

Ordinance Incorporated by Reference  
Under the Provisions of K.S.A. 12-3009  
through 12-3012, and K.S.A 12-3301  
and 12-3302

by Ordinance No. \_\_\_\_\_

City of \_\_\_\_\_, Kansas

Uniform Public Offense Code  
for Kansas Cities

27th Edition  
edited by Donald L. Moler, Jr.  
Executive Director

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*Cover Photo: Auburn City Hall. Photo provided by the City of Auburn.*

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1 (Published in the Topeka Metro News October 17, 2011)  
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3 **ORDINANCE NO. 19651**  
4

5 AN ORDINANCE introduced by Daniel R. Stanley, Interim City Manager, amending  
6 City of Topeka Code § 9.05.080, concerning the 2011 Uniform  
7 Public Offense Code and specifically repealing said original section  
8 as well as § 5.135.010 in its entirety.  
9

10 BE IT ORDAINED BY THE GOVERNING BODY THE CITY OF TOPEKA:  
11

12 Section 1. That section 9.05.080, Uniform Public Offense Code, of The Code  
13 of the City of Topeka, Kansas, is hereby amended to read as follows:

14 **Uniform Public Offense Code.**

15 There is hereby incorporated by reference for the purpose of regulating public  
16 offenses within the corporate limits of the city of Topeka, Kansas, that certain code  
17 known as the "Uniform Public Offense Code," Edition of ~~2010~~2011, prepared and  
18 published in book form by the League of Kansas Municipalities, Topeka, Kansas, save  
19 and except Sections 3.1.1 ("Domestic Battery"), 4.3 ("Prostitution"), 4.4 ("Promoting  
20 Prostitution"), 4.5 ("Patronizing a Prostitute"), ~~9.11 ("Picketing of Funerals")~~ 10.24  
21 ("Smoking Prohibited"), 10.25 ("Smoking; Posting Premises"), 10.26 ("Smoking  
22 Prohibited; Penalties") and 11.11 ("Cruelty to Animals"), which are specifically deleted  
23 and omitted. No fewer than three copies of said Uniform Public Offense Code shall be  
24 marked or stamped "Official Copy as adopted by Ordinance No. ~~19536~~\_\_\_\_\_," with all  
25 sections or portions thereof intended to be omitted or changed clearly marked to show  
26 any such omission or change and to which shall be attached a copy of said ordinance  
27 and filed with the city clerk to be open to inspection and available to the public at all  
28 reasonable hours.

29           The Uniform Public Offense Code, Edition of ~~2010~~2011, is hereby further  
30 amended by adding the following exception to Section 10.6:

31           Exception: Operation of a bow and arrow is permitted in accordance with the  
32 provisions set forth in TMC 6.05.070.

33           Section 2. That section 5.135.010, Information as to ownership, of The Code  
34 of the City of Topeka, Kansas, is hereby repealed in its entirety.

35           ~~**Information as to ownership — Records to be maintained by dealers and**~~  
36 ~~**salvage yard owners.**~~

37           ~~(a) — Purpose. For the purpose of promoting public health, safety and welfare, it~~  
38 ~~is hereby declared to be in the public interest and necessary to require dealers in~~  
39 ~~secondhand metals to obtain information from the sellers of those secondhand metals,~~  
40 ~~prior to purchasing such metals.~~

41           ~~(b) — Information Required from Sellers of Junk — Exceptions. Any person who~~  
42 ~~sells an item or items of junk to a salvage yard owner/operator is required to furnish to~~  
43 ~~the salvage yard owner/operator information as to the ownership of such item or items~~  
44 ~~of junk. Such information shall include the seller's name, address and place of business,~~  
45 ~~if any. Failure to provide such information shall be deemed a violation of municipal~~  
46 ~~ordinances and may be prosecuted in municipal court.~~

47           ~~The requirement of the seller providing the above stated information shall only apply to~~  
48 ~~those instances where the seller is selling semiprecious metal items, which include, but~~  
49 ~~are not limited to, copper, aluminum and brass. In no event shall the requirement of~~  
50 ~~providing information as to ownership apply to the sale of rags, paper, rope and rubber~~  
51 ~~debris.~~

52           ~~(c) Salvage Yard Owners/Operators Required to Obtain Certain Information~~  
53           ~~as to Ownership — Record of Ownership. No salvage yard owner/operator shall~~  
54           ~~purchase an item or items of junk without receiving from the seller information as to~~  
55           ~~ownership. Such information shall include the seller's name, address and place of~~  
56           ~~business, if any. Every salvage yard owner/operator shall maintain a record of~~  
57           ~~ownership of items purchased pursuant to any transaction described in this section.~~  
58           ~~Records kept in accordance with the provisions in this section shall be at all times open~~  
59           ~~to inspection by law enforcement officers and shall be maintained on the business~~  
60           ~~premises for two years. Failure to receive and/or maintain such information shall be~~  
61           ~~deemed a violation of municipal ordinances and may be prosecuted in municipal court.~~  
62           ~~The requirement of the salvage yard owner/operator to receive and maintain ownership~~  
63           ~~information shall only apply to those instances where the seller is selling semiprecious~~  
64           ~~metal items, which include, but are not limited to, copper, aluminum and brass. In no~~  
65           ~~event shall the requirement of receiving and maintaining ownership information apply to~~  
66           ~~the sale of rags, paper, rope and rubber debris.~~

67           ~~(d) Activities Not Covered. The requirements of this section shall not apply to~~  
68           ~~businesses dealing in the purchase of aluminum cans as an incidental part of the~~  
69           ~~operation, such as grocery stores or similar situations, nor shall it apply to automated~~  
70           ~~pickup and recycling stations, such as the Golden Goat or similar operations, or~~  
71           ~~recycling stations where no payment is made for scrap or waste paper, such as the~~  
72           ~~scouts and churches or other charitable organizations engaged in fundraising.~~

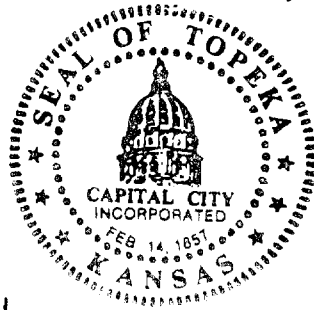
73           Section 3.     That original § 9.05.080 of The Code of the City of Topeka, Kansas,  
74           is hereby specifically repealed.

75            Section 4.    This ordinance shall take effect and be in force from and after its  
76 passage, approval and publication in the official City newspaper.

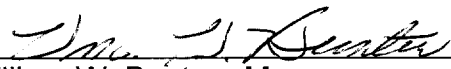
77            Section 5.    This ordinance shall supersede all ordinances, resolutions or rules,  
78 or portions thereof, which are in conflict with the provisions of this ordinance.

79            Section 6.    Should any section, clause or phrase of this ordinance be declared  
80 invalid by a court of competent jurisdiction, the same shall not affect the validity of this  
81 ordinance as a whole, or any part thereof, other than the part so declared to be invalid.

82            PASSED AND APPROVED by the Governing Body on October 11, 2011.

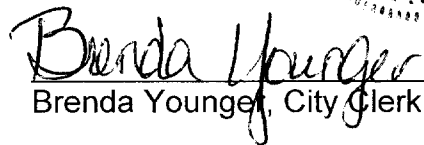


CITY OF TOPEKA, KANSAS

  
\_\_\_\_\_  
William W. Bunten, Mayor

89            ATTEST:

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\_\_\_\_\_  
Brenda Younger, City Clerk

# UNIFORM PUBLIC OFFENSE CODE

## FOR

### KANSAS CITIES

The *Uniform Public Offense Code* has been published by the League of Kansas Municipalities since 1980 with this being the 27th edition of the publication. It is designed to provide a comprehensive public offense ordinance for Kansas cities. It does not take effect in a city until the governing body has passed and published an ordinance incorporating it by reference under the authority of and by the procedure prescribed by K.S.A. 12-3009 through 12-3012 and K.S.A. 12-3301 and 12-3302.

It is not necessary to publish the *Uniform Public Offense Code* in a newspaper if it is properly incorporated by reference. It is only necessary to publish the incorporating ordinance. The incorporating ordinance may delete articles or sections which the governing body considers unnecessary for the city. The incorporating ordinance may also change sections, but where there is a statutory citation at the end of any section, care should be exercised not to change the language in such a manner as to conflict with the language of the statute.

The *Uniform Public Offense Code*, in large part, parallels the state criminal code. Additional provisions for local regulations, if any, may be included in the incorporating ordinance. Previous ordinances relating to public offenses in conflict with provisions of the *Uniform Public Offense Code* and ordinances incorporating earlier editions of the *Uniform Public Offense Code* should be repealed by the incorporating ordinance.

There must be at least three official copies of the *Uniform Public Offense Code* on file with the city clerk. Enforcing officers should have copies. The blanks on the first page should be filled in on all copies.

There are several blank pages at the end of this book. Newspaper clippings of the incorporating ordinance and subsequent ordinances on public offenses may be pasted on these pages. Extra copies of the newspaper should be procured or reprints made so that copies may be pasted in all copies of the *Uniform Public Offense Code*.

A listing of changes in the *Uniform Public Offense Code*, 2010 edition, which appear in the 2011 edition of the *Uniform Public Offense Code*, can be found on page 120 of this edition.



## Table of Contents

	Page
Article 1. General Provisions.....	6
Article 2. Anticipatory Offenses.....	18
Article 3. Offenses Against Persons.....	19
Article 4. Sex Offenses .....	31
Article 5. Offenses Affecting Children .....	32
Article 6. Offenses Against Property .....	39
Article 7. Offenses Affecting Governmental Functions .....	64
Article 8. Denial of Civil Rights.....	69
Article 9. Offenses Against Public Peace.....	70
Article 10. Offenses Against Public Safety.....	75
Article 11. Offenses Against Public Morals .....	96
Article 12. Violations, Penalties.....	113
Article 13. Miscellaneous .....	115
Index.....	116
Changes to Uniform Public Offense Code in 2011 .....	120

## ARTICLE 1. GENERAL PROVISIONS

1.1 **DEFINITIONS.** The following definitions shall apply when the words and phrases defined are used in this code except when a particular context clearly requires a different meaning.

