

Approved: 12-18-2010

Date

MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE COMMITTEE

The meeting was called to order by Chairman Pat at 1:30 p.m. on March 10, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Stan Frownfelter- excused

Committee staff present:

Sean Ostrow, Office of the Revisor of Statutes

Jason Thompson, Office of the Revisor of Statutes

Athena Andaya, Kansas Legislative Research Department

Jerry Donaldson, Kansas Legislative Research Department

Jackie Lunn, Committee Assistant

Conferees appearing before the Committee:

Others attending:

See attached list.

H Sub for S 458 by Committee on Corrections and Juvenile Justice - Amending the penalties for violations of the Kansas uniform securities

Chairperson Colloton called the meeting to order and announced to the Committee they would open with consideration of **H Sub for SB 458**. She called on Sean Ostrow, Office of the Revisor, to explain a balloon of the Kansas Securities Commission (Attachment 1). After his explanation, Chairperson Colloton called on Rick Fleming, Council for the Securities Commission. Mr. Fleming explained the balloon in more detail and pointed out a couple of sections that should be changed.

Questions and answers followed with the Committee and Mr. Fleming.

Representative Barnes made a motion to amend the severity level from an 8 to a 7. Representative McCray-Miller seconded the motion. The motion carried. By majority vote of the Committee, H Sub for SB 458 was passed out favorably.

Sub for SB 67 by Committee on Judiciary – Amending the crime of mistreatment of a dependent adult

SB 411 - Criminal possession of a firearm

Chairperson Collation advised the goal was to accomplish two things in addition to approving the changes that were made earlier; one to put **SB 411** into it and review an amendment from Ed Klump, Kansas Association of Chiefs of Police and the Kansas Peace Officers' Association. Chairperson Collation requested Sean Ostrow, Office of the Revisor, to explain the balloon amendment (Attachment 2), identifying identity theft, identity fraud and their severity levels.

Representative Brookens made a motion to adopt the balloon amendment. Representative McCray-Miller seconded the motion. The motion carried.

Representative Brookens made a motion to amend Page 2, line 19, taking the verbiage out which indicates severity level 8 person felony and substitute with a class A personal misdemeanor. Representative McCray-Miller seconded the motion. The motion carried.

Chairperson Collation requested Jason Thompson, Office of the Revisor of Statutes, to explain the balloon amendment on **Sub for SB 67** (Attachment 3), which changes the title to include "criminal possession of a firearm" to make clear that a person convicted of attempts, conspiracy or solicitation of one of the crimes, you also get a 10 year ban and without this amendment, it would be a 5 year ban.

CONTINUATION SHEET

Minutes of the House Corrections and Juvenile Justice Committee at 1:30 p.m. on March 10, 2010, in Room 144-S of the Capitol.

Representative Bethel made a motion to move SB 411 into Sub for SB 67. Representative Spalding seconded the motion. The motion carried.

Chairperson Collation stated Ed Klump, Kansas Association of Chiefs of Police and the Kansas Peace Officers' Association had another concern of the language in the recodification which is scheduled to go into effect in another year, however, Mr. Klump requests it be put into the current law. Jason Thompson, Office of the Revisor of Statutes, advises to strike most of the current law, replace it, but keep the part that says it is supplemental to the criminal code (Attachment 4).

Representative Pauls made a motion to move the identity balloon. Representative Brookens seconded the motion. The motion carried.

Representative Bethel made a motion to pass out favorably Sub for SB 67 as amended. Representative Spalding seconded the motion. The motion carried.

The meeting adjourned at 2:30 p.m.

The next meeting is scheduled for March 11, 2010, in room 144-S.

CORRECTIONS & JUVENILE JUSTICE GUEST LIST

DATE: 3-10-10

| NAME | REPRESENTING |
|--------------------|-----------------------|
| DAVID HURCHINS | KBI |
| Rick Fleming | Securities Commission |
| Michelle Lancaster | " " |
| Dawn Spencer | OJA |
| Richard Samaniego | Kenney & ASSOC. |
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PROPOSED HOUSE Substitute for SENATE BILL NO. 458

By

AN ACT concerning crimes, punishment and criminal procedure; relating to violations of the Kansas uniform securities act; amending K.S.A. 17-12a508 and repealing the existing section.

