

Approved: February 6, 1992  
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Vice Chairperson Senator Jerry Moran at 10:05 a.m. on January 23, 1992 in room 514-S of the Capitol.

All members were present except:  
Senator Winter who was excused.

Committee staff present:  
Mike Heim, Legislative Research Department  
Gordon Self, Office of Revisor of Statutes  
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:  
Matt Lynch, Kansas Judicial Council  
Emil Tonkovich, University of Kansas Law Professor  
Representative Joan Hamilton  
Keith Landis, Christian Science Committee on Publication for Kansas  
Ron Smith, Kansas Bar Association  
Chuck Simmons, Kansas Department of Corrections

Vice Chairman Moran called the meeting to order by opening the hearing for SB 358.  
SB 358 - amendments to Kansas criminal code.

Matt Lynch, Kansas Judicial Council, reminded the committee that SB 358 incorporated only the first half of the KJC recodification recommendations. The second half of their recommendations are incorporated into the materials to be presented by Professor Emil Tonkovich during his testimony. (ATTACHMENT 1)

Emil Tonkovich, University of Kansas Law Professor, testified in support of SB 358 and the further amendments suggested by the Kansas Judicial Council. He presented a balloon copy of the bill to the committee and explained all of the changes being recommended. (ATTACHMENT 2)

Professor Tonkovich continued his comments by stating that SB 358 is interrelated to SB 479, enacting the Kansas Sentencing Guidelines Act. He added that the effective dates should be staggered. A lag time in implementation of the two measures would allow for the education process.

Representative Joan Hamilton testified in opposition to SB 358. She stated that although the bill would clear up a lot of problems, there are current pieces of legislation that would address those problems more immediately and offer better solutions. She continued by stating that she felt SB 358 might not solve the recent problem of drive-by shootings, and would prefer not to have the current House bills.

Representative Hamilton continued her comments by suggesting sentencing for vehicular homicides be increased to a class E felony.

Keith Landis, Christian Science Committee on Publication for Kansas, presented his request for amendment of SB 358 to include a provision for spiritual treatment exception. (ATTACHMENT 3)

Ron Smith, Kansas Bar Association, addressed the committee with a request for a noncontroversial amendment to SB 358. (ATTACHMENT 4)

The concluded the hearing for SB 358.

Chuck Simmons, Kansas Department of Corrections, presented his request for introduction of a bill creating the crime of unlawful sexual relations, and a bill concerning the obstruction of legal process or official duty. (ATTACHMENTS 5 and 6)

Senator Gaines moved to introduce the bills as requested by Mr. Simmons. Senator Oleen seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,  
room 514-S, Statehouse, at 10:05 a.m. on January 23, 1992.

Senator Bond moved to approve the minutes of the joint meetings of January 15 and January 16; also to approve the minutes of January 14, January 15, January 16 and January 21. Senator Morris seconded the motion. The motion carried and the minutes were approved as written.

The meeting was adjourned at 11:00 a.m.



Introduction to Criminal Law Advisory Committee's Recommendations  
on Crimes Against Persons, Crimes Against Property and Sex  
Offenses

Submitted to Judicial Council 12/14/90

Enclosed are the Criminal Law Committee's proposals for crimes against persons, crimes against property, and sex crimes. These three Articles cover the most important crimes and the crimes that will be most affected by the Sentencing Commission's proposals. Consequently, the Committee believes that these proposals should be presented to the Legislature in the next session.

The Committee's revisions represent an attempt to accomplish the following goals: 1) clarify and simplify the language and organization; 2) eliminate inconsistencies and fill gaps; 3) conform the Code to majority U.S. law when doing so was not clearly contrary to the Legislature's intent; 4) modify provisions that are clearly inconsistent with legislative intent; 5) modify provisions to accommodate practical realities; 6) resolve problems with "lesser included" crimes and "more specific" crimes; 7) update the Code to reflect recent court decisions. The Committee did not intend to favor either the prosecution or the defense and believes that on balance the revisions are relatively neutral.

It is important to note that the Committee did not address purely moral issues. For example, the Committee did not address abortion, feticide, homosexual sodomy, or adultery. The Committee

*Senate Judiciary Committee*  
*January 23, 1992*  
*Attachment 1*

believes that these issues do not require legal expertise and should be decided by the people of Kansas through their elected representatives.

The Committee will proceed with its work on the remainder of the Criminal Code. Hopefully, the Committee's remaining proposals will be finalized by December 1991.

CRIMINAL HOMICIDES

Intentional

3401(a) Premeditated  
3402(a) Intentional  
w/o premeditation  
3403 Voluntary manslaughter

Reckless

3401(b) Felony-murder  
3402(b) Depraved-heart  
3404 Invol. manslaughter

SEX CRIMES

W/O Consent

12-15

Under 12

Intercourse: 3502  
Rape  
(any age)  
Sodomy: 3506  
Agg. Sodomy  
(any age)  
"Battery": 3517-18  
Sex./Agg. Sex. Battery  
(16 and over)

3504  
Agg. Indec. Lib.  
3505  
Sodomy  
3503  
Indec. Lib

3502  
Rape  
3506  
Agg. Sodomy  
3504  
Agg. Indec. Lib.

## SENATE BILL No. 358

By Committee on Judiciary

2-27

8 AN ACT concerning the Kansas criminal code; amending K.S.A. 21-  
 9 3201, 21-3402, 21-3403, 21-3404, 21-3405, 21-3406, 21-3408, 21-  
 10 3410, 21-3412, 21-3414, 21-3419, 21-3424, 21-3426, 21-3427, 21-  
 11 3428, 21-3434, 21-3502, 21-3504, 21-3505, 21-3506, 21-3508, 21-  
 12 3510, 21-3511, 21-3513, 21-3517, 21-3518, 21-3525, 21-3602, 21-  
 13 3603, 21-3701, 21-3703, 21-3704, 21-3705, 21-3716, 21-3721, 21-  
 14 3722, 21-3728, 21-3734, 21-3755, 21-4111, 21-4201 and 21-4217  
 15 and K.S.A. 1990 Supp. 21-3401, 21-3501, 21-3503, 21-3516, 21-  
 16 3715 and 21-3729 and repealing the existing sections; also re-  
 17 pealing K.S.A. 21-3417, 21-3433, 21-3509, 21-3514, 21-3519, 21-  
 18 3706, 21-3714, 21-3717, 21-3732, 21-3733, 21-3735, 21-3736, 21-  
 19 3740, 21-3741, 21-3745, 21-3753, 21-3754, 21-4112, 21-4114 and  
 20 23-103 and K.S.A. 1990 Supp. 21-3401a, 21-3405a, 21-3405b, 21-  
 21 4115, 32-1013, 36-206 and 36-207.

22

23 *Be it enacted by the Legislature of the State of Kansas:*

24 Section 1. K.S.A. 21-3201 is hereby amended to read as follows:  
 25 21-3201. (1) Except as *otherwise* provided by sections ~~21-3202, 21-~~  
 26 ~~3204, and 21-3405~~, a criminal intent is an essential element of  
 27 every crime defined by this code. Criminal intent may be established  
 28 by proof that the conduct of the accused person was ~~willful or~~  
 29 ~~wanton~~ *intentional or reckless*. Proof of ~~willful intentional~~ conduct  
 30 shall be required to establish criminal intent, unless the statute  
 31 defining the crime expressly provides that the prohibited act is crim-  
 32 inal if done in a ~~wanton reckless~~ manner.

33 (2) ~~Willful Intentional~~ conduct is conduct that is purposeful and  
 34 ~~intentional willful~~ and not accidental. As used in this code, the  
 35 terms "knowing," "~~intentional,~~" "*willful,*" "purposeful," and "on  
 36 purpose" are included within the term "~~willful,~~" "*intentional.*"

37 (3) ~~Wanton Reckless~~ conduct is conduct done under circumstan-  
 38 ces that show a realization of the imminence of danger to the person  
 39 of another and a ~~reckless wanton~~ disregard or complete indifference  
 40 and unconcern for the probable consequences of such conduct. The  
 41 terms "gross negligence," "culpable negligence," "~~wanton negli-~~  
 42 ~~gence~~" and "~~recklessness~~" "*wantonness*" are included within the  
 43 term "~~wantonness~~" "*recklessness*" as used in this code.

Comment

The statutory terms used to describe the two types of criminal intent are replaced with terms that are more commonly used by the legal profession and the general public. "Willful" is replaced with "intentional." "Wanton" is replaced with "reckless." These revisions merely clarify the statute and are not substantive in nature.

*Senate Judiciary Committee*  
*January 23, 1992*  
*Attachment 2*

Y114

1       Sec. 2. K.S.A. 1990 Supp. 21-3401 is hereby amended to read  
2 as follows: 21-3401. Murder in the first degree is the killing of a  
3 human being committed:  
4       (a) ~~Maliciously, willfully, deliberately~~ *Intentionally* and with  
5 premeditation; or  
6       (b) ~~in the perpetration of or attempt to perpetrate any~~  
7 ~~felony;~~  
8       (c) ~~in the perpetration of abuse of a child, as provided in~~  
9 ~~K.S.A. 21-3609 and amendments thereto; or~~  
10       (d) ~~in the perpetration of, attempt to perpetrate, or as a~~  
11 ~~result of the commission of any felony offense as provided in~~  
12 ~~K.S.A. 65-4127a or 65-4127b, and amendments thereto.~~  
13       (b) *in the commission of, attempt to commit, or flight from an*  
14 *inherently dangerous felony.*  
15       Murder in the first degree is a class A felony.

#### Comment

The two types of first degree murder -- premeditated and felony murder -- are divided into subsections (a) and (b) respectively. For all practical purposes, the revisions merely clarify the statute.

#### (a) Premeditated murder

The statutory language is simplified and generally patterned from the Model Penal Code. "Willfully" is replaced with "intentionally" because the latter term is better understood. "Deliberately" is deleted because it is redundant. "Maliciously" is deleted because it is unnecessary and confusing. The deletion of the term "maliciously" is not a substantive revision and is not intended to affect defenses. The definition of "premeditation" is deleted because it is unnecessary.

#### (b) Felony murder

The statutory language describing the underlying felony is changed from "any felony" to "an inherently dangerous felony." This revision accurately reflects the case law and presumably the legislative intent. Inherently dangerous felonies are listed in a separate definition section. The list is limited to felonies that have been specifically recognized by the Kansas Supreme Court or that clearly support felony murder. Note: The Kansas Supreme Court held that child abuse merges and does not support felony murder. State v. Lucas, 243 Kan. 462 (1988). However, the Kansas Legislature subsequently added child abuse to the statute. (L. 1989, ch. 87, § 1) Consequently, child abuse is listed as an inherently dangerous felony. Similarly, the drug offenses are listed because the Kansas Legislature specifically added them to the statute in 1990. (L. 1990, ch. 100, § 2) For a discussion on distinct criminal homicides as underlying felonies for felony murder, see Lucas, supra at 466; but see State v. Leonard, 248 Kan. 427, 430-1 (1991).

The statutory language "in the commission of, attempt to commit, or flight from" more accurately reflects the law and is more easily understood. The 1990 language ". . . as a result of . . ." when specifically referring to underlying drug felonies is deleted.



16 Sec. 3. K.S.A. 21-3402 is hereby amended to read as follows:  
17 21-3402. Murder in the second degree is the ~~malicious~~ killing of a  
18 human being, committed ~~without deliberation or premeditation~~  
19 ~~and not in the perpetration or attempt to perpetrate a felony:~~  
20 (a) *Intentionally; or*  
21 (b) *unintentionally but recklessly under circumstances manifest-*  
22 *ing extreme indifference to the value of human life.*  
23 Murder in the second degree is a class B felony.

#### Comment

Second degree murder is divided into two subsections. Subsection (a) covers intentional murders and merely clarifies the statute. Subsection (b) is new and covers "depraved-heart" murders.

##### (a) Intentional murder

The statutory language is simplified and generally patterned from the Model Penal Code. "Intentionally" is added because it accurately reflects this type of murder and is easily understood. "Without deliberation or premeditation," "not in perpetration or attempt to perpetrate a felony," and "maliciously" are deleted because they are unnecessary and confusing. The deletion of the term "maliciously" is not a substantive revision and is not intended to affect defenses.

##### (b) Depraved-heart murder

This new subsection covers extremely reckless murders. The proposed statutory language is patterned from the Model Penal Code. A majority of states recognize common law depraved-heart murder.

Depraved-heart murder, as defined by the Model Penal Code, is a reckless killing done "under circumstances manifesting extreme indifference to the value of human life." Model Penal Code § 210.2(1)(b) (1980).

Depraved-heart murder includes extremely reckless killings and intent-to-do-serious-bodily-injury killings. Examples of depraved-heart murder include: (1) killing a child while target shooting at school windows during school hours; and (2) killing a person while beating him with a baseball bat with the intent to severely injure him.

The majority of states as well as the Model Penal Code categorizes this conduct as murder. Most states include depraved-heart murder within second degree murder. Categorizing this crime as murder provides a greater deterrent to this extremely dangerous conduct.

Adding depraved-heart murder also gives theoretical continuity to the criminal homicide statutes, thereby improving plea bargains and verdicts. Depraved-heart murder is fundamentally similar to felony murder and involuntary manslaughter. In felony murder cases, the commission of the underlying felony provides the extreme recklessness required for criminal liability. In involuntary manslaughter cases, the commission of the underlying unlawful act or the reckless conduct provides the necessary recklessness. Depraved-heart murder, in terms of degree, falls between felony murder (first degree murder) and involuntary manslaughter. As illustrated in the above two examples, this extremely reckless conduct is at least as dangerous to human life as most felony murder situations. Adding depraved-heart murder provides a middle category to cover extremely reckless conduct, thus improving plea bargains and verdicts.

24 Sec. 4. K.S.A. 21-3403 is hereby amended to read as follows:  
25 21-3403. Voluntary manslaughter is the ~~unlawful~~ *intentional* killing  
26 of a human being, ~~without malice, which is done intentionally~~  
27 ~~upon a sudden quarrel or in the heat of passion committed:~~  
28 (a) *Upon a sudden quarrel or in the heat of passion; or*  
29 (b) *upon an unreasonable but honest belief that deadly force was*  
30 *justified in self-defense.*  
31 Voluntary manslaughter is a class C felony.

#### Comment

Voluntary manslaughter is divided into two subsections. Subsection (a) covers "heat of passion" manslaughters and merely clarifies the statute. Subsection (b) is new and covers "imperfect right to self-defense" manslaughters.

#### (a) "Heat of passion" manslaughters

The statutory language is simplified. "Unlawful" and "without malice" are deleted because they are unnecessary and confusing.

#### (b) "Imperfect right to self-defense" manslaughter

This new subsection covers intentional killings that result from an unreasonable but honest belief that deadly force was justified in self-defense. In essence, the defendant meets the subjective, but not the objective, test for self-defense. This so-called "imperfect right to self-defense" is recognized in various forms. Kansas apparently recognizes it for unintentional killings under involuntary manslaughter. State v. Gregory, 218 Kan. 180 (1975); State v. Warren, 5 Kan.App.2d 754 (1981); State v. Meyers, 245 Kan. 471 (1989). The Model Penal Code also follows this approach. Some states, e.g. Illinois, recognize this partial defense for intentional killings. See, Lafave, Criminal Law, pp. 665-666 (1986).

Applying this partial defense to intentional killings is simply a recognition of the practical realities of plea bargaining and jury verdicts. Often it is unjust to prosecute and convict such killers of murder and it is equally unjust to acquit them. This new subsection provides a middle category that is theoretically sound and legitimizes the realities of plea bargaining and jury verdicts.

32 Sec. 5. K.S.A. 21-3404 is hereby amended to read as follows:  
33 21-3404. (a) Involuntary manslaughter is the ~~unlawful unintentional~~  
34 killing of a human being, ~~without malice, which is done unin-~~  
35 ~~tentionally in the wanton commission of an unlawful act not~~  
36 ~~amounting to felony, or in the commission of a lawful act in~~  
37 ~~an unlawful or wanton manner.~~  
38 (b) As used in this section, an "unlawful act" is any act  
39 which is prohibited by a statute of the United States or the  
40 state of Kansas or an ordinance of any city within the state,  
41 which statute or ordinance is enacted for the protection of  
42 human life or safety committed:  
43 (a) Recklessly; or  
1 (b) in the commission of, or attempt to commit, or flight from  
2 any felony, not defined in section 49, that is enacted for the pro-  
3 tection of human life or safety or a misdemeanor that is enacted for  
4 the protection of human life or safety, including acts described in  
5 K.S.A. 8-1566, 8-1567 and 8-1568 and amendments thereto.  
6 (c) Involuntary manslaughter is a class D felony.

Comment

The two types of involuntary manslaughter -- reckless and unlawful act -- are divided into subsections (a) and (b) respectively. The former statutory language was very confusing and did not reflect the 1968 Judicial Council comment. The statutory revisions correct these problems and follow majority law. Also, aggravated vehicular homicide (21-3405a) is incorporated into this statute.

(a) Reckless involuntary manslaughter

The statutory language is simplified. "Wanton" is replaced with "recklessly" because the latter term is better understood. Furthermore, "reckless" is a better legal term and it parallels other statutory revisions. "Unlawful" and "without malice" are deleted because they are unnecessary and confusing.

(b) Unlawful act involuntary manslaughter

Inherently dangerous felonies (defined by statute) and local ordinances are excluded. The former are covered under felony murder, the latter could cause harsh results and are covered if the conduct is reckless. K.S.A. 8-1566, 8-1567 and 8-1568 are specifically included to incorporate the former aggravated vehicular homicide (21-3405a). A separate statute is unnecessary and confusing.

The statutory language "in the commission of, attempt to commit, or flight from" more accurately reflects the law, is more easily understood, and parallels the felony murder language.

7 Sec. 6. K.S.A. 21-3405 is hereby amended to read as follows:  
8 21-3405. ~~(1)~~ Vehicular homicide is the *unintentional* killing of a  
9 human being *committed* by the operation of an automobile, airplane,  
10 motor boat or other motor vehicle in a manner which creates an  
11 unreasonable risk of injury to the person or property of another and  
12 which constitutes a material deviation from the standard of care which  
13 a reasonable person would observe under the same circumstances.  
14 ~~(2)~~ This section shall be applicable only when the death of  
15 the injured person ensues within one ~~(1)~~ year as the proximate  
16 result of the operation of a vehicle in the manner described  
17 in subsection ~~(1)~~ of this section.  
18 ~~(3)~~ Vehicular homicide is a class A misdemeanor.

Comment

"Unintentional" is added to clarify the state of mind and to parallel the other homicide statutes. The one-year limitation is deleted because it unnecessarily limits liability and is not found in other homicide statutes.

19 Sec. 7. K.S.A. 21-3406 is hereby amended to read as follows:  
20 21-3406. Assisting suicide is intentionally advising, encouraging or  
21 assisting another in the taking of ~~his own~~ *the other's* life which  
22 *results in a suicide or attempted suicide.*  
23 Assisting suicide is a class E felony.