**Act.** A failure or omission to take action.

**Air Gun or Air Rifle.** Any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any pellet or BB shot, and whether operating from and upon compressed air or mechanical or elastic spring work or otherwise.

**Alcohol Concentration.** The number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.

**Alcohol Without Liquid Machine.** A device designed or marketed for the purpose of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

**Alcoholic Liquor.** Alcohol, spirits, wine, beer and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer and capable of being consumed as a beverage by a human being, but shall not include any cereal malt beverage.

**Another.** A person or persons as defined in this code other than the person whose act is claimed to be an offense.

**Arson Dog.** Any dog which is owned, or the service of which is employed, by the state fire marshal or a fire department for the principal purpose of aiding in the detection of liquid accelerants in the investigation of fires.

**Audiovisual Recording Function.** The capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

**Body Piercing.** Puncturing the skin of a person by aid of needles or other instruments designed or used

to puncture the skin for the purpose of inserting jewelry or other objects in or through the human body, except puncturing the external part of the human ear shall not be included in this definition.

**Cereal Malt Beverage.** Any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which contains more than 3.2% alcohol by weight.

**City or this City.** All land and water either within or outside the boundary of the city over which the city has either exclusive or concurrent jurisdiction, and the air space above such land and water.

**Conduct.** An act or series of acts, and the accompanying mental state.

**Conviction.** A judgment of guilt entered upon a plea or finding of guilt.

**Correctional Officer or Employee.** Any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution.

**Deception.** Knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.

**To Deprive Permanently.**

- (a) Take from the owner the possession, use or benefit of property, without intent to restore the same; or
- (b) Retain property without intent to restore the same or with intent to restore to the owner only if the owner purchases or leases it back, or pays a reward or compensation for its return; or
- (c) Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

**Dwelling.** A building or portion thereof, a tent, a vehicle, or other enclosed space which is used or intended for use as a human habitation, home or residence.

**Dwelling Unit.** A single-family residence, multiple-family residence and each living unit in a mixed-use building.

**Firearm.** Any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

**Fire Department.** A public fire department under the control of the governing body of a city, township, county, fire district or benefit district or a private fire department operated by a nonprofit corporation providing fire protection services for a city, township, county, fire district or benefit district under contract with the governing body of the city, township, county or district.

**Gamecock.** A domesticated fowl that is reared or trained for the purpose of fighting with other fowl.

**Identification Document.** Any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes, but is not limited to, documents purporting to be drivers' licenses, nondrivers' identification cards, birth certificates, social security cards and employee identification cards.

**Intent to Defraud.** An intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

**Law Enforcement Officer.**

- (a) Any person who by virtue of his or her office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses.
- (b) Any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

**Motion Picture Theater.** A movie theater, screening room or other venue when used primarily for the exhibition of a motion picture.

**Motorboat.** Any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion.

**Motor Vehicle.** Every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.

**Obtain.** To bring about a transfer of interest in or possession of property, whether to the offender or to another.

**Obtains or Exerts Control Over Property.** Includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

**Ordinance Cigarette or Tobacco Infraction.** A violation of an ordinance that proscribes the same behavior as proscribed by subsection (m) or (n) of K.S.A. 79-3321 and amendments thereto.

**Owner.** A person who has any interest in property.

**Paint Ball Gun.** Any device whether or not in the shape and form commonly associated with the terms pistol, sidearm, small arm, rifle, shotgun, or any other type of gun designed to forcibly expel from an opening therein any paint ball, and whether operating from and upon compressed air or mechanical or elastic springwork or otherwise.

**Person.** An individual, public or private corporation, government, partnership or unincorporated association.

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

**Police Dog.** Any dog which is owned, or the service of which is employed, by a law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws or apprehension of offenders.

**Property.** Anything of value, tangible or intangible, real or personal.

**Prosecution.** All legal proceedings by which a person's liability for an offense is determined.

**Public Employee.** A person employed by or acting for the city and who is not a public officer.

**Public Offense or Offense.** An act or omission defined by this code which, upon conviction, is punishable by fine, confinement or both fine and confinement.

**Public Officer.** Includes the following whether elected or appointed.

- (a) An executive or administrative officer of the city;
- (b) A member of the governing body of the city;
- (c) A judicial officer, which shall include a judge, municipal judge, magistrate, juror, master or any other person appointed by a judge or court to hear or determine a cause of controversy;
- (d) A hearing officer shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;
- (e) A law enforcement officer or public safety officer;
- (f) Any other person exercising the functions of a public officer under color of right.

**Railroad Property.** Includes, but is not limited to, any train, locomotive, railroad car, caboose, rail-mounted work equipment, rolling stock, work equipment, safety device, switch, electronic signal, microwave communication equipment, connection, railroad track, rail, bridge, trestle, right-of-way or other property that is owned, leased, operated or possessed by a railroad company.

**Real Property or Real Estate.** Every estate, interest and right in lands, tenements and hereditaments.

**Regulated Scrap Metal.** Means wire, cable, bars, ingots, wire scraps, pieces, pellets, clamps, aircraft parts, junk vehicles, vehicle parts, pipes, or connectors made from aluminum; catalytic converters containing platinum, palladium, or rhodium; and copper, titanium, tungsten, and nickel in any form; for which the purchase price was primarily based on the content therein of aluminum, copper, titanium, tungsten, nickel, platinum, palladium, stainless steel, or rhodium; any item composed in whole or in part of any nonferrous metal other than an item composed of tin, that is purchased or otherwise acquired for the purpose of recycling or storage for later recycling. Aluminum shall not include food or beverage containers.

**Regulated Scrap Metal Yard.** Any yard, plot, space, enclosure, building, or any other place where regulated scrap metal is collected, gathered together and stored or kept for shipment, sale, or transfer.

**Sail Board.** A surfboard using for propulsion a free sail system comprising one or more swivel-mounted rigs (mast, sail and booms) supported in an upright position by the crew and the wind.

**Sailboat.** Any vessel, other than a sail board, that is designed to be propelled by wind action upon a sail for navigation on the water.

**Scrap Metal Dealer.** Any person that operates a business out of a fixed location, and that is also either:

- (a) Engaged in the business of buying and dealing in regulated scrap metal;
- (b) Purchasing, gathering, collecting, soliciting or procuring regulated scrap metal; or
- (c) Operating, carrying on, conducting, or maintaining a regulated scrap metal yard or place where regulated scrap metal is gathered together and stored or kept for shipment, sale, or transfer.

**Search and Rescue Dog.** Any dog which is owned or the service of which is employed, by a law enforcement or emergency response agency for the purpose of aiding in the location of persons missing in disasters or other times of need.

## Smoking; Definitions

- (a) **Access Point** means the area within a 10 foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of section 10.24.
- (b) **Bar** means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on premises consumption.
- (c) **Employee** means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.
- (d) **Employer** means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.
- (e) **Enclosed Area** means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an **enclosed area**:
  - (1) Rooms or areas, enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and
  - (2) rooms or areas, enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.

- (f) **Food Service Establishment** means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institutions routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.
- (g) **Gaming Floor** means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.
- (h) **Medical Care Facility** means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.
- (i) **Outdoor Recreational Facility** means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.
- (j) **Place of Employment** means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For

purposes of this section, a private residence shall not be considered a **place of employment** unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

- (k) **Private club** means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.
  
- (l) **Public Building** means any building owned or operated by:
  - (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof;
  - (2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or
  - (3) any other separate corporate instrumentality or unit of the state or any municipality.
  
- (m) **Public Meeting** means any meeting open to the public pursuant to K.S.A. 75-4317 *et seq.*, and amendments thereto, or any other law of this state.
  
- (n) **Public Place** means any enclosed areas open to the public or used by the general public including, but not limited to: Banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a **public place** unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.

- (o) **Smoking** means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco.
- (p) **Tobacco Shop** means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of tobacco.
- (q) **Substantial Dues or Membership Fee Requirements** means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a statewide ban on smoking.

**Smoke Detector.** A device or combination of devices which operate from a power supply in the dwelling unit or at the point of installation for the purpose of detecting visible or invisible particles of combustion. Such term shall include smoke detectors approved or listed for the purpose for which they are intended by an approved independent testing laboratory.

**Solicit or Solicitation.** To command, authorize, urge, incite, request or advise another to commit an offense.

**State.** The State of Kansas.

**Stolen Property.** Property over which control has been obtained by theft.

**Tattooing.** The process by which the skin is marked or colored by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or figurative purposes.

**Telefacsimile Communication.** The use of electronic equipment to send or transmit a copy of a document via telephone line.

**Threat.** A communicated intent to inflict physical or other harm on any person or on property.

**Throwing Star.** 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.

**Toxic Vapors.** The following substances or products containing such substances:

- (1) Alcohols, including methyl, isopropyl, propyl, or butyl;
- (2) Aliphatic acetates, including ethyl, methyl, propyl, or methyl cellosolve acetate;
- (3) Acetone;
- (4) Benzene;
- (5) Carbon tetrachloride;
- (6) Cyclohexane;
- (7) Freons, including freon 11 and freon 12;
- (8) Hexane;
- (9) Methyl ethyl ketone;
- (10) Methyl isobutyl ketone;
- (11) Naptha;
- (12) Perchlorethylene;
- (13) Toluene;
- (14) Trichloroethane; or
- (15) Xylene.

**Vessel.** Any watercraft designed to be propelled by machinery, oars, paddles or wind action upon a sail for navigation on the water.

**Written Instrument.** Any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, and any money, tokens, stamps, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is being capable of being used to the advantage or disadvantage of some person. (K.S.A. 8-126; K.S.A. 12-4113; K.S.A. 21-5111; K.S.A. 21-5413; K.S.A. 21-5809; K.S.A. 21-5918; K.S.A. 21-6109; K.S.A. 32-1102; K.S.A. 41-102; K.S.A. 41-2701; K.S.A. 82a-802, as amended)

## 1.2

### **LIABILITY FOR OFFENSES OF ANOTHER.**

- (a) A person is criminally responsible for an offense committed by another if such person intentionally

aids, abets, advises, hires, counsels or procures the other to commit the offense.