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

Section 1. K.S.A. 17-12a508 is hereby amended to read as follows: 17-12a508. (a) Criminal penalties. (1) Except as provided in subsections (a)(2) through (a)(4), a conviction for an intentional violation of ~~this~~ the Kansas uniform securities act, or a rule adopted or order issued under this act, except K.S.A. 17-12a504, and amendments thereto, or the notice filing requirements of K.S.A. 17-12a302 or 17-12a405, and amendments thereto, is a severity level ~~7~~ 8, nonperson felony. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(2) A conviction for an intentional violation of K.S.A. 17-12a501 or 17-12a502, and amendments thereto, ~~is:~~

~~{A}--A-severity-level-4,-nonperson-felony--if--the--violation resulted-in-a-loss-of-\$100,000-or-more;~~

~~{B}--a--severity--level--5,-nonperson-felony-if-the-violation resulted-in-a-loss-of-at-least-\$25,000-but-less-than-\$100,000,-or~~

~~{C}--a-severity-level-7,-nonperson-felony--if--the--violation resulted--in--a--loss--of--less--than--\$25,000.~~ if the violation resulted in a loss of an amount of:

(A) \$1,000,000 or more is a severity level 2, nonperson

Corrections and Juvenile Justice
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felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, nonperson felony; or

(E) less than \$25,000 is a severity level 6, nonperson felony.

(3) A conviction for an intentional violation of K.S.A. 17-12a301, 17-12a401(a), ~~17-12a401(e)~~, 17-12a402(a), ~~17-12a402(d)~~, 17-12a403(a), ~~17-12a403(e)~~, ~~17-12a403(d)~~, or 17-12a404(a), ~~or 17-12a404(e)~~, and amendments thereto, is:

~~(A) a severity level 5, nonperson felony if the violation resulted in a loss of \$100,000 or more;~~

~~(B) a severity level 6, nonperson felony if the violation resulted in a loss of at least \$25,000 but less than \$100,000; or~~

~~(C) a severity level 7, nonperson felony if the violation resulted in a loss of less than \$25,000; if the violation resulted in a loss of an amount of:~~

(A) \$1,000,000 or more is a severity level 2, nonperson felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, nonperson felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, nonperson felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 6, nonperson felony; or

(E) less than \$25,000 is a severity level 7, nonperson felony.

(4) A conviction for an intentional violation of ~~K.S.A. 17-12a505 or 17-12a506, and amendments thereto,~~ is a severity level 8, nonperson felony.

(A) K.S.A. 17-12a404(e) or 17-12a505, and amendments thereto, or an order to cease and desist issued by the administrator pursuant to K.S.A. 17-12a412(c) or 17-12a604(a), and amendments thereto, is a severity level 5, nonperson felony.

(B) K.S.A. 17-12a401(c), 17-12a403(c) or 17-12a506, and amendments thereto, is a severity level 6, nonperson felony.

(C) K.S.A. 17-12a402(d) or 17-12a403(d), and amendments thereto, is a severity level 7, nonperson felony.

(5) Any violation of K.S.A. 17-12a301, 17-12a401(a), ~~17-12a401(e),~~ 17-12a402(a), ~~17-12a402(d),~~ 17-12a403(a), ~~17-12a403(e), 17-12a403(d),~~ 17-12a404(a), ~~17-12a404(e),~~ 17-12a501 or 17-12a502, and amendments thereto, resulting in a loss of \$25,000 or more shall ~~have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block~~ be presumed imprisonment.

(b) Statute of Limitations. Except as provided by subsection (9) of K.S.A. 21-3106, and amendments thereto, no prosecution for any crime under this act may be commenced more than 10 years after the alleged violation if the victim is the Kansas public

employees retirement system and no prosecution for any other crime under this act may be commenced more than five years after the alleged violation. A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution, except that no prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

(c) Criminal reference. The administrator may refer such evidence as may be available concerning violations of this act or of any rules and regulations or order hereunder to the attorney general or the proper county or district attorney, who may in the prosecutor's discretion, with or without such a reference, institute the appropriate criminal proceedings under this act. Upon receipt of such reference, the attorney general or the county attorney or district attorney may request that a duly employed attorney of the administrator prosecute or assist in the prosecution of such violation or violations on behalf of the state. Upon approval of the administrator, such employee shall be appointed a special prosecutor for the attorney general or the county attorney or district attorney to serve without compensation from the attorney general or the county attorney or district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for assistant attorneys general or assistant county or district attorneys and such other powers and duties as are lawfully delegated to such special

prosecutor by the attorney general or the county attorney or district attorney. If an attorney employed by the administrator acts as a special prosecutor, the administrator may pay extradition and witness expenses associated with the case.

