

(A) the commission of one or more person felonies, or

(B) the commission of felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, and

(C) which has its members have a common name or common identifying sign or symbol, and

(D) whose its members, individually or collectively, engage in or have engaged in the commission, attempted commission, conspiracy to commit or solicitation of two or more person felonies or felony violations of the uniform controlled substances act, K.S.A. 65-4101 et seq., and amendments thereto, or any substantially similar offense from another jurisdiction.

(l) Except as provided in subsection (o), the sentence for a violation of subsection (a) of K.S.A. 21-3715 and amendments thereto when such person being sentenced has a prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715 or 21-3716 and amendments thereto shall be presumed imprisonment.

(m) The sentence for a violation of K.S.A 22-4903 or subsection (d) of K.S.A. 21-3812, and amendments thereto, shall be presumptive imprisonment. If an offense under such sections is classified in grid blocks 5-E, 5-F, 5-G, 5-H or 5-I, the court may impose an optional nonprison sentence as provided in subsection (q). upon making the following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism, such program is available and the offender can be admitted to such program within a reasonable period of time; or

(2) the nonprison sanction will serve community safety interests by promoting offender reformation.
Any decision made by the court regarding the imposition of an optional nonprison sentence pursuant to this section shall not be considered a departure and shall not be subject to appeal.

(n) The sentence for a third or subsequent violation of subsection (b) of K.S.A. 21-3705, and amendments thereto, shall be presumptive imprisonment. Such sentence shall not be considered a departure and shall not be subject to appeal.

(o) The sentence for a felony violation of K.S.A. 21-3701 or 21-3715, and amendments thereto, when such person being sentenced has no prior convictions for a violation of K.S.A. 21-3701 or 21-3715, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has one or two prior felony convictions for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto; or the sentence for a felony violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has one prior felony conviction for a violation of K.S.A. 21-3701, 21-3715 or 21-3716, and amendments thereto, shall be the sentence as provided by this section, except that the court may order an optional nonprison sentence for a defendant to participate in a drug treatment program, including, but not limited to, an approved after-care plan, if the court makes the following findings on the record:

(1) Substance abuse was an underlying factor in the commission of the crime;

(2) substance abuse treatment in the community is likely to be more effective than a prison term in reducing the risk of offender recidivism; and

(3) participation in an intensive substance abuse treatment program will serve community safety interests.

A defendant sentenced to an optional nonprison sentence under this subsection shall be supervised by community correctional services. The provisions of subsection (f)(1) of K.S.A. 21-4729, and amendments thereto, shall apply to a defendant sentenced under this subsection. The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

(p) The sentence for a felony violation of K.S.A. 21-3701, and amendments thereto, when such person being sentenced has any combination of three or more prior felony convictions for violations of K.S.A. 21-3701, 21-3715 or 21-3716 and amendments thereto, or the sentence for a violation of K.S.A. 21-3715, and amendments thereto, when such person being sentenced has any combination of two or more prior convictions for violations of K.S.A. 21-3701, 21-3715 and 21-3716, and amendments thereto, shall be presumed imprisonment and the defendant shall be sentenced to prison as provided by this section, except that the court may recommend that an offender be placed in the custody of the secretary of corrections, in a facility designated by the secretary to participate in an intensive substance abuse treatment program, upon making the following findings on the record:
Substance abuse was an underlying factor in the commission of the crime;

substance abuse treatment with a possibility of an early release from
imprisonment is likely to be more effective than a prison term in reducing the
risk of offender recidivism; and

participation in an intensive substance abuse treatment program with the
possibility of an early release from imprisonment will serve community safety
interests by promoting offender reformation.

The intensive substance abuse treatment program shall be determined by the
secretary of corrections, but shall be for a period of at least four months. Upon the
successful completion of such intensive treatment program, the offender shall be
returned to the court and the court may modify the sentence by directing that a less
severe penalty be imposed in lieu of that originally adjudged within statutory limits. If
the offender’s term of imprisonment expires, the offender shall be placed under the
applicable period of postrelease supervision. The sentence under this subsection shall
not be considered a departure and shall not be subject to appeal.

As used in this section an “optional nonprison sentence” is a sentence which the court
may impose, in lieu of the presumptive sentence, upon making the following findings
on the record:

An appropriate treatment program exists which is likely to be more effective
than the presumptive prison term in reducing the risk of offender recidivism; and

the recommended treatment program is available and the offender can be
admitted to such program within a reasonable period of time; or

the nonprison sanction will serve community safety interests by promoting
offender reformation.

Any decision made by the court regarding the imposition of an optional nonprison
sentence shall not be considered a departure and shall not be subject to appeal.

Comment

This section incorporates KSA 21-4704. Revisions are made to reorganize and clarify the
language of the statute.
21-47-105. Same; grid for drug crimes applied in felony cases under uniform controlled substances act; authority and responsibility of sentencing court; presumptive disposition.

(a) The provisions of this section shall be applicable to the sentencing guidelines grid for drug crimes. For the purpose of sentencing, the following sentencing guidelines grid for drug crimes shall be applied to in-felony crimes for violations of cases under the uniform controlled substances act [Sections 1–17 of HB 2236 from the 2009 Legislative Session.] for crimes committed on or after July 1, 1993 except as otherwise provided by law:

(Sentencing Grid)

(b) The provisions of subsection (a) will apply for the purpose of sentencing violations of the uniform controlled substances act except as otherwise provided by law. Sentences expressed in the sentencing guidelines grid for drug crimes in subsection (a) represent months of imprisonment.

(c) (1) The sentencing court has discretion to sentence at any place within the sentencing range. In the usual case it is recommended that the sentencing judge shall select the center of the range in the usual case and reserve the upper and lower limits for aggravating and mitigating factors insufficient to warrant a departure. The sentencing court shall not distinguish between the controlled substances cocaine base (9041L000) and cocaine hydrochloride (9041L005) when sentencing within the sentencing range of the grid block.

(2) In presumptive imprisonment cases, the sentencing court shall pronounce the complete sentence which shall include

(A) the prison sentence,

(B) the maximum potential reduction to such sentence as a result of good time, and

(C) the period of postrelease supervision at the sentencing hearing. Failure to pronounce the period of postrelease supervision shall not negate the existence of such period of postrelease supervision.

(3) In presumptive nonprison cases, the sentencing court shall pronounce the prison sentence as well as the duration of the nonprison sanction at the sentencing hearing.

(d) Each grid block states the presumptive sentencing range for an offender whose crime of conviction and criminal history place such offender in that grid block. If an offense is classified in a grid block below the dispositional line, the presumptive disposition shall be nonimprisonment. If an offense is classified in a grid block above the dispositional line, the presumptive disposition shall be imprisonment. If an
offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I, the court may impose an
optional nonprison sentence as provided in KSA 21-4704(q), upon making the
following findings on the record:

(1) An appropriate treatment program exists which is likely to be more effective than the
presumptive prison term in reducing the risk of offender recidivism; and
— (2) the recommended treatment program is available and the offender can be admitted
to such program within a reasonable period of time; or
— (3) the nonprison sanction will serve community safety interests by promoting offender
reformation.

Any decision made by the court regarding the imposition of an optional nonprison
sentence if the offense is classified in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I shall not be
considered a departure and shall not be subject to appeal.

(e) The sentence for a second or subsequent conviction of K.S.A. 65-4159 and
amendments thereto, manufacture of any controlled substance or controlled
substance analog shall be a presumptive term of imprisonment of two times the
maximum duration of the presumptive term of imprisonment. The court may impose
an optional reduction in such sentence of not to exceed 50% of the mandatory
increase provided by this subsection upon making a finding on the record that one or
more of the mitigating factors as specified in K.S.A. 21-4716 and amendments
thereto justify such a reduction in sentence. Any decision made by the court
regarding the reduction in such sentence shall not be considered a departure and shall not be subject to appeal.