- (b) A person liable under subsection (a) hereof is also liable for any other offense committed in pursuance of the intended offense if reasonably foreseeable by such person as a probable consequence of committing or attempting to commit the offense intended.
- (c) A person liable under this section may be charged with and convicted of the offense although the person alleged to have directly committed the act constituting the offense lacked criminal or legal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the offense or of some other offense based on the same act. (K.S.A. Supp. 21-5210)

### 1.3 **CORPORATIONS: CRIMINAL RESPONSIBILITY; INDIVIDUAL LIABILITY.**

#### (a) **Corporations; Criminal Responsibility.**

- (1) A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.
- (2) Agent means any director, officer, servant, employee or other person who is authorized to act in behalf of the corporation.

#### (b) **Individual Liability for Corporate Offenses.**

- (1) An individual who commits public offenses, or causes public offenses to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in his or her own name or on his or her own behalf;
- (2) An individual who has been convicted of an offense based on conduct performed by the individual for and on behalf of a corporation is subject to punishment as an individual upon conviction of such offense, although a lesser or different punishment is authorized for

## **ARTICLE 2. ANTICIPATORY OFFENSES**

### **2.1 ATTEMPT.**

- (a) An attempt is any overt act toward the perpetration of an offense done by a person who intends to commit such offense but fails in the perpetration thereof or is prevented or intercepted in executing such offense.
- (b) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the offense was not possible. (K.S.A. Supp. 21-5301)

An attempt to commit a Class A violation is a Class B violation.

An attempt to commit a Class B or C violation is a Class C violation.

### **2.2 CONSPIRACY.**

- (a) A conspiracy is an agreement with another person to commit an offense or to assist in committing an offense. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.
- (b) It shall be a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator. (K.S.A. Supp. 21-5302)

A conspiracy to commit a violation is a Class C violation.

## ARTICLE 3. OFFENSES AGAINST PERSONS

### 3.1 BATTERY.

Battery is:

- (a) Intentionally or recklessly causing bodily harm to another person; or
- (b) Intentionally causing physical contact with another person when done in a rude, insulting or angry manner. (K.S.A. Supp. 21-5413)

Battery is a Class B violation.

#### ~~3.1.1 DOMESTIC BATTERY.~~

~~(a) Domestic battery is:~~

- ~~(1) intentionally or recklessly causing bodily harm by a family or household member against a family or household member; or~~
  - ~~(2) intentionally causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.~~
- ~~(b) (1) Upon a first conviction of a violation of domestic battery, a person shall be guilty of a Class B violation and sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the person enroll in and successfully complete a domestic violence prevention program.~~
- ~~(2) If, within five years immediately preceding commission of the crime, a person is convicted of a violation of domestic battery a second time, such person shall be guilty of a Class A violation and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five~~

~~days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The person convicted must serve at least five consecutive days' imprisonment before the person is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the person shall be required to enter into and complete a treatment program for domestic violence prevention.~~

~~(c) As used in this section:~~

- ~~(1) **Family or household member** means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or who have lived together at any time. **Family or household member** also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and~~
- ~~(2) for the purpose of determining whether a conviction is a first or second conviction in sentencing under this section:  
(A) **Conviction** includes being convicted of a violation of this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;~~

~~(B) **Conviction** includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;~~  
~~(C) only convictions occurring in the immediately preceding five years including prior to the effective date of this act shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first or second offender, whichever is applicable; and~~  
~~(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.~~  
~~(E) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any five year period. (K.S.A. Supp. 21 5414)~~

### 3.2

**BATTERY AGAINST A LAW ENFORCEMENT OFFICER.** Battery against a law enforcement officer is a battery, as defined in Section 3.1(a)(2) of this article, committed against: (A) A uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty; or (B) a uniformed or properly identified state, county, or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile correctional facility officer or employee or a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty. (K.S.A. Supp. 21-5413)

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

3.2.1 **SEXUAL BATTERY.** Sexual battery is the intentional touching of the person of another who is 16 or more years of age, who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another. (K.S.A. Supp. 21-5505)

Sexual battery is a Class A violation.

3.3 **ASSAULT AND ASSAULT OF A LAW ENFORCEMENT OFFICER.**

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

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

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

(2) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty. (K.S.A. Supp. 21-5412)

Assault is a Class C violation.

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

3.4 **RESERVED FOR FUTURE USE.**

3.5 **UNLAWFUL INTERFERENCE WITH FIREFIGHTER.**

Unlawful interference with a firefighter is knowingly and intentionally interfering with, molesting or assaulting, any firefighter while engaged in the performance of such firefighter's duties, or knowingly and intentionally obstructing, interfering with or impeding the efforts of any firefighter to reach the location of a fire. (K.S.A. Supp. 21-6325)

Unlawful interference with a fire fighter is a Class B violation.

3.6

**UNLAWFUL RESTRAINT.**

- (a) Unlawful restraint is knowingly and without legal authority restraining another person so as to interfere substantially with such person's liberty.
- (b) This section shall not apply to acts done in the performance of duty by any law enforcement officer of the city.
- (c) Any merchant, or a merchant's agent or employee, who has probable cause to believe that a person has actual possession of and has wrongfully taken, or is about to wrongfully take merchandise from a mercantile establishment, may detain such person on the premises or in the immediate vicinity thereof, in a reasonable manner and for a reasonable period of time for the purpose of investigating the circumstances of such possession. Such reasonable detention shall not constitute an arrest nor unlawful restraint. (K.S.A. Supp. 21-5411)

Unlawful restraint is a Class A violation.

3.7

**MISTREATMENT OF CONFINED PERSON.**

Mistreatment of a confined person is the intentional abuse, neglect or ill-treatment of any person, who is detained or confined and who is physically disabled, mentally ill or mentally retarded or whose detention or confinement is involuntary, by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution or any public or private hospital or nursing home. (K.S.A. Supp. 21-5416)

Mistreatment of a confined person is a Class A violation.

3.8

**VIOLATION OF PROTECTION FROM ABUSE ORDER.**

- (a) If a person enters or remains on premises or property violating an order issued pursuant to K.S.A. Supp. 60-3107(a)(2), and amendments thereto, such violation shall constitute criminal trespass.

- (b) If a person abuses, molests or interferes with the privacy or rights of another violating an order issued pursuant to K.S.A. Supp. 60-3107(a)(1), and amendments thereto, such violation may constitute assault or battery. (K.S.A. Supp. 60-3107)

### 3.8.1

#### **VIOLATION OF A PROTECTIVE ORDER.**

- (a) Violation of a protective order is knowingly, or intentionally violating:
  - (1) A protection from abuse order issued pursuant to K.S.A. 60-3105, 60-3106, and 60-3107, and amendments thereto.
  - (2) A protective order issued by a court or tribunal of any state or Indian tribe that is consistent with the provisions of 18 U.S.C. 2265, and amendments thereto;
  - (3) A restraining order issued pursuant to K.S.A. 38-1542, 38-1543, 38-1563, and 60-1607, and amendments thereto;
  - (4) An order issued in this or any other state as a condition of pretrial release, diversion, probation, suspended sentence, postrelease supervision or at any other time during the criminal case that orders the person to refrain from having any direct or indirect contact with another person;
  - (5) An order issued in this or any other state as a condition of release after conviction or as a condition of a supersedeas bond pending disposition of an appeal, that orders the person to refrain from having any direct or indirect contact with another person;
  - (6) A protection from stalking order.

**Order** includes any order issued by a municipal or district court.

- (b) No protective order, as set forth in this section, shall be construed to prohibit an attorney, or any person acting on the attorney's behalf, who is representing the defendant in any civil or criminal proceeding, from contacting the

protected party for a legitimate purpose within the scope of the civil or criminal proceeding. The attorney, or person acting on the attorney's behalf, shall be identified in any such contact. (K.S.A. Supp. 21-5924)

Violation of a protective order is a Class A violation.

### 3.9 **CRIMINAL DEFAMATION.**

- (a) Criminal defamation is communicating to a person orally, in writing, or by any other means, information, knowing the information to be false and with actual malice, tending to expose another living person to public hatred, contempt or ridicule; tending to deprive such person of the benefits of public confidence and social acceptance; or tending to degrade and vilify the memory of one who is dead and to scandalize or provoke surviving relatives and friends.
- (b) In all prosecution under this section the truth of the information communicated shall be admitted as evidence. It shall be a defense to a charge of criminal defamation if it is found that such matter was true. (K.S.A. Supp. 21-6103)

Criminal defamation is a Class A violation.

### 3.10 **EAVESDROPPING.**

- (a) Eavesdropping is knowingly and without lawful authority:
  - (1) Entering into a private place with intent to listen surreptitiously to private conversations or to observe the personal conduct of any other person or persons therein;
  - (2) Installing or using outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein;

- (3) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire communication without the consent of the person in possession or control of the facilities for such wire communication;
  - (4) Installing or using a concealed camcorder, motion picture camera or photographic camera of any type, to secretly videotape, film, photograph or record by electronic means, another, identifiable person under or through the clothing being worn by that other person or another, identifiable person who is nude or in a state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.
- (b) A **private place** within the meaning of this section is a place where one may reasonably expect to be safe from uninvited intrusion or surveillance, but does not include a place to which the public has lawful access.
- (c) It shall not be unlawful for an operator of a switchboard, or any officer, employee, or agent of any public utility providing telephone communications service, whose facilities are used in the transmission of a communication, to intercept, disclose or use that communication in the normal course of employment while engaged in any activity which is incident to the rendition of public utility service or to the protection of the rights of property of such public utility. (K.S.A. Supp. 21-6101)

Eavesdropping is a Class A violation.

### 3.11 **UNLAWFUL ADMINISTRATION OF A SUBSTANCE.**

- (a) Unlawful administration of a substance is the intentional and knowing administration of a

substance to another person without consent for the purpose of impairing such other person's physical or mental ability to appraise or control such person's conduct.

- (b) Unlawful administration of a substance means any method of causing the ingestion by another person of a controlled substance, including gamma hydroxybutyric acid or any controlled substance analog, as defined in K.S.A. 65-4101, of gamma hydroxybutyric acid, including gamma butyrolactone; butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with CAS No. 96-48-0; 1,4 butanediol; butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol, tetramethylene glycol; tetramethylene 1,4-diol, into any food, beverage or other consumable that the person knows, or should know, would be consumed by such other person.
- (c) This section shall not prohibit administration of any substance described in subsection (b) for lawful medical or therapeutic treatment. (K.S.A. Supp. 21-5425)

Unlawful administration of a substance is a Class A violation.