(d) No limitation on other criminal enforcement. This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

Sec. 2. K.S.A. 17-12a508 is hereby repealed.

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

Substitute for SENATE BILL No. 67

By Committee on Judiciary

2-16

9 AN ACT concerning crimes and punishment; relating to mistreatment
10 of a dependent adult; amending K.S.A. 21-3437 and repealing the ex-
11 isting section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-3437 is hereby amended to read as follows: 21-
15 3437. (a) Mistreatment of a dependent adult is knowingly and intention-
16 ally committing one or more of the following acts:

17 (1) Infliction of physical injury, unreasonable confinement or ~~eruel~~
18 *unreasonable* punishment upon a dependent adult;

19 (2) taking unfair advantage of a dependent adult's physical or financial
20 resources for another individual's personal or financial advantage by the
21 use of undue influence, coercion, harassment, duress, deception, false
22 representation or false pretense ~~by a caretaker or another person~~; or

23 (3) ~~omitting or depriving~~ *omission or deprivation* of treatment, goods
24 or services ~~by a caretaker or another person which~~ *that* are necessary to
25 maintain physical or mental health of a dependent adult.

26 (b) No dependent adult is considered to be mistreated for the sole
27 reason that such dependent adult relies upon or is being furnished treat-
28 ment by spiritual means through prayer in lieu of medical treatment in
29 accordance with the tenets and practices of a recognized church or relig-
30 ious denomination of which such dependent adult is a member or
31 adherent.

32 (c) For purposes of this section: "Dependent adult" means an indi-
33 vidual 18 years of age or older who is unable to protect their own interest.
34 Such term shall include:

35 (1) Any resident of an adult care home including but not limited to
36 those facilities defined by K.S.A. 39-923 and amendments thereto;

37 (2) any adult cared for in a private residence;

38 (3) any individual kept, cared for, treated, boarded or otherwise ac-
39 commodated in a medical care facility;

40 (4) any individual with mental retardation or a developmental disa-
41 bility receiving services through a community mental retardation facility
or residential facility licensed under K.S.A. 75-3307b and amendments
thereto;

1 (5) any individual with a developmental disability receiving services
2 provided by a community service provider as provided in the develop-
3 mental disability reform act; or

4 (6) any individual kept, cared for, treated, boarded or otherwise ac-
5 commodated in a state psychiatric hospital or state institution for the
6 mentally retarded.

7 (d) (1) Mistreatment of a dependent adult as defined in subsection
8 (a)(1) is a severity level 6 (5), person felony.

9 (2) Mistreatment of a dependent adult as defined in subsection (a)(2)
10 is a severity level 6 (5), person felony if the aggregate amount of the value
11 of the resources is \$100,000 or more.

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

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

18 (5) Mistreatment of a dependent adult as defined in subsection (a)(2)
19 is a class A person misdemeanor if the aggregate amount of the value of
20 the resources is less than \$1,000.

21 (6) Mistreatment of a dependent adult as defined in subsection (a)(3)
22 is a class A person misdemeanor *severity level 8, person felony.*

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

28 Sec. 2. K.S.A. 21-3437 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the Kansas register.

4 person felony if the aggregate amount of the value of the resources is at least \$100,000 but less than \$250,000.

severity level 8 person felony

(2) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 2, person felony if the aggregate amount of the value of the resources is \$1,000,000 or more.

(3) Mistreatment of a dependent adult as defined in subsection (a)(2) is a severity level 3, person felony if the aggregate amount of the value of the resources is at least \$250,000 but less than \$1,000,000.

2-2

Substitute for SENATE BILL No. 67

By Committee on Judiciary

2-16

SubSB67-Balloon-Identity.pdf
RS - JThompson - 03/10/10

identity theft and identity fraud;

and 21-4018

sections

9 AN ACT concerning crimes and punishment; relating to mistreatment
10 of a dependent adult; amending K.S.A. 21-3437 and repealing the ex-
11 isting section.
12

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

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15 3437. (a) Mistreatment of a dependent adult is knowingly and intention-
16 ally committing one or more of the following acts:

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

19 (2) taking unfair advantage of a dependent adult's physical or financial
20 resources for another individual's personal or financial advantage by the
21 use of undue influence, coercion, harassment, duress, deception, false
22 representation or false pretense ~~by a caretaker or another person~~; or

23 (3) ~~omitting or depriving~~ omission or deprivation of treatment, goods
24 or services ~~by a caretaker or another person which~~ that are necessary to
25 maintain physical or mental health of a dependent adult.