Comment

The revisions merely clarify the statute to cover aiding and abetting attempted suicides.

24 Sec. 8. K.S.A. 21-3408 is hereby amended to read as follows:  
25 21-3408. ~~An assault is an intentional threat or attempt to do~~  
26 ~~bodily harm to another coupled with apparent ability and re-~~  
27 ~~sulting in immediate apprehension of bodily harm. No bodily~~  
28 ~~contact is necessary. Assault is intentionally placing another person~~  
29 ~~in reasonable apprehension of immediate bodily harm.~~  
30 Assault is a class C misdemeanor.

Comment

The revisions merely clarify the statute. Kansas only recognizes tort-type assault. Most jurisdictions also include attempted-battery assault, which covers situations where the victim is unaware that a battery was attempted. This conduct, however, can be prosecuted in Kansas by simply charging attempted battery.

31 Sec. 9. K.S.A. 21-3410 is hereby amended to read as follows:  
32 21-3410. Aggravated assault is *an assault, as defined in K.S.A. 21-*  
33 *3408 and amendments thereto, committed:*  
34 (a) ~~Unlawfully assaulting or striking at another~~ With a deadly  
35 weapon; or  
36 (b) ~~Committing assault by threatening or menacing another~~  
37 while disguised in any manner designed to conceal identity; or  
38 (c) ~~Willfully and intentionally assaulting another~~ with intent  
39 to commit any felony.  
40 Aggravated assault is a class D felony.

Comment

The revisions clarify the statute and more concisely incorporate the elements of simple assault.

41 Sec. 10. K.S.A. 21-3412 is hereby amended to read as follows:  
42 21-3412. Battery is ~~the unlawful, intentional touching or appli-~~  
43 ~~cation of force to the person of another, when done in a rude,~~  
1 ~~insolent or angry manner:~~  
2 (a) *Intentionally or recklessly causing bodily harm to another*  
3 *person; or*  
4 (b) *intentionally causing physical contact with another person*  
5 *when done in a rude, insulting or angry manner.*  
6 Battery is a class B misdemeanor.

Comment

Battery is divided into two subsections. This division is necessary to incorporate reckless battery.

Reckless battery is necessary to punish reckless conduct that results in bodily harm. (If such reckless conduct resulted in death it would be some type criminal homicide.) Most jurisdictions recognize reckless batteries.

Subsection (a) covers batteries that result in bodily harm. Intentional and reckless conduct is covered. "Unlawful" is deleted because it is unnecessary and confusing.

Subsection (b) covers conduct that intentionally causes insulting contact. "Insolent" is replaced with "insulting" because the latter term is better understood. Reckless conduct is not covered under subsection (b).

~~7 Sec. 11. K.S.A. 21-3414 is hereby amended to read as follows:  
8 21-3414. Aggravated battery is ~~the unlawful touching or appli-~~  
9 ~~cation of force to the person of another with intent to injure~~  
10 ~~that person or another and which either a battery, as defined in~~  
11 ~~K.S.A. 21-3412 and amendments thereto, which:~~  
12 (a) ~~Inflicts great bodily harm upon him or disfigurement; or~~  
13 (b) ~~Causes any disfigurement or dismemberment to or of his~~  
14 ~~person; or~~  
15 (c) ~~is done with a deadly weapon, or in any manner whereby~~  
16 ~~great bodily harm, disfigurement, dismemberment, or death can~~  
17 ~~be inflicted.~~  
18 Aggravated battery is a class C felony.~~

21-3414. Aggravated battery. (1) Aggravated battery is the-unlawful-touching-or-application-of-force-to-the-person-of another-with-intent-to-injure-that-person-or-another-and-which either:

(a) (1) Inflicts Intentionally causing great bodily harm upon-him to another person or disfigurement of another person; or

(b) (2) Causes any intentionally causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or-dismemberment-to-or-of-his person or death can be inflicted; or

(c) (3) Is-done 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,-dismemberment, or death can be inflicted; or

(b) (1) recklessly causing great bodily harm to another person or disfigurement of another person; or

(2) 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.

(2) Aggravated battery as described in subsection (1)(a) is a class C felony. Aggravated battery as described in subsection (1)(b) is a class D felony.

#### Comment

The revisions clarify the statute and incorporate the revised elements of simple battery. Consequently, an aggravated battery can be committed recklessly. (See comment to 21-3412) The modifier "any" is deleted to clarify the statute does not refer to minor disfigurement. The term "dismemberment" has been deleted on the basis it is adequately covered by "great bodily harm."

A reduced penalty for a reckless aggravated battery is provided to avoid a reckless act resulting in great bodily harm carrying a higher penalty than a reckless act resulting in death (involuntary manslaughter).

19 Sec. 12. K.S.A. 21-3419 is hereby amended to read as follows:  
20 21-3419. (1) A ~~terroristic~~ *criminal* threat is any threat to:  
21 (a) Commit violence communicated with intent to terrorize an-  
22 other, or to cause the evacuation of any building, place of assembly  
23 or facility of transportation, or in ~~wanton~~ *reckless* disregard of the  
24 risk of causing such terror or evacuation; or  
25 (b) adulterate or contaminate any food, beverage, drug or public  
26 water supply.  
27 (2) A ~~terroristic~~ *criminal* threat is a class E felony.  
28 (3) As used in this section, "threat" includes any statement that  
29 one has committed any action described by subsection (1)(a) or (b).

Comment

The section covers a broad range of conduct and has been relabeled as "criminal" rather than "terroristic" threat. "Wanton" is replaced by "reckless" because the latter term is more commonly used and better understood.

30 Sec. 13. K.S.A. 21-3424 is hereby amended to read as follows:  
31 21-3424. (1) ~~Unlawful Criminal~~ restraint is knowingly and without  
32 legal authority restraining another *person* so as to interfere substan-  
33 tially with ~~his~~ *such person's* liberty.  
34 (2) This section shall not apply to acts done in the performance  
35 of duty by any law enforcement officer of the state of Kansas or any  
36 political subdivision thereof.  
37 (3) Any merchant, ~~his~~ *or a merchant's* agent or employee, who  
38 has probable cause to believe that a person has actual possession of  
39 and (a) has wrongfully taken, or (b) is about to wrongfully take  
40 merchandise from a mercantile establishment, may detain such per-  
41 son (a) on the premises or (b) in the immediate vicinity thereof, in  
42 a reasonable manner and for a reasonable period of time for the  
43 purpose of investigating the circumstances of such possession. Such  
1 reasonable detention shall not constitute an arrest nor an ~~unlawful~~  
2 ~~criminal~~ restraint.  
3 (4) ~~Unlawful Criminal~~ restraint is a class A misdemeanor.

Comment

The section is relabeled as "criminal" restraint and the gender references are removed.

4 Sec. 14. K.S.A. 21-3426 is hereby amended to read as follows:  
5 21-3426. Robbery is the taking of property from the person or pres-  
6 ence of another ~~by threat of bodily harm to his person or the~~  
7 ~~person of another or~~ *by force or by threat of bodily harm to any*  
8 *person.*  
9 Robbery is a class C felony.

Comment

The revisions merely clarify the statute.



10 Sec. 15. K.S.A. 21-3427 is hereby amended to read as follows:  
11 21-3427. Aggravated robbery is a robbery, *as defined in K.S.A. 21-*  
12 *3426 and amendments thereto*, committed by a person who is armed  
13 with a dangerous weapon or who inflicts bodily harm upon any person  
14 in the course of such robbery.  
15 Aggravated robbery is a class B felony.

Comment

The reference to K.S.A. 21-3426 has been added to parallel the form of other aggravated statutes such as aggravated assault and aggravated battery.

16 Sec. 16. K.S.A. 21-3428 is hereby amended to read as follows:  
17 21-3428. Blackmail is ~~verbally or by written or printed com-~~  
18 ~~munication and with intent to extort or gain any thing of value~~  
19 ~~from another or to compel another to do an act against his will-~~  
20 (a) ~~Accusing or threatening to accuse any person of a crime~~  
21 ~~or conduct which would tend to degrade and disgrace the per-~~  
22 ~~son accused; or~~  
23 (b) ~~Exposing or threatening to expose any fact, report or~~  
24 ~~information concerning any person which would in any way~~  
25 ~~subject such person to the ridicule or contempt of society;~~  
26 ~~coupled with the threat that such accusation or exposure will~~  
27 ~~be communicated to a third person or persons unless the person~~  
28 ~~threatened or some other person pays or delivers to the accuser~~  
29 ~~or some other person some thing of value or does some act~~  
30 ~~against his will. Blackmail is gaining or attempting to gain anything~~  
31 ~~of value or compelling another to act against such person's will, by~~  
32 ~~threatening to communicate accusations or statements about any~~  
33 ~~person that would subject such person or any other person to public~~  
34 ~~ridicule, contempt or degradation.~~  
35 Blackmail is a class E felony.

Comment

The revision clarifies the previous statute. Also, it makes clear that the "accusations or statements" threatened to be communicated may be information known to the public.

36 Sec. 17. K.S.A. 21-3434 is hereby amended to read as follows:  
37 21-3434. (a) ~~No person shall recklessly participate in the hazing~~  
38 ~~of another~~ *No social or fraternal organization shall promote or*  
39 *permit hazing.*  
40 (b) ~~As used in this section, "hazing" means willfully and~~  
41 ~~wantonly~~ *Hazing is intentionally, coercing, demanding or encour-*  
42 *aging another person to perform as a condition of membership in a*  
43 *social or fraternal organization, any act which could reasonably be*  
1 *expected to result in great bodily harm, disfigurement or death or*  
2 *which is done in a manner whereby great bodily harm, disfigurement*  
3 *or death could be inflicted.*  
4 (c) ~~Violation of this section~~ *Promoting or permitting hazing is*  
5 *a class B misdemeanor.*  
6 (d) This section shall be part of and supplemental to the Kansas  
7 criminal code.

Comment

The revision makes the organization liable for promoting or permitting hazing. This revision was made because the original statute may have been a "more specific crime" and this may have enabled serious offenders to escape appropriate punishment.

8 Sec. 18. K.S.A. 1990 Supp. 21-3501 is hereby amended to read  
9 as follows: 21-3501. The following definitions apply in this article  
10 unless a different meaning is plainly required:

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

16 (a) Generally recognized health care practices; or  
17 (b) a body cavity search conducted in accordance with K.S.A.  
18 22-2520 through 22-2524, and amendments thereto.

19 (2) "Sodomy" means ~~oral or anal copulation, including oral-~~  
20 ~~genital stimulation between the tongue of a male and the gen-~~  
21 ~~ital area of a female; oral or anal copulation or sexual inter-~~  
22 ~~course between a person and an animal; or any penetration of~~  
23 ~~the anal opening by any body part or object. Any penetration,~~  
24 ~~however slight, is sufficient to constitute sodomy oral contact~~  
25 ~~or oral penetration of the female genitalia or oral contact of the~~  
26 ~~male genitalia; anal penetration, however slight, of a male or female~~  
27 ~~by any body part or object; or oral or anal copulation or sexual~~  
28 ~~intercourse between a person and an animal. "Sodomy" does not~~  
29 ~~include penetration of the anal opening by a finger or object in the~~  
30 ~~course of the performance of:~~

31 (a) Generally recognized health care practices; or  
32 (b) a body cavity search conducted in accordance with K.S.A.  
33 22-2520 through 22-2524, and amendments thereto.

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

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

#### Comment

Further revisions are made to the definition of sodomy in subsection (2). In State v. Moppin, 245 Kan. 639 (1989), the court held that oral-genital stimulation between the tongue of a male and the genital area of a female, commonly known as cunnilingus, is not included in the definition of sodomy. The legislature amended the definition of sodomy to specifically address Moppin. (L. 1990, ch. 149, § 14) However, the 1990 amendment does not cover the problems presented in cases such as State v. Schad, 247 Kan. 242 (1990) (Oral-genital contact between mother and five-year-old daughter). As further revised, the definition covers such cases. Furthermore, penetration is not a required element for sodomy by oral-genital contact.

42 Sec. 19. K.S.A. 21-3502 is hereby amended to read as follows:  
43 21-3502. (1) Rape is: (a) Sexual intercourse with a person who does  
1 not consent to the sexual intercourse, under any of the following  
2 circumstances:  
3 (a) (i) When the victim is overcome by force or fear;  
4 (b) (ii) when the victim is unconscious or physically powerless;  
5 (c) (iii) when the victim is incapable of giving consent because  
6 of mental deficiency or disease, which condition was known by the  
7 offender or was reasonably apparent to the offender; or  
8 (d) (iv) when the victim is incapable of giving consent because  
9 of the effect of any alcoholic liquor, narcotic, drug or other substance  
10 administered to the victim by the offender, or by another person  
11 with the offender's knowledge, unless the victim voluntarily con-  
12 sumes or allows the administration of the substance with knowledge  
13 of its nature; or  
14 (b) sexual intercourse with a child who is under 12 years of age.  
15 (2) Rape is a class B felony.

Comment

Subsection (1)(b) is added to make sexual intercourse with a child under 12 rape regardless of whether the child actually consents to the act. Subsection (1)(b) constitutes statutory rape and stands for the proposition that children under the age of 12 cannot legally consent to sexual acts. Twelve years represents the common-law age at which a female has the capacity to enter into a marriage and Kansas recognizes such common-law marriages. Subsection (1)(a) covers nonconsensual sexual intercourse.

16 Sec. 20. K.S.A. 1990 Supp. 21-3503 is hereby amended to read  
17 as follows: 21-3503. (1) Indecent liberties with a child is engaging  
18 in any of the following acts ~~act~~ with a child ~~who is under not~~  
19 ~~married to the offender and who is 12 or more years of age but~~  
20 ~~less than 16 years of age:~~  
21 (a) ~~Sexual intercourse; or~~  
22 (b) Any lewd fondling or touching of the person of either the  
23 child or the offender, done or submitted to with the intent to arouse  
24 or to satisfy the sexual desires of either the child or the offender,  
25 or both; or.  
26 (c) ~~soliciting the child to engage in any lewd fondling or~~  
27 ~~touching of the person of another with the intent to arouse or~~  
28 ~~satisfy the sexual desires of the child, the offender or another.~~  
29 (2) ~~It shall be a defense to a prosecution of indecent lib-~~  
30 ~~erties with a child that the child was married to the accused~~  
31 ~~at the time of the offense.~~  
32 (3) (2) Indecent liberties with a child is a class C D felony.

Comment

As revised, the section addresses acts of "lewd fondling or touching" with children 12 or more years of age but less than 16. Lack of consent is not an element. Sexual intercourse with children under 12 is rape under 21-3502(b). Sexual intercourse with children 12 to 16 years of age and "lewd fondling or touching" of children under 12 years of age are covered by aggravated indecent liberties with a child (21-3504).

2-14/114

Subsection (1)(c) is deleted. Acts of solicitation are covered under 21-3510 (Indecent Solicitation of a Child).

Prior to 1989, nonmarriage of the child and the offender was an element of indecent liberties with a child. The Legislature deleted this element and made marriage of the child to the accused at the time of the offense a defense to a charge of indecent liberties with the child. (L. 1989, ch. 89, § 1) As revised, nonmarriage is reinserted as an element of the offense and the affirmative defense of marriage is deleted. The element of nonmarriage was not viewed as substantially different from other elements of criminal offenses and it was deemed inconsistent to single it out as an appropriate matter for an affirmative defense. There is also the concern that making marriage an affirmative defense may compel self-incrimination since, in instances of a common-law marriage, the defendant will have to testify as to the existence of the marriage to successfully put the defense in issue.

33 Sec. 21. K.S.A. 21-3504 is hereby amended to read as follows:  
 34 21-3504. (1) Aggravated indecent liberties with a child is the com-  
 35 mission of indecent liberties with a child, as defined in K.S.A.  
 36 21-3503 and amendments thereto, by any guardian, proprietor  
 37 or employee of any foster home, orphanage or other public or  
 38 private institution for the care and custody of minor children,  
 39 to whose charge the child has been committed or entrusted by  
 40 any court, court services officer, department of social and re-  
 41 habilitation services or other agency acting under color of law:  
 42 (a) Sexual intercourse with a child who is not married to the  
 43 offender and who is 12 or more years of age but less than 16 years  
 1 of age; or  
 2 (b) engaging in the following act with a child who is under 12  
 3 years of age:  
 4 Any lewd fondling or touching of the person of either the child  
 5 or the offender, done or submitted to with the intent to arouse or  
 6 to satisfy the sexual desires of either the child or the offender, or  
 7 both.  
 8 (2) Aggravated indecent liberties with a child is a class B C  
 9 felony.

#### Comment

As revised, the section covers sexual intercourse with a child 12 or more but less than 16 and "lewd fondling or touching" of a child under 12. Lack of consent is not an element. Under the former statutes, the severity of the crime as reflected in the penalty classification, varied with the status (e.g. parent, guardian, proprietor of foster home) of the offender. Under the revised statutes, the severity of the act depends on the sexual act involved and the age of the victim, not on the status of the offender.

Soliciting a child under 12 to engage in "lewd fondling" is covered under 21-3511 (Aggravated Indecent Solicitation of a Child).

Nonmarriage is an element under subsection (a), but not under subsection (b) which covers certain acts with children under 12 years of age. Since there is no minimum statutory age for marriage in Kansas, the common law governs and fixes the age at 12 for females. [State v. Wade, 244 Kan. 136 (1989)]

10 Sec. 22. K.S.A. 21-3505 is hereby amended to read as follows:  
 11 21-3505. (1) Criminal sodomy is:  
 12 (a) Sodomy between persons who are 16 or more years of age  
 13 and members of the same sex or between a person and an animal;  
 14 (b) sodomy with a child who is not married to the offender and  
 15 who is 12 or more years of age but less than 16 years of age; or  
 16 (c) causing a child 12 or more years of age but less than 16  
 17 years of age to engage in sodomy with any person or animal.  
 18 (2) Criminal sodomy as provided in subsection (1)(a) is a class  
 19 B misdemeanor. Criminal sodomy as provided in subsections (1)(b)  
 20 and (1)(c) is a class C felony.

Comment

New subdivisions are added to subsection (1). The reference to age in subsection (1)(a) is added to accommodate and parallel other provisions. Subsections (1)(b) and (c) address sodomy with children who are 12 or more years of age but less than 16. Violations of (1)(b) and (c) constitute felonies presumably of the same severity as sexual intercourse with a child between 12 and 16 [21-3504(a), Aggravated indecent liberties with a child]. Lack of consent is not an element. If there is a lack of consent, aggravated criminal sodomy could be charged.