### 3.12 **BREACH OF PRIVACY.**

- (a) Breach of privacy is knowingly and without lawful authority:
  - (1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication;
  - (2) Divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if such person illegally learned of the message in the

- course of employment with an agency in transmitting it;
- (3) Entering with intent to listen surreptitiously to private conversations in a private place or to observe the personal conduct of any other person or persons entitled to privacy therein;
  - (4) Installing or using outside or inside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible without the use of such device, without the consent of the person or persons entitled to privacy therein; or
  - (5) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire or wireless communication without the consent of the person in possession or control of the facilities for such communication.(K.S.A. Supp. 21-6101)

Breach of privacy, as defined in this section, is a Class A violation.

### 3.13 **Stalking.**

- (a) Stalking is:
  - (1) intentionally or recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;
  - (2) Intentionally engaging in a course of conduct targeted at a specific person which the individual knows will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family.

- (b) For the purposes of this section, a person served with a protective order as defined by K.S.A. Supp. 21-5924, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a uniformed law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted intentionally as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.
- (c) In a criminal proceeding under this section, a person claiming an exemption, exception, or exclusion has the burden of going forward with evidence of the claim.
- (d) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.
- (e) As used in this section:
  - (1) **Course of Conduct** means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:
    - (A) Threatening the safety of the targeted person or a member of such person's immediate family.
    - (B) Following, approaching, or confronting the targeted person or a member of such person's immediate family.
    - (C) Appearing in close proximity to, or entering the targeted person's residence, place of employment, school, or other place where such person can be found, or the residence, place of employment,

or school of a member of such person's immediate family.

- (D) Causing damage to the targeted person's residence or property or that of a member of such person's immediate family.
  - (E) Placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person.
  - (F) Causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family.
  - (G) Any act of communication.
- (2) **Communication** means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer.
- (3) **Computer** means a programmable, electronic device capable of accepting and processing data.
- (4) **Conviction** includes being convicted of a violation of this section or being convicted of a law of another state which prohibits the acts that this section prohibits.
- (5) **Immediate Family** means father, mother, stepparent, child, stepchild, sibling, spouse, or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person. (K.S.A. Supp. 21-5427)

Upon a first conviction, stalking as described in subsection (a) is a Class A violation.

## ARTICLE 4. SEX OFFENSES

4.1 **LEWD, LASCIVIOUS BEHAVIOR.** Lewd and lascivious behavior is:

- (a) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or
- (b) Publicly exposing a sex organ or exposing a sex organ in the presence of a person who is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another. (K.S.A. Supp. 21-5513)

Lewd and lascivious behavior if committed in the presence of a person 16 or more years of age is a Class B violation.

4.2 **RESERVED FOR FUTURE USE.**

4.3 ~~**PROSTITUTION.** Prostitution is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:~~

- ~~(a) Sexual intercourse;~~
- ~~(b) Sodomy; or~~
- ~~(c) Manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another. (K.S.A. Supp. 21-6419)~~

~~Prostitution is a Class B violation.~~

4.4 ~~**PROMOTING PROSTITUTION.** Promoting prostitution is:~~

- ~~(a) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance, or management thereof;~~
- ~~(b) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution;~~

- ~~(c) Procuring a prostitute for a house of prostitution;~~
- ~~(d) Inducing another to become a prostitute;~~
- ~~(e) Soliciting a patron for a prostitute or for a house of prostitution;~~
- ~~(f) Procuring a prostitute for a patron;~~
- ~~(g) Procuring transportation or paying for the transportation of, or transporting a person within this city 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. (K.S.A. Supp. 21-6420)~~

~~Promoting prostitution is a Class A violation except as provided by K.S.A. Supp. 21-6420, as amended, where promoting prostitution is a felony when the prostitute is under 16 years of age or the person promoting prostitution has, prior to the commission of the crime, been convicted of promoting prostitution.~~

~~4.5 **PATRONIZING A PROSTITUTE.** Patronizing a prostitute is either:~~

- ~~(a) Knowingly entering or remaining in a house of prostitution with intent to engage in sexual intercourse, sodomy or any unlawful sexual act with a prostitute; or~~
- ~~(b) Knowingly hiring a prostitute to engage in sexual intercourse, sodomy or any unlawful sexual act. (K.S.A. Supp. 21-6421)~~

~~Patronizing a prostitute is a Class C violation.~~

## **ARTICLE 5. OFFENSES AFFECTING CHILDREN**

~~5.1 **CONTRIBUTING TO A CHILD'S MISCONDUCT OR DEPRIVATION.**~~

- ~~(a) Contributing to a child's misconduct or deprivation is:~~

- (1) Causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the revised Kansas code for care of children;
- (2) 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 public offense; or
- (3) 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.
- (4) Causing or encouraging a child to violate the terms or conditions of the child's probation or conditional release pursuant to subsection (a)(1) of K.S.A. 38-2361, and amendments thereto.  
(K.S.A. Supp. 21-5603)

Contributing to a child's misconduct or deprivation is a Class A violation.

- (b) 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.

## 5.2 **FURNISHING ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE TO A MINOR.**

- (a) Furnishing alcoholic liquor or cereal malt beverage to a minor is directly or indirectly, selling to, buying for, giving or furnishing any alcoholic liquor or cereal malt beverage to any person under 21 years of age.
- (b) It shall be a defense to a prosecution under this section if:
  - (1) The defendant is a licensed retailer, club, drinking establishment or caterer or holds a temporary permit, or an employee thereof;
  - (2) The defendant sold the alcoholic liquor or cereal malt beverage to the minor

with reasonable cause to believe that the minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage; and

- (3) To purchase the alcoholic liquor or cereal malt beverage, the person exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, containing a photograph of the minor and purporting to establish that such minor was 21 or more years of age or of legal age for the consumption of alcoholic liquor or cereal malt beverage.

- (c) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward when such furnishing is permitted and supervised by the child or ward's parent or legal guardian. (K.S.A. Supp. 21-5608)

Furnishing alcoholic liquor or cereal malt liquor to a minor is a Class B violation for which the minimum fine is \$200.

### 5.3

#### **UNLAWFULLY HOSTING MINORS CONSUMING ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE.**

- (a) Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is intentionally or recklessly permitting a person's residence or any land, building, structure or room owned, occupied, or procured by such person to be used by an invitee of such person or an invitee of such person's child or ward, in a manner that results in the possession or consumption therein of alcoholic liquor or cereal malt beverages by a minor.
- (b) As used in this section, **minor** means a person under 21 years of age.
- (c) The provisions of this section shall not be deemed to create any civil liability for any

lodging establishment, as defined in K.S.A. 36-501, and amendments thereto. (K.S.A. Supp. 21-5608)

Unlawfully hosting minors consuming alcoholic liquor or cereal malt beverage is a Class A violation, for which the minimum fine is \$1,000.

**5.4            ENDANGERING A CHILD.**

- (a) Endangering a child is intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered.
- (b) Nothing in this section shall be construed to mean a child is endangered for the sole reason the child's parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child. (K.S.A. Supp. 21-5601)

Endangering a child is a Class A violation.

**5.5            WATERCRAFT; LIFESAVING DEVICES REQUIRED.**

The operator of every vessel shall require every person 12 years of age or under to wear a United States Coast Guard approved type I, type II or type III personal flotation device while aboard or being towed by such vessel. A life belt or ring shall not satisfy the requirement of this section. (K.S.A. 32-1129)

Violation of this section shall constitute a Class C violation.

**5.6            PURCHASE OR POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS BY A MINOR.** It shall be unlawful for any person:

- (a) Who is under 18 years of age to purchase or attempt to purchase cigarettes or tobacco products; or

- (b) Who is under 18 years of age to possess or attempt to possess cigarettes or tobacco products. (K.S.A. 79-3321:3322)

Violation of this section shall be an ordinance cigarette or tobacco infraction for which the fine shall be \$25. In addition, the judge may require the juvenile to appear in court with a parent or legal guardian.

5.7

**SELLING, GIVING OR FURNISHING CIGARETTES OR TOBACCO PRODUCTS TO A MINOR.**

- (a) It shall be unlawful for any person to:
  - (1) Sell, give or furnish any cigarettes or tobacco products to any person under 18 years of age; or
  - (2) Buy any cigarettes or tobacco products for any person under 18 years of age.
  
- (b) It shall be a defense to a prosecution under this subsection if:
  - (1) The defendant is a licensed retail dealer, or employee thereof, or a person authorized by law to distribute samples;
  - (2) The defendant sold, furnished or distributed the cigarettes or tobacco products to the person under 18 years of age with reasonable cause to believe the person was of legal age to purchase or receive cigarettes or tobacco products; and
  - (3) To purchase or receive the cigarettes or tobacco products, the person under 18 years of age exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document containing a photograph of the person and purporting to establish that the person was of legal age to purchase or receive cigarettes or tobacco products.
  - (4) For purposes of this subsection the person who violates this subsection shall be the individual directly selling, furnishing or distributing the cigarettes

or tobacco products to any person under 18 years of age or the retail dealer who has actual knowledge of such selling, furnishing or distributing by such individual or both.

- (c) It shall be a defense to a prosecution under this subsection if:
  - (1) The defendant engages in the lawful sale, furnishing or distribution of cigarettes or tobacco products by mail; and
  - (2) The defendant sold, furnished or distributed the cigarettes or tobacco products to the person by mail only after the person had provided to the defendant an unsworn declaration, conforming to K.S.A. 53-601 and amendments thereto, that the person was 18 or more years of age. (K.S.A. 79-3322)

Violation of this section shall constitute a Class B violation punishable by a minimum fine of \$200.

5.8

**PURCHASE, CONSUMPTION OR POSSESSION OF ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE BY A MINOR; 18-21.**

- (a) Except with regard to serving of alcoholic liquor or cereal malt beverage as permitted by K.S.A. 41-308a, 41-308b, 41-727a, 41-2610, 41-2652, 41-2704, and 41-2727, and amendments thereto, and subject to any rules and regulations adopted pursuant to such statutes, no person under 21 years of age shall possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt beverage except as authorized by law.
- (b) In addition to any other penalty provided for a violation of this section:
  - (1) The court may order the offender to do either or both of the following:
    - (A) Perform 40 hours of public service; or
    - (B) Attend and satisfactorily complete a suitable educational or training

program dealing with the effects of alcohol or other chemical substances when ingested by humans.