26 (b) No dependent adult is considered to be mistreated for the sole
27 reason that such dependent adult relies upon or is being furnished treat-
28 ment by spiritual means through prayer in lieu of medical treatment in
29 accordance with the tenets and practices of a recognized church or relig-
30 ious denomination of which such dependent adult is a member or
31 adherent.

32 (c) For purposes of this section: "Dependent adult" means an indi-
33 vidual 18 years of age or older who is unable to protect their own interest.
34 Such term shall include:

35 (1) Any resident of an adult care home including but not limited to
36 those facilities defined by K.S.A. 39-923 and amendments thereto;

37 (2) any adult cared for in a private residence;

38 (3) any individual kept, cared for, treated, boarded or otherwise ac-
39 commodated in a medical care facility;

40 (4) any individual with mental retardation or a developmental disa-
41 bility receiving services through a community mental retardation facility
42 or residential facility licensed under K.S.A. 75-3307b and amendments
43 thereto;

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1 (5) any individual with a developmental disability receiving services
2 provided by a community service provider as provided in the develop-
3 mental disability reform act; or

4 (6) any individual kept, cared for, treated, boarded or otherwise ac-
5 commodated in a state psychiatric hospital or state institution for the
6 mentally retarded.

7 (d) (1) Mistreatment of a dependent adult as defined in subsection
8 (a)(1) is a severity level 6 (5), person felony.

9 (2) Mistreatment of a dependent adult as defined in subsection (a)(2)
10 is a severity level 6 (5), person felony if the aggregate amount of the value
11 of the resources is \$100,000 or more.

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

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

18 (5) Mistreatment of a dependent adult as defined in subsection (a)(2)
19 is a class A person misdemeanor if the aggregate amount of the value of
20 the resources is less than \$1,000.

21 (6) Mistreatment of a dependent adult as defined in subsection (a)(3)
22 is a ~~class A person misdemeanor~~ *severity level 8, person felony.*

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

28 Sec. 2. K.S.A. 21-3437 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the Kansas register.

Insert
Sec. 2. Amend K.S.A. 21-4018
(attached)
Renumber remaining sections

and 21-4018 are

K.S.A. 21-4018 is hereby amended to read as follows:
21-4018. ~~(a) Identity theft is knowingly and with intent to defraud for any benefit, obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, one or more identification documents or personal identification number of another person other than that issued lawfully for the use of the possessor.~~

~~(b) "Identification documents" has the meaning provided in K.S.A. 21-3830, and amendments thereto.~~

~~(c) Except as provided further, identity theft is a severity level 8, nonperson felony. If the monetary loss to the victim or victims is more than \$100,000, identity theft is a severity level 5, nonperson felony.~~

~~(d) Identity fraud is:~~

~~(1) Willfully and knowingly supplying false information intending that the information be used to obtain an identification document;~~

~~(2) making, counterfeiting, altering, amending or mutilating any identification document:~~

~~(A) Without lawful authority; and~~

~~(B) with the intent to deceive; or~~

~~(3) willfully and knowingly obtaining, possessing, using, selling or furnishing or attempting to obtain, possess or furnish to another for any purpose of deception an identification document.~~

~~(e) Identity fraud is a severity level 8, nonperson felony.~~

(a) Identity theft is obtaining, possessing, transferring, using, selling or purchasing any personal identifying information, or document containing the same, belonging to or issued to another person, with the intent to defraud that person, or any one else, in order to receive any benefit.

(b) Identity fraud is:

(1) Using or supplying information the person knows to be false in order to obtain a document containing any personal identifying information; or

(2) altering, amending, counterfeiting, making, manufacturing or otherwise replicating any document containing personal identifying information with the intent to deceive;

(c) (1) Identity theft is a:

(A) Severity level 8, nonperson felony, except as provided in subsection (c) (1) (B); and

(B) severity level 5, nonperson felony if the monetary loss to the victim or victims is more than \$100,000.