(f) (1) The sentence for a third or subsequent felony conviction of K.S.A. 65-4160 or
65-4162, and amendments thereto, shall be a presumptive term of
imprisonment and the defendant shall be sentenced to prison as provided by
this section. Such term of imprisonment shall be served in a facility
designated by the secretary of corrections in the custody of the secretary of
corrections. The offender shall participate in an intensive substance abuse
treatment program. The intensive substance abuse treatment program shall
be determined by the secretary of corrections, but shall be for a period of at
least four months. The defendant’s term of imprisonment shall be served in
the custody of the secretary of corrections in a facility designated by the
secretary. The defendant shall participate in an intensive substance abuse
treatment program, of at least four months duration, selected by the secretary
of corrections. Upon the successful completion of such intensive treatment
program, the offender shall be returned to the court and the court may modify
the sentence by directing that a less severe penalty be imposed in lieu of that
originally adjudged within statutory limits. If the offender’s term of
imprisonment expires, the offender shall be placed under the applicable
period of postrelease supervision.

(2) If the defendant has previously completed a certified drug abuse treatment program, as
provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto, has been discharged or
refused to participate in a certified drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto, has completed an intensive substance abuse treatment program under paragraph (1) or has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1), such defendant's term of imprisonment shall not be subject to modification under paragraph (1).

(2) Such defendant's term of imprisonment shall not be subject to modification under paragraph (1) if:

(A) the defendant has previously completed a certified drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto;

(B) has been discharged or refused to participate in a certified drug abuse treatment program, as provided in K.S.A. 2007 Supp. 75-52,144, and amendments thereto;

(C) has completed an intensive substance abuse treatment program under paragraph (1); or

(D) has been discharged or refused to participate in an intensive substance abuse treatment program under paragraph (1).

The sentence under this subsection shall not be considered a departure and shall not be subject to appeal.

Comment
KSA 21-4705. Revisions are made to reorganize and clarify the language of the statute. No substantive change is made.

21-47-106

21-47-106. Sentencing guidelines; imprisonment, good time; pronouncement of sentence in felony cases; off-grid crimes.

(a) For crimes committed on or after July 1, 1993, the Sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of up to 15% of the primary sentence for good time as authorized by law K.S.A. 21-47-122, and amendments thereto. For crimes committed on or after January 1, 2008, the sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of up to 20% of the primary sentence for good time for drug severity level 3 or 4 or nondrug severity level 7 through 10 crimes and a reduction for program credit as authorized by K.S.A. 21-4722, and amendments thereto.
(b) The sentencing court shall pronounce sentence in all felony cases.

(c) Violations of K.S.A. 21-3401, 21-3439, 21-3449, 21-3450 and 21-3801, and amendments thereto, are off-grid crimes for the purpose of sentencing. Except as otherwise provided by K.S.A. 21-4622 through 21-4627, and 21-4629 through 21-4631, and amendments thereto, the sentence shall be imprisonment for life and shall not be subject to statutory provisions for suspended sentence, community service or probation.

(d) As identified in K.S.A. 21-3447, 21-3502, 21-3504, 21-3506, 21-3513 and 21-3516, and amendments thereto, if the offender is 18 years of age or older and the victim is under 14 years of age, such violations are off-grid crimes for the purposes of sentencing. Except as provided in K.S.A. 21-4642, and amendments thereto, the sentence shall be imprisonment for life pursuant to K.S.A. 21-4643, and amendments thereto.

Comment

KSA 21-4706. Revisions are made to the language of the statute. No substantive change is made. The language omitted in subsection (a) is included in 21-47-122.
(2) Except for off-grid felony crimes, which are classified as person felonies, all felony crimes omitted from the crime severity scale shall be considered nonperson felonies.

(3) All unclassified felonies shall be scored as level 10 nonperson crimes.

(4) The offense severity level of a crime for which the court has accepted a plea of guilty or nolo contendere pursuant to K.S.A. 22-3210 and amendments thereto, or of a crime of which the defendant has been convicted shall not be elevated or enhanced for sentencing purposes as a result of the discovery of prior convictions or any other basis for such enhancement subsequent to the acceptance of the plea or conviction. Any such prior convictions discovered after the plea has been accepted by the court shall be counted in the determination of the criminal history of the offender.

Comment

KSA 21-4107. No change is recommended.
Supp. 65-4160 through 65-4164 and amendments thereto, or agrees to exclude any prior conviction from the defendant's criminal history.

Comment
KSA 21-4708. Revisions are made to reorganize and clarify the language of the statute. No substantive change is made. The omitted language in subsection (b)(2) is in 21-47-113(f).

21-47-109

21-47-109. Criminal history categories in criminal history scale. The criminal history scale is represented in abbreviated form on the horizontal axis of the sentencing guidelines grids. The relative severity of each criminal history category decreases from left to right on such grids. Criminal history category A is the most serious classification. Criminal history category I is the least serious classification. The criminal history categories in the criminal history scale are:

<table>
<thead>
<tr>
<th>Criminal History Category</th>
<th>Descriptive Criminal History</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>The offender's criminal history includes three or more adult convictions or juvenile adjudications, in any combination, for person felonies.</td>
</tr>
<tr>
<td>B</td>
<td>The offender's criminal history includes two adult convictions or juvenile adjudications, in any combination, for person felonies.</td>
</tr>
<tr>
<td>C</td>
<td>The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, and one or more adult conviction or juvenile adjudication for a nonperson felony.</td>
</tr>
<tr>
<td>D</td>
<td>The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, but no adult conviction or juvenile adjudications for a nonperson felony.</td>
</tr>
<tr>
<td>E</td>
<td>The offender's criminal history includes three or more adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.</td>
</tr>
<tr>
<td>F</td>
<td>The offender's criminal history includes two adult convictions or juvenile adjudications for nonperson felonies, but no adult conviction or juvenile adjudication for a person felony.</td>
</tr>
<tr>
<td>G</td>
<td>The offender's criminal history includes one adult conviction or juvenile adjudication for a nonperson felony, but no adult conviction or juvenile adjudication for a person felony.</td>
</tr>
<tr>
<td>H</td>
<td>The offender's criminal history includes two or more adult convictions or juvenile adjudications for nonperson and/or select misdemeanors, and no more than two adult convictions or juvenile adjudications for person misdemeanors, but no adult conviction or juvenile adjudication for either a person or nonperson felony.</td>
</tr>
<tr>
<td>I</td>
<td>The offender's criminal history includes no prior record; or, one adult conviction or juvenile adjudication for a person, nonperson, or select misdemeanor, but no adult conviction or juvenile adjudication for either a person or nonperson felony.</td>
</tr>
</tbody>
</table>
Comment

KSA 21-4709. No change is recommended.

21-47-110. Sentencing; criminal history categories, basis; determination of offenders classification; decay factors; prior convictions.

(a) Criminal history categories contained in the sentencing guidelines grid for nondrug crimes and the sentencing guidelines grid for drug crimes are based on the following types of prior convictions: Person felony adult convictions, nonperson felony adult convictions, person felony juvenile adjudications, nonperson felony juvenile adjudications, person misdemeanor adult convictions, nonperson class A misdemeanor adult convictions, person misdemeanor juvenile adjudications, nonperson class A misdemeanor juvenile adjudications, select class B nonperson misdemeanor adult convictions, select class B nonperson misdemeanor juvenile adjudications and convictions and adjudications for violations of municipal ordinances or county resolutions which are comparable to any crime classified under the state law of Kansas as a person misdemeanor, select nonperson class B misdemeanor or nonperson class A misdemeanor. A prior conviction is any conviction, other than another count in the current case which was brought in the same information or complaint or which was joined for trial with other counts in the current case pursuant to K.S.A. 22-3203 and amendments thereto, which occurred prior to sentencing in the current case regardless of whether the offense that led to the prior conviction occurred before or after the current offense or the conviction in the current case.

(b) A class B nonperson select misdemeanor is a special classification established for weapons violations. Such classification shall be considered and scored in determining an offender's criminal history classification.