- (2) Upon a first conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 30 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 30 days whether or not that person has a driver's license.
  - (3) Upon a second conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for 90 days. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for 90 days whether or not that person has a driver's license.
  - (4) Upon a third or subsequent conviction of a violation of this section, the court shall order the division of vehicles to suspend the driving privilege of such offender for one year. Upon receipt of the court order, the division shall notify the violator and suspend the driving privileges of the violator for one year whether or not that person has a driver's license.
- (c) This section shall not apply to the possession and consumption of cereal malt beverage by a person under the legal age for consumption of cereal malt beverage when such possession and consumption is permitted and supervised, and such beverage is furnished, by the person's parent or legal guardian. (K.S.A. Supp. 41-727)

Violation of this section by a person 18 or more years of age but less than 21 years of age is a Class C violation for which the minimum fine is \$200.

## ARTICLE 6. OFFENSES AGAINST PROPERTY

6.1           **THEFT.** Theft is any of the following acts done with the intent to deprive the owner permanently of the possession, use or benefit of the owner's property or services:

- (a) Obtaining or exerting unauthorized control over property or services;
- (b) Obtaining control over property or services by deception;
- (c) Obtaining control over property or services by threat; or
- (d) Obtaining control over stolen property or services knowing the property or services to have been stolen by another.
- (e) Knowingly dispensing motor fuel into a storage container or the fuel tank of a motor vehicle at an establishment in which motor fuel is offered for retail sale and leaving the premises of the establishment without making payment for the motor fuel. (K.S.A. Supp. 21-5801)

Theft of property of the value of less than \$1,000 is a Class A violation except: (1) when the person has been convicted of theft two or more times; or (2) theft of property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct, in which case it is a felony under state statute.

Conviction of a violation of a municipal ordinance prohibiting acts which constitute theft as defined by this section shall be considered a conviction of theft for the purpose of determining the number of proper convictions and the classification of the crime under this section.

6.2           **INTENT; PERMANENTLY DEPRIVE.**

- (a) In any prosecution under this article, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor

of property of the possession, use or benefit thereof:

- (1) The giving of a false identification or fictitious name, address or place of employment at the time of obtaining control over the property;
- (2) The failure of a person who leases or rents personal property and fails to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;
- (3) Destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;
- (4) Destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;
- (5) The failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any

- appropriate state and local computer system listing stolen motor vehicles; or
- (6) The failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying:
- (A) The time and place to return the vehicle; and
- (B) That failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles.
- (b) In any prosecution in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.
- (c) The word **notice** as used herein shall be construed to mean notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library materials at the address as it appears in the information supplied by such person at the time of such leasing, renting

or borrowing, or to such person's last known address. (K.S.A. Supp. 21-5804)

6.3 **THEFT; LOST, MISLAID PROPERTY.** Theft of lost or mislaid property is failure to take reasonable measures to restore lost or mislaid property to the lawful owner by a person who has obtained control of such property, who knows or learns the identity of the owner thereof, and who intends to deprive the owner permanently of the possession, use or benefit of the property. (K.S.A. 21-5802)

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

6.4 **RESERVED FOR FUTURE USE.**

6.5 **CRIMINAL DEPRIVATION OF PROPERTY.** Criminal deprivation of property is obtaining or exerting unauthorized control over property, with intent to deprive the owner of temporary use thereof, without the owner's consent but not with the intent of depriving the owner permanently of the possession, use or benefit of such owner's property. (K.S.A. Supp. 21-5803)

Criminal deprivation of property that is a motor vehicle upon a first or second conviction is a Class A violation. Upon a first conviction of this paragraph, a person shall be sentenced to not less than 30 days nor more than one year's imprisonment and fined not less than \$100. Upon a second conviction of this paragraph, a person shall be sentenced to not less than 60 days nor more than one year's imprisonment and fined not less than \$200. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. The mandatory provisions of this subsection shall not apply to any person where such application would result in a manifest injustice.

Criminal deprivation of property other than a motor vehicle is a Class A violation. Upon a second or subsequent conviction of this subsection, a person shall be sentenced to not less than 30 days imprisonment and fined not less than \$100, except that the provisions of this subsection relating to a second or subsequent conviction shall not apply to any person where such application would result in a manifest injustice.

6.6 **CRIMINAL DAMAGE TO PROPERTY.** Criminal damage to property is by means other than by fire or explosive:

- (a) Intentionally injuring, damaging, mutilating, defacing, destroying, or substantially impairing the use of any property in which another has an interest without the consent of such other person; or
- (b) Injuring, damaging, mutilating, defacing, destroying or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder. (K.S.A. Supp. 21-5813)

Criminal damage to property is a Class B violation if the property damaged is of the value of less than \$1,000 or is of the value of \$1,000 or more and is damaged to the extent of less than \$1,000.

6.7 **CRIMINAL TRESPASS.**

- (a) Criminal trespass is:
  - (1) Entering or remaining upon or in any land, nonnavigable body of water, structure, vehicle, aircraft or watercraft other than railroad property by a person with knowledge that such person is not authorized or privileged to do so, and:
    - (A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person; or
    - (B) Such premises or property are posted in a manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or
    - (C) Such person enters or remains therein in defiance of a restraining order issued by a court of competent jurisdiction and the restraining order has been personally served upon the person so restrained.

- (2) Entering or remaining upon or in any public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.
- (b) As used in this section:
- (1) **Health Care Facility** means any licensed medical care facility, certificated health maintenance organization, licensed mental health center, or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients.
  - (2) **Health Care Provider** means any person:
    - (A) Licensed to practice a branch of the healing arts;
    - (B) Licensed to practice psychology;
    - (C) Licensed to practice professional or practical nursing;
    - (D) Licensed to practice dentistry;
    - (E) Licensed to practice optometry;
    - (F) Licensed to practice pharmacy;
    - (G) Registered to practice podiatry;
    - (H) Licensed as a social worker; or
    - (I) Registered to practice physical therapy. (K.S.A. Supp. 21-5808)
- (c) This section shall not apply to a land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters, and other premises in the making of a survey.

Criminal trespass is a Class B violation.

Upon a conviction of a violation of subsection (a) (1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which must be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

6.7.1            **TRESPASSING ON RAILROAD PROPERTY.**

- (a) It shall be unlawful for any person, without the consent of the owner or the owner's agent, to enter or remain on railroad property, knowing that it is railroad property.
- (b) Subsection (a) shall not be construed to interfere with the lawful use of a public or private crossing.
- (c) Nothing in this section shall be construed as limiting a representative or member of a labor organization which represents or is seeking to represent the employees of the railroad, from conducting such business as provided under the railway labor act (45 U.S.C. 151 *et seq.*) and other federal labor laws. (K.S.A. Supp. 21-5809)

Trespassing on railroad property is a Class A violation.

6.8            **LITTERING.** (Editor's Note: As a result of the passage of HB 2695 by the 2004 Kansas Legislature, as codified in K.S.A. Supp. 21-5815, the League believes there now exist one or more conflicts in the state statutes concerning Littering. (See also: K.S.A. Supp. 8-2118 and K.S.A. Supp. 8-15,102.) Therefore, this section has been removed from the UPOC. City Attorneys and City Prosecutors are urged to proceed with caution when charging Littering under state statute.)

6.9            **TAMPERING WITH A LANDMARK.** Tampering with a landmark is willfully and maliciously:

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

- (b) Defacing or altering marks upon any tree, post or other monument, made for the purpose of designating any point on such boundary; or
- (c) Cutting down or removing any tree, post or other monument upon which any such marks have been made for such purpose, with intent to destroy such marks; or
- (d) Breaking, destroying, removing or defacing any milepost, milestone or guideboard erected by authority of law on any public highway or road; or
- (e) Defacing or altering any inscription on any such marker or monument; or
- (f) Altering, removing, damaging or destroying any public land survey corner or accessory without complying with the provisions of K.S.A. 58-2011. (K.S.A. Supp. 21-5816)

Tampering with a landmark is a Class C violation.

- 6.10      **TAMPERING WITH A TRAFFIC SIGNAL.** Tampering with a traffic signal is intentionally manipulating, altering, destroying or removing any light, sign, marker, railroad switching device, or other signal device erected or installed for the purpose of controlling or directing the movement of motor vehicles, railroad trains, aircraft or watercraft. (K.S.A. Supp. 21-5817)

Tampering with a traffic signal is a Class C violation.

- 6.11      **UNLAWFUL MANUFACTURE OR DISPOSAL OF FALSE TOKENS.**

- (a) The unlawful manufacture or disposal of false tokens is manufacturing, offering for sale or giving away any false token, slug, substance, false or spurious coin or other device intended or calculated to be placed or deposited in any automatic vending machine, coin-operated telephone, parking meter or other such receptacle with intent to cheat or defraud the owner, lessee, licensee or other person entitled to the contents of such automatic

vending machine, coin-operated telephone, parking meter or other receptacle designed to receive coins or currency of the United States of America in connection with the sale, use or enjoyment of property or services.

- (b) The manufacture, advertising, offering for sale or distribution of any such false token, slug, substance, false or spurious coin or other device shall be prima facie evidence of an intent to cheat or defraud within the meaning of this section. (K.S.A. Supp. 21-5829)

Unlawful manufacture or disposal of false tokens is a Class B violation.

## 6.12 **SERIAL NUMBERS.**

- (a) It shall be unlawful for any person to willfully change, cover, alter, remove, obliterate or deface any serial number or other manufacturer's number or any identification letters, words, or numbers of any machine, apparatus, or article that carries a manufacturer's serial number or any other identification letters, words or numbers, with the intent to conceal the identify of such machine, apparatus, or article from the rightful owner thereof or from law enforcement personnel.
- (b) It shall be unlawful for any person to knowingly buy, sell, receive, barter, trade, dispose of or have in his or her possession any articles, devices, apparatuses, or machines from which the manufacturer's number or identification letters, words or numbers have been changed, covered, altered, removed, obliterated, defaced or destroyed with the intent to conceal the identity thereof from the rightful owner or from law enforcement personnel.
- (c) Possession of any of the aforementioned manufacturer's articles, devices, apparatuses or machines from which the manufacturer's serial number or other manufacturer's number or identification mark, or the name of the manufacturer or make or model, or any other identification letters, words or numbers have

been changed, covered, altered, removed, obliterated, defaced, or destroyed shall be prima facie evidence that the possessor has changed, covered, altered, removed, obliterated, defaced, or destroyed the same with the intent to cancel, destroy or misrepresent the identity or type, or ownership of such machine, apparatus, or article.