(2) Identity fraud is a severity level 8, nonperson felony.

(d) It is not a defense that the person did not know that such personal identifying information belongs to another person, or that the person to whom such personal identifying information belongs or was issued is deceased.

(e) As used in this section "personal identifying information" includes, but is not limited to, the following:

- (1) Name;
- (2) birth date;
- (3) address;
- (4) telephone number;
- (5) drivers license number or card or non-drivers identification number or card;
- (6) social security number or card;
- (7) place of employment;
- (8) employee identification numbers or other personal identification numbers or cards;
- (9) mother's maiden name;
- (10) birth, death or marriage certificates;
- (11) electronic identification numbers;
- (12) electronic signatures; and
- (13) any financial number, or password that can be used to access a person's financial resources, including, but not limited to, checking or savings accounts, credit or debit card information, demand deposit or medical information.

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

Substitute for SENATE BILL No. 67

By Committee on Judiciary

2-16

SubSB67-Balloon-411.pdf
RS - JThompson - 03/10/10

criminal possession of a firearm;

and K.S.A. 2009 Supp. 21-4204

sections

9 AN ACT concerning crimes and punishment; relating to mistreatment
10 of a dependent adult; amending K.S.A. 21-3437 and repealing the ex-
11 isting section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 21-3437 is hereby amended to read as follows: 21-
15 3437. (a) Mistreatment of a dependent adult is knowingly and intention-
16 ally committing one or more of the following acts:

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

19 (2) taking unfair advantage of a dependent adult's physical or financial
20 resources for another individual's personal or financial advantage by the
21 use of undue influence, coercion, harassment, duress, deception, false
22 representation or false pretense ~~by a caretaker or another person~~; or

23 (3) ~~omitting or depriving~~ *omission or deprivation of* treatment, goods
24 or services ~~by a caretaker or another person which~~ *that* are necessary to
25 maintain physical or mental health of a dependent adult.

26 (b) No dependent adult is considered to be mistreated for the sole
27 reason that such dependent adult relies upon or is being furnished treat-
28 ment by spiritual means through prayer in lieu of medical treatment in
29 accordance with the tenets and practices of a recognized church or relig-
30 ious denomination of which such dependent adult is a member or
31 adherent.

32 (c) For purposes of this section: "Dependent adult" means an indi-
33 vidual 18 years of age or older who is unable to protect their own interest.
34 Such term shall include:

35 (1) Any resident of an adult care home including but not limited to
36 those facilities defined by K.S.A. 39-923 and amendments thereto;

37 (2) any adult cared for in a private residence;

38 (3) any individual kept, cared for, treated, boarded or otherwise ac-
39 commodated in a medical care facility;

40 (4) any individual with mental retardation or a developmental disa-
41 bility receiving services through a community mental retardation facility
42 or residential facility licensed under K.S.A. 75-3307b and amendments
43 thereto;

1 (5) any individual with a developmental disability receiving services
2 provided by a community service provider as provided in the develop-
3 mental disability reform act; or

4 (6) any individual kept, cared for, treated, boarded or otherwise ac-
5 commodated in a state psychiatric hospital or state institution for the
6 mentally retarded.

7 (d) (1) Mistreatment of a dependent adult as defined in subsection
8 (a)(1) is a severity level 6 (5), person felony.

9 (2) Mistreatment of a dependent adult as defined in subsection (a)(2)
10 is a severity level 6 (5), person felony if the aggregate amount of the value
11 of the resources is \$100,000 or more.

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

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

18 (5) Mistreatment of a dependent adult as defined in subsection (a)(2)
19 is a class A person misdemeanor if the aggregate amount of the value of
20 the resources is less than \$1,000.

21 (6) Mistreatment of a dependent adult as defined in subsection (a)(3)
22 is a ~~class A person misdemeanor~~ *severity level 8, person felony.*

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

28 Sec. 2. K.S.A. 21-3437 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the Kansas register.

Insert
Sec. 2. Amend K.S.A. 2009
Supp. 21-4204 as amended in
SB 411 (attached)
Renumber remaining sections

and K.S.A. 2009
Supp. 21-4204 are



SENATE BILL No. 411

By Committee on Judiciary

1-21

AN ACT concerning crimes and punishment; relating to criminal possession of a firearm; amending K.S.A. 2009 Supp. 21-4204 and repealing the existing section.