(c) Except as otherwise provided, all convictions, whether sentenced consecutively or concurrently, shall be counted separately in the offender's criminal history.

(d) Except as provided in K.S.A. 21-4716, and amendments thereto, the following are applicable to determining an offender's criminal history classification:

(1) Only verified convictions will be considered and scored.

(2) All prior adult felony convictions, including expungements, will be considered and scored.

(3) There will be no decay factor applicable for adult convictions.
(4) Except as otherwise provided, a juvenile adjudication, which would have been a nonperson class D or E felony if committed before July 1, 1993, or a nondrug level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed on or after July 1, 1993, or a misdemeanor if committed by an adult, will decay if the current crime of conviction is committed after the offender reaches the age of 25.

(5) For convictions of crimes committed before July 1, 1993, a juvenile adjudication which would constitute a class A, B or C felony, if committed by an adult, will not decay. For convictions of crimes committed on or after July 1, 1993, a juvenile adjudication which would constitute an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if committed by an adult, will not decay.

(6) All juvenile adjudications which would constitute a person felony will not decay or be forgiven.

(3) There will be no decay factor applicable for:

(A) adult convictions;

(B) a juvenile adjudication for an offense which would constitute a person felony if committed by an adult;

(C) a juvenile adjudication for an offense committed before July 1, 1993 which would have been a class A, B or C felony, if committed by an adult; or

(D) a juvenile adjudication for an offense committed on or after July 1, 1993 which would be an off-grid felony, a nondrug severity level 1, 2, 3, 4 or 5 felony, or a drug severity level 1, 2 or 3 felony, if committed by an adult.

(4) Except as otherwise provided, a juvenile adjudication will decay if the current crime of conviction is committed after the offender reaches the age of 25, and the juvenile adjudication is:

(A) for an offense committed before July 1, 1993 which would have been a class D or E felony if committed by an adult;

(B) for an offense committed on or after July 1, 1993 which would be a nondrug level 6, 7, 8, 9 or 10, or drug level 4, nonperson felony if committed by an adult; or
(C) for an offense which would be a misdemeanor if committed by an adult.

(2) (5) All person misdemeanors, class A nonperson misdemeanors and class B select nonperson misdemeanors, and all municipal ordinance and county resolution violations comparable to such misdemeanors, shall be considered and scored.

(8) (6) Unless otherwise provided by law, unclassified felonies and misdemeanors, shall be considered and scored as nonperson crimes for the purpose of determining criminal history.

(9) (7) Prior convictions of a crime defined by a statute which has since been repealed shall be scored using the classification assigned at the time of such conviction.

(10) (8) Prior convictions of a crime defined by a statute which has since been determined unconstitutional by an appellate court shall not be used for criminal history scoring purposes.

(11) (9) Prior convictions of any crime shall not be counted in determining the criminal history category if they enhance the severity level or applicable penalties, elevate the classification from misdemeanor to felony, or are elements of the present crime of conviction. Except as otherwise provided, all other prior convictions will be considered and scored.

Comment

KSA 21-4710. Revisions are made to reorganize and clarify the language of the statute. No substantive change is made.

21-47-111

21-47-111. Same; determination of offender's criminal history classification in presumptive sentencing guidelines grids. In addition to the provisions of K.S.A. 21-4710 and amendments thereto, the following shall apply in determining an offender's criminal history classification as contained in the presumptive sentencing guidelines grids:

(a) Every three prior adult convictions or juvenile adjudications of class A and class B person misdemeanors in the offender's criminal history, or any combination thereof, shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes. Every three prior adult convictions or juvenile adjudications of assault as defined in K.S.A. 21-3408 and amendments thereto occurring within a period commencing three years prior to the date of conviction for the current crime of conviction shall be rated as one adult conviction or one juvenile adjudication of a person felony for criminal history purposes.
(b) A conviction of subsection (a)(1) of K.S.A. 21-4204 and amendments thereto, criminal possession of firearms by a person who is both addicted to and an unlawful user of a controlled substance, subsection (a)(4) of K.S.A. 21-4204 and amendments thereto, possession of a firearm on school grounds or K.S.A. 21-4218 and amendments thereto, possession of a firearm on the grounds or in the state capitol building, will be scored as a select class B nonperson misdemeanor conviction or adjudication and shall not be scored as a person misdemeanor for criminal history purposes.

(c) (1) If the current crime of conviction was committed before July 1, 1996, and is for subsection (b) of K.S.A. 21-3404, involuntary manslaughter in the commission of K.S.A. 8-1567 and amendments thereto driving under the influence, then, each prior adult conviction or juvenile adjudication for K.S.A. 8-1567 and amendments thereto shall count as one person felony for criminal history purposes.

(2) If the current crime of conviction was committed on or after July 1, 1996, and is for a violation of an act described in K.S.A. 21-3442, and amendments thereto, each prior adult conviction, diversion in lieu of criminal prosecution or juvenile adjudication for: (A) An act described in K.S.A. 8-1567 and amendments thereto; or (B) a violation of a law of another state or an ordinance of any city, or resolution of any county, which prohibits the act described in K.S.A. 8-1567 and amendments thereto shall count as one person felony for criminal history purposes.

(d) Prior burglary adult convictions and juvenile adjudications will be scored for criminal history purposes as follows:

(1) As a prior person felony if the prior conviction or adjudication was classified as a burglary as described in subsection (a) of K.S.A. 21-3715 and amendments thereto.

(2) As a prior nonperson felony if the prior conviction or adjudication was classified as a burglary as described in subsection (b) or (c) of K.S.A. 21-3715 and amendments thereto.

The facts required to classify prior burglary adult convictions and juvenile adjudications must be established by the state by a preponderance of the evidence.

(e) Out-of-state convictions and juvenile adjudications will be used in classifying the offender's criminal history. An out-of-state crime will be classified as either a felony or a misdemeanor according to the convicting jurisdiction. If a crime is a felony in another state, it will be counted as a felony in Kansas. The state of Kansas shall classify the crime as person or nonperson. In designating a crime as person or nonperson comparable offenses shall be referred to. If the state of Kansas does not have a comparable offense, the out-of-state conviction shall be classified as a
nonperson crime. Convictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, tribal or military courts are considered out-of-state convictions or adjudications. The facts required to classify out-of-state adult convictions and juvenile adjudications must be established by the state by a preponderance of the evidence.

(f) Except as provided in subsections (4), (5) and (6) of K.S.A. 21-4710 and amendments thereto, juvenile adjudications will be applied in the same manner as adult convictions. Out-of-state juvenile adjudications will be treated as juvenile adjudications in Kansas.

(g) A prior felony conviction of an attempt, a conspiracy or a solicitation as provided in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, to commit a crime shall be treated as a person or nonperson crime in accordance with the designation assigned to the underlying crime.

(h) Drug crimes are designated as nonperson crimes for criminal history scoring.

Comment

KSA 21-4711. No substantive change is recommended. Minor revisions are made to the text of the statute.

21-47-112

This section intentionally blank

21-47-113

21-47-113. Actions which prosecutors may take under agreements with defendants for plea; exceptions relating to prior convictions. The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea to a charged offense or to a lesser or related offense, the prosecutor may do any of the following:

(a) Move for dismissal of other charges or counts;

(b) recommend a particular sentence within the sentencing range applicable to the offense or to the offense to which the offender pled guilty;

(c) recommend a particular sentence outside of the sentencing range only when departure factors exist and shall be such factors are stated on the record;

(d) agree to file a particular charge or count;
(e) agree not to file charges or counts; or

(f) make any other promise to the defendant, except that the prosecutor shall not enter into any agreement to decline to use a prior drug conviction of the defendant to elevate or enhance the severity level of a drug crime as provided in K.S.A. 65-4127a, 65-4127b and 65-4159 or K.S.A. 1995 Supp. 65-4160 through 65-4164 and amendments thereto, or make any agreement to exclude any prior conviction from the criminal history of the defendant.