21 Sec. 23. K.S.A. 21-3506 is hereby amended to read as follows:  
 22 21-3506. Aggravated criminal sodomy is:  
 23 (a) Sodomy with a child ~~who is not married to the offender~~  
 24 ~~and~~ who is under ~~16~~ 12 years of age;  
 25 (b) causing a child under ~~16~~ 12 years of age to engage in sodomy  
 26 with any person or an animal; or  
 27 (c) sodomy with a person who does not consent to the sodomy  
 28 or causing a person, without the person's consent, to engage in  
 29 sodomy with any person or an animal, under any of the following  
 30 circumstances:  
 31 (i) When the victim is overcome by force or fear;  
 32 (ii) when the victim is unconscious or physically powerless;  
 33 (iii) when the victim is incapable of giving consent because of  
 34 mental deficiency or disease, which condition was known by the  
 35 offender or was reasonably apparent to the offender; or  
 36 (iv) when the victim is incapable of giving consent because of  
 37 the effect of any alcoholic liquor, narcotic, drug or other substance  
 38 administered to the victim by the offender, or by another person  
 39 with the offender's knowledge, unless the victim voluntarily con-  
 40 sumes or allows the administration of the substance with knowledge  
 41 of its nature.  
 42 (2) Aggravated criminal sodomy is a class B felony.

Comment

Subsections (a) and (b) are revised to cover children under 12 years of age. Lack of consent is not an element. This parallels the revision making sexual intercourse with a child under 12 statutory rape. [See 21-3502(b)] Sodomy with children between 12 and 16 years of age is covered in 21-3505. However, if there is a lack of consent in a case involving a child between 12 and 16 years of age, it would constitute aggravated criminal sodomy under subsection (c). Subsection (c) parallels 21-3502(1)(a) (Rape).

43 Sec. 24. K.S.A. 21-3508 is hereby amended to read as follows:

- 1 21-3508. (1) Lewd and lascivious behavior is:  
 2 (a) *Publicly* engaging in *otherwise lawful* sexual intercourse or  
 3 sodomy with ~~any person or animal with~~ knowledge or reasonable  
 4 anticipation that the participants are being viewed by others; or  
 5 (b) ~~the exposure of~~ *publicly exposing* a sex organ ~~in a public~~  
 6 ~~place,~~ or *exposing a sex organ* in the presence of a person who is  
 7 not the spouse of the offender and who has not consented thereto,  
 8 with intent to arouse or gratify the sexual desires of the offender or  
 9 another.  
 10 (2) Lewd and lascivious behavior is a class B misdemeanor.

Comment

In subsection (a), the reference to "any person or animal" is deleted as unnecessary. The phrase "otherwise lawful" is added to distinguish violations of this subsection from nonconsensual or unlawful acts covered by other sections with more severe penalties. Subsection (b) was expanded to include any public exposure of a sex organ.

11 Sec. 25. K.S.A. 21-3510 is hereby amended to read as follows:

- 12 21-3510. Indecent solicitation of a child is ~~the accosting~~;  
 13 (1) Enticing or soliciting ~~of~~ a child ~~under the age of sixteen~~  
 14 ~~(16) years~~ *12 or more years of age but less than 16 years of age*  
 15 to commit or to submit to an unlawful sexual act; or  
 16 (2) *inviting, persuading or attempting to persuade a child 12 or*  
 17 *more years of age but less than 16 years of age to enter any vehicle,*  
 18 *building, room or secluded place with intent to commit an unlawful*  
 19 *sexual act upon or with the child.*  
 20 Indecent solicitation of a child is a class ~~A~~ *misdemeanor E* felony.

Comment

The section is revised to address certain acts with children 12 or more years of age but less than 16. Subsection (2) incorporates acts proscribed by 21-3509 (Enticement of a child). The term "accosting" is deleted as unnecessary.

The offense is elevated from a class A misdemeanor to a felony. Similar acts with children under 12 years of age are covered by 21-3511 (Aggravated indecent solicitation of a child).

21 Sec. 26. K.S.A. 21-3511 is hereby amended to read as follows:  
22 21-3511. Aggravated indecent solicitation of a child is ~~the accosting~~;  
23 (1) Enticing or soliciting of a child under the age of ~~twelve (12)~~  
24 12 years to commit or to submit to an unlawful sexual act; or  
25 (2) *inviting, persuading or attempting to persuade a child under*  
26 *the age of 12 years to enter any vehicle, building, room or secluded*  
27 *place with intent to commit an unlawful sexual act upon or with the*  
28 *child.*  
29 Aggravated indecent solicitation of a child is a class ~~E~~ D felony.

Comment

The section is revised to address certain acts with children under 12 years of age. Subsection (2) incorporates acts proscribed by 21-3509 (Enticement of a child). The term "accosting" is deleted as unnecessary.

~~30 Sec. 27. K.S.A. 21-3513 is hereby amended to read as follows:  
31 21-3513. (1) Promoting prostitution is:  
32 (a) Establishing, owning, maintaining or managing a house of  
33 prostitution, or participating in the establishment, ownership, main-  
34 tenance, or management thereof; or  
35 (b) permitting any place partially or wholly owned or controlled  
36 by the defendant to be used as a house of prostitution; or  
37 (c) procuring a prostitute for a house of prostitution; or  
38 (d) inducing another to become a prostitute; or  
39 (e) soliciting a patron for a prostitute or for a house of prostitution;  
40 or  
41 (f) procuring a prostitute for a patron; or  
42 (g) procuring transportation for, paying for the transportation of,  
43 or transporting a person within this state with the intention of as-  
1 assisting or promoting that person's engaging in prostitution; or  
2 (h) being employed to perform any act which is prohibited by  
3 this section.  
4 (2) *Except as provided in subsection (3), promoting prostitution*  
5 *is a class A misdemeanor or E felony when the prostitute is 16 or*  
6 *more years of age. Except as provided in subsection (3), promoting*  
7 *prostitution is a class E D felony when the prostitute is under 16*  
8 *years of age.*  
9 (3) *Upon conviction for a second or subsequent offense under*  
10 *this section, a person shall be guilty of a class C felony.*~~



21-3513. Promoting prostitution. (1) Promoting prostitution is:

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

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

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

(d) Inducing another to become a prostitute; or

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

(f) Procuring a prostitute for a patron; or

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

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

(2) Promoting prostitution is a class A misdemeanor when the prostitute is 16 or more years of age, except that promoting prostitution when the prostitute is 16 or more years of age is a class E felony if committed by a person who has, prior to the commission of the crime, been convicted of promoting prostitution. Promoting prostitution is a class E D felony when the prostitute is under 16 years of age.

Comment

Promoting prostitution when the prostitute is under 16 years of age is raised to a D felony. In such cases, the person is promoting acts which are D, C or B felonies.

When the prostitute is 16 or more years of age, the section is revised in conjunction with the repeal of 21-3514 (habitually promoting prostitution) to make a prior conviction a factor which enhances punishment rather than an element of a crime.

11 Sec. 28. K.S.A. 1990 Supp. 21-3516 is hereby amended to read  
12 as follows: 21-3516. (1) Sexual exploitation of a child is:  
13 (a) Employing, using, persuading, inducing, enticing or coercing  
14 a child under 16 years of age to engage in sexually explicit conduct  
15 for the purpose of promoting any performance;  
16 (b) possessing any film, photograph, negative, slide, book, mag-  
17 azine or other printed or visual medium or any audio tape recording  
18 in which a real child under 16 years of age is shown or heard engaging  
19 in sexually explicit conduct with intent to arouse or satisfy the sexual  
20 desires or appeal to the prurient interest of the offender, the child  
21 or another; or  
22 (c) being a parent, guardian or other person having custody or  
23 control of a child under 16 years of age and knowingly permitting  
24 such child to engage in, or assist another to engage in, sexually  
25 explicit conduct for any purpose described in subsection (1)(a) or (b);  
26 or  
27 (d) *promoting any performance that includes sexually explicit*  
28 *conduct by a child under 16 years of age, knowing the character*  
29 *and content of the performance.*  
30 (2) As used in this section and ~~K.S.A. 21-3519~~, and amend-  
31 ments thereto:  
32 (a) "Sexually explicit conduct" means actual or simulated: Exhi-  
33 bition in the nude; sexual intercourse or sodomy, including genital-  
34 genital, oral-genital, anal-genital or oral-anal contact, whether be-  
35 tween persons of the same or opposite sex; masturbation; sado-ma-  
36 sochistic abuse for the purpose of sexual stimulation; or lewd  
37 exhibition of the genitals or pubic area of any person.  
38 (b) "Promoting" means procuring, selling, providing, lending,  
39 mailing, delivering, transferring, transmitting, distributing, circulat-  
40 ing, disseminating, presenting, producing, directing, manufacturing,  
41 issuing, publishing, displaying, exhibiting or advertising:  
42 (i) For pecuniary profit; or  
43 (ii) with intent to arouse or gratify the sexual desire or appeal  
1 to the prurient interest of the offender, the child or another.  
2 (c) "Performance" means any film, photograph, negative, slide,  
3 book, magazine or other printed or visual medium, any audio tape  
4 recording or any play or other live presentation.  
5 (d) "Nude" means any state of undress in which the human gen-  
6 itals, pubic region, buttock or female breast, at a point below the  
7 top of the areola, is less than completely and opaquely covered.  
8 (3) Sexual exploitation of a child is a class D felony.  
9 (4) This section shall be part of and supplemental to the Kansas  
10 criminal code.

#### Comment

The addition of subsection (1)(d) incorporates 21-3519 into this section. Consequently, the reference to 21-3519 in subsection (2) is deleted.

11 Sec. 29. K.S.A. 21-3517 is hereby amended to read as follows:  
12 21-3517. (1) Sexual battery is the ~~unlawful~~, intentional touching of  
13 the person of another *who is 16 or more years of age*, who is not  
14 the spouse of the offender and who does not consent thereto, with  
15 the intent to arouse or satisfy the sexual desires of the offender or  
16 another.  
17 (2) Sexual battery is a class A misdemeanor.  
18 (3) This section shall be part of and supplemental to the Kansas  
19 criminal code.

Comment

The section is revised to cover situations in which the victim is 16 or more years of age. Similar acts with children under 16 are covered by 21-3503 (Indecent liberties with a child) and 21-3504 (Aggravated indecent liberties with a child). Lack of consent is not an element under such statutes. "Unlawful" is deleted as unnecessary.

20 Sec. 30. K.S.A. 21-3518 is hereby amended to read as follows:  
21 21-3518. (1) Aggravated sexual battery is:  
22 (a) ~~The unlawful, intentional application of force to the per-~~  
23 ~~son of another who is not the spouse of the offender and who~~  
24 ~~does not consent thereto, with the intent to arouse or satisfy~~  
25 ~~the sexual desires of the offender or another;~~  
26 (b) ~~sexual battery, as defined in K.S.A. 1983 Supp. 21-3517~~  
27 ~~and amendments thereto, against a person under 16 years of~~  
28 ~~age;~~  
29 (c) ~~sexual battery, as defined in K.S.A. 1983 Supp. 21-3517~~  
30 ~~and amendments thereto, committed in another's dwelling by~~  
31 ~~one who entered into or remained in the dwelling without~~  
32 ~~authority;~~  
33 (d) ~~sexual battery, as defined in K.S.A. 1983 Supp. 21-3517~~  
34 ~~and amendments thereto, of a person who is unconscious or~~  
35 ~~physically powerless; or~~  
36 (e) ~~sexual battery, as defined in K.S.A. 1983 Supp. 21-3517~~  
37 ~~and amendments thereto, of a person who is incapable of giving~~  
38 ~~consent because of mental deficiency or disease, which con-~~  
39 ~~dition was known by, or was reasonably apparent to, the of-~~  
40 ~~fender. sexual battery, as defined in K.S.A. 21-3517 and amendments~~  
41 ~~thereto, under any of the following circumstances:~~  
42 (a) *When the victim is overcome by force or fear;*  
43 (b) *when the victim is unconscious or physically powerless;*  
1 (c) *when the victim is incapable of giving consent because of*  
2 *mental deficiency or disease, which condition was known by, or was*  
3 *reasonably apparent to, the offender; or*  
4 (d) *when the victim is incapable of giving consent because of the*  
5 *effect of any alcoholic liquor, narcotic, drug or other substance*  
6 *administered to the victim by the offender, or by another person*  
7 *with the offender's knowledge, unless the victim voluntarily consumes*  
8 *or allows the administration of the substance with knowledge of its*  
9 *nature.*  
10 (2) Aggravated sexual battery is a class D felony.  
11 (3) This section shall be part of and supplemental to the Kansas  
12 criminal code.

The section is revised to make sexual battery aggravated in the same circumstances which would make sexual intercourse rape under 21-3502(1)(a). This represents the substance of former subsections (a), (d) and (e) of this section.

Former subsection (b) concerning sexual battery against children under 16 years of age is deleted. Such acts are addressed by 21-3503 (Indecent liberties with a child) and 21-3504 (Aggravated indecent liberties with a child) which do not contain lack of consent as an element.

Former subsection (c) made it aggravated sexual battery to commit a sexual battery ". . . in another's dwelling by one who entered into or remained in the dwelling without authority; . . ." A similar result is achieved by revisions to the burglary statutes (See 21-3715 and 3716).

13       Sec. 31. K.S.A. 21-3525 is hereby amended to read as follows:  
14       21-3525. (1) The provisions of this section shall apply only in a  
15       prosecution for: (a) Rape, as defined by K.S.A. 21-3502 and amend-  
16       ments thereto; (b) indecent liberties with a child, as defined in K.S.A.  
17       21-3503 and amendments thereto; (c) aggravated indecent liberties  
18       with a child, as defined in K.S.A. 21-3504 and amendments thereto;  
19       (d) *criminal sodomy, as defined in subsections (1)(b) and (1)(c) of*  
20       *K.S.A. 21-3505 and amendments thereto;* (e) aggravated criminal  
21       sodomy as defined by K.S.A. 21-3506 and amendments thereto; (e)  
22       enticement of a child, as defined in K.S.A. 21-3509 and amend-  
23       ments thereto; (f) aggravated indecent solicitation of a child, as  
24       defined in K.S.A. 21-3511 and amendments thereto; (g) sexual ex-  
25       ploitation of a child as defined in K.S.A. 21-3516 and amendments  
26       thereto; (h) aggravated sexual battery, as defined in K.S.A. 1983  
27       Supp. 21-3518 and amendments thereto; (i) incest, as defined in  
28       K.S.A. 21-3602 and amendments thereto; (j) aggravated incest, as  
29       defined in K.S.A. 21-3603 and amendments thereto; (k) *indecent*  
30       *solicitation of a child, as defined in K.S.A. 21-3510 and amendments*  
31       *thereto;* (l) aggravated assault, as defined in K.S.A. 21-3410 and  
32       amendments thereto, with intent to commit any crime specified  
33       above; (l) ~~indecent solicitation of a child, as defined in K.S.A.~~  
34       ~~21-3510 and amendments thereto;~~ (m) sexual battery, as defined  
35       in K.S.A. 1983 Supp. 21-3517 and amendments thereto; or (n)  
36       attempt, as defined in K.S.A. 21-3301 and amendments thereto, or  
37       conspiracy, as defined in K.S.A. 21-3302 and amendments thereto,  
38       to commit any crime specified above.  
39       (2) Except as provided in subsection (3), in any prosecution to  
40       which this section applies, evidence of the complaining witness' pre-  
41       vious sexual conduct with any person including the defendant shall  
42       not be admissible, and no reference shall be made thereto in the  
43       presence of the jury, except under the following conditions: The

2-23/114

1 defendant shall make a written motion to the court to admit evidence  
2 or testimony concerning the previous sexual conduct of the com-  
3 plaining witness. The motion must be made at least seven days before  
4 the commencement of the trial unless that requirement is waived  
5 by the court. The motion shall state the nature of such evidence or  
6 testimony and its relevancy and shall be accompanied by an affidavit  
7 in which an offer of proof of the previous sexual conduct of the  
8 complaining witness is stated. The court shall conduct a hearing on  
9 the motion in camera. At the conclusion of the hearing, if the court  
10 finds that evidence proposed to be offered by the defendant regarding  
11 the previous sexual conduct of the complaining witness is relevant  
12 and is not otherwise inadmissible as evidence, the court may make  
13 an order stating what evidence may be introduced by the defendant  
14 and the nature of the questions to be permitted. The defendant may  
15 then offer evidence and question witnesses in accordance with the  
16 order of the court.

17 (3) In any prosecution for a crime designated in subsection (1),  
18 the prosecuting attorney may introduce evidence concerning any  
19 previous sexual conduct of the complaining witness, and the com-  
20 plaining witness may testify as to any such previous sexual conduct.  
21 If such evidence or testimony is introduced, the defendant may cross-  
22 examine the witness who gives such testimony and offer relevant  
23 evidence limited specifically to the rebuttal of such evidence or  
24 testimony introduced by the prosecutor or given by the complaining  
25 witness.

26 (4) As used in this section, "complaining witness" means the  
27 alleged victim of any crime designated in subsection (1), the pros-  
28 ecution of which is subject to this section.

29 Sec. 32. K.S.A. 21-3602 is hereby amended to read as follows:  
30 21-3602. Incest is marriage to or engaging in *otherwise lawful* sexual  
31 intercourse, or sodomy or ~~any unlawful sexual act~~, as defined by  
32 K.S.A. 21-3501 and amendments thereto, with a person who is 18  
33 or more years of age and who is known to the offender to be related  
34 to the offender as any of the following biological relatives: parent,  
35 child, grandparent of any degree, grandchild of any degree, brother,  
36 sister, half-brother, half-sister, uncle, aunt, nephew or niece.  
37 Incest is a class E felony.

#### Comment

This offense is narrowed to only include otherwise lawful acts. The revisions make it clear that unlawful acts should be prosecuted under the statutes making such acts unlawful.

38 Sec. 33. K.S.A. 21-3603 is hereby amended to read as follows:  
39 21-3603. (1) Aggravated incest is:  
40 (a) Marriage to or engaging in ~~any prohibited act enumerated~~  
41 ~~in subsection (2)~~ (i) *otherwise lawful sexual intercourse or sodomy*  
42 *as defined by K.S.A. 21-3501 and amendments thereto; or (ii) any*  
43 *lewd fondling, as described in subsection (a) of K.S.A. 21-3503 and*

1 amendments thereto, with a person who is 16 or more years of age  
2 but under 18 years of age and who is known to the offender to be  
3 related to the offender as any of the following biological, step or  
4 adoptive relatives: child, grandchild of any degree, brother, sister,  
5 half-brother, half-sister, uncle, aunt, nephew or niece; or  
6 (b) marriage to a person who is under 16 years of age and who  
7 is known to the offender to be related to the offender as any of the  
8 following biological, step or adoptive relatives: child, grandchild of  
9 any degree, brother, sister, half-brother, half-sister, uncle, aunt,  
10 nephew or niece.  
11 (2) The following are prohibited acts under subsection (1):  
12 (a) Sexual intercourse, sodomy or any unlawful sex act, as  
13 defined by K.S.A. 21-3501 and amendments thereto; or  
14 (b) any lewd fondling or touching of the person of either  
15 the child or the offender, done or submitted to with the intent  
16 to arouse or to satisfy the sexual desires of either the child or  
17 the offender or both.  
18 (3) (2) Aggravated incest is a class D felony.