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

Section 1. K.S.A. 2009 Supp. 21-4204 is hereby amended to read as follows: 21-4204. (a) Criminal possession of a firearm is:

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

(2) possession of any firearm by a person who has been convicted of a person felony or a violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of K.S.A. 2009 Supp. 21-36a01 through 21-36a17, and amendments thereto, and was found to have been in possession of a firearm at the time of the commission of the offense;

(3) possession of any firearm by a person who, within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(4)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was found not to have been in possession of a firearm at the time of the commission of the offense;

(4) possession of any firearm by a person who, within the preceding 10 years, has been convicted of: (A) A felony under K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, K.S.A. 2009 Supp. 21-36a03, 21-36a05 ~~or~~, 21-36a06, 21-36a07 or 21-36a09, and amendments thereto; K.S.A. 65-4127a, 65-4127b, 65-4159, 65-4160, 65-4161, 65-4162, 65-4163, 65-4164 or 65-7006, prior to such section's repeal; an attempt, conspiracy or criminal solicitation, as

1 *defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto,*
2 *of any such felony; or a crime under a law of another jurisdiction which*
3 *is substantially the same as such felony, has been released from impris-*
4 *onment for such felony, or was adjudicated as a juvenile offender because*
5 *of the commission of an act which if done by an adult would constitute*
6 *the commission of such felony, was found not to have been in possession*
7 *of a firearm at the time of the commission of the offense, and has not*
8 *had the conviction of such crime expunged or been pardoned for such*
9 *crime; or (B) a nonperson felony under the laws of Kansas or a crime*
10 *under the laws of another jurisdiction which is substantially the same as*
11 *such nonperson felony, has been released from imprisonment for such*
12 *nonperson felony or was adjudicated as a juvenile offender because of*
13 *the commission of an act which if done by an adult would constitute the*
14 *commission of a nonperson felony, and was found to have been in pos-*
15 *session of a firearm at the time of the commission of the offense;*

16 (5) possession of any firearm by any person, other than a law enforce-
17 ment officer, in or on any school property or grounds upon which is
18 located a building or structure used by a unified school district or an
19 accredited nonpublic school for student instruction or attendance or ex-
20 tracurricular activities of pupils enrolled in kindergarten or any of the
21 grades 1 through 12 or at any regularly scheduled school sponsored ac-
22 tivity or event;

23 (6) refusal to surrender or immediately remove from school property
24 or grounds or at any regularly scheduled school sponsored activity or
25 event any firearm in the possession of any person, other than a law en-
26 forcement officer, when so requested or directed by any duly authorized
27 school employee or any law enforcement officer; or

28 (7) possession of any firearm by a person who is or has been a men-
29 tally ill person subject to involuntary commitment for care and treatment,
30 as defined in K.S.A. 59-2946, and amendments thereto, or persons with
31 an alcohol or substance abuse problem subject to involuntary commit-
32 ment for care and treatment as defined in K.S.A. 59-29b46, and amend-
33 ments thereto.

34 (b) Subsection (a)(5) shall not apply to:

35 (1) Possession of any firearm in connection with a firearms safety
36 course of instruction or firearms education course approved and author-
37 ized by the school;

38 (2) any possession of any firearm specifically authorized in writing by
39 the superintendent of any unified school district or the chief administrator
40 of any accredited nonpublic school;

41 (3) possession of a firearm secured in a motor vehicle by a parent,
42 guardian, custodian or someone authorized to act in such person's behalf
43 who is delivering or collecting a student; or

1 (4) possession of a firearm secured in a motor vehicle by a registered
2 voter who is on the school grounds, which contain a polling place for the
3 purpose of voting during polling hours on an election day.

4 (c) Subsection (a)(7) shall not apply to a person who has received a
5 certificate of restoration pursuant to K.S.A. 2009 Supp. 75-7c26, and
6 amendments thereto.

7 (d) Violation of subsection (a)(1) or (a)(5) is a class B nonperson select
8 misdemeanor; violation of subsection (a)(2), (a)(3), (a)(4) or (a)(7) is a
9 severity level 8, nonperson felony; violation of subsection (a)(6) is a class
10 A nonperson misdemeanor.

11 Sec. 2. K.S.A. 2009 Supp. 21-4204 is hereby repealed.

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

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