Comment

KSA 21-4713. A minor revision is made to the text of the statute; no other change is recommended.

21-47-114. Presentence investigation report; information included; part of court record; confidential information, disclosure to certain parties; report format.

(a) The court shall order the preparation of the presentence investigation report by the court services officer as soon as possible after conviction of the defendant.

(b) Each presentence report prepared for an offender to be sentenced for one or more felonies committed on or after July 1, 1993, shall be limited to the following information:

1. A summary of the factual circumstances of the crime or crimes of conviction.

2. If the defendant desires to do so, a summary of the defendant's version of the crime.

3. When there is an identifiable victim, a victim report. The person preparing the victim report shall submit the report to the victim and request that the information be returned to be submitted as a part of the presentence investigation. To the extent possible, the report shall include a complete listing of restitution for damages suffered by the victim.

4. An appropriate classification of each crime of conviction on the crime severity scale.

5. A listing of prior adult convictions or juvenile adjudications for felony or misdemeanor crimes or violations of county resolutions or city ordinances comparable to any misdemeanor defined by state law. Such listing shall include an assessment of the appropriate classification of the criminal
history on the criminal history scale and the source of information regarding
each listed prior conviction and any available source of journal entries or
other documents through which the listed convictions may be verified. If any
such journal entries or other documents are obtained by the court services
officer, they shall be attached to the presentence investigation report. Any
prior criminal history worksheets of the defendant shall also be attached.

(6) A proposed grid block classification for each crime, or crimes of conviction
and the presumptive sentence for each crime, or crimes of conviction.

(7) If the proposed grid block classification is a grid block which presumes
imprisonment, the presumptive prison term range and the presumptive
duration of postprison supervision as it relates to the crime severity scale.

(8) If the proposed grid block classification does not presume prison, the
presumptive prison term range and the presumptive duration of the
nonprison sanction as it relates to the crime severity scale and the court
services officer's professional assessment as to recommendations for
conditions to be mandated as part of the nonprison sanction.

(9) For defendants who are being sentenced for a conviction of a felony
violation of K.S.A. 65-4160 or 65-4162, and amendments thereto, and meet
the requirements of K.S.A. 21-4729, and amendments thereto, the drug
abuse assessment as provided in K.S.A. 21-4729, and amendments thereto.

(10) For defendants who are being sentenced for a third or subsequent felony
conviction of a violation of K.S.A. 65-4160 or 65-4162, and amendments
thereto, the drug abuse assessment as provided in K.S.A. 21-4729, and
amendments thereto.

(c) The presentence report will become part of the court record and shall be accessible
to the public, except that the official version, defendant's version and the victim's
statement, any psychological reports, risk and needs assessments and drug and
alcohol reports and assessments shall be accessible only to the parties, the
sentencing judge, the department of corrections, and if requested, the Kansas
sentencing commission. If the offender is committed to the custody of the secretary
of corrections, the report shall be sent to the secretary and, in accordance with
K.S.A. 75-5220 and amendments thereto to the warden of the state correctional
institution to which the defendant is conveyed.

(d) The criminal history worksheet will not substitute as a presentence report.

(e) The presentence report will not include optional report components, which would
be subject to the discretion of the sentencing court in each district except for
psychological reports and drug and alcohol reports.
(f) The court can take judicial notice in a subsequent felony proceeding of an earlier presentence report criminal history worksheet prepared for a prior sentencing of the defendant for a felony committed on or after July 1, 1993.

(g) All presentence reports in any case in which the defendant has been convicted of a felony shall be on a form approved by the Kansas sentencing commission.

Comment

KSA 21-4714. No change is recommended.

21-47-115

21-47-115. Offenders criminal history; admission in court or determined by judge; burden of proof; notice of error by offender.

(a) The offender's criminal history shall be admitted in open court by the offender or determined by a preponderance of the evidence at the sentencing hearing by the sentencing judge.

(b) Except to the extent disputed in accordance with subsection (c), the summary of the offender's criminal history prepared for the court by the state shall satisfy the state's burden of proof regarding an offender's criminal history.

(c) Upon receipt of the criminal history worksheet prepared for the court, the offender shall immediately notify the district attorney and the court with written notice of any error in the proposed criminal history worksheet. Such notice shall specify the exact nature of the alleged error. The state shall have the burden of producing further evidence to satisfy its burden of proof regarding any disputed part, or parts, of the criminal history and the sentencing judge shall allow the state reasonable time to produce such evidence to establish the disputed portion of the criminal history by a preponderance of the evidence. The state shall have the burden of proving the disputed portion of the offender's criminal history. The sentencing judge shall allow the state reasonable time to produce evidence to establish its burden of proof.

Comment

KSA 21-4715. A revision is made to the text of subsection (c) of the statute; no other change is recommended.
Article 31

21-47-116. Imposition of presumptive sentence; jury requirements; departure sentencing; substantial and compelling reasons for departure; mitigating and aggravating factors.

(a) Except as provided in subsection (b), the sentencing judge shall impose the presumptive sentence provided by the sentencing guidelines for crimes committed on or after July 1, 1993, unless the judge finds substantial and compelling reasons to impose a departure sentence. If the sentencing judge departs from the presumptive sentence, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure.

(b) Subject to the provisions of subsection (b) of K.S.A. 21-4718, and amendments thereto, any fact that would increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be submitted to a jury and proved beyond a reasonable doubt.

(c) (1) Subject to the provisions of subsections (c)(3) and (e), the following nonexclusive list of mitigating factors may be considered in determining whether substantial and compelling reasons for a departure exist:

(A) The victim was an aggressor or participant in the criminal conduct associated with the crime of conviction.

(B) The offender played a minor or passive role in the crime or participated under circumstances of duress or compulsion. This factor may be considered when it is not sufficient as a complete defense.

(C) The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants, drugs or alcohol does not fall within the purview of this factor.

(D) The defendant, or the defendant’s children, suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(E) The degree of harm or loss attributed to the current crime of conviction was significantly less than typical for such an offense.

(2) Subject to the provisions of subsection (c)(3), the following nonexclusive list of aggravating factors may be considered in determining whether substantial and compelling reasons for departure exist:
(A) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity which was known or should have been known to the offender.

(B) The defendant's conduct during the commission of the current offense manifested excessive brutality to the victim in a manner not normally present in that offense.

(C) The offense was motivated entirely or in part by the race, color, religion, ethnicity, national origin or sexual orientation of the victim or the offense was motivated by the defendant's belief or perception, entirely or in part, of the race, color, religion, ethnicity, national origin or sexual orientation of the victim whether or not the defendant's belief or perception was correct.

(D) The offense involved a fiduciary relationship which existed between the defendant and the victim.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age to commit or assist in avoiding detection or apprehension for commission of any person felony or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit any person felony regardless of whether the defendant knew the age of the individual under 16 years of age.

(E) The defendant, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age:

(i) to commit any person felony;

(ii) to assist in avoiding detection or apprehension for commission of any person felony; or

(iii) to attempt, conspire or solicit, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit any person felony.

That the defendant did not know the age of the individual under 16 years of age shall not be a consideration.

(F) The defendant's current crime of conviction is a crime of extreme sexual violence and the defendant is a predatory sex offender. As used in this subsection:
"Crime of extreme sexual violence" is a felony limited to the following:

(a) A crime involving a nonconsensual act of sexual intercourse or sodomy with any person;
(b) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is 14 or more years of age but less than 16 years of age and with whom a relationship has been established or promoted for the primary purpose of victimization; or
(c) a crime involving an act of sexual intercourse, sodomy or lewd fondling and touching with any child who is less than 14 years of age.

"Predatory sex offender" is an offender who has been convicted of a crime of extreme sexual violence as the current crime of conviction and who:

(a) Has one or more prior convictions of any crimes of extreme sexual violence. Any prior conviction used to establish the defendant as a predatory sex offender pursuant to this subsection shall also be counted in determining the criminal history category; or
(b) suffers from a mental condition or personality disorder which makes the offender likely to engage in additional acts constituting crimes of extreme sexual violence.