Comment

See comment to 21-3602. The revision narrows this offense to exclude crimes covered under other statutes.

19 Sec. 34. K.S.A. 21-3701 is hereby amended to read as follows:  
20 21-3701. Theft is any of the following acts done with intent to deprive  
21 the owner permanently of the possession, use or benefit of the  
22 owner's property:  
23 (a) Obtaining or exerting unauthorized control over property; or  
24 (b) obtaining by deception control over property; or  
25 (c) obtaining by threat control over property; or  
26 (d) obtaining control over stolen property knowing the property  
27 to have been stolen by another.  
28 Theft of property of the value of \$50,000 or more is a class D  
29 felony. Theft of property of the value of at least \$500 but less than  
30 \$50,000 is a class E felony. Theft of property of the value of less  
31 than \$500 is a class A misdemeanor, except that theft of property  
32 of the value of less than \$500 is a class E felony if committed by a  
33 person who has, within five years immediately preceding commission  
34 of the crime, been convicted of theft two or more times.  
35 Nothing herein shall prohibit the removal in a lawful manner,  
36 by towing or otherwise, of personal property unlawfully placed  
37 or left upon real property.  
38 Conviction of a violation of a municipal ordinance prohibiting  
39 acts which constitute theft as defined by this section shall be  
40 considered a conviction of theft for the purpose of determining  
41 the number of prior convictions and the classification of the  
42 crime under this section.

Comment

The provision on the removal in a lawful manner of personal property unlawfully placed or left upon real property is deleted because it is unnecessary.

The provision regarding municipal ordinances is deleted because enhanced sentences should be based on convictions from a court of record.

43 Sec. 35. K.S.A. 21-3703 is hereby amended to read as follows:  
1 21-3703. Theft of lost or mislaid property is failure to take reasonable  
2 measures to restore lost or mislaid property to the *lawful* owner by  
3 a person who has obtained control of such property, who knows or  
4 learns the identity of the owner thereof, and who intends to deprive  
5 the owner permanently of the possession, use or benefit of the  
6 property.  
7 Theft of lost or mislaid property is a class A misdemeanor.

Comment

The statute is revised to make reference to the "lawful" owner to address situations involving found contraband.

8 Sec. 36. K.S.A. 21-3704 is hereby amended to read as follows:  
9 21-3704. (1) Theft of services is obtaining services from another by  
10 deception, threat, coercion, stealth, tampering or use of false token  
11 or device.  
12 (2) "Services" within the meaning of this section, includes, but  
13 is not limited to, labor, professional service, cable television service,  
14 public or municipal utility or transportation service, telephone serv-  
15 ice, *lodging*, entertainment and the supplying of equipment for use.  
16 (3) "Tampering" within the meaning of this section, includes, but  
17 is not limited to:  
18 (a) Making a connection of any wire, conduit or device, to any  
19 service or transmission line owned by a public or municipal utility,  
20 or by a cable television service provider;  
21 (b) defacing, puncturing, removing, reversing or altering any me-  
22 ter or any connections, for the purpose of securing unauthorized or  
23 unmeasured electricity, natural gas, telephone service or cable tel-  
24 evision service;  
25 (c) preventing any such meters from properly measuring or  
26 registering;  
27 (d) knowingly taking, receiving, using or converting to such per-  
28 son's own use, or the use of another, any electricity or natural gas  
29 which has not been measured; or any telephone or cable television  
30 service which has not been authorized; or  
31 (e) causing, procuring, permitting, aiding or abetting any person  
32 to do any of the preceding acts.  
33 (4) In any prosecution under this section, the existence of any  
34 of the connections of meters, alterations or use of unauthorized or  
35 unmeasured electricity, natural gas, telephone service or cable tel-  
36 evision service, specified in subsection (3), shall be prima facie evi-  
37 dence of intent to violate the provisions of this section by the person  
38 or persons using or receiving the direct benefits from the use of the  
39 electricity, natural gas, telephone service or cable television service  
40 passing through such connections or meters, or using the electricity,  
41 natural gas, telephone service or cable television service which has  
42 not been authorized or measured.  
43 (5) Theft of services of the value of \$50,000 or more is a class  
1 D felony. Theft of services of the value of at least \$500 but less  
2 than \$50,000 is a class E felony. Theft of services of the value of  
3 less than \$500 is a class A misdemeanor.



"Lodging" has been added to the services covered under subsection (2). Consequently, K.S.A. 36-206 and 207 (relating to defrauding an inn keeper) are repealed.

4 Sec. 37. K.S.A. 21-3705 is hereby amended to read as follows:  
 5 21-3705. ~~Unlawful Criminal~~ deprivation of property is obtaining or  
 6 exerting unauthorized use thereof, without the owner's consent but  
 7 not with the intent of depriving the owner permanently of the pos-  
 8 session, use or benefit of ~~his~~ *such owner's* property.  
 9 ~~Unlawful Criminal~~ deprivation of property is a class A  
 10 misdemeanor.  
 11 ~~Nothing herein shall prohibit the removal in a lawful manner,~~  
 12 ~~by towing or otherwise, of personal property unlawfully placed~~  
 13 ~~or left upon real property.~~

Comment

The provision on the removal in a lawful manner of personal property unlawfully placed or left upon real property is deleted because it is unnecessary.

14 Sec. 38. K.S.A. 1990 Supp. 21-3715 is hereby amended to read  
 15 as follows: 21-3715. Burglary is knowingly and without authority  
 16 entering into or remaining within any: (1) Building, mobile home,  
 17 tent or other structure, with intent to commit a felony ~~or~~, theft *or*  
 18 *sexual battery* therein; or (2) motor vehicle, aircraft, watercraft, rail-  
 19 road car or other means of conveyance of persons or property, with  
 20 intent to commit a felony ~~or~~, theft *or sexual battery* therein.  
 21 Burglary as described in subsection (1) is a class D felony. Burglary  
 22 as described in subsection (2) is a class E felony.

Comment

The burglary statutes are revised to cover entering or remaining without authority with intent to commit a sexual battery. Former 21-3518(c) made it aggravated sexual battery to commit a sexual battery in another's dwelling by one who entered into or remained in the dwelling without authority.

23 Sec. 39. K.S.A. 21-3716 is hereby amended to read as follows:  
24 21-3716. Aggravated burglary is knowingly and without authority  
25 entering into or remaining within any:  
26 (1) Building, mobile home, tent or other structure, *in which there*  
27 *is a human being, with intent to commit a felony, theft or sexual*  
28 *battery therein; or any*  
29 (2) motor vehicle, aircraft, watercraft, railroad car or other means  
30 of conveyance of persons or property in which there is ~~some~~ *a*  
31 *human being, with intent to commit a felony or, theft or sexual*  
32 *battery therein.*  
33 Aggravated burglary *as described in subsection (1)* is a class C  
34 felony. *Aggravated battery as described in subsection (2)* is a class  
35 *D felony.*

Comment

Structural and vehicular burglaries are put in separate categories. This revision parallels the 1989 amendment to the burglary statute (21-3715). In regard to the revision concerning sexual battery, see the comment to 21-3715.

36 Sec. 40. K.S.A. 21-3721 is hereby amended to read as follows:  
37 21-3721. Criminal trespass is entering or remaining upon or in any  
38 land, *nonnavigable body of water*, structure, vehicle, aircraft or  
39 watercraft by a person who knows ~~he or she~~ *such person* is not  
40 authorized or privileged to do so, and:  
41 (a) Such person enters or remains therein in defiance of an order  
42 not to enter or to leave such premises or property personally com-  
43 municated to such person by the owner thereof or other authorized  
1 person; or  
2 (b) such premises or property are posted in a manner reasonably  
3 likely to come to the attention of intruders, or are locked or fenced  
4 or otherwise enclosed, or shut or secured against passage or entry;  
5 or  
6 (c) such person enters or remains therein in defiance of a re-  
7 straining order issued pursuant to K.S.A. 60-1607, 60-3105, 60-3106  
8 or 60-3107 or K.S.A. 38-1542, 38-1543 or 38-1563, and amendments  
9 thereto, and the restraining order has been personally served upon  
10 the person so restrained.  
11 Criminal trespass is a class B misdemeanor.

Comment

The revision expands coverage of the statute to nonnavigable bodies of water. This revision is supported by a 1990 Kansas Supreme Court decision. The Kansas Supreme Court held that if a stream is nonnavigable the landowner's title extends to the middle of the stream bed by the same title that he owns the adjoining land. (The Court found that only the Kansas, Arkansas, and Missouri rivers have been declared navigable.) The Court concluded that owners of the bed of a nonnavigable stream have exclusive right of control of everything above the stream bed, subject only to constitutional and statutory limitations, restrictions, and regulations; and that the public has no right to the use of nonnavigable water overlying private lands for recreational purposes without the consent of the landowner. State ex rel. Meeks v. Hays, 246 Kan. 99 (1990). See Attorney General Opinions 80-161 and 74-137.

12 Sec. 41. K.S.A. 21-3722 is hereby amended to read as follows:  
13 21-3722. Littering is ~~dumping, throwing, placing, intentionally or~~  
14 ~~recklessly~~ depositing or ~~leaving, or causing to be dumped, thrown,~~  
15 ~~deposited or left any refuse of any kind or any object or substance~~  
16 which tends to pollute, mar or deface, into, upon or about:  
17 (a) Any public street, highway, alley, road, right-of-way, park or  
18 other public place, or any lake, stream, watercourse, or other body  
19 of water, except by direction of some public officer or employee  
20 authorized by law to direct or permit such acts; or  
21 (b) Any private property without the consent of the owner or  
22 occupant of such property.  
23 Littering is a class C misdemeanor ~~punishable by a fine of not~~  
24 ~~less than ten dollars (\$10) or more than five hundred dollars~~  
25 ~~(\$500).~~

Comment

Littering is expanded to include reckless littering. The other revisions are designed to prevent loopholes and improve enforcement.

26 Sec. 42. K.S.A. 21-3728 is hereby amended to read as follows:  
27 21-3728. ~~Unlawful Criminal~~ hunting is ~~fishing, or shooting, hunt-~~  
28 ~~ing or, shooting, trapping, pursuing any bird or animal, or fishing:~~  
29 (1) Upon any land or nonnavigable body of water of another,  
30 without having first obtained permission of the owner or person in  
31 possession of such premises; or  
32 (2) upon or from any ~~traveled~~ public road, ~~public road right-~~  
33 ~~of-way or railroad right-of-way that adjoins occupied or improved~~  
34 ~~premises, without having first obtained permission of the owner~~  
35 ~~or person in possession of such premises.~~  
36 ~~Unlawful Criminal~~ hunting is a class C misdemeanor. Upon the  
37 first conviction thereof after the effective date of this act, and in  
38 addition to any authorized sentence imposed by the court, such court  
39 may require the forfeiture of the convicted person's hunting or fishing  
40 license, or both, or, in any case where such person has a combination  
41 license, the court may require forfeiture of a part or all of such  
42 license and the court may order such person to refrain from hunting  
43 or fishing, or both, for one ~~(1)~~ year from the date of such conviction.  
1 Upon any subsequent conviction thereof, and in addition to any  
2 authorized sentence imposed by the court, such court shall require  
3 the forfeiture of the convicted person's hunting or fishing license,  
4 or both, or, in any case where such person has a combination license,  
5 the court shall require the forfeiture of a part or all of such license  
6 and the court shall order such person to refrain from hunting or  
7 fishing, or both, for one ~~(1)~~ year from the date of such conviction.  
8 A person licensed to hunt and following or pursuing a wounded  
9 game bird or animal upon any land of another without per-  
10 mission of the landowner or person in lawful possession thereof  
11 shall not be deemed to be in violation of this provision while  
12 in such pursuit.

Comment

The statutory language defining criminal hunting is clarified and expanded to include trapping. The physical areas in which criminal hunting is prohibited are expanded to include nonnavigable bodies of water (see 21-3721 comment) and public road right-of-ways. This expansion apparently follows legislative intent.

Also, the statutory language regarding the landowner's permission is revised. Taken literally, the former statute allowed a landowner to give a hunter permission to hunt from an adjoining public road. The statutory language was revised to avoid confusion and apparently follow legislative intent. (Similar revisions are made in 21-4217).

The clause regarding the pursuit of a wounded animal is deleted. Although pursuing wounded animals is desirable, it poses significant danger to unaware landowners. Furthermore, by simply claiming pursuit of a wounded animal, an unlawful hunter has a virtual irrebuttable defense. Hunters should always receive permission to enter private property.

13 Sec. 43. K.S.A. 1990 Supp. 21-3729 is hereby amended to read  
14 as follows: 21-3729. (1) ~~Unlawful Criminal~~ use of a financial card  
15 is any of the following acts done with intent to defraud and for the  
16 purpose of obtaining money, goods, property, services or commu-  
17 nication services, other than telecommunication services as defined  
18 by K.S.A. 21-3745 and amendments thereto:

19 (a) Using a financial card without the consent of the cardholder;  
20 or

21 (b) knowingly using a financial card, or the number or description  
22 thereof, which has been revoked or canceled; or

23 (c) using a falsified, mutilated, altered or nonexistent financial  
24 card or a number or description thereof.

25 (2) For the purposes of this section:

26 (a) "Financial card" means an identification card, plate, instru-  
27 ment, device or number issued by a business organization authorizing  
28 the cardholder to purchase, lease or otherwise obtain money, goods,  
29 property, services or communication services or to conduct other  
30 financial transactions.

31 (b) "Cardholder" means the person or entity to whom or for  
32 whose benefit a financial card is issued.

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

37 (4) ~~Unlawful Criminal~~ use of a financial card is a class D felony  
38 if the money, goods, property, services or communication services  
39 obtained within any seven-day period are of the value of \$50,000 or  
40 more. ~~Unlawful Criminal~~ use of a financial card is a class E felony  
41 if the money, goods, property, services or communication services  
42 obtained within any seven-day period are of the value of at least  
43 \$500 but less than \$50,000. ~~Unlawful Criminal~~ use of a financial  
1 card is a class A misdemeanor if the money, goods, property, services  
2 or communication services obtained within a seven-day period are  
3 of the value of less than \$500.

Comment

The section has been relabeled as "criminal" use of a financial card.

4 Sec. 44. K.S.A. 21-3734 is hereby amended to read as follows:  
5 21-3734. (1) Impairing a security interest is:  
6 (a) Damaging, destroying or concealing any personal property  
7 subject to a security interest with intent to defraud the secured  
8 party;  
9 (b) selling, exchanging or otherwise disposing of any personal  
10 property subject to a security interest without the written consent  
11 of the secured party, with intent to defraud the secured party, where  
12 such sale, exchange or other disposition is not authorized by the  
13 secured party under the terms of the security agreement; or  
14 (c) failure to account to the secured party for the proceeds of  
15 the sale, exchange or other disposition of any personal property  
16 subject to a security interest, with intent to defraud the secured  
17 party, where such sale, exchange or other disposition is authorized  
18 and such accounting for proceeds is required by the secured party  
19 under the terms of the security agreement or otherwise.  
20 (2) *Impairing a security interest is a class D felony when the*  
21 *personal property subject to the security interest is of the value of*  
22 *\$50,000 or more and is subject to a security interest of \$50,000 or*  
23 *more. Impairing a security interest is a class E felony when the*  
24 *personal property subject to the security interest is of the value of*  
25 *~~\$150 or more~~ at least \$500 and is subject to a security interest of*  
26 *~~\$150 or more. Impairment of~~ at least \$500 and either the value*  
27 *of the property or the security interest is less than \$50,000. Impairing*  
28 *a security interest is a class A misdemeanor when the personal*  
29 *property subject to the security interest is of the value of less than*  
30 *~~\$150~~ \$500, or of the value of ~~\$150~~ \$500 or more but subject to a*  
31 *security interest of less than ~~\$150~~ \$500.*

Comment

Subsection (2) is revised to make this section consistent with other property crimes where the dollar amount of harm determines the penalty classification.

32 Sec. 45. K.S.A. 21-3755 is hereby amended to read as follows:  
33 21-3755. (1) As used in this section, the following words and phrases  
34 shall have the meanings respectively ascribed thereto:  
35 (a) "Access" means to approach, instruct, communicate with,  
36 store data in, retrieve data from, or otherwise make use of any  
37 resources of a computer, computer system or computer network.  
38 (b) "Computer" means an electronic device which performs work  
39 using programmed instruction and which has one or more of the  
40 capabilities of storage, logic, arithmetic or communication and in-  
41 cludes all input, output, processing, storage, software or commu-  
42 nication facilities which are connected or related to such a device  
43 in a system or network.  
1 (c) "Computer network" means the interconnection of commu-  
2 nication lines, including microwave or other means of electronic  
3 communication, with a computer through remote terminals, or a  
4 complex consisting of two or more interconnected computers.  
5 (d) "Computer program" means a series of instructions or state-  
6 ments in a form acceptable to a computer which permits the func-  
7 tioning of a computer system in a manner designed to provide  
8 appropriate products from such computer system.

9 (e) "Computer software" means computer programs, procedures  
10 and associated documentation concerned with the operation of a  
11 computer system.

12 (f) "Computer system" means a set of related computer equip-  
13 ment or devices and computer software which may be connected or  
14 unconnected.

15 (g) "Financial instrument" means any check, draft, money order,  
16 certificate of deposit, letter of credit, bill of exchange, credit card,  
17 debit card or marketable security.

18 (h) "Property" includes, but is not limited to, financial instru-  
19 ments, information, electronically produced or stored data, sup-  
20 porting documentation and computer software in either machine or  
21 human readable form and any other tangible or intangible item of  
22 value.

23 (i) "Services" includes, but is not limited to, computer time, data  
24 processing and storage functions and other uses of a computer, com-  
25 puter system or computer network to perform useful work.

26 (j) "Supporting documentation" includes, but is not limited to,  
27 all documentation used in the construction, classification, imple-  
28 mentation, use or modification of computer software, computer pro-  
29 grams or data.

30 (2) Computer crime is:

31 (a) ~~Willfully~~ *Intentionally* and without authorization gaining or  
32 attempting to gain access to and damaging, modifying, altering, de-  
33 stroying, copying, disclosing or taking possession of a computer,  
34 computer system, computer network or any other property;

35 (b) using a computer, computer system, computer network or  
36 any other property for the purpose of devising or executing a scheme  
37 or artifice with the intent to defraud or for the purpose of obtaining  
38 money, property, services or any other thing of value by means of  
39 false or fraudulent pretense or representation; or

40 (c) ~~willfully intentionally~~ exceeding the limits of authorization  
41 and ~~damaging, modifying, altering, destroying, copying, disclosing~~  
42 ~~or taking possession of a computer, computer system, computer~~  
43 ~~network or any other property.~~

1 Computer crime which causes a loss of the value of less than \$150  
2 \$500 is a class A misdemeanor.

3 Computer crime which causes a loss of the value of \$150 ~~or more~~  
4 *at least \$500 but less than \$50,000* is a class E felony.