Violation of this section is a Class C violation.

- 6.13 **WITHHOLDING POSSESSION OF PUBLIC PROPERTY.** It shall be unlawful for any person to unlawfully take possession of any property, real or personal belonging to the city, or to the possession of which the city shall be entitled or to commit any trespass thereon or to unlawfully withhold any property from the city. The unlawful withholding of the possession of any property belonging to the city after demand therefor has been made under the direction of the governing body of the city shall be deemed a new and separate offense for each day the possession is withheld after such demand.

Withholding possession of public property is a Class C violation.

- 6.14 **UNLAWFUL DEPOSITS IN SEWERS.** No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- (a) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit;
- (b) Any water or waste which may contain more than 100 parts per million, by weight, of fat, oil or grease;
- (c) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
- (d) Any garbage that has not been properly shredded;
- (e) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous

substance capable of causing obstruction of the flow in sewers or other interference with the proper operation of the sewage works;

- (f) Any waters or wastes having a pH lower than 5.5 or higher than nine or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
- (g) Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, or create any hazard in the receiving waters of the sewage treatment plant;
- (h) Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;
- (i) Any noxious or malodorous gas or substance capable of creating a public nuisance.

Unlawful deposits in sewers is a Class C violation.

6.15        **DAMAGING SEWERS.** It shall be unlawful for any person willfully to injure or destroy, or attempt to injure or destroy any public sewer, or to molest any sewer or any part thereof by removing the cover of any flush tank, manhole or any part of the public sewer system of the city without authority.

The violation of this section is a Class C violation.

6.16        **GIVING A WORTHLESS CHECK.**

- (a) Giving a worthless check is the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, 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.

- (b) 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:
  - (1) Unless the maker or drawer pays the holder thereof the amount due thereon and a service charge not exceeding \$30 for each check, within seven days after notice has been given to the maker or drawer that such check, 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; or
  - (2) If a postdated date is placed on the check, order or draft without the knowledge or consent of the payee.
- (c) In addition to all other costs and fees allowed by law, each prosecuting attorney who takes any action under the provisions of this section may collect from the issuer in such action an administrative handling cost, except in cases filed in a court of appropriate jurisdiction. The cost shall not exceed \$10 for each check.
- (d) It shall not be a defense to a prosecution under this section that the check, draft or order upon which such prosecution is based:
  - (1) Was postdated, unless such check, draft or order was presented for payment prior to the postdated date; or
  - (2) 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, unless such check, draft or order was presented for payment prior to the date the maker informed the payee there would be sufficient funds. (K.S.A. Supp. 21-5821)

Giving a worthless check is a Class A violation if the check, draft or order is drawn for less than \$1,000 except when the person has, within five years immediately preceding commission of the offense, been convicted of giving a worthless check two or more times, in which case it is a felony under state statute.

## 6.17 **CRIMINAL USE OF A FINANCIAL CARD.**

- (a) Criminal use of a financial card is any of the following acts done with intent to defraud and for the purpose of obtaining money, goods, property, services or communication services:
  - (1) Using a financial card without the consent of the cardholder; or
  - (2) Knowingly using a financial card, or the number or description thereof, which has been revoked or canceled; or
  - (3) Using a falsified, mutilated, altered or nonexistent financial card or a number or description thereof.
  
- (b) For the purposes of this section:
  - (1) **Financial card** means an identification card, plate, instrument, device or number issued by a business organization authorizing the cardholder to purchase, lease or otherwise obtain money, goods, property, services or communication services or to conduct other financial transactions.
  - (2) **Cardholder** means the person or entity to whom or for whose benefit a financial card is issued.
  
- (c) For the purposes of subsection (a)(2), a financial card shall be deemed canceled or revoked when

notice in writing thereof has been received by the named holder thereof as shown on such financial card or by the records of the company. (K.S.A. Supp. 21-5828)

Criminal use of a financial card is a Class A violation if the money, goods, property, services or communication services obtained within a seven-day period are of the value of less than \$1,000.

- 6.18 **MOTOR VEHICLE DEALERS; SELLING MOTOR VEHICLES WITHOUT A LICENSE.** It shall be unlawful for any person to do business as a motor vehicle dealer, salvage vehicle dealer, motor vehicle manufacturer, motor vehicle converter, auction motor vehicle dealer, or salesperson without a license issued by the director of vehicles. The isolated or occasional sale of a vehicle by a person who owned such vehicle shall not constitute the doing of business as a vehicle dealer. (K.S.A. Supp. 8-2434)

Violation of this section shall be punishable by a fine not to exceed \$2,500.

- 6.19 **EQUITY SKIMMING.** It shall be unlawful for any person who, with intent to defraud, willfully engages in a pattern or practice of:

- (a) Purchasing one family to four family dwellings, including condominiums and cooperatives or acquiring any right, title or interest therein, including but not limited to an equity of redemption interest, which are subject to a loan in default at time of purchase or in default within one year subsequent to the purchase and the loan is secured by a mortgage;
- (b) Failing to deliver all rent proceeds received from rental of the property to the holder of the mortgage before a sheriff's sale or holder of the certificate of purchase during the period of redemption, not to exceed the monthly payment of principal and interest required by the note and mortgage; and
- (c) Applying or authorizing the application of rents from such dwellings for such person's own use. (K.S.A. Supp. 21-6504)

Violation of this section is a Class A violation. Each purchase of a dwelling pursuant to this section shall be deemed a separate offense.

6.20 **COMPUTER TRESPASS COMPUTER PASSWORD DISCLOSURE.**

(a) As used in this section:

- (1) **Access** means to instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system or computer network.
- (2) **Computer** means an electronic device which performs work using programmed instruction and which has one or more of the capabilities of storage, logic, arithmetic or communication and includes all input, output, processing, storage, software or communication facilities which are connected or related to such a device in a system or network.
- (3) **Computer Network** means the interconnection of communication lines, including microwave or other means of electronic communication, with a computer through remote terminals, or a complex consisting of two or more interconnected computers.
- (4) **Computer Program** means a series of instructions or statements in a form acceptable to a computer which permits the functioning of a computer system in a manner designed to provide appropriate products from such computer system.
- (5) **Computer Software** means computer programs, procedures and associated documentation concerned with the operation of a computer system.
- (6) **Computer System** means a set of related computer equipment or devices and computer software which may be connected or unconnected.
- (7) **Financial Instrument** means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card, debit card or marketable security.

- (8) **Property** includes, but is not limited to, financial instruments, information, electronically produced or stored data, supporting documentation and computer software in either machine or human readable form.
  - (9) **Services** includes, but is not limited to, computer time, data processing and storage functions and other uses of a computer, computer system or computer network to perform useful work.
  - (10) **Supporting Documentation** includes, but is not limited to, all documentation used in the construction, classification, implementation, use or modification of computer software, computer programs or data.
- (b) **Computer Password Disclosure** is the unauthorized and intentional disclosure of a number, code, password or other means of access to a computer or computer network.
- (c) **Computer Trespass** is intentionally, and without authorization accessing or attempting to access any computer, computer system, computer network or computer software, program, documentation, data or property contained in any computer, computer system or computer network. (K.S.A. Supp. 21-5839)

Computer password disclosure is a Class A violation.  
Computer trespass is a Class A violation.

## 6.21

### **POSTING LAND.**

- (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 posted as provided in this subsection, without having in the person's possession the written permission of the owner or person in lawful possession thereof.
- (b) Instead of posting land as provided in subsection (a), any landowner or person in lawful possession of any land may post such

land by placing identifying purple paint marks on trees or posts around the area to be posted. Each paint mark shall be a vertical line of at least eight inches in length and the bottom of the mark shall be not less than three feet nor more than five feet high. Such paint marks shall be readily visible to any person approaching the land. Land posted as provided in this subsection shall be considered to be posted by written permission only as provided in subsection (a).

- (c) A person licensed to hunt or fur harvest who is following or pursuing a wounded animal on land as provided in this section posted without written permission of the landowner or person in lawful possession thereof shall not be in violation of this section 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. Any person who fails to leave such land when instructed is subject to the provisions of subsection (b) of Section 6.22. (K.S.A. Supp. 32-1013)

## 6.22

### **CRIMINAL HUNTING.**

- (a) Criminal hunting is hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing:
  - (1) Upon any land or nonnavigable body of water of another, without having first obtained permission of the owner or person in possession of such premises; or
  - (2) Upon or from any public road, public road right-of-way or railroad right-of-way that adjoins occupied or improved premises, without having first obtained permission of the owner or person in possession of such premises.

**Criminal hunting** is a Class C violation. Upon the first conviction thereof and in addition to any authorized sentence imposed by the court, such court may require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or, in any case where such person

has a combination license, the court may require forfeiture of a part or all of such license and the court may order such person to refrain from hunting, fishing, or fur harvesting, or all, for up to one year from the date of such conviction. Upon any subsequent conviction thereof, and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in any case where such person has a combination license, the court shall require the forfeiture of a part or all of such license and the court shall order such person to refrain from hunting, fishing, or fur harvesting, or all, for one year from the date of such conviction. A person licensed to hunt and following or pursuing a wounded game bird or animal upon any land of another without permission of the landowner or person in lawful possession thereof shall not be deemed to be in violation of this provision while in such pursuit, except that this provision shall not authorize a person to remain on such land if instructed to leave by the owner thereof or other authorized person.

The court shall notify the department of wildlife and parks of any conviction or diversion for criminal hunting.

- (b) **Intentional criminal hunting** is hunting, shooting, fur harvesting, pursuing any bird or animal, or fishing upon any land or nonnavigable body of water of another by a person who knows such person is not authorized or privileged to do so, and:
- (1) Such person remains therein and continues to hunt, shoot, fur harvest, pursue any bird or animal or fish in defiance of an order not to enter or to leave such premise or property personally communicated to such person by the owner thereof or other authorized person; or
  - (2) Such premises or property are posted in a manner consistent with Section 6.21, and amendments thereto.