"Mental condition or personality disorder" means an emotional, mental or physical illness, disease, abnormality, disorder, pathology or condition which motivates the person, affects the predisposition or desires of the person, or interferes with the capacity of the person to control impulses to commit crimes of extreme sexual violence.

The defendant was incarcerated during the commission of the offense.

The crime involved two or more participants in the criminal conduct, and the defendant played a major role in the crime as the organizer, leader, recruiter, manager or supervisor.
In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

(3) If a factual aspect of a crime is a statutory element of the crime or is used to subclassify the crime on the crime severity scale, that aspect of the current crime of conviction may be used as an aggravating or mitigating factor only if the criminal conduct constituting that aspect of the current crime of conviction is significantly different from the usual criminal conduct captured by the aspect of the crime.

(d) In determining aggravating or mitigating circumstances, the court shall consider:

(1) Any evidence received during the proceeding;
(2) the presentence report;
(3) written briefs and oral arguments of either the state or counsel for the defendant; and
(4) any other evidence relevant to such aggravating or mitigating circumstances that the court finds trustworthy and reliable.

(e) Upon motion of the prosecutor stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who is alleged to have committed an offense, the court may consider such mitigation in determining whether substantial and compelling reasons for a departure exist. In considering this mitigating factor, the court may consider the following:

(A) The court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the prosecutor's evaluation of the assistance rendered;
(B) the truthfulness, completeness and reliability of any information or testimony provided by the defendant;
(C) the nature and extent of the defendant's assistance;
(D) any injury suffered, or any danger or risk of injury to the defendant or the defendant's family resulting from such assistance; and
(E) the timeliness of the defendant's assistance.

Comment
KSA 21-4716. Revisions are made to reorganize and clarify the language of the statute. No substantive change is made.
21-47-117. Departure sentencing for drug crimes; finding substantial and compelling reasons for departure; aggravating factors considered in determining if reasons exist.

(a) The following aggravating factors, which apply to drug crimes committed on or after July 1, 1993, under the sentencing guidelines system, and may be considered in determining whether substantial and compelling reasons for departure exist:

(1) The crime was committed as part of a major organized drug manufacture, production, cultivation or delivery activity. Two or more of the following nonexclusive factors constitute evidence of major organized drug manufacture, cultivation or distribution activity:

(A) The offender derived a substantial amount of money or asset ownership from the illegal drug sale activity.

(B) The presence of a substantial quantity or variety of weapons or explosives at the scene of arrest or associated with the illegal drug activity.

(C) The presence of drug transaction records or customer lists that indicate a drug activity of major size.

(D) The presence of manufacturing or distribution materials such as, but not limited to, drug recipes, precursor chemicals, laboratory equipment, lighting, irrigation systems, ventilation, power-generation, scales or packaging material.

(E) Building acquisitions or building modifications including but not limited to painting, wiring, plumbing or lighting which advanced or facilitated the commission of the offense.

(F) Possession of large amounts of illegal drugs or substantial quantities of controlled substances.

(G) A showing that the offender has engaged in repeated criminal acts associated with the manufacture, cultivation or delivery distribution of controlled substances.

(2) The offender possessed illegal drugs with the intent to distribute, which were distributed, or offered for distribution:
(A) to a person under 18 years of age; or

(B) in the immediate presence of a person under 18 years of age.

(3) The offender, 18 or more years of age, employs, hires, uses, persuades, induces, entices or coerces any individual under 16 years of age to violate or assist in avoiding detection or apprehension for violation of any provision of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto or any attempt, conspiracy or solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit a violation of any provision of the uniform controlled substances act regardless of whether the offender knew the age of the individual under 16 years of age.

(3) The offender, 18 or more years of age, employed, hired, used, persuaded, induced, enticed or coerced any individual under 16 years of age:

(A) to violate any provision of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto;

(B) to assist in avoiding detection or apprehension for violation of any provision of the uniform controlled substances act, K.S.A. 65-4101 et seq. and amendments thereto; or

(C) to attempt, conspire or solicit, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto to commit a violation of any provision of the uniform controlled substances act.

That the offender did not know the age of the individual under 16 years of age shall not be a consideration.

(4) The offender was incarcerated during the commission of the offense.

(b) In determining whether aggravating factors exist as provided in this section, the court shall review the victim impact statement.

Comment

KSA 21-4717. Revisions are made to reorganize and clarify the language of the statute. No substantive change is made.
21-47-118. Departure sentencing; hearing; notice; findings of fact and conclusions of law; order; upward durational departure sentencing, procedures and jury requirements.

(a) (1) Whenever a person is convicted of a felony, the court upon motion of either the defendant or the state, shall hold a hearing to consider imposition of a departure sentence other than an upward durational departure sentence. The motion shall state the type of departure sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The county or district attorney shall notify the victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the convicted person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report.

(2) At the conclusion of the hearing or within 20 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If the court decides to depart on its own volition, without a motion from the state or the defendant, the court must notify all parties of its intent and allow reasonable time for either party to respond if requested. The notice shall state the type of departure intended by the court and the reasons and factors relied upon.

(4) In each case in which the court imposes a sentence that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure as provided in this subsection regardless of whether a hearing is requested.

(b) (1) Upon motion of the county or district attorney to seek an upward durational departure sentence, the court shall consider imposition of such upward durational departure sentence in the manner provided in subsection (b)(2). The county or district attorney shall file such motion to seek an upward durational departure sentence not less than 30 days prior to the date of trial or if the trial date is to take place in less than 30 days then within five days from the date of the arraignment.
The court shall determine if the presentation of any evidence regarding the alleged fact or factors that may increase the penalty for a crime beyond the statutory maximum, other than a prior conviction, shall be presented to a jury and proved beyond a reasonable doubt during the trial of the matter or whether such evidence should be submitted to the jury in a separate departure sentencing hearing following the determination of the defendant's innocence or guilt.

If the presentation of the evidence regarding the alleged fact or factors is submitted to the jury during the trial of the matter as determined by the court, then the provisions of subsections (b)(5), (b)(6) and (b)(7) shall be applicable.

If the court determines it is in the interest of justice, the court shall conduct a separate departure sentence proceeding to determine whether the defendant may be subject to an upward durational departure sentence. Such proceeding shall be conducted by the court before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the upward durational departure sentence proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the upward durational departure sentence proceeding, the court may conduct such upward durational departure sentence proceeding before a jury which may have 12 or less jurors, but at no time less than six jurors. Any decision of an upward durational departure sentence proceeding shall be decided by a unanimous decision of the jury. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such jury. The jury at the upward durational departure sentence proceeding may be waived in the manner provided by K.S.A. 22-3403, and amendments thereto, for waiver of a trial jury. If the jury at the upward durational departure sentence proceeding has been waived or the trial jury has been waived, the upward durational departure sentence proceeding shall be conducted by the court.

In the upward durational departure sentence proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of determining if any specific factors exist that may serve to enhance the maximum sentence as provided by K.S.A. 21-4716 or 21-4717, and amendments thereto. Only such evidence as the state has made known to the defendant prior to the upward durational departure sentence proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the upward durational departure sentence proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary
presentation, the court shall allow the parties a reasonable period of time in
which to present oral arguments.

(6) The court shall provide oral and written instructions to the jury to guide its
deliberations.

(7) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or
more specific factors exist that may serve to enhance the maximum
sentence, the defendant may be sentenced pursuant to K.S.A. 21-4716
through 21-4719, and amendments thereto; otherwise, the defendant shall
be sentenced as provided by law. The jury, if its verdict is a unanimous
recommendation that one or more of the specific factors that may serve to
enhance the maximum sentence exists, shall designate in writing, signed by
the foreman of the jury, the specific factor or factors which the jury found
beyond a reasonable doubt. If, after a reasonable time for deliberation, the
jury is unable to reach a verdict of finding any of the specific factors, the
court shall dismiss the jury and shall only impose a sentence as provided by
law. In nonjury cases, the court shall follow the requirements of this
subsection in determining if one or more of the specific factors exist that
may serve to enhance the maximum sentence.