5 *Computer crime which causes a loss of the value of \$50,000 or*  
6 *more is a class D felony.*

7 (3) In any prosecution for computer crime, it is a defense that  
8 the property or services were appropriated openly and avowedly  
9 under a claim of title made in good faith.

10 (4) ~~Unlawful Criminal~~ computer access is ~~willfully intention-~~  
11 ~~ally~~, fraudulently and without authorization gaining or attempting to  
12 gain access to any computer, computer system, computer network  
13 or to any computer software, program, documentation, data or prop-  
14 erty contained in any computer, computer system or computer  
15 network.

16 ~~Unlawful Criminal~~ computer access is a class A misdemeanor.

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

#### Comment

Subsection (2)(c) is revised to make this section consistent with other property crimes where the dollar amount of harm determines the penalty classification. The revised section refers to "criminal" computer access and substitutes "intentionally" for "willfully."

19 Sec. 46. K.S.A. 21-4111 is hereby amended to read as follows:  
20 21-4111. (1) Criminal desecration is purposely desecrating any  
21 public monument or structure, or any place of worship or pur-  
22 posely and publicly desecrating the national flag, the state flag  
23 of Kansas or any other object venerated by the public or a  
24 substantial segment thereof.

25 (2) "Desecrate" means to deface, damage, pollute or oth-  
26 erwise physically mistreat in a way that will outrage the sen-  
27 sibilities of persons likely to observe or discover the action.

28 (3) Criminal desecration is a class G misdemeanor. Criminal  
29 desecration is:

30 (1) Obtaining or attempting to obtain unauthorized control of a  
31 dead body or remains of any human being or the coffin, urn or  
32 other article containing a dead body or remains of any human being;

33 (2) damaging, defacing or destroying the flag, ensign or other  
34 symbol of the United States or this state in which another has <sup>(an)</sup>  
35 interest without the consent of such other person;

36 ~~(3)~~ damaging, defacing or destroying any public monument or  
37 structure;

38 ~~(4)~~ damaging, defacing or destroying any tomb, monument, mem-  
39 orial, marker, grave, vault, crypt gate, tree, shrub, plant or any  
40 other property in a cemetery; or

41 ~~(5)~~ damaging, defacing or destroying any place of worship.

42 Criminal desecration as described in subsections ~~(3), (4) and (5)~~  
43 is a class D felony if the property is damaged to the extent of \$50,000

1 or more; a class E felony if the property is damaged to the extent  
2 of at least \$500 but less than \$50,000; and a class A misdemeanor

3 if the property is damaged to the extent of less than \$500. Criminal  
4 desecration as described in subsections (1) and (2) is a class A

5 misdemeanor.

by means other than by fire or explosive; (a)

(b)

(c)

(d)

(2) (b), (c) and (d)

(a)

*a property*

### Comment

The above statute is a consolidation of four statutes: K.S.A. 21-4111, Criminal Desecration; K.S.A. 21-4112, Desecrating a Dead Body; K.S.A. 21-4114, Desecration of Flags; and K.S.A. 21-4115, Desecrating a Cemetery.

Damaging a public monument and damaging a place of worship are revised to add a dollar amount to increase penalties for greater damage. Similar amendments were made to K.S.A. 21-4115 in 1990. (L. 1990, ch. 101, § 3) The revisions result in the same penalty applying to acts of desecration which cause monetary damage as would apply if such acts were covered under K.S.A. 21-3720 (Criminal damage to property). An offender is still appropriately labeled as a "desecrator" but does not as a consequence evade the more severe penalty for property damage.

K.S.A. 21-4112 has been expanded to cover any dead human body such as a cadaver donated for authorized medical purposes, but then used for unauthorized purposes.

K.S.A. 21-4114 has been rewritten to remove the constitutional problems that were present in light of the recent U. S. Supreme Court decision on freedom of speech.

**21-4201. [Unlawful] use of weapons. (1)** <sup>Criminal</sup>  
[Unlawful] use of weapons is knowingly:

(a) Selling, manufacturing, purchasing, 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;

(b) carrying concealed on one's person, or possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slung shot, 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;

(c) carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;

(d) 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;

(e) setting a spring gun;

(f) possessing any device or attachment of any kind designed, used or intended for use in silencing the report of any firearm;

(g) selling, manufacturing, purchasing, 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;

(h) 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.

(i) possessing or transporting any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device, commonly known as a "molotov cocktail."

(2) Subsections (1)(a), (b), (c), (d) and (g) shall not apply to or affect any of the following:

(a) 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;

(b) 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;

(c) 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

(d) manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.

(3) Subsection (1)(d) shall not apply to or affect the following:

(a) Watchmen, while actually engaged in the performance of the duties of their employment;

(b) licensed hunters or fishermen, while engaged in hunting or fishing;

(c) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(d) 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

(e) 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.

(4) Subsections (1)(a), (f) and (g) 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.

(5) Subsection (1)(h) shall not apply to a governmental laboratory or solid plastic bullets.

(6) It shall be a defense that the defendant is within an exemption.

(7) Violation of subsections (1)(a) through (1)(~~f~~) (e) or violation of subsection (1)(i) is a class B A misdemeanor. Violation of subsection (1)(f), (g) or (h) is a class E felony.

(8) 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

"Unlawful" is replaced with "Criminal."

Former 21-3732 (possession or transportation of incendiary or explosive device) is incorporated into subsection (1)(i).

Violations of (1)(f) (possessing a silencer) are raised to an E felony. Other than the exemption provided in subsection (4), there appears to be no legitimate reason to possess such a device. The other misdemeanor violations are raised from class B to class A misdemeanors.

10 Sec. 48. K.S.A. 21-4217 is hereby amended to read as follows:  
11 21-4217. (a) ~~Unlawful Criminal~~ discharge of a firearm is the dis-  
12 charge of any firearm:  
13 (1) Upon any land or *nonnavigable body of water* of another,  
14 *without having obtained permission of the owner or person in pos-*  
15 *session of such land;* or  
16 (2) upon or from any public road, *public road right-of-way* or  
17 railroad right-of-way that ~~adjoins land of another without having~~  
18 ~~first obtained permission of the owner or person in possession~~  
19 ~~of such land.~~  
20 (b) This section shall not apply to any of the following:  
21 (1) Law enforcement officers, or any person summoned by any  
22 such officers to assist in making arrests or preserving the peace while  
23 actually engaged in assisting such officer;  
24 (2) wardens, superintendents, directors, security personnel and  
25 keepers of prisons, penitentiaries, jails and other institutions for the  
26 detention of persons accused or convicted of crime, while acting  
27 within the scope of their authority;  
28 (3) members of the armed services or reserve forces of the United  
29 States or the ~~Kansas~~ national guard while in the performance of  
30 their official duty;  
31 (4) watchmen, while actually engaged in the performance of the  
32 duties of their employment;  
33 (5) private detectives licensed by the state to carry the firearm  
34 involved, while actually engaged in the duties of their employment;  
35 (6) detectives or special agents regularly employed by railroad  
36 companies or other corporations to perform full-time security or  
37 investigative service, while actually engaged in the duties of their  
38 employment; or  
39 (7) the state fire marshal, the state fire marshal's deputies or any  
40 member of a fire department authorized to carry a firearm pursuant  
41 to K.S.A. 31-157 and amendments thereto, while engaged in an  
42 investigation in which such fire marshal, deputy or member is au-  
43 thorized to carry a firearm pursuant to K.S.A. 31-157 and amend-  
1 ments thereto.  
2 (c) ~~Unlawful Criminal~~ discharge of a firearm is a class C  
3 misdemeanor.

Comment

The section is redesignated as "criminal" discharge of a firearm. Subsection (a) is further subdivided to prohibit shooting from a public road, public road right-of-way or railroad right-of-way regardless of whether permission of the owner of adjoining lands is obtained. In (a)(1), the physical areas in which permission of the owner or person in possession is required is expanded to include nonnavigable bodies of water (see comment to 21-3721). In (b)(3), "Kansas" is deleted in recognition of the fact that national guard units from other states are at times in Kansas to perform official duties.

4 New Sec. 49. An inherently dangerous felony is defined as any  
5 of the following:  
6 (1) Murder in the first degree under subsection (a) of K.S.A. 21-  
7 3401 and amendments thereto;  
8 (2) murder in the second degree under subsection (a) of K.S.A.  
9 21-3402 and amendments thereto;  
10 (3) voluntary manslaughter under subsection (a) of K.S.A. 21-  
11 3403 and amendments thereto;  
12 (4) kidnapping, as defined in K.S.A. 21-3420 and amendments  
13 thereto;  
14 (5) aggravated kidnapping, as defined in K.S.A. 21-3421 and  
15 amendments thereto;  
16 (6) robbery, as defined in K.S.A. 21-3426 and amendments  
17 thereto;  
18 (7) aggravated robbery, as defined in K.S.A. 21-3427 and amend-  
19 ments thereto;  
20 (8) rape, as defined in K.S.A. 21-3502 and amendments thereto;  
21 (9) aggravated sodomy, as defined in K.S.A. 21-3506 and amend-  
22 ments thereto;  
23 (10) abuse of a child, as defined in K.S.A. 21-3609 and amend-  
24 ments thereto;  
25 (11) felony theft under subsection (a) or (c) of K.S.A. 21-3701  
26 and amendments thereto;  
27 (12) burglary, as defined in K.S.A. 21-3715 and amendments  
28 thereto;  
29 (13) aggravated burglary, as defined in K.S.A. 21-3716 and  
30 amendments thereto;  
31 (14) arson, as defined in K.S.A. 21-3718 and amendments thereto;  
32 (15) aggravated arson, as defined in K.S.A. 21-3719 and amend-  
33 ments thereto;  
34 (16) treason, as defined in K.S.A. 21-3801 and amendments  
35 thereto; and  
36 (17) any felony offense as provided in K.S.A. 65-4127a or 65-  
37 4127b and amendments thereto.

See comment to 21-3401

38 Sec. 50. K.S.A. 21-3201, 21-3402, 21-3403, 21-3404, 21-3405, 21-  
39 3406, 21-3408, 21-3410, 21-3412, 21-3414, 21-3417, 21-3419, 21-3424,  
40 21-3426, 21-3427, 21-3428, 21-3433, 21-3434, 21-3502, 21-3504, 21-  
41 3505, 21-3506, 21-3508, 21-3509, 21-3510, 21-3511, 21-3513, 21-3514,  
42 21-3517, 21-3518, 21-3519, 21-3525, 21-3602, 21-3603, 21-3701, 21-  
43 3703, 21-3704, 21-3705, 21-3706, 21-3714, 21-3716, 21-3717, 21-3721,  
1 21-3722, 21-3728, 21-3732, 21-3733, 21-3734, 21-3735, 21-3736, 21-  
2 3740, 21-3741, 21-3745, 21-3753, 21-3754, 21-3755, 21-4111, 21-4112,  
3 21-4114, 21-4201, 21-4217 and 23-103 and K.S.A. 1990 Supp. 21-  
4 3401, 21-3401a, 21-3405a, 21-3405b, 21-3501, 21-3503, 21-3516, 21-  
5 3715, 21-3729, 21-4115, 32-1013, 36-206 and 36-207 are hereby  
6 repealed.

7 Sec. 51. This act shall take effect and be in force from and after  
8 its publication in the statute book.

Sections repealed by SB 358

**21-3405a. Aggravated vehicular homicide.** (1) Aggravated vehicular homicide is the unintentional killing of a human being, without malice, which is done while committing a violation of K.S.A. 8-1566, 8-1567 or 8-1568, and amendments thereto, or the ordinance of a city which prohibits any of the acts prohibited by those statutes.

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

(3) Aggravated vehicular homicide is a class D felony if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, and for which the offender shall:

(a) Be fined not less than \$1,000;

(b) be required, as a condition of any grant of probation, assignment to community corrections or suspension of sentence, to serve at least 90 days' imprisonment in the county jail, by house arrest as provided by K.S.A. 21-4603b or by other residential confinement;

(c) be required, as a condition of any grant of probation, assignment to community corrections, suspension or reduction of sentence, parole or other release, to enter into and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs; and

(d) have driving privileges suspended, or suspended and restricted, as provided in K.S.A. 1988 Supp. 8-1014.

(4) Aggravated vehicular homicide is a class E felony if the crime is committed while committing a violation of K.S.A. 8-1566 or 8-1568, and amendments thereto, or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute.

**History:** L. 1984, ch. 39, § 48; L. 1985, ch. 48, § 14; L. 1988, ch. 47, § 3; L. 1989, ch. 88, § 1; July 1.

Comment

Repealed and incorporated into involuntary manslaughter (21-3404).

Sec. 2. K.S.A. 21-3405b is hereby amended to read as follows: 21-3405b. (a) Vehicular battery is unintentionally causing bodily ~~harm~~ *injury* to another human being which is done while committing a violation of K.S.A. 8-1566, 8-1567 or 8-1568, and amendments thereto, or the ordinance of a city or resolution of a county which prohibits any of the acts prohibited by those statutes.

(b) Vehicular battery is a class A misdemeanor for which the offender, if the crime is committed while committing a violation of K.S.A. 8-1567 and amendments thereto or the ordinance of a city or resolution of a county in this state which prohibits any acts prohibited by that statute, shall:

(1) Be fined not less than \$1,000;

(2) not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment;

(3) be required, as a condition of any grant of probation, suspension or reduction of sentence, parole or other release, to enter into and successfully complete an alcohol and drug safety action program or a treatment program as provided in K.S.A. 8-1008 and amendments thereto, or both the education and treatment programs; and

(4) have driving privileges suspended, or suspended and restricted, as provided by K.S.A. ~~1988~~ 1989 Supp. 8-1014, *and amendments thereto.*

(c) As used in this section, "bodily injury" means great bodily harm, disfigurement or dismemberment.

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

#### Comment

Repealed and incorporated into battery (21-3412). Reckless batteries are covered under the revised battery statute, therefore, this statute is unnecessary.

**21-3417. Attempted poisoning.** Attempted poisoning is mingling poison with any food, drink, or medicine, with intent to kill or injure any human being.

Attempted poisoning is a class C felony.

**History:** L. 1969, ch. 180, § 21-3417; L. 1975, ch. 196, § 1; July 1.

**Source or prior law:**

21-432, 21-433.

**Judicial Council, 1968:** This section covers an area probably not included in the definition of aggravated assault. It seems to reflect the law of Kansas.

Comment

This section is repealed because the proscribed acts are covered by attempted murder and attempted aggravated battery.

**21-3433.** Aircraft piracy. Aircraft piracy is the willful or unauthorized seizure in this state of any aircraft containing a pilot and one or more persons by the use of force or any other means with the intent to exercise control over the aircraft.

Aircraft piracy is a class A felony.

**History:** L. 1973, ch. 138, § 1; July 1.

Comment

This section is repealed because the conduct is adequately covered by other crimes and federal statutes.



**21-3509. Enticement of a child.** Enticement of a child is inviting, persuading or attempting to persuade a child under the age of sixteen (16) years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the person of said child.

Enticement of a child is a class D felony.

**History:** L. 1969, ch. 180, § 21-3509; July 1, 1970.

**Revisor's Note:**

For Judicial Council comment, see 21-3511.

**Attorney General's Opinions:**

Code for care of children; definition of sexual abuse and exploitation in code; conformity with federal regulations. 83-186.

Comment

This section is repealed and incorporated into 21-3510 and 3511.

**21-3514. Habitually promoting prostitution.** Habitually promoting prostitution is the commission of any act constituting promoting prostitution, as defined in section 21-3513, by a person who has, prior to the commission of such act, been convicted of a prior violation of said section 21-3513.

Habitually promoting prostitution is a class E felony.

**History:** L. 1969, ch. 180, § 21-3514; July 1, 1970.

**Revisor's Note:**

For Source or Prior Law and Judicial Council comment, see 21-3515.

Comment

This section is repealed. See the comment to the revisions of 21-3513.

**21-3519. Promoting sexual performance by a minor.** (1) Promoting sexual performance by a minor is promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.

(2) Promoting sexual performance by a minor is a class E felony.

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

**History:** L. 1986, ch. 121, § 2; July 1.

Comment

This section is repealed and incorporated into 21-3516.

**21-3706. Fraudulently obtaining execution of a document.** Fraudulently obtaining execution of a document is causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred.

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

**History:** L. 1969, ch. 180, § 21-3706; July 1, 1970.

**Source or prior law:**

21-551.

**Judicial Council, 1968:** Theft, as defined in section 21-3701, includes the situation where control of property is obtained by deception. The present section defines a lesser species of crime. The gist of the section is the wrongful procuring of the execution of a document which may or may not convey an interest in property. It may have been included in former K.S.A. 21-1112.

The language is taken from Illinois Criminal Code, 17-1 (a).

Comment

This section is repealed because the acts proscribed are adequately covered by attempted theft.

**21-3714. Possession of forgery devices.**

Possession of forgery devices is making or possessing, with knowledge of its character and with intent to use or to aid or permit another to use for purposes of forgery, any device, apparatus, equipment or article capable of or adaptable for use in counterfeiting, simulating or otherwise forging written instruments.

Possession of forgery devices is a class E felony.

**History:** L. 1969, ch. 180, § 21-3714; July 1, 1970.

**Source or prior law:**

21-632, 21-633.

**Judicial Council, 1968:** This section reflects an idea found in the former laws—the prohibition of possession of instruments for purposes of forgery. Note that proof of intent to use is an element of the act prohibited.

The source is proposed New York Penal Law, 170.40.

Comment

This section is repealed. It is sufficient to make conduct criminal when it rises to the level of attempted forgery.

**21-3717. Possession of burglary tools.**

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

Possession of burglary tools is a class E felony.

**History:** L. 1969, ch. 180, § 21-3717; July 1, 1970.

**Source or prior law:**

21-2437.

**Judicial Council, 1968:** Possession of burglary tools was probably prohibited by former K.S.A. 21-2437 along with explosives and other devices "designed or commonly used for breaking into" certain structures. This section is intended to clarify the conduct prohibited.

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

Comment

This section is repealed. It is sufficient to make conduct criminal when it rises to the level of attempted burglary.

**21-3732. Possession or transportation of incendiary or explosive device.** Possession or transportation of incendiary or explosive device is the knowing possession or transportation of any incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick, or any other detonating device, commonly known as a "molotov cocktail."

Possession or transportation of an incendiary or explosive device is a class A misdemeanor.

History: L. 1969, ch. 180, § 21-3732; July 1, 1970.

**Revisor's Note:**

Section not included in proposed criminal code by judicial council.

Comment

This section is repealed. K.S.A. 21-4201 (Unlawful use of weapons) is revised to cover acts proscribed by this section.

**21-3733. Criminal use of noxious matter.**

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

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

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

**History:** L. 1969, ch. 180, § 21-3733; July 1, 1970.

**Source or prior law:**

21-2437, 21-2454.