Intentional criminal hunting is a Class B violation. Upon the first conviction or a diversion agreement for intentional criminal hunting, and in addition to any authorized sentence imposed by the court, the court shall require forfeiture of such person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for six months. Upon the second conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require the forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for one year. Upon the third or subsequent conviction of intentional criminal hunting and in addition to any authorized sentence imposed by the court, such court shall require forfeiture of the convicted person's hunting, fishing, or fur harvesting license, or all, or in the case where such person has a combination license, the court shall require forfeiture of a part or all of such license for five years.

The court shall notify the department of wildlife and parks of any conviction or diversion for intentional criminal hunting. (K.S.A. Supp. 21-5810)

6.23

**UNLAWFUL USE OF A RECORDING DEVICE.**

- (a) Unlawful use of a recording device is knowingly operating, in a motion picture theater, while a motion picture is being exhibited, an audiovisual recording function of a device without the consent of the owner or lessee of such theater.
- (b) Unlawful use of a recording device is a Class A violation on conviction of the first offense.
- (c) This section shall not apply to a person operating an audiovisual recording device as part of such person's lawfully authorized investigative, law

enforcement, protective or intelligence gathering duties as a lawfully authorized investigative, law enforcement, protective, or intelligence gathering employee or agent of the state or federal government.

- (d) The owner or lessee of a motion picture theater where a motion picture is being exhibited, or the authorized agent or employee thereof, who alerts law enforcement authorities of an alleged violation of subsection (a), and amendments thereto, shall not be liable in any civil action arising out of measures taken by such owner, lessee, agent, or employee in the course of subsequently detaining a person that the owner, lessee, agent, or employee in good faith believed to have violated subsection (a), and amendments thereto, while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that such measures were manifestly unreasonable or the period of detention was unreasonably long. (K.S.A. Supp. 51-301)

6.24

#### **UNLAWFULLY SELLING SCRAP METAL.**

- (a) Except as provided in subsection (d), it shall be unlawful for any person to sell any item or items of regulated scrap metal to a scrap metal dealer, or employee or agent of a dealer, in this state unless such person presents to such scrap metal dealer, or employee or agent of such dealer, at or before the time of sale, the following information: The seller's name, address, sex, date of birth, and the identifying number from the seller's driver's license, military identification card, passport, or personal identification license. The identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller.
- (b) Every scrap metal dealer shall keep a register in which the dealer, or employee or agent of the dealer, shall at the time of purchase or receipt of any item for which such information is required to be presented, cross-reference to previously received information, or accurately

and legibly record at the time of sale the following information:

- (1) The time, date, and place of transaction;
- (2) The seller's name, address, sex, date of birth, and the identifying number from the seller's driver's license, military identification card, passport, or personal identification license; the identifying number from an official governmental document for a country other than the United States may be used to meet this requirement provided that a legible fingerprint is also obtained from the seller;
- (3) A copy of the identification card or document containing such identifying number;
- (4) The license number, color, and style or make of any motor vehicle in which the junk vehicle or other regulated scrap metal property is delivered in a purchase transaction;
- (5) A general description, made in accordance with the custom of the trade, of the predominant types of junk vehicle or other regulated scrap metal property purchased in the transaction;
- (6) The weight, quantity or volume, made in accordance with the custom of the trade, of the regulated scrap metal property purchased;
- (7) If a junk vehicle or vehicle part is being bought or sold, a description of the junk vehicle or vehicle part, including the make, model, color, vehicle identification number, and serial number if applicable;
- (8) The amount of consideration given in a purchase transaction for the junk vehicle or other regulated scrap metal property; and
- (9) The name of the individual acting on behalf of the regulated scrap metal dealer in making the purchase.

- (c) The scrap metal dealer's register, including copies of identification cards, may be kept in electronic format.
- (d) Notwithstanding the foregoing, this section shall not apply to:
  - (1) Transactions involving regulated scrap metal, except for catalytic converters, for which the total sale price for all regulated scrap metal is \$50 or less;
  - (2) Transactions involving only catalytic converters for which the total sale price is \$30 or less;
  - (3) Transactions in which the seller is also a scrap metal dealer; or
  - (4) Transactions for which the seller is known to the purchasing scrap metal dealer to be an established business that operates out of a fixed business location and that can reasonably be expected to generate regulated scrap metal.
- (e) The exceptions contained in subsections (d)(1) and (d)(2) shall not apply to any purchase from any seller of the following materials:
  - (1) Catalytic converters purchased separate from a vehicle;
  - (2) Coated or insulated wire or stripped wire or burnt wire;
  - (3) Refrigeration condensing units or air conditioning coils of any type; or
  - (4) Copper tubing bars, plate, buss bar and sheet copper.
- (f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to pay for any of the items described in subsections (e)(1) through (4) by any means other than:
  - (1) A prenumbered check drawn on a regular bank account in the name of the scrap metal dealer and with such check made payable to the person documented as the seller in accordance with subsection (b); or
  - (2) A system for automated cash or electronic payment distribution which photographs

or videotapes the payment recipient and identifies the payment with a distinct transaction in the register maintained in accordance with subsection (b). (K.S.A. Supp. 50-6,110; K.S.A. Supp. 50-6,112)

Any person intentionally violating the provisions of this section shall be guilty of a class C violation for which the minimum fine is \$200. Any person convicted of violating the provisions of this section for the second time within a two-year period shall be guilty of a class B violation for which the minimum fine is \$500. Any person convicted of violating the provisions of this section for the third and subsequent time within a two-year period shall be guilty of a class A violation for which the minimum fine is \$1,000.

6.25

**UNLAWFULLY BUYING SCRAP METAL.**

- (a) It shall be unlawful for any such scrap metal dealer to purchase any item or items of regulated scrap metal in a transaction for which Section 6.24 requires information to be presented by the seller, without demanding and receiving from the seller that information. Every scrap metal dealer shall file and maintain a record of information obtained in compliance with the requirements in Section 6.24. All records kept in accordance with the provisions of this section shall be open at all times to peace or law enforcement officers and shall be kept for two years. If the required information is maintained in electronic format, the scrap metal dealer shall provide a printout of the information to peace or law enforcement officers upon request.
- (b) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any item or items of regulated scrap metal in a transaction for which Section 6.24 requires information to be presented by the seller, without obtaining from the seller a signed statement that:
  - (1) Each item is the seller's own personal property, is free of encumbrances and is not stolen; or

- (2) That the seller is acting for the owner and has permission to sell each time.
- (c) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any junk vehicle in a transaction for which Section 6.24 requires information to be presented by the seller, without:
- (1) Inspecting the vehicle offered for sale and recording the vehicle identification number; and
  - (2) Obtaining an appropriate vehicle title or bill of sale issued by a governmentally operated vehicle impound facility if the vehicle purchased has been impounded by such facility or agency.
- (d) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase or receive any regulated scrap metal from a minor unless such minor is accompanied by a parent or guardian or such minor is a licensed scrap metal dealer.
- (e) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to purchase any of the following items of regulated scrap metal property without obtaining proof that the seller is an employee, agent or person who is authorized to sell the item of regulated scrap metal property on behalf of the governmental entity, utility provider, railroad, cemetery, civic organization or scrap metal dealer:
- (1) Utility access cover;
  - (2) Street light poles or fixtures;
  - (3) Road or bridge guard rails;
  - (4) Highway or street sign;
  - (5) Water meter cover;
  - (6) Traffic directional or traffic control signals;
  - (7) Traffic light signals;
  - (8) Any metal marked with any form of the name or initials of a government entity;
  - (9) Property owned and marked by a telephone, cable, electric, water or other utility provider or any such wire or cable

that has had the sheathing removed, making ownership identification impossible;

- (10) Property owned and marked by a railroad;
  - (11) Funeral markers or vases;
  - (12) Historical markers;
  - (13) Bales of regulated metal;
  - (14) Beer kegs;
  - (15) Manhole covers;
  - (16) Fire hydrants or fire hydrant caps;
  - (17) Junk vehicles with missing or altered vehicle identification numbers;
  - (18) Real estate signs;
  - (19) Bleachers or risers, in whole or in part; and
  - (20) Twisted pair copper telecommunications wiring of 25 pair or greater existing in 19, 22, 24, or 26 gauge.
- (f) It shall be unlawful for any scrap metal dealer, or employee or agent of the dealer, to sell, trade, melt or crush, or in any way dispose of, alter or destroy any regulated scrap metal, junk vehicle or vehicle part upon notice from any law enforcement agency, or any of their agents or employees, that they have cause to believe an item has been stolen. A scrap metal dealer shall hold any of the items that are designated by or on behalf of the law enforcement agency for 30 days, exclusive of weekends and holidays. (K.S.A. Supp. 50-6,111: 50-6,112)

Any person intentionally violating the provisions of this section shall be guilty of a class C violation for which the minimum fine is \$200. Any person convicted of violating the provisions of this section for the second time within a two-year period shall be guilty of a class B violation for which the minimum fine is \$500. Any person convicted of violating the provisions of this section for the third and subsequent time within a two-year period shall be guilty of a class A violation for which the minimum fine is \$1,000.

## **ARTICLE 7. OFFENSES AFFECTING GOVERNMENTAL FUNCTIONS**

- 7.1        **COMPOUNDING AN OFFENSE.** Compounding an offense is accepting or agreeing to accept anything of value as consideration for a promise: (1) Not to initiate or aid in the prosecution of a person who has committed an offense; or (2) to intentionally conceal or destroy evidence of a crime. (K.S.A. Supp. 21-5905)

Compounding an offense is a Class A violation.

- 7.2        **OBSTRUCTING LEGAL PROCESS OR OFFICIAL DUTY.** 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. (K.S.A. Supp. 21-5904)

Obstructing legal process or official duty in a case of a violation, or resulting from any authorized disposition for a violation, or a civil case is a Class A violation.

- 7.3        **ESCAPE FROM CUSTODY.**

- (a) Escape from custody is escaping while held in lawful custody on a charge or conviction of a public offense, or on a charge or adjudication as a juvenile offender, where the act, if committed by an adult, would constitute a public offense.