Comment
KSA 21-4718. Revisions are made to the text of the statute. No substantive change is made.

21-47-119. Same; limitations.

(a) When a departure sentence is appropriate, the sentencing judge may depart from the
sentencing guidelines as provided in this section. The sentencing judge shall not
impose a downward dispositional departure sentence for any crime of extreme sexual
violence, as defined in K.S.A. 21-4716, and amendments thereto. The sentencing judge
shall not impose a downward durational departure sentence for any crime of extreme
sexual violence, as defined in K.S.A. 21-4716, and amendments thereto, to less than
50% of the center of the range of the sentence for such crime.

(b) When a sentencing judge departs in setting the duration of a presumptive term of
imprisonment:

(1) The judge shall consider and apply the enacted purposes and principles of
the sentencing guidelines, which is to impose a sentence that is
proportionate to the severity of the crime of conviction and the offender’s
criminal history; and
(2) the presumptive term of imprisonment set in such departure shall not total more than double the maximum duration of the presumptive imprisonment term.

(c) When a sentencing judge imposes a prison term as a dispositional departure:

(1) The judge shall consider and apply the primary purpose of the sentencing guidelines, which is to impose a sentence that is proportionate to the severity of the crime of conviction; and

(2) the term of imprisonment shall not exceed the maximum duration of the presumptive imprisonment term listed within the sentencing grid. Any sentence inconsistent with the provisions of this section shall constitute an additional departure and shall require substantial and compelling reasons independent of the reasons given for the dispositional departure.

(d) If the sentencing judge imposes a nonprison sentence as a dispositional departure from the guidelines, the recommended duration shall be as provided in subsection (c) of K.S.A. 21-4611 and amendments thereto.

Comment

KSA 21-4719. Revisions are made to the text of the statute. No substantive change is made.

21-47-120

21-47-120. Sentencing in multiple conviction cases; discretion of judge to impose concurrent or consecutive sentences; requirements applicable; departure sentencing based on aggravating factors.

(a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of K.S.A. 21-4608 and amendments thereto regarding multiple sentences shall apply to the sentencing of offenders for crimes committed on or after July 1, 1993, pursuant to the sentencing guidelines system as provided in this act. The mandatory consecutive sentence requirements contained in subsections (c), (d) and (e) of K.S.A. 21-4608 shall not apply if such application would result in a manifest injustice.

(b) The sentencing judge shall otherwise have discretion to impose concurrent or consecutive sentences in multiple conviction cases. The sentencing judge shall state on the record if the sentence is to be served concurrently or consecutively. In cases where consecutive sentences may be imposed by the sentencing judge, the following shall apply:
(1) When the sentencing judge imposes multiple sentences consecutively, the consecutive sentences shall consist of an imprisonment term which is the sum of the consecutive imprisonment terms, and a supervision term. The postrelease supervision term will be based on the longest supervision term imposed for any of the crimes.

(2) The sentencing judge must establish a base sentence for the primary crime. The primary crime is the crime with the highest crime severity ranking. An off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. If sentences for off-grid and on-grid convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and the postrelease supervision term will be based on the off-grid crime. If more than one crime of conviction is classified in the same crime category, the sentencing judge must designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge will use the crime which presumes imprisonment as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of either both probation or both imprisonment, the sentencing judge will use the crime within the grid block range as the primary crime.

(3) The base sentence is set using the total criminal history score assigned.

(4) The total prison sentence imposed in a case involving multiple convictions arising from multiple counts within an information, complaint or indictment cannot exceed twice the base sentence. This limit shall apply only to the total sentence, and it shall not be necessary to reduce the duration of any of the nonbase sentences imposed to be served consecutively to the base sentence. The postrelease supervision term will reflect only the longest such term assigned to any of the crimes for which consecutive sentences are imposed. Supervision periods will not be aggregated.

(5) Nonbase sentences will not have criminal history scores applied, as calculated in the criminal history I column of the grid, but base sentences will have the full criminal history score assigned. In the event a conviction designated as the primary crime in a multiple conviction case is reversed on appeal, the appellate court shall remand the multiple conviction case for resentencing. Upon resentencing, if the case remains a multiple conviction case the court shall follow all of the provisions of this section concerning the sentencing of multiple conviction cases.

(6) If the sentence for the primary crime is a prison term, the entire imprisonment term of the consecutive sentences will be served in prison.
(7) If the sentence for the consecutive sentences is a prison term, the postrelease supervision term is a term of postrelease supervision as established for the primary crime.

(8) If the sentence for the primary crime is a nonprison sentence, a nonprison term will be imposed for each crime conviction, but the nonprison terms shall not be aggregated or served consecutively even though the underlying prison sentences have been ordered to be served consecutively. Upon revocation of the nonprison sentence, the offender shall serve the prison sentences consecutively as provided in this section.

(c) The following shall apply for a departure from the presumptive sentence based on aggravating factors within the context of consecutive sentences:

(1) The court may depart from the presumptive limits for consecutive sentences only if the judge finds substantial and compelling reasons to impose a departure sentence for any of the individual crimes being sentenced consecutively.

(2) When a departure sentence is imposed for any of the individual crimes sentenced consecutively, the imprisonment term of that departure sentence shall not exceed twice the maximum presumptive imprisonment term that may be imposed for that crime.

(3) The total imprisonment term of the consecutive sentences, including the imprisonment term for the departure crime, shall not exceed twice the maximum presumptive imprisonment term of the departure sentence following aggravation.

Comment

KSA 21-4720. Revisions are made to the text of the statute. No substantive change is made.

21-47-121. Departure sentence subject to appeal; confinement or release of defendant pending review; scope of review; action by court; written opinion, when; summary disposition; correction of arithmetic or clerical errors.

(a) A departure sentence is subject to appeal by the defendant or the state. The appeal shall be to the appellate courts in accordance with rules adopted by the supreme court.
(b) Pending review of the sentence, the sentencing court or the appellate court may order the defendant confined or placed on conditional release, including bond.

(c) On appeal from a judgment or conviction entered for a felony committed on or after July 1, 1993, the appellate court shall not review:

(1) Any sentence that is within the presumptive sentence for the crime; or

(2) any sentence resulting from an agreement between the state and the defendant which the sentencing court approves on the record.

(d) In any appeal from a judgment of conviction imposing a sentence that departs from the presumptive sentence prescribed by the sentencing grid for a crime, sentence review shall be limited to whether the sentencing court's findings of fact and reasons justifying a departure:

(1) Are supported by the evidence in the record; and

(2) constitute substantial and compelling reasons for departure.

(e) In any appeal, the appellate court may review a claim that:

(1) A sentence that departs from the presumptive sentence resulted from partiality, prejudice, oppression or corrupt motive;

(2) the sentencing court erred in either including or excluding recognition of a prior conviction or juvenile adjudication for criminal history scoring purposes; or

(3) the sentencing court erred in ranking the crime severity level of the current crime or in determining the appropriate classification of a prior conviction or juvenile adjudication for criminal history purposes.

(f) The appellate court may reverse or affirm the sentence. If the appellate court concludes that the trial court's factual findings are not supported by evidence in the record or do not establish substantial and compelling reasons for a departure, it shall remand the case to the trial court for resentencing.

(g) The appellate court shall issue a written opinion whenever the judgment of the sentencing court is reversed. The court may issue a written opinion in any other case when it is believed that a written opinion will provide guidance to sentencing judges and others in implementing the sentencing guidelines adopted by the Kansas sentencing commission. The appellate courts may provide by rule for summary disposition of cases arising under this section when no substantial question is presented by the appeal.
(h) A review under summary disposition shall be made solely upon the record that was
before the sentencing court. Written briefs shall not be required unless ordered by
the appellate court and the review and decision shall be made in an expedited
manner according to rules adopted by the supreme court.