**Judicial Council, 1968:** Sections 21-3731 and 21-3733 are similar in content to former K.S.A. 21-2454. However, the criminal use of explosives is made a felony, while under the former law it was a misdemeanor only.

Comment

This section is repealed. Acts proscribed by this section are adequately covered in K.S.A. 21-4201(1)(c).



**21-3735. Fraudulent release of a security agreement.** Fraudulent release of a security agreement is the execution of a release or the providing of a termination statement or statement of release of a security agreement, with intent to defraud a secured party, by a person named as a secured party in the security agreement, who is not at the time the owner and holder of the debt secured by such security agreement.

Fraudulent release of a security agreement is a class E felony.

**History:** L. 1969, ch. 180, § 21-3735; July 1, 1970.

Comment

This section is repealed. The proscribed conduct is covered by K.S.A. 21-3711 (Making a false writing).

**21-3736. Warehouse receipt fraud.** (1) Warehouse receipt fraud is making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering by a warehouseman, or any officer, agent or servant of a warehouseman, of:

(a) A negotiable receipt for goods with knowledge that the goods for which 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

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

(c) a duplicate or additional negotiable receipt for goods with knowledge that a former negotiable receipt for the same goods or any part thereof is outstanding and uncanceled, without plainly placing on the face thereof the word "duplicate," except in the case of a lost, stolen or destroyed receipt after proceedings as provided in K.S.A. 34-257 or 84-7-601(1).

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

**History:** L. 1969, ch. 180, § 21-3736; L. 1983, ch. 135, § 1; July 1.

Comment

This section is repealed. The proscribed acts are covered by Making a false writing (21-3711), Theft (21-3701) and Attempted theft.

**21-3740. Opening, damaging or removing coin-operated machines.** Opening, damaging or removing coin-operated machines is willfully and knowingly opening, removing or damaging any parking meter, coin telephone, vending machine dispensing goods or services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services or any part thereof, with intent to commit theft.

Opening, damaging or removing coin-operated machines is a class A misdemeanor.

This section shall be a part of and supplemental to the Kansas criminal code.

**History:** L. 1970, ch. 126, § 1; July 1.

Comment

This section is repealed. The proscribed acts are covered by Criminal damage to property or Attempted theft.

**21-3741. Possession of tools for opening, damaging or removing coin-operated machines.** Possession of tools for opening, damaging or removing coin-operated machines is the possession of any key, tool, instrument or other device, or any drawing, print or mold of a key or other device or any explosive specifically designed for or suitable for use in opening or breaking into any parking meter, coin telephone, vending machine dispensing goods or services, money changer or any other device designed to receive money in the sale, use or enjoyment of property or services with intent to commit theft.

Possession of tools for opening, damaging or removing coin-operated machines is a class A misdemeanor.

This section shall be a part of and supplemental to the Kansas criminal code.

**History:** L. 1970, ch. 126, § 2; July 1.

Comment

This section is repealed. It is sufficient to make conduct criminal when it rises to the level of Attempted theft or Attempted criminal damage to property.

**21-3745. Theft of telecommunication services.** (1) Theft of telecommunication services is knowingly:

(a) Making or possessing any instrument, apparatus, equipment, or device designed, adapted, or which is used to conceal, or to assist another to conceal, from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication.

(b) Selling, giving, transporting or otherwise transferring to another or offering or advertising for sale, any instrument, apparatus, equipment, or device described in paragraph (a), or plans or instructions for making or assembling the same, under circumstances evincing an intent to use or employ such apparatus, equipment, or device, or to allow the same to be used or employed, for a purpose described in paragraph (a), or knowing or having reason to believe that the same is intended to be so used, or that the aforesaid plans or instructions are intended to be used for making or assembling such apparatus, equipment or device.

(c) Publishing plans or instructions for making or assembling or using any apparatus, equipment or device described in paragraph (a).

(d) Publishing the number or code of an existing, canceled, revoked or nonexistent telephone number, credit number or other credit device or method of numbering or coding which is employed in the issuance of telephone numbers, credit numbers or other credit devices under circumstances evincing an intent to have such telephone number, credit number, credit device or method of numbering or coding used to avoid the payment of a lawful charge for any telecommunication service, or knowing or having reason to believe that the

same may be used to avoid the payment of any such charge.

(e) Obtaining or attempting to obtain credit for or to purchase or attempt to purchase any telecommunication service by the use of any false, fictitious or counterfeit telephone number, credit number or other credit device, or by the use of any telephone number, credit number or other credit device without the authority of the person to whom such number or device was issued, or by the use of any telephone number, credit number or other credit device knowing that such number or device has been revoked.

(f) Avoiding or attempting to avoid, or causing another to avoid, the lawful charges, in whole or in part, for any telecommunication service, by the use of any fraudulent scheme, device, means or method.

(2) As used in this section, the term "telecommunication service" means any telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph or over telephone or telegraph facilities.

(3) Any instrument, apparatus, device, plans or instructions or publications described in this section may be seized under warrant or incident to a lawful arrest, and, upon the conviction of a person for theft of telecommunication services, any such instrument, apparatus, device, plans, instructions or publication may be destroyed as contraband by the sheriff of the county in which such person was convicted or turned over to the person providing telecommunication services in the territory in which the same was seized.

(4) Theft of telecommunication services is a class A misdemeanor, except that on a second or subsequent conviction it shall be a class E felony if the telecommunication services obtained within any seven-day period are of the value of fifty dollars (\$50) or more.

**History:** L. 1972, ch. 119, § 1; L. 1973, ch. 139, § 2; April 9.

#### Comment

This section is repealed. The proscribed acts are covered by 21-3701 (theft) and 21-3704 (theft of services).

**21-3753. Grain embezzlement.** (a) Grain embezzlement is:

(1) Embezzlement or willful misappropriation of grain by a warehouseman or by an officer, agent or servant of a warehouseman, with intent to injure or defraud any individual or entity; or

(2) aiding or abetting a warehouseman or an officer, agent or servant of a warehouseman to embezzle or willfully misappropriate grain, with intent to injure or defraud any individual or entity.

(b) Grain embezzlement is a class C felony.

**History:** L. 1983, ch. 135, § 13; July 1.

Comment

This section is repealed. The proscribed acts are covered by K.S.A. 21-3701 (Theft).

**21-3754.** False warehouse records or reports. (a) Making false public warehouse financial records and statements is a public warehouseman making or maintaining or causing to be made or maintained any written entry in a book or other record of account or in any financial statement, or any such entry or statement stored or prepared on computer disk, tape or other electronically accessed media, with knowledge that the same falsely states or represents some material matter or is not what it purports to be, and with intent to defraud or to induce official action.

Making false public warehouse financial records and statements is a class D felony.

(b) Making false public warehouse reports is a public warehouseman making or causing to be made any written report or statement required to be prepared and submitted to the Kansas state grain inspection department under any statute contained in article 2 of chapter 34 of the Kansas Statutes Annotated and amendments thereto or any rules and regulations adopted thereunder, with knowledge that the same falsely states some material matter or is not what it purports to be, and with intent to defraud or to induce official action.

Making false public warehouse reports is a class D felony.

(c) As used in this section "public warehouseman" has the meaning ascribed thereto by K.S.A. 34-223 and amendments thereto.

History: L. 1985, ch. 137, § 2; July 1.

Comment

This section is repealed. The proscribed acts are covered by K.S.A. 21-3711 (Making a false writing).

**21-4112. Desecrating a dead body.** Desecrating a dead body is knowingly and without authorization of law:

(a) Opening a grave or other place of interment or sepulcher with intent to remove the dead body or remains of any human being or any coffin, vestment or other article interred with such body; or

(b) Removing the dead body or remains of any human being, or the coffin, vestment or other article interred with such body, from the grave or other place of interment or sepulcher; or

(c) Receiving the dead body or remains of any human being knowing the same to have been disinterred unlawfully.

Desecrating a dead body is a class B misdemeanor.

**History:** L. 1969, ch. 180, § 21-4112; July 1, 1970.

**21-4114. Desecration of flags.** (a) As used in this section, unless the context otherwise requires, the term "flag" shall have the following meaning: Flag includes every flag, standard, color, or ensign authorized by the laws of the United States or of this state, and every picture or representation thereof, of any size, made of any substance, or represented on any substance evidently purporting to be such flag, standard, color or ensign of the United States or of this state, and every picture or representation which shows the design thereof.

(b) Desecration of flags is: (1) In any manner for exhibition or display, placing or causing to appear any word, figure, mark, picture, design, drawing, or any advertisement of any nature upon any flag of the United States or this state.

(2) Exposing to public view any such flag upon which is printed, painted, or placed or to which is attached, appended, affixed, or annexed any word, figure, mark, picture, design, drawing or any advertisement of any nature.

(3) Exposing to public view, manufacturing, selling, exposing for sale, giving away, or having in possession for sale or to give away or for use for any purpose any article or substance being an article of merchandise or a receptacle of merchandise upon which is printed, painted, attached, or placed a representation of any such flag, standard, color, or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed.

(4) Publicly mutilating, defacing, defiling, or trampling any such flag.

(c) Desecration of flags is a class A misdemeanor.

**History:** L. 1970, ch. 307, § 1; July 1.



Sec. 3. K.S.A. 21-4115 is hereby amended to read as follows:  
21-4115. Desecrating a cemetery is knowingly and without authorization of law:

(a) Destroying, cutting, mutilating, defacing, or otherwise injuring, tearing down or removing any tomb, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or any property in a cemetery;

(b) obliterating any grave, vault, niche or crypt; or

(c) destroying, cutting, breaking or injuring any building, statuary, ornamentation, tree, shrub or plant within the limits of a cemetery.

*Desecrating a cemetery is a class E felony if the damage is to the extent of \$500 or more. Desecrating a cemetery is a class A misdemeanor if the damage is to the extent of less than \$500.*

Comment

These sections are repealed and consolidated into 21-4111, as revised.

**23-102. Incestuous marriages void.** All marriages between parents and children, including grandparents and grandchildren of any degree, between brothers and sisters of the one half as well as the whole blood, and between uncles and nieces, aunts and nephews, and first cousins, are declared to be incestuous and absolutely void.

**History:** L. 1867, ch. 84, § 2; G.S. 1868, ch. 61, § 2; R.S. 1923, 23-102; L. 1985, ch. 114, § 21; July 1.

**23-103. Penalty for violating 23-102.** Whoever shall contract marriage in fact contrary to the provisions of the preceding section, and whoever shall issue any license for or solemnize any such marriage knowingly, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or both, at the discretion of the jury which shall try the cause; or if the conviction be by confession, at the discretion of the court; the fine not to be more than one thousand nor less than one hundred dollars, and imprisonment not less than three months nor more than five years.

**History:** L. 1867, ch. 84, § 3; May 27; G.S. 1868, ch. 61, § 3; R.S. 1923, 23-103.

Comment

K.S.A. 23-103 is repealed because it contains obsolete provisions and the proscribed acts are covered by other statutes.

**32-1013. Taking wildlife without permission on land posted "by written permission only".** (a) Any landowner or person in lawful possession of any land may post such land with signs stating that hunting, trapping or fishing on such land shall be by written permission only. It is unlawful for any person to take wildlife on land which is so posted, without having in the person's possession the written permission of the owner or person in lawful possession thereof.

(b) A person licensed to hunt or furharvest and following or pursuing a wounded animal on land so posted without written 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 the provisions of this subsection shall not authorize a person to remain on such land if instructed to leave by the owner or person in lawful possession of the land and any person failing to leave such land when so instructed is subject to the provisions of K.S.A. 21-3721 and 21-3728, and amendments thereto.

**History:** L. 1971, ch. 143, § 1; L. 1977, ch. 113, § 2; L. 1985, ch. 132, § 3; L. 1989, ch. 118, § 124; July 1.

Comment

See revisions to 21-3728 (Criminal hunting).

**36-206. Fraud or cheating in obtaining accommodations; penalties.** (a) Defrauding an innkeeper is obtaining any food, lodging or other accommodation at any inn, restaurant, hotel, boardinghouse, apartment house, dwelling unit or rooming house by means of any trick, deception or false representation, statement or pretense, with intent to defraud the owner or keeper thereof.

(b) Defrauding an innkeeper is a class A misdemeanor if the value of the food, lodging, services or other accommodations is \$150 or less. Defrauding an innkeeper is a class E felony if the value of the food, lodging, services or other accommodations is more than \$150.

(c) As used in this act, "dwelling unit" means a structure or a part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

**History:** L. 1913, ch. 205, § 6; L. 1923, ch. 149, § 6; R.S. 1923, 36-206; L. 1941, ch. 247, § 7; L. 1965, ch. 272, § 1; L. 1982, ch. 132, § 5; L. 1987, ch. 148, § 1; July 1.

**36-207. Proof of intent to defraud.** The following shall be prima facie evidence of the intent to defraud an owner or innkeeper as provided in K.S.A. 36-206 and amendments thereto: (1) Obtaining lodging, food or other accommodations by false pretense or by false or fictitious show or pretense of any baggage or other property;

(2) paying for such food, lodging or other accommodation by a check or other negotiable paper on which payment had been refused;

(3) leaving the inn, restaurant, hotel, boardinghouse, apartment house, dwelling unit or rooming house without paying or offering to pay for such food, lodging or other accommodation;

(4) surreptitiously removing or attempting to remove baggage or other property; or

(5) registering under a fictitious name.

**History:** L. 1913, ch. 205, § 7; L. 1923, ch. 149, § 7; R.S. 1923, 36-207; L. 1987, ch. 148, § 2; July 1.

Comment

See revisions to 21-3704 (Theft of services).

Further amendments to criminal statutes not contained in SB 358

2-63/114

c. 20. K.S.A. 1990 Supp. 8-1567 is hereby amended to read as follows: 8-1567. (a) No person shall operate or attempt to operate any vehicle within this state while:

(1) The alcohol concentration in the person's blood or breath as shown by any competent evidence, including other competent evidence, as defined in paragraph (1) of subsection (f) of K.S.A. 8-1013, and amendments thereto, is .10 or more, ~~except that an alcohol concentration of .04 or more, shall be used for persons operating or attempting to operate commercial motor vehicles, as defined in K.S.A. 1989 Supp. 8-2,128, and amendments thereto;~~

(2) the alcohol concentration in the person's blood or breath, as measured within two hours of the time of operating or attempting to operate a vehicle, is .10 or more, ~~except that an alcohol concentration of .04 or more, shall be used for persons operating or attempting to operate commercial motor vehicles, as defined in K.S.A. 1989 Supp. 8-2,128, and amendments thereto;~~

(3) under the influence of alcohol;

(4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle; or

(5) under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle.

(b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

(c) If a person is charged with a violation of this section involving drugs, the fact that the person is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.

(d) ~~Any person operating or attempting to operate a commercial motor vehicle who refuses testing or submits to a test which discloses an alcohol concentration of .04, or more, the law enforcement officer shall submit a sworn report to the secretary certifying that the test was requested pursuant to subsection (a) and that the person refused to submit to testing or submitted to a test which disclosed an alcohol concentration of .04, or more.~~

(e) ~~Upon receipt of the sworn report of the law enforcement officer submitted under subsection (d), the secretary shall disqualify the driver from driving a commercial motor vehicle under K.S.A. 1989 Supp. 8-2,142, and amendments thereto.~~

(f) (d) Violation of this section is a misdemeanor. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment, or in the court's discretion 100 hours of public service, and fined not less than \$200 nor more than \$500. The person convicted must serve at least 48 consecutive hours' imprisonment or 100 hours of public service either before or as a condition of any grant of probation or suspension, reduction of sentence or parole. In addition, the court shall enter an order which requires that the person enroll in and successfully complete an alcohol and drug safety action education program or treatment program as provided in K.S.A. 8-1008, and amendments thereto, or both the education and treatment programs.

(g) (e) On a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than

to a degree that  
renders the person  
incapable of safely  
driving a vehicle.

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 confinement at the end of each day in the work release program. Except as provided in subsection ~~(i)~~ (g), 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 alcohol and drug abuse as provided in K.S.A. 8-1008, and amendments thereto.

~~(h)~~ (f) On the third or a subsequent conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. Except as provided in subsection ~~(i)~~ (g), 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 may also require as a condition of parole that such person enter into and complete a treatment program for alcohol and drug abuse as provided by K.S.A. 8-1008, and amendments thereto. 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.

~~(i)~~ (g) On a second or subsequent conviction of a violation of this section, the court may place the person convicted under a house arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto, to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.

~~(j)~~ (h) The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

~~(k)~~ (i) In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not

later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.

~~(l)~~ (j) The court shall report every conviction of a violation of this section and every diversion agreement entered into in lieu of further criminal proceedings or a complaint alleging a violation of this section to the division. Prior to sentencing under the provisions of this section, the court shall request and shall receive from the division a record of all prior convictions obtained against such person for any violations of any of the motor vehicle laws of this state.

~~(m)~~ (k) For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

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

(2) "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 agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(3) 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

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

~~(n)~~ (l) Upon conviction of a person of a violation of this section or a violation of a city ordinance or county resolution prohibiting the acts prohibited by this section, the division, upon receiving a report of conviction, shall suspend, restrict or suspend and restrict the person's driving privileges as provided by K.S.A. ~~1989~~ 1990 Supp. 8-1014, and amendments thereto.

~~(o)~~ (m) Nothing contained in this section shall be construed as preventing any city from enacting ordinances, or any county from adopting resolutions, declaring acts prohibited or made unlawful by this act as unlawful or prohibited in such city or county and prescribing penalties for violation thereof, but the minimum penalty prescribed by any such ordinance or resolution shall not be less than

nor exceed the minimum penalty prescribed by this act for the same violation, nor shall the maximum penalty in any such ordinance or resolution exceed the maximum penalty prescribed for the same violation. In addition, any such ordinance or resolution shall authorize the court to order that the convicted person pay restitution to any victim who suffered loss due to the violation for which the person was convicted.

~~(p)~~ (n) No plea bargaining agreement shall be entered into nor shall any judge approve a plea bargaining agreement entered into for the purpose of permitting a person charged with a violation of this section, or a violation of any ordinance of a city or resolution of any county in this state which prohibits the acts prohibited by this section, to avoid the mandatory penalties established by this section or by the ordinance. For the purpose of this subsection, entering into a diversion agreement pursuant to K.S.A. 12-4413 *et seq.* or 22-2906 *et seq.*, and amendments thereto, shall not constitute plea bargaining.

~~(q)~~ (o) The alternatives set out in subsections (a)(1) ~~and~~ (2) and (3) may be pleaded in the alternative, and the state, city or county may, but shall not be required to, *may* elect one or two of the ~~two~~ *three* prior to submission of the case to the fact finder.

~~(r)~~ (p) For the purpose of this section, "alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

#### Comment

Subsection (a)(3) is revised to parallel subsections (a)(4) and (5). See State v. Reeves, 233 Kan. 702 (1983).