(i) The sentencing court shall retain authority irrespective of any notice of appeal for 90
days after entry of judgment of conviction to modify its judgment and sentence to
correct any arithmetic or clerical errors.

Comment

KSA 21-4721. No change is recommended.

21-47-122. Good time and program credits; calculation; forfeiture; rules and regulations of
secretary.

(a) The secretary of corrections is hereby authorized to adopt rules and regulations
providing for a system of good time calculations. Such rules and regulations shall
provide circumstances upon which an inmate may earn good time credits and for the
forfeiture of earned credits. Such circumstances may include factors related to
program and work participation and conduct and the inmate’s willingness to
examine and confront past behavioral patterns that resulted in the commission of
the inmate’s crimes.

(a) (b) For purposes of determining release of an inmate, the following shall apply with
regard to good time calculations:

(1) A system shall be developed whereby good behavior by inmates is the
expected norm and negative behavior will be punished; and

(2) the amount of good time which can be earned by an inmate and subtracted
from any sentence is limited to:

(A) For a crime committed on or after July 1, 1993, an amount equal to
15% of the prison part of the sentence; or

(B) for a drug severity level 3 or 4 or a nondrug severity level 7 through
10 crime committed on or after January 1, 2008, an amount equal to
20% of the prison part of the sentence.
(b) (c) Any time which is earned and subtracted from the prison part of the sentence of any inmate pursuant to good time calculation shall be added to such inmate's postrelease supervision obligation term.

(c) The secretary of corrections is hereby authorized to adopt rules and regulations to carry out the provisions of this section regarding good time calculations. Such rules and regulations shall provide circumstances upon which an inmate may earn good time credits and for the forfeiture of earned credits and such circumstances may include factors substantially related to program and work participation and conduct and the inmate's willingness to examine and confront the past behavior patterns that resulted in the commission of the inmate's crimes.

(d) An inmate shall not be awarded good time credits pursuant to this section for any review period established by the secretary of corrections in which a court finds that the inmate has done any of the following while in the custody of the secretary of corrections:

(1) Filed a false or malicious action or claim with the court;

(2) brought an action or claim with the court solely or primarily for delay or harassment;

(3) testified falsely or otherwise submitted false evidence or information to the court;

(4) attempted to create or obtain a false affidavit, testimony or evidence; or

(5) abused the discovery process in any judicial action or proceeding.

(e) (1) For purposes of determining release of an inmate who is serving only a sentence for a nondrug severity level 4 through 10 crime or a drug severity level 3 or 4 crime committed on or after January 1, 2008, the secretary of corrections is hereby authorized to adopt rules and regulations regarding program credit calculations. Such rules and regulations shall provide circumstances upon which an inmate may earn program credits and for the forfeiture of earned credits and such circumstances may include factors substantially related to program participation and conduct. In addition to any good time credits earned and retained, the following shall apply with regard to program credit calculations:

(A) A system shall be developed whereby program credits may be earned by inmates for the successful completion of requirements for a general education diploma, a technical or vocational training program, a substance abuse treatment program or any other program designated by the secretary which has been shown to reduce offender's risk after release; and
the amount of time which can be earned and retained by an inmate for the successful completion of programs and subtracted from any sentence is limited to not more than 60 days.

(2) Any time which is earned and subtracted from the prison part of the sentence of any inmate pursuant to program credit calculation shall be added to such inmate’s postrelease supervision obligation, if applicable.

(3) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, a defendant shall only be eligible for program credits if such crimes are a nondrug severity level 4 through 10 or a drug severity level 3 or 4.

(4) Program credits shall not be earned by any offender successfully completing a sex offender treatment program.

(5) The secretary of corrections is hereby authorized to adopt rules and regulations to carry out the provisions of this subsection regarding program credit calculations. Such rules and regulations shall provide circumstances upon which an inmate may earn program credits and for the forfeiture of earned credits and such circumstances may include factors substantially related to program participation and conduct.

(6) The secretary of corrections shall report to the Kansas sentencing commission and the Kansas reentry policy council the data on the program credit calculations.

Comment

KSA 21-4722. Revisions are made to reorganize and clarify the language of the statute. No substantive change is made.

21-47-123

-47-123. Determination of time when crime committed; law applicable. Except as provided in K.S.A. 21-4724, the provisions of this act creating a presumptive sentencing guidelines system have no application to crimes committed prior to July 1, 1993. If it cannot be determined whether the crime was committed on or after July 1, 1993, the person convicted of committing such crime shall be sentenced as if such crime had been committed prior to July 1, 1993. A crime is committed prior to July 1, 1993, if any of the essential elements of the crime as then defined occurred before July 1, 1993. Except as provided in K.S.A. 21-4724, prosecutions for prior crimes shall be governed, prosecuted and punished under the laws existing at the time such crimes were committed.
Comment

KSA 21-4723. This statute is now included in 21-47-102.

21-47-124

_21-47-124_ Sentencing; application of guidelines to persons who committed crimes prior to July 1, 1993; modification and conversion of certain sentences; review of sentences of persons in custody; department to determine criminal history classification and prepare sentencing guideline report on inmates; filing of reports; request for hearing; determination by court; crimes committed prior to July 1, 1993, but sentence imposed after such date. (a) The sentencing grid for nondrug crimes as provided in K.S.A. 21-4704 and the sentencing grid for drug crimes as provided in K.S.A. 21-4705 shall be applied for crimes committed before July 1, 1993, as provided in this section.

(b)(1) Except as provided in subsection (d), persons who committed crimes which would be classified in a presumptive nonimprisonment grid block on either sentencing grid, in grid blocks 5-H, 5-I or 6-G of the nondrug grid or in grid blocks 3-H or 3-I of the drug grid, pursuant to the provisions of subsection (c) of K.S.A. 21-4705 and amendments thereto, if sentenced pursuant to the Kansas sentencing guidelines act, and were sentenced prior to July 1, 1993, shall have their sentences modified according to the provisions specified in the Kansas sentencing guidelines act.

(b)(2) Except as provided in subsection (d), offenders on probation, assignment to community corrections, conditional release or parole for crimes classified in subsection (b)(1) committed prior to July 1, 1993, who have such probation, assignment to community corrections, conditional release or parole revoked shall have their sentences modified according to the provisions specified in the Kansas sentencing guidelines act.

(c)(1) Except as provided in subsection (f), the department of corrections shall conduct a review of all persons who committed crimes and were sentenced prior to July 1, 1993, and are imprisoned in the custody of the secretary of corrections as of that date. The department shall prepare a sentencing guidelines report on all such imprisoned inmates except those who have convictions for crimes which, if committed on or after July 1, 1993, would constitute a severity level 1, 2, 3 or 4 felony on the sentencing guidelines grid for nondrug crimes or a severity level 1, 2 or 3 felony on the sentencing guidelines grid for drug crimes, but, including those in grid blocks 3-H or 3-I of the drug grid, pursuant to the provisions of subsection (c) of K.S.A. 21-4705 and amendments thereto, which shall review and determine what the person's sentence as provided by the crime severity and criminal history grid matrix established by the Kansas sentencing commission guidelines act would be as if the crime were committed on or after July 1, 1993. A copy of the report shall be transmitted to the inmate, the county or district attorney for the county from which the inmate was sentenced, and the sentencing court.

(c)(2) In determining the criminal history classification, the department of corrections shall conduct a reasonable search of the inmate's file and available presentence report, and make a reasonable inquiry of the Kansas bureau of investigation and the federal bureau of
investigation, for other records of criminal or juvenile convictions which would affect the criminal history classification.

— (3) The department of corrections shall have access to any juvenile records maintained by the Kansas bureau of investigation or the department of social and rehabilitation services for use in determining the person’s criminal history classification.

— (4) The criminal history classification as determined by the department of corrections shall be deemed to be correct unless objection thereto is filed by either the person or the prosecution officer within the 30-day period provided to request a hearing. If an objection is filed, the sentencing court shall determine the person’s criminal history classification. The burden of proof shall be on the prosecution officer regarding disputed criminal history issues.