21-3415. Aggravated battery against a law enforcement officer. Aggravated battery against a law enforcement officer is an aggravated battery, as defined in section subsection (1)(a) of K.S.A. 21-3414 and amendments thereto, committed against a uniformed or properly identified state, county, or city, law enforcement officer while ~~such~~ the officer is engaged in the performance of ~~his~~ the officer's duty.

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

Comment

The section continues the policy of providing an increased penalty for an intentional aggravated battery committed against a law enforcement officer. A reckless aggravated battery committed against a law enforcement officer is covered by the general provision on reckless aggravated battery [21-3414(1)(b)]. Increasing the penalty one felony class for an aggravated reckless battery based on its commission against a law enforcement officer would result in a higher penalty than that for a reckless act causing the death of a law enforcement officer.

21-3605. Nonsupport of a child or spouse. (1)(a) Nonsupport of a child is 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.

(b) 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.

(c) 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, and may punish for violation of such order as for contempt.

(d) At any stage of the proceeding, instead of or in addition to imposing the penalty hereinafter 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 to an organization or individual approved by the court 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.

(e) 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.

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

(g) Nonsupport of a child is a class E felony.

(2) (a) Nonsupport of a spouse is an individual's failure without just cause to provide for the support of such individual's spouse in necessitous circumstances.

(b) At any time before the trial in a prosecution for nonsupport of a spouse, upon petition and notice, the court may enter such temporary order as may seem just providing for support of such spouse, and may punish for violation of such order as for contempt.

(c) At any stage of the proceeding, instead of or in addition to imposing the penalty hereinafter 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 spouse or to the guardian or conservator of such 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.

(d) 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 conviction, or enforce the suspended sentence as the case may be.

(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 (2)(a) so long as the other spouse is receiving medical assistance as defined by K.S.A. 39-702 and amendments thereto.

(f) Nonsupport of a spouse is a class E felony.

#### Comment

The first and last sentences of former subsection (1)(f) are deleted. The first sentence contained a reduced standard of proof for parentage which was held to violate the constitutional requirement that every element of a crime be proven beyond a reasonable doubt. State v. Rupert, 247 Kan. 512, 515 (1990). The last sentence added little and appeared to create an evidentiary presumption which impermissibly relieved the state of its burden of proof beyond a reasonable doubt on the essential element of intent. See generally, State v. DeVries, 13 Kan.App.2d 609 (1989).

**21-3606. Criminal desertion.** Criminal desertion is a husband's or wife's abandonment or willful failure without just cause to provide for the care, protection or support of a spouse who is in ill health or necessitous circumstances.

Criminal desertion is a class E felony.

Comment

This section is repealed. Where prosecutions do occur in this area it is redundant in light of the provisions for non-support of a spouse in K.S.A. 21-3605(2)(a). K.S.A. 21-3605(2)(a) was amended in 1970 to cover failure without just cause to provide support for a spouse "in necessitous circumstances." Prior to the 1970 amendment, 21-3605(2)(a) covered an individual's failure without just cause to support a spouse "where such individual knows of an existing legal obligation to provide such support." To the extent the scope of K.S.A. 21-3606 may arguably exceed that of 21-3605(2)(a), adequate coverage is provided by the homicide and battery statutes.

21-3608. Endangering a child. (1) Endangering a child is willfully:

~~(a) Causing or permitting a child under the age of eighteen (18) years to suffer unjustifiable physical pain or mental distress; or~~

~~(b) intentionally and unreasonably causing or permitting a child under the age of eighteen (18) years to be placed in a situation in which its the child's life, body or health may be injured or endangered.~~

~~(c) (2) Nothing in this section shall be construed to mean a child is endangered for the sole reason ~~his~~ 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.~~

~~(2) (3) Endangering a child is a class A misdemeanor.~~

#### Comment

Former subsection (1)(a) is deleted. It covered causing or permitting a child under 18 ". . . to suffer unjustifiable physical pain or mental distress." This provision was found to be unconstitutional since it was so vague and indefinite it failed to establish reasonably definite standards of guilt. State v. Meinert, 225 Kan. 816 (1979). Adequate coverage is provided by the remainder of subsection (1).

The substance of subsection (2) is unchanged. The impact of subsection (2) appears to be limited to prosecutions for endangering a child and would not affect potential prosecutions under the homicide and battery statutes.

21-3609. Abuse of a child. Abuse of a child is willfully intentionally torturing, cruelly beating or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.

Abuse of a child is a class D C felony.

Comment

Abuse of a child is raised from a D to a C felony to make the penalty consistent with that for intentional aggravated battery [K.S.A. 21-3414(1)(a)].



21-3612. Contributing to a child's misconduct or deprivation. (1) Contributing to a child's misconduct or deprivation is:

(a) Causing or encouraging a child under 18 years of age to become or remain a ~~traffice-offender~~, child in need of care as defined by the Kansas code for care of children ~~or-a-juvenile offender-as-defined-by-the-Kansas-juvenile-offenders-code~~;

(b) ~~causing-or-encouraging-a-child-under-18-years-of-age-not to-attend-school-as-required-by-law~~;

(c) 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. 1991 Supp. 74-8810, and amendments thereto;

(d) (c) 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;

(e) ~~causing-or-encouraging-a-child-under-18-years-of-age-to commit-an-act-which-if-committed-by-an-adult-would-be-a-felony~~;  
or

(f) (d) sheltering or concealing a runaway with intent to aid the runaway in avoiding detection or apprehension by law enforcement officers; or

(g) causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a felony.

Contributing to a child's misconduct or deprivation as described in subsection (1)(a), (b)~~7-(e)-or-(d)~~ or (c) is a class A misdemeanor. Contributing to a child's misconduct or deprivation as described in subsection ~~(1)-(e)-or-(f)~~ (1)(d) is a class E felony. Contributing to a child's misconduct or deprivation as described in subsection (1)(e) is a class D felony.

(2) 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 Kansas code for care of children, Kansas juvenile offenders code or Kansas criminal code.

(3) As used in this section, "runaway" means a child under 18 years of age who is willfully and voluntarily absent from:

(a) The child's home without the consent of the child's parent or other custodian; or

(b) 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.

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

#### Comment

The term "traffic offender" is deleted from subsection (1)(a). "Traffic offender" was defined in K.S.A. 38-802 of the old juvenile code and the other terms defined in that code (delinquent, miscreant, wayward, deprived, truant) have been deleted from (1)(a) in previous years. Causing or encouraging a

child to commit a traffic infraction or a traffic offense which is a misdemeanor is covered by (1)(b), as amended. Also deleted from (1)(a) is causing or encouraging a child to become or remain a "juvenile offender". "Juvenile offender" is defined in K.S.A. 38-1602(b). Causing a child to be a juvenile offender by virtue of committing a misdemeanor or violation of 41-727 or 74-8810(j) is covered by (1)(b), as amended. Causing a child to be a juvenile offender by virtue of committing a felony is covered by (1)(e). Without the amendments, causing a child to commit a felony would be a violation of both subsections (1)(a) and (e) and different penalties are prescribed for violations of these subsections.

Former subsection (1)(b) covered "causing or encouraging a child under 18 years of age not to attend school as required by law." It is deleted since subsection (1)(a) refers to a "child in need of care." "Child in need of care" is defined to include a person under 18 who "is not attending school as required by K.S.A. 72-977 or 72-1111 . . . ." [K.S.A. 38-1502(a)(6)]

Causing or encouraging a child to commit a felony is viewed as the most serious violation of the section and is raised to a class D felony.

21-3707. Giving a worthless check. (1) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent with intent to defraud and knowing, at the time of the making, drawing, issuing or delivering of such check, order or draft, that the maker or drawer has no deposit in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation.

(2) In any prosecution against the maker or drawer of a check, order or draft payment, of which has been refused by the drawee on account of insufficient funds, the making, drawing, issuing or delivering of such check shall be prima facie evidence of intent to defraud and of knowledge of insufficient funds in, or on deposit with, the drawee unless the maker or drawer pays the holder thereof the amount due thereon and service charge not exceeding \$10 for each check, within seven days after notice has been given to the maker or drawer that such check, draft or order has not been paid by the drawee. As used in this section, "notice" includes oral or written notice to the person entitled thereto. 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.

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

(a) Was postdated, or

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

(4) Giving a worthless check is a class D felony if the check, draft or order is drawn for \$50,000 or more. Giving a worthless check is a class E felony if the check, draft or order is drawn for at least \$500 but less than \$50,000. Giving a worthless check is a class A misdemeanor if the check, draft or order is drawn for less than \$500, except that giving a worthless check, draft or order drawn for less than \$500 is a class E felony if committed by a person who has, within five years immediately preceding commission of the crime, been convicted of giving a worthless check two or more times.

#### Comment

Subsection (4) is revised to parallel the provisions of 21-3701 relating to enhanced penalties for repeated, misdemeanor thefts. Formerly, this subject was addressed in 21-3708 (Habitually giving a worthless check) under which a misdemeanor worthless check was escalated to an E felony if the person had been twice convicted of giving a worthless check within the immediately preceding two years. Under 21-3708, the prior convictions were an element of the offense. The revisions to 21-3707 and 3708 make enhancement based on prior convictions a sentencing issue, as it is under the theft statute. The period for considering prior convictions is enlarged from two to five years, as is done under the theft statute.

**21-3708. Habitually giving a worthless check.** (1) Habitually giving worthless checks is:

(a) Giving a worthless check, as defined by K.S.A. 21-3707 and amendments thereto, drawn for less than \$500, by a person who has within two years immediately preceding the giving of such worthless check, been twice convicted of giving worthless checks; or

(b) Giving two or more worthless checks, as defined by K.S.A. 21-3707 and amendments thereto, each drawn for less than \$500, if the total amount for which such worthless checks are drawn is \$500 or more and each of such checks was given on the same day.

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

(3) Habitually giving worthless checks is a class E felony.

#### Comment

This section is repealed. The enhancement of misdemeanor violations to felonies based on prior convictions is addressed as a sentencing issue under the revisions to 21-3707.

The provision on giving two or more worthless checks on the same day is unnecessary in light of the enhanced penalties for repeated, misdemeanor violations and the civil penalties available in connection with worthless checks.

**21-3803. Practicing criminal syndicalism.**

(1) Practicing criminal syndicalism is:

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

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

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

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

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

**History:** L. 1969, ch. 180, § 21-3803; July 1, 1970.

Comment

This section is repealed as unnecessary. It is doubtful it is ever used or contains any deterrent value. Acts constituting "criminal syndicalism" can be prosecuted under a variety of criminal statutes as can solicitation and conspiracy to commit such acts.

**21-3804.** Permitting premises to be used for criminal syndicalism. Permitting premises to be used for criminal syndicalism is knowingly permitting any assembly or group of persons to use premises owned or controlled by the offender for the purpose of advocating or promoting criminal syndicalism.

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

**History:** L. 1969, ch. 180, § 21-3804; July 1, 1970.

Comment

This section is repealed. See the comment to the repeal of 21-3808 (practicing criminal syndicalism).



21-3805. Perjury. (a) Perjury is ~~willfully~~ 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; or

(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. 1989 Supp. 53-601.

(b) Perjury is a class D felony if the false statement is made upon the trial of a felony. Perjury is a class E felony if the false statement is made in a cause, matter or proceeding other than the trial of a felony charge or is made under penalty of perjury in any declaration, verification, certificate or statement as permitted by K.S.A. 1989 Supp. 53-601.

Comment

"Intentionally" is substituted for "willfully" and an apparent omission made in 1989 amendments is corrected by inserting ":(1)" after "falsely" so that falsely applies to subsection (a)(2).

21-3807. Compounding a crime. (1) Compounding a crime is accepting or agreeing to accept any thing 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 intentionally conceal or destroy evidence of a crime.

(2) Compounding a felony is a class E felony.

(3) Compounding a misdemeanor is a class A misdemeanor.

Comment

Subsection (1)(b) is added to specifically address matters which arguably are not covered under (1)(a).

21-3813. Failure to appear. 91) Failure to appear is ~~willfully~~ intentionally incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (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 ~~willfully~~ intentionally incurring a forfeiture of an appearance bond and failing to surrender oneself within thirty (30) days after ~~his-or~~ her the 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.

(2) Any person who is released upon ~~his-or-her~~ 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 (1) of this section.

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

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

Comment

"Willfully" is replaced with "intentionally."

21-3818. Falsely reporting a crime. Falsely reporting a crime is informing 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.

Falsely reporting a crime is a class A misdemeanor.

Comment

The section is broadened to cover falsely reporting a crime to a state investigative agency. This extension is consistent with the intent of the statute to prevent malicious harassment through false accusation.

21-3820. Simulating legal process. (1) Simulating legal process is:

(a) Sending or delivering to another any document which simulates or purports to be, or is ~~reasonably~~ designed to cause others to believe it to be, a summons, petition, complaint, or other judicial process, with intent thereby to induce payment of a claim; or

(b) Printing, distributing or offering for sale any such document, knowing or intending that it shall be so used.

(2) Subsection (1) of this section does not apply to the printing, distribution or sale of blank forms of legal documents intended for actual use in judicial proceedings.

(3) Simulating legal process is a class A misdemeanor.

Comment

"Reasonably" is deleted from (1)(a) as unnecessary.

21-3824. False impersonation. 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.

False impersonation is a class B misdemeanor.

Comment

"Public" is inserted prior to "employee" to avoid any potential ambiguity. "Public employee" is defined in K.S.A 21-3110 (18).

21-3826. Traffic in or unauthorized possession or distribution of contraband in penal institutions. (1) Traffic in contraband in a penal institution is introducing or attempting to introduce into or upon the grounds of any penal institution ~~under the supervision-and-control-of-the-director-of-penal-institutions-or any-jail~~, or taking, sending, attempting to take or attempting to send ~~therefrom~~ from any penal institution or any unauthorized possession while in ~~-aforesaid~~ any penal institution or distributing within any ~~aforesaid~~ penal institution, any narcotic, synthetic narcotic, drug, stimulant, sleeping pill, barbiturate, nasal inhaler, alcoholic liquor, intoxicating beverage, firearm, ammunition, gun powder, weapon, hypodermic needle, hypodermic syringe, currency, coin, communication, or writing without the consent of the ~~warden,-superintendent-or-jailer~~ administrator of the penal institution.

(2) For purposes of this section, "penal institution" means any state correctional institution or facility, conservation camp, state security hospital, state youth center, community correction center or facility for detention or confinement, juvenile detention facility or jail.

(3) Traffic in contraband in a penal institution is a class E felony.

#### Comment

The section is revised to delete outdated terminology and provide a comprehensive definition of "penal institution."

21-3827. ~~Unlawful~~ Criminal disclosure of a warrant. An ~~unlawful~~ Criminal disclosure of a warrant is making public in any way, except at the request of a law enforcement officer for the purpose of assisting in the execution of such warrant, the fact that a search warrant or warrant for arrest has been applied for or issued or the contents of the affidavit or testimony on which such warrant is based, prior to the execution thereof but the above shall not apply to personnel of a law enforcement agency disclosing a warrant: (1) For the purpose of encouraging the person named in the warrant to voluntarily surrender; or (2) issued in a case involving the abduction of a child unless such disclosure is specifically prohibited by the court issuing such warrant.

An-~~unlawful~~ Criminal disclosure of a warrant is a class B misdemeanor.

Comment

"Unlawful" is replaced with "Criminal."



21-3829. Aggravated interference with 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.

Aggravated interference with the conduct of public business is a class D felony.

Comment

The section is revised to cover possession of other weapons in addition to firearms.

21-3901. Bribery. Bribery is:

(a) 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

(b) 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.

Bribery is a class D felony. ~~Any person convicted of bribery shall be forever disqualified from holding public office or public employment in this state and, if the person is a public officer or employee at the time of conviction,~~ Upon conviction of bribery a public officer or public employee shall forfeit the person's office or employment.

Comment

As revised, a public officer or employee convicted of bribery is no longer forever disqualified from holding public office or employment in Kansas. Other statutes in the area of crimes affecting public trusts do not contain such a provision and its effectiveness is questionable in light of the ability to have a bribery conviction expunged.

21-3902. Official misconduct. Official misconduct is any of the following acts committed by a public officer or employee in ~~his~~ the officer or employee's public capacity or under color of ~~his~~ the officer or employee's office or employment:

(a) ~~Willfully~~ Intentionally and maliciously committing an act of ~~oppression, partiality,~~ misconduct or abuse of authority; or

(b) ~~Willfully~~ Intentionally demanding or receiving any fee or reward, knowing that same is illegal, for the execution of any official act or the performance of a duty imposed by law or the terms of ~~his~~ the officer or employee's employment.

Official misconduct is a class A misdemeanor. Upon conviction of official misconduct a public officer or employee shall forfeit ~~his~~ the officer or employee's office or employment.

Comment

"Willfully" is replaced with "Intentionally."

"Oppression" and "partiality" are deleted from subsection (a) as unnecessary.

21-3904. Presenting a false claim. Presenting a false claim is knowingly and with intent to defraud presenting a claim or demand which is false in whole or in part, to a public officer or body authorized to audit, allow or pay such claim.

Presenting a false claim for \$50,000 or more is a class D felony. Presenting a false claim for ~~fifty-dollars-(\$50)-or-more~~ at least \$500 but less than \$50,000 is a class E felony. Presenting a false claim for less than ~~fifty-dollars-(\$50)~~ \$500 is a class A misdemeanor.

#### Comment

The section is revised to make it consistent with other crimes where the dollar amount of harm determines the penalty classification.

21-3905. Permitting a false claim. Permitting a false claim is the auditing, allowing, or paying of any claim or demand made upon the state or any subdivision thereof or other governmental instrumentality within the state by a public officer or employee who knows such claim or demand is false or fraudulent in whole or in part.

Permitting a false claim for \$50,000 or more is a class D felony. Permitting a false claim for ~~fifty-dollars-(\$50)-or-more~~ at least \$500 but less than \$50,000 is a class E felony. Permitting a false claim for less than ~~fifty-dollars-(\$50)~~ \$500 is a class A misdemeanor. Upon conviction of permitting a false claim, a public officer or public employee shall forfeit ~~his~~ the officer or employee's office or employment.

Comment

The section is revised to make it consistent with other crimes where the dollar amount of harm determines the penalty classification.

**21-3906. Discounting a public claim.** Discounting a public claim is the act of a public officer or employee, who in his private capacity either directly or indirectly, purchases for less than full value or discounts any claim held by another against the state or a political subdivision or municipality thereof.

Discounting a public claim is a class A misdemeanor.

**History:** L. 1969, ch. 180, § 21-3906; July 1, 1970.

Comment

This section is repealed as overly broad. For example, it would cover the purchase by a public officer or employee of a government obligation which, due to a below market interest rate, has a market price less than face value.

21-3909.

**21-3909.** Unlawful collection by a judicial officer. Unlawful collection by a judicial officer is causing or permitting an action or proceeding upon a claim placed in his hands for collection to be brought in a court over which he presides.