— (5) The department of corrections shall complete and submit to the appropriate parties the report on all imprisoned inmates with a controlling sentence which, if committed on and after July 1, 1993, would constitute a severity level 9 or 10 felony on the sentencing guidelines grid for nondrug crimes by August 15, 1993.

— (6) The department of corrections shall complete and submit to the appropriate parties the report on all imprisoned inmates with a controlling sentence which, if committed on and after July 1, 1993, would constitute a severity level 7 or 8 felony on the sentencing guidelines grid for nondrug crimes by October 15, 1993.

— (7) The department of corrections shall complete and submit to the appropriate parties the report on all imprisoned inmates with a controlling sentence which, if committed on and after July 1, 1993, would be classified in grid blocks 5-H, 5-I, 6-G, 6-H or 6-I of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-H or 3-I of the drug grid, pursuant to the provisions of subsection (c) of K.S.A. 21-4705 and amendments thereto, by December 1, 1993.

— (d) (1) Within 30 days of the issuance of such report, the person who committed the crime and the prosecution officer shall have the right to request a hearing by filing a motion with the sentencing court, regarding conversion to a sentence under the Kansas sentencing guidelines act to be held in the jurisdiction where the original criminal case was filed. The secretary of corrections shall be provided written notice of any request for a hearing. If a request for a hearing is not filed within 30 days of the issuance of the report, the department shall convert the person’s sentence to one provided for under the sentencing guidelines and provide notification of that action to the person, the prosecution officer, and the court in the jurisdiction where the original criminal case was held. The conversion by the department of corrections to the sentencing guidelines shall be to the mid-point of the range in the applicable grid box. The secretary of corrections shall be authorized to implement a converted sentence as provided in this section, if the secretary has not received written notice of a request for a hearing by the close of normal business hours on the fifth business day after expiration of the 30-day period.

(2) In the event a hearing is requested and held, the court shall determine the applicable sentence as prescribed by the Kansas sentencing guidelines act.

(3) In the event a hearing is requested, the court shall schedule and hold the hearing within 60 days after it was requested and shall rule on the issues raised by the parties within 30 days after the hearing.

(4) Such offender shall be represented by appointed counsel pursuant to the provisions of K.S.A. 22-4501 et seq. and amendments thereto.
— (5) Nothing contained in this section shall be construed as requiring the appearance in
person of the offender or creating such a right of appearance in person of the offender at
the hearing provided in this section regarding conversion to a sentence under the Kansas
sentencing guidelines act.
— (6) The court shall enter an order regarding the person's sentence and forward that
order to the secretary of corrections who shall administer the sentence.
— (e) If a sentence is converted as provided by this section, then all the rights and
privileges accorded by the Kansas sentencing guidelines act shall be applicable. A person's
sentence shall not be increased in length through a conversion to one under sentencing
guidelines.
— (f) In the case of any person to whom the provisions of this section shall apply, who
committed a crime prior to July 1, 1993, but was sentenced after July 1, 1993, the sentencing
court shall impose a sentence as provided pursuant to law as the law existed prior to July 1,
1993, and shall compute the appropriate sentence had the person been sentenced pursuant
to the Kansas sentencing guidelines.

Comment

KSA 21-4724. The Commission recommends repeal of the statute.

21-47-125

21-47-125. Sentencing guidelines; changes in; duties of sentencing commission and
secretary of corrections; submission to legislature. The Kansas sentencing commission shall
meet as necessary for the purpose of modifying and improving the guidelines. The secretary
of corrections shall notify the commission at any time when it is determined that prisons in
the state have been filled to 90% or more of their overall capacity. The commission shall
then propose modifications which amend the sentencing guidelines grid, including severity
levels, criminal history scores or other factors which would result in the reduction of any
sentence, as deemed necessary to maintain the prison population within the reasonable
management capacity of the prisons as determined after consultation with the secretary of
corrections. Such proposed modifications shall be submitted to the legislature by February 1
in any year in which the commission proposes to make the change. No change will be in
effect without the approval of the legislature and the governor.

Comment

KSA 21-4725. No change is recommended.

21-47-126

— 21-47-126. Invalidity of part of act; presumption. If any provision of this act is held to be
invalid or unconstitutional, it shall be conclusively presumed that the legislature would have
enacted the remainder of this act without such invalid or unconstitutional provision.
Comment

KSA 21-4726. This section is repealed in lieu of the general severability provision in article 31.

21-47-127

21-47-127. Costs and expenses associated with postconviction sanctions for felony convictions; consolidation of probation, parole and community corrections services. All costs and expenses associated with postconviction prison and nonprison sanctions imposed for felony convictions and time spent in a county jail pursuant to a nonprison sanction imposed for felony convictions shall be the responsibility of and paid by the state of Kansas. On or before January 1, 1994, probation, parole and community corrections services shall be consolidated after review of the recommendations of a task force to be appointed by the Kansas sentencing commission.

Comment

KSA 21-4727. The Commission recommends that the last sentence of the statute be deleted.

21-47-128

21-47-128. Sentencing court to consider alternatives determining appropriate sentence. The sentencing court should consider in all cases a range of alternatives with gradations of supervisory, supportive and custodial facilities at its disposal so as to permit a sentence appropriate for each individual case, consistent with these guidelines and the permitted dispositional and durational departures contained in this act.

Comment

KSA 21-4728. This statute is now included in 21-47-102.

21-47-129

21-47-129. Nonprison sanction; certified drug abuse treatment programs; assessment; supervision by community corrections; discharge from program; exceptions to placement in program.

(a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 65-4160 or 65-4162, and amendments thereto:
(1) Whose offense is classified in grid blocks 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto or any substantially similar offense from another jurisdiction; or

(2) whose offense is classified in grid blocks 4-A, 4-B, 4-C or 4-D of the sentencing guidelines grid for drug crimes, and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, and amendments thereto, or any substantially similar offense from another jurisdiction, if such the person felonies committed by the in the offender offender’s criminal history were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes, and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) As a part of the presentence investigation pursuant to K.S.A. 21-4714, and amendments thereto, offenders who meet the requirements of subsection (a) shall be subject to:

(1) A drug abuse assessment which shall include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the offender; and

(2) a criminal risk-need assessment, unless otherwise specifically ordered by the court. The criminal risk-need assessment shall assign a high or low risk status to the offender.

(c) The sentencing court shall commit the offender to treatment in a drug abuse treatment program until the court determines the offender is determined suitable for discharge by the court. The term of treatment shall not exceed 18 months. The court may extend the term of probation, pursuant to subsection (c)(3) of K.S.A. 21-4611. The term of treatment may not exceed the term of probation.

(d) Offenders shall be supervised by community correctional services.

(e) Placement of offenders under subsection (a)(2) shall be subject to the departure sentencing statutes of the Kansas sentencing guidelines act.

(f) (1) Offenders in drug abuse treatment programs shall be discharged from such program if the offender:

(A) Is convicted of a new felony; or
(B) has a pattern of intentional conduct that demonstrates the offender’s refusal to comply with or participate in the treatment program, as established by judicial finding.

(2) Offenders who are discharged from such program shall be subject to the revocation provisions of subsection (n) of K.S.A. 21-4603d, and amendments thereto.

(g) As used in this section, "mental health professional" includes licensed social workers, licensed psychiatrists, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 2007 Supp. 75-52,144, and amendments thereto.

(h) (1) The following offenders who meet the requirements of subsection (a) shall not be subject to the provisions of this section and shall be sentenced as otherwise provided by law:

   (A) Offenders who are residents of another state and are returning to such state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision; or

   (B) offenders who are not lawfully present in the United States and being detained for deportation.

   (2) Such sentence shall not be considered a departure and shall not be subject to appeal.

Comment

This section incorporates K.S.A. 21-4729. Subsection (c) includes new language that codifies the holding in State v. Holt, 186 P.3d 803 (Kan. Ct. App. 2007).