Unlawful collection by a judicial officer is a class B misdemeanor. Upon conviction of violating this section a judicial officer shall forfeit his office.

**History:** L. 1969, ch. 180, § 21-3909; July 1, 1970.

Comment

This section is repealed. It appears to serve no purpose due to the abolition of courts presided over by justices of the peace.

21-3911. Unlawful use of state postage. (a) It shall be unlawful for any person to use for such person's personal use, or to allow any unauthorized person to use, any form of postage paid for with state funds.

(b) Violation of this section shall constitute ~~an unclassified misdemeanor. -- Upon conviction, any person violating this section may be punished by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) a class C~~ class C misdemeanor.

Comment

The section is changed from an unclassified to a class C misdemeanor.



**21-4108. Vagrancy.** Vagrancy is:

- (a) Engaging in an unlawful occupation; or
- (b) Being of the age of eighteen (18) years or over and able to work and without lawful means of support and failing or refusing to seek employment; or
- (c) Loitering in any community without visible means of support; or
- (d) Loitering on the streets or in a place open to the public with intent to solicit for immoral purposes; or
- (e) Deriving support in whole or in part from begging.

Vagrancy is a class C misdemeanor.

**History:** L. 1969, ch. 180, § 21-4108; July 1, 1970.

Comment

This section is repealed. Virtually all of the section's provisions appear to be unconstitutional.

21-4202. Aggravated weapons violation. An aggravated weapons violation is a violation of any of the provisions of K.S.A. 21-4201 by a person who within five (5) years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony.

Aggravated weapons violation is a class E felony for a violation of subsections (1)(a) through (1)(e) or subsection (1)(i) of K.S.A. 21-4201 and amendments thereto. Aggravated weapons violation is a class D felony for a violation of subsections (1)(f) through (1)(h) of K.S.A. 21-4201 and amendments thereto.

#### Comment

The section is revised to provide an increased penalty for aggravated violations of subsections (1)(f), (g) and (h) of 21-4201. Formerly, aggravated and nonaggravated violations of (1)(g) and (h) carried the same penalty.

21-4203. ~~Unlawful~~ Criminal disposal of firearms. (1) ~~Unlawful~~ Criminal disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age;

(b) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any 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; or

(d) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a crime to which this subsection (1)(d) applies, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime.

(2) Subsection (1)(d) 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, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(3) ~~Unlawful~~ Criminal disposal of firearms is a class A misdemeanor.

Comment

"Unlawful" is replaced with "Criminal."

21-4203a.

**21-4203a. Unlawful disposal of firearms.**  
[See Revisor's Note] (1) Unlawful disposal of firearms is knowingly:

(a) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age; or

(b) Selling, giving or otherwise transferring any firearms to any habitual drunkard or narcotic addict; or

(c) Selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person who has been convicted of a felony under the laws of this or any other jurisdiction if such sale, gift or transfer is made to such convicted person within five years after such person's release from a state correctional institution or within five years after such person's conviction if the defendant has not been imprisoned in a state correctional institution.

(2) Unlawful disposal of firearms is a class A misdemeanor.

Comment

This section is repealed. Two versions of 21-4203 were passed in 1990. The amendments which resulted in this section have been rendered unnecessary by other amendments to 21-4203.

Section 1. K.S.A. 1990 Supp. 21-4204 is hereby amended to read \_\_\_\_\_ Criminal  
as follows: 21-4204. (1)[Unlawful]possession of a firearm is:

(a) Possession of any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(b) possession of a firearm with a barrel less than 12 inches long by a person who, within five years preceding such violation has been convicted of a felony under the laws of Kansas or any other jurisdiction or has been released from imprisonment for a felony; ~~or~~

(c) possession of any firearm by any person who, within the preceding 10 years, has been convicted of a crime to which this subsection (1)(c) applies, or has been released from imprisonment for such a crime, and has not had the conviction of such crime expunged or been pardoned for such crime;

(d) *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 ; or*

(e) *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.*

(2) Subsection (1)(c) 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, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a or 65-4127b, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(3) *Subsection (1)(d) shall not apply to:*

(a) *Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;*

(b) *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;*

(c) *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*

(d) *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.*

(4) Violation of subsection (1)(a) or (1)(d) is a class B misdemeanor; violation of subsection (1)(b) or (1)(c) is a class D felony; violation of subsection (1)(e) is a class A misdemeanor.

#### Comment

"Unlawful" is replaced with "Criminal."

21-4209. ~~Unlawful~~ Criminal disposal of explosives. (1)  
~~Unlawful~~ Criminal disposal of explosives is knowingly selling,  
giving or otherwise transferring any explosive or detonating  
substance to:

(a) A person under eighteen (18) years of age; or

(b) ~~An-habitual-drunkard-or-narcotic-addict~~ A person who is  
both addicted to and an unlawful user of a controlled substance;  
or

(c) A person who, within the preceding five years, has been  
convicted of a felony under the laws of this or any other  
jurisdiction ~~within-five-(5)-years-after-his-release-from-a-penal  
institution-or-within-five-(5)-years-after-his-conviction-if-he  
has-not-been-imprisoned~~ or has been released from imprisonment  
for a felony.

(2) ~~Unlawful~~ Criminal disposal of explosives is a class A  
misdemeanor.

Comment

"Unlawful" is replaced with "Criminal".

As revised, subsections (1)(b) and (c) follow the language  
used in other criminal provisions on weapons and explosives.

21-4209a. ~~Unlawful~~ Criminal possession of explosives. (a) ~~Unlawful~~ 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) This section shall not prohibit the possession of ~~explosives-in-the-course-of-a-person's-lawful-employment.~~

~~(e)-~~Unlawful Criminal possession of explosives is a class D felony.

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

Comment

"Unlawful" is replaced with "Criminal."

The section is revised to delete the former exemption for possession of explosives in the course of a person's lawful employment.

65-4127a. Unlawful acts regarding opiates, opium or narcotic drugs; penalties; sentencing presumption. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsection (c), any person who violates this subsection shall be guilty of a class D felony.

(b) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess, have under such person's control, possess with intent to sell, offer for sale, sell, offer for sale or have in such person's possession with intent to sell, prescribe, administer, deliver, distribute, dispense or compound any opiates opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (c) and (e), any person who violates this section subsection shall be guilty of a class C felony, except that,

(c) Upon conviction for the a second offense under this section, such a person shall be guilty of a class B felony, and upon conviction for a third or subsequent offense under this section, such a person shall be guilty of a class A felony, and the punishment shall be life imprisonment.



{b} (d) Upon conviction of any person pursuant to subsection (a) or (b) in which (1) the substances involved were equal to or greater than the amounts for such substances as specified in K.S.A. 1990 Supp. 65-4127e, and amendments thereto, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence.

{e} (e) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection {a} (b), such person shall be guilty of a class B felony if such person is ~~over~~ 18 or more years of age and the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a 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.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description

above, the actual use of that structure or property at the time alleged shall not be a defense to the ~~criminal~~ crime charged or the sentence imposed.

(d) (f) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

#### Comment

As revised, the penalty is lowered one felony class for a first conviction if such first conviction is for possession. Second, third and subsequent convictions under this section continue to carry enhanced penalties regardless of whether such subsequent convictions are for possession or sale. Consequently, a first conviction based on possession is no longer deemed equivalent for penalty purposes to a first conviction based on sale.

The reference to a sentence of life imprisonment for a class A felony in (c) is deleted as unnecessary.

Subsection (e) is revised to cover persons 18 or more years of age to remove any ambiguity resulting from the former language of "over 18 years of age".

6. K.S.A. 1990 Supp. 65-4127b, as amended by section 3 of House Bill No. 2365, is hereby amended to read as follows: 65-4127b. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess or have under such person's control:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105 and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated *in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated* in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111 and amendments thereto; or

(5) any anabolic steroids as defined in subsection ~~(h)~~ of ~~K.S.A. 65-4111~~ *(f) of K.S.A. 65-4109*, and amendments thereto.

Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony upon conviction for a second or subsequent offense.

(b) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, cultivate, prescribe, administer, deliver, distribute, dispense or compound:

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto;

(4) any substance designated *in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated* in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection ~~(h)~~ of ~~K.S.A. 65-4111~~ *(f) of K.S.A. 65-4109*, and amendments thereto.

Any person who violates this subsection shall be guilty of a class C felony.

(c) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to possess, have under such person's control, prescribe, administer, deliver, distribute, dispense, compound, sell, offer for sale or have in such person's possession with intent to sell any controlled substance designated in K.S.A. 65-4113 and amendments thereto. Any person who violates this subsection shall be guilty of a class A misdemeanor, except that such person shall be guilty of a class D felony if the substance was prescribed for or administered, delivered, distributed, dispensed, sold, offered for sale or possessed with intent to sell to a child under 18 years of age.

(d) Upon conviction of any person pursuant to subsection (a), (b) or (c) in which (1) the substances involved were equal to or greater than the amounts for such substance as specified in K.S.A. 1990 Supp. 65-4127e and amendments thereto, or (2) the substances involved, regardless of amounts, were possessed with intent to sell, sold or offered for sale to a child under 18 years of age, there shall be at sentencing a presumption that the defendant be sentenced to imprisonment and not granted probation, assignment to a community correctional services program or suspension of sentence.

(e) Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (b) for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a 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 and such person is ~~over~~ 18 or more years of age, such person shall be guilty of a class B felony.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the criminal charged or the sentence imposed.

(f) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

#### Comment

Subsection (e) is revised to cover persons 18 or more years of age to remove any ambiguity resulting from the former language of "over 18 years of age."

**65-4129. Bar to prosecution.** If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

**History:** L. 1972, ch. 234, § 29; July 1.

Comment

This section is repealed. A special double jeopardy provision is unnecessary in light of 21-3108 (Effect of former prosecution) and 21-3102 (2) which makes provisions of the criminal code applicable to crimes outside chapter 21.

65-4141. Unlawfully arranging sales or purchases of controlled substances using a communication facility; penalty. (a) Except as authorized by the uniform controlled ~~substance~~ substances act, it shall be unlawful for any person knowingly or intentionally to use any communication facility: (1) in conspiring or soliciting, as defined in article 33 of chapter 21 of the Kansas Statutes Annotated, or facilitating any felony violation of K.S.A. 65-4127a and 65-4127b and amendments thereto committing or in causing or facilitating the commission of any felony under K.S.A. 65-4127a, 65-4127b or 65-4159 and amendments thereto; or (2) in any attempt to commit, any conspiracy to commit or any criminal solicitation of any felony under K.S.A. 65-4127a, 65-4127b or 65-4159 and amendments thereto. Each separate use of a communication facility may be charged as a separate offense under this subsection.

(b) As used in this section, "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures or sounds of all kinds and includes telephone, wire, radio, computer, computer networks, beepers, pagers and all other means of communication.

(c) Any person who violates this section shall be guilty of a class D felony.

(d) This act shall be part of and supplemental to the uniform controlled substances act.

Comment

The section is revised to cover use of a communication facility in the unlawful manufacture of a controlled substance. When this section was adopted in 1989, unlawful manufacture was covered in 65-4127a and 4127b. In 1990, unlawful manufacture was transferred to a new section (65-4159) which technically is not part of the uniform controlled substances act.

As revised, the section also covers the use of a communication facility in an attempt to commit a felony under the cited drug statutes as well as in a conspiracy to commit or the solicitation of such a felony.

**65-4154. Same; promotion prohibited; penalties.** (a) No person shall place or cause to be placed in any newspaper, magazine, handbill or other publication distributed in this state, or received by mail in this state, any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of:

(1) A simulated controlled substance; or  
(2) objects designed or intended for use as drug paraphernalia.

(b) Violation of this section is a class A misdemeanor.

History: L. 1981, ch. 140, § 5; July 1.

#### Comment

This section is repealed. It was declared unconstitutional since it is geographically overbroad in that it prohibits advertising in Kansas the sale of objects which are legal in other states. Kansas Retail Trade Cooperative v. Stephen, 522 F. Supp. 632 (1981).



# Christian Science Committee on Publication For Kansas

820 Quincy Suite K  
Topeka, Kansas 66612

Office Phone  
913/233-7483

To: Senate Judiciary Committee

Re: Senate Bill No. 358

Your committee has been very helpful over the years in finding ways to solve my legislative problems. I hope you are able to help again.

K.S.A. 21-3608, which is not in this bill but is in SB 479, makes endangering a child a crime. It includes a provision which states that a child is not endangered "for the sole reason such 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."

We have a good record over the last 125 years of successful healing by spiritual means alone. But, what happens if a child dies while receiving spiritual treatment? In recent years, courts in other states have heard cases charging parents with manslaughter or murder where the child did not survive. While the cases are few, they have received widespread publicity, and have had devastating effects on families.

The Minnesota Supreme Court refused to revive manslaughter charges against the parents after the lower court had dismissed charges, citing a provision in the state criminal neglect statute which allowed parents to rely on spiritual healing for a child.

The California Supreme Court, in a similar case, refused to dismiss charges against the mother, and returned the case to the lower court for trial, where the mother was found guilty of involuntary manslaughter.

A trial judge in Massachusetts refused to allow mention of a statutory spiritual healing provision in a trial charging parents with manslaughter. The parents were found guilty. Two jurors later wrote to newspapers and the judge after the trial alleging judicial impropriety.

The U. S. Supreme Court recently refused to hear the Minnesota case on appeal. Appeal is being considered in the other cases.

It is my hope that you will be able to help us find a way to protect parents from charges of this nature in Kansas. Any parent who loves his or her children and does their best to provide good care for them should not have to face the ordeal of a trial.

  
Keith R. Landis  
Committee on Publication  
for Kansas

*Senate Judiciary Committee  
January 23, 1992  
Attachment 3*



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Art Thompson, Legal Services — IOLTA Director

### POSITION STATEMENT

TO: Senate Judiciary Committee  
FROM: Ron Smith, KBA General Counsel  
SUBJ: SB 358; criminal code changes  
DATE: January 21, 1992

Mr. Chairman, and members of the Senate Judiciary committee. KBA's membership includes 5,300 Kansas attorneys and judges. I appreciate the opportunity to provide written comments on this topic.

We have no problem with SB 358. What I'd like you to consider is amending into SB 358 the change found in HB 2646, which is attached.

In 1989 you'll recall we changed the perjury statute in 1989 to indicate that willful and falsely swearing as to a material fact in an unsworn declaration was a Class "E" felony perjury. A typical example is the unsworn declaration we all sign when we file our state income tax return.

As the attached copy of the 1989 session law shows, we left out a "(1)" after the phrase "falsely" in the first line of the section. The effect of the statute without the "(1)", literally because of the conjunctive "or", means that it is perjury to sign and use an unsworn declaration. That certainly wasn't the intent, and we haven't enough prison space for the 400,000 taxpayers -- including all of us -- who are guilty of perjury as the statute now reads. Thankfully, prosecutors have exercised great restraint.

By amending HB 2646 into SB 358 we save some time and correct the oversight. I don't believe it is a controversial amendment.

1200 Harrison • P.O. Box 1037 • Topeka, Kansas 66601-1037 • FAX (913) 234-3813 • Telephone (913) 234-5696

BOARD OF GOVERNORS: Charles E. Wetzler, John L. Vratil, David J. Waxse, District 1 • John C. Tillotson, District 2 • Hon. Tim Brazil, District 3  
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*Senate Judiciary Committee  
January 23, 1992  
Attachment 4*

Amend into  
358 ??

Session of 1991

HOUSE BILL No. 2646

By Committee on Appropriations

4-26

8 AN ACT concerning crimes; relating to perjury; amending K.S.A.  
9 1990 Supp. 21-3805 and repealing the existing section.

10

11 *Be it enacted by the Legislature of the State of Kansas:*

12 Section 1. K.S.A. 1990 Supp. 21-3805 is hereby amended to read  
13 as follows: 21-3805. (a) Perjury is willfully, knowingly and falsely:

14 (1) Swearing, testifying, affirming, declaring or subscribing to any  
15 material fact upon any oath or affirmation legally administered in  
16 any cause, matter or proceeding before any court, tribunal, public  
17 body, notary public or other officer authorized to administer oaths;  
18 or

19 (2) subscribing as true and correct under penalty of perjury any  
20 material matter in any declaration, verification, certificate or state-  
21 ment as permitted by K.S.A. ~~1989~~ 1990 Supp. 53-601, and amend-  
22 ments thereto.

23 (b) Perjury is a class D felony if the false statement is made  
24 upon the trial of a felony. Perjury is a class E felony if the false  
25 statement is made in a cause, matter or proceeding other than the  
26 trial of a felony charge or is made under penalty of perjury in any  
27 declaration, verification, certificate or statement as permitted by  
28 K.S.A. ~~1989~~ 1990 Supp. 53-601, and amendments thereto.

29 Sec. 2. K.S.A. 1990 Supp. 21-3805 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after  
31 its publication in the statute book.

1989 version (Ch. 93)

Sec. 2. K.S.A. 21-3805 is hereby amended to read as follows:  
21-3805. (a) Perjury is willfully, knowingly and falsely swearing, tes-  
tifying, 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; or

(2) *subscribing as true and correct under penalty of perjury any  
material matter in any declaration, verification, certificate or state-  
ment as permitted by section 1.*

(b) Perjury is a class D felony if the false statement is made  
upon the trial of a felony. Perjury is a class E felony if the false  
statement is made in a cause, matter or proceeding other than the  
trial of a felony charge or is made under penalty of perjury in any  
declaration, verification, certificate or statement as permitted by  
section 1.

4-7/2

PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning crimes and punishment; creating the crime of unlawful sexual relations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Unlawful sexual relations is engaging in sexual intercourse or sodomy with a person who is not married to the offender if:

(1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution as defined by subsection (b) of K.S.A. 75-5202 and amendments thereto; and

(2) the person with whom the offender is engaging in sexual intercourse or sodomy is an inmate as defined by subsection (c) of K.S.A. 75-5202 and amendments thereto or is an inmate who has been released on parole or conditional release.

(b) The consent of the inmate or parolee shall not be a defense to this offense.

(c) Unlawful sexual relations is a class E felony.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

*Senate Judiciary Committee  
January 23, 1992  
Attachment 5*

PROPOSED BILL NO. \_\_\_\_\_

By

AN ACT concerning the obstruction of legal process or official duty; amending K.S.A. 21-3808 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-3808 is hereby amended to read as follows: 21-3808. Obstructing legal process or official duty is knowingly and willfully obstructing, resisting or opposing any person authorized by law to serve process in the service or execution or in the attempt to serve or execute any writ, warrant, process or order of a court, or in the discharge of any official duty.

Obstructing legal process or official duty in a case of felony, or resulting from parole or any authorized disposition for a felony, is a class E felony. Obstructing legal process or official duty in a case of misdemeanor, or resulting from any authorized disposition for a misdemeanor, or a civil case is a class A misdemeanor.

Sec. 2. K.S.A. 21-3808 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

*Senate Judiciary Committee  
January 23, 1992  
Attachment 6*