- (b) As used in this section:

- (1)        **Custody** means arrest; detention in a facility for holding persons charged with or convicted of offenses or charged or adjudicated as a juvenile offender, where the act, if committed by an adult, would constitute an offense; detention in a facility for holding persons adjudicated as juvenile offenders; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services

program; or any other detention for law enforcement purposes. Custody does not include general supervision of a person on probation or parole or constraint incidental to release on bail.

- (2) **Escape** means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law or order of a court. (K.S.A. Supp. 21-5911)

Escape from custody is a Class A violation.

#### 7.4 **INTERFERENCE; ADMINISTRATION OF JUSTICE.**

- (a) Interference with the administration of justice is communicating in any manner a threat of violence to any judicial officer or any prosecuting attorney or harassing a judicial officer or a prosecuting attorney by repeated vituperative communication, or picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecuting attorney or near such officer's or prosecuting attorney's residence or place of abode, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecuting attorney on any matter then pending before the officer or prosecuting attorney.
- (b) Nothing in this section shall limit or prevent the exercise by any court of this state of its power to punish for contempt.
- (c) As used in this section, **prosecuting attorney** has the meaning ascribed thereto in K.S.A. 22-2202, and amendments thereto. (K.S.A. Supp. 21-5905)

Interference with the administration of justice is a Class A violation.

#### 7.5 **FALSELY REPORTING AN OFFENSE.** Falsely reporting an offense is informing a law enforcement officer that an offense has been committed, knowing that such

information is false and intending that the officer shall act in reliance upon such false information. (K.S.A. Supp. 21-5904)

Falsely reporting an offense is a Class A violation.

7.6 **PERFORMANCE OF UNAUTHORIZED OFFICIAL ACT.** Performance of an unauthorized official act is knowingly and without lawful authority:

- (a) Conducting a marriage ceremony; or
- (b) Certifying an acknowledgment of the execution of any document which by law may be recorded. (K.S.A. Supp. 21-5919 )

Performance of an unauthorized official act is a Class B violation.

7.7 **SIMULATING LEGAL PROCESS.** Simulating legal process is:

- (a) Sending or delivering to another any document which simulates or purports to be, or is designed to cause others to believe it to be, a summons, petition, complaint, or other judicial process, with intent thereby to induce payment of a claim; or
- (b) Printing, distributing or offering for sale any such document, knowing or intending that it shall be so used.

This section does not apply to the printing, distribution or sale of blank forms of legal documents intended for actual use in judicial proceedings. (K.S.A. Supp. 21-5907)

Simulating legal process is a Class A violation.

7.8 **TAMPERING WITH PUBLIC RECORD.** Tampering with a public record is knowingly and without lawful authority altering, destroying, defacing, removing or concealing any public record. (K.S.A. Supp. 21-5920)

Tampering with a public record is a Class A violation.

7.9           **TAMPERING WITH PUBLIC NOTICE.** Tampering with public notice is knowingly and without lawful authority altering, defacing, destroying, removing or concealing any public notice posted according to law, during the time the notice is required or authorized to remain posted. (K.S.A. Supp. 21-5921)

Tampering with a public notice is a Class C violation.

7.10           **FALSE SIGNING OF PETITION.** False signing of a petition is the affixing of any fictitious or unauthorized signature to any petition, memorial or remonstrance, intended to be presented to the legislature, or either house thereof, or to any agency or officer of the State of Kansas or any of its political subdivisions. (K.S.A. Supp. 21-5916)

False signing of an official petition is a Class C violation.

7.11           **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. (K.S.A. Supp. 21-5917)

False impersonation is a Class B violation.

7.12           **INTERFERENCE; CONDUCT, PUBLIC BUSINESS IN PUBLIC BUILDING.** Interference with the conduct of public business in public buildings is:

- (a) Conduct at or in any public building owned, operated or controlled by the state or any of its political subdivisions so as to willfully deny to any public official, public employee, or any invitee on such premises, the lawful rights of such official, employee, or invitee to enter, to use the facilities or to leave any such public building;
- (b) Intentionally impeding any public official or employee in the lawful performance of duties or activities through the use of restraint, abduction, coercion, or intimidation or by force and violence or threat thereof;

- (c) Intentionally refusing or failing to leave any such public building upon being requested to do so by the chief administrative officer, or such officer's designee, charged with maintaining order in such public building, if such person is committing, threatens to commit, or incites others to commit, any act which did or would if completed, disrupt, impair, interfere with, or obstruct the lawful missions, processes, procedures or functions being carried on in such public building;
- (d) Intentionally impeding, disrupting or hindering the normal proceedings of any meeting or session conducted by any judicial or legislative body or official at any public building by any act of intrusion into the chamber or other areas designated for the use of the body or official conducting such meeting or session, or by any act designed to intimidate, coerce or hinder any member of such body or any official engaged in the performance of duties at such meeting or session; or
- (e) Intentionally impeding, disrupting or hindering, by any act of intrusion into the chamber or other areas designed for the use of any executive body or official, the normal proceedings of such body or official. (K.S.A. Supp. 21-5922)

Interference with the conduct of public business in public buildings is a Class A violation.

## 7.13

### **INTERFERENCE WITH POLICE DOGS.**

- (a) It shall be unlawful for any person to strike, abuse, tease, harass, or assault any dog being used by the city for the purpose of performing the duties of a police dog regardless of whether the dog is on duty or off.
- (b) It shall be unlawful for any person to interfere with a dog being used by the police department or attempt to interfere with the handler of the dog in such a manner as to inhibit, restrict or deprive the handler of his or her control of the dog.

Violation of this section is a Class C violation.

**ELECTIONEERING.**

- (a) Electioneering is knowingly attempting to persuade or influence eligible voters to vote for or against a particular candidate, party or question submitted. Electioneering includes wearing, exhibiting or distributing labels, signs, posters, stickers or other materials that clearly identify a candidate in the election or clearly indicates support or opposition to a question submitted election within any polling place on election day or advance voting site during the time period allowed by law for casting a ballot by advance voting or within a radius of 250 feet from the entrance thereof. Electioneering shall not include bumper stickers affixed to a motor vehicle that issued to transport voters to a polling place or to an advance voting site for the purpose of voting.
- (b) As used in this section, **advance voting site** means the central county election office or satellite advance voting sites designated as such pursuant to subsection (c) of K.S.A. 25-1122, and amendments thereto. (K.S.A. Supp. 25-2430)

Electioneering is a Class C violation.

**ARTICLE 8. DENIAL OF CIVIL RIGHTS**

**DENIAL OF CIVIL RIGHTS.** Denial of civil rights is denying to another, on account of the race, color, ancestry, national origin, age, sex, physical handicap or religion of such other:

- (a) The full and equal use and enjoyment of the services, facilities, privileges and advantages of any institution, department or agency of the State of Kansas or any political subdivision or municipality thereof;
- (b) The full and equal use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations of any establishment which provides lodging to transient guests for hire; of any establishment which is engaged

in selling food or beverage to the public for consumption upon the premises; or of any place of recreation, amusement, exhibition or entertainment which is open to members of the public;

- (c) The full and equal use and enjoyment of the services, privileges and advantages of any facility for the public transportation of persons or goods;
- (d) The full and equal use and enjoyment of the services, facilities, privileges, and advantages of any establishment which offers personal or professional services to members of the public; or
- (e) The full and equal exercise of the right to vote in any election held pursuant to the laws of Kansas. (K.S.A. Supp. 21-6102)

Denial of civil rights is a Class A violation.

## **ARTICLE 9. OFFENSES AGAINST PUBLIC PEACE**

9.1 **DISORDERLY CONDUCT.** Disorderly conduct is, with knowledge or probable cause to believe that such acts will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (a) Engaging in brawling or fighting; or
- (b) Disturbing an assembly, meeting or procession, not unlawful in its character; or
- (c) Using offensive, obscene or abusive language or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others. (K.S.A. Supp. 21-6203)

Disorderly conduct is a Class C violation.

9.2 **UNLAWFUL ASSEMBLY; REMAINING AT AN UNLAWFUL ASSEMBLY.**

- (a) Unlawful assembly is:

- (1) The meeting or coming together of not less than five persons for the purpose of engaging in conduct constituting;
  - (A) Disorderly conduct, as defined by Section 9.1 of this article; or
  - (B) A riot, as defined by Section 9.4 of this article; or
- (2) When in a lawful assembly of not less than five persons, agreeing to engage in conduct constituting disorderly conduct or riot.

- (b) Remaining at an unlawful assembly is willfully failing to depart from the place of an unlawful assembly after being directed to leave by a law enforcement officer. (K.S.A. Supp. 21-6202)

Unlawful assembly is a Class B violation.

Remaining at an unlawful assembly is a Class A violation.

9.3           **RESERVED FOR FUTURE USE.**

9.4           **RIOT.** Riot is any use of force or violence which produces a breach of the public peace, or any threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution, by five or more persons acting together and without authority of law. (K.S.A. Supp. 21-6201)

Riot is a Class A violation.

9.5           **MAINTAINING OR PERMITTING A PUBLIC NUISANCE.**

- (a) Maintaining a public nuisance is knowingly causing or permitting a condition to exist which injures or endangers the public health, safety or welfare.
- (b) Permitting a public nuisance is knowingly permitting property under the control of the offender to be used to maintain a public nuisance, as defined in Subsection (a). (K.S.A. Supp. 21-6204)

Maintaining or Permitting a public nuisance is a Class C violation.

9.6 **RESERVED FOR FUTURE USE.**

9.7 **GIVING A FALSE ALARM.** Giving a false alarm is:

- (a) Transmitting in any manner to the fire department of any city, township or other municipality, a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or
- (b) Making a call in any manner for emergency service assistance including police, fire, medical or other emergency service provided under K.S.A. 12-5301 *et seq.*, and amendments thereto, knowing at the time of such call that there is no reasonable ground for believing such assistance is needed. (K.S.A. 21-6207)

Giving a false alarm is a Class A violation.

9.8 **CRIMINAL DESECRATION.**

- (a) Criminal desecration is:
  - (1) Obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being;
  - (2) By means other than by fire or explosive:
    - (A) Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;
    - (B) Damaging, defacing or destroying any public monument or structure;
    - (C) Damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or
    - (D) Damaging, defacing or destroying any place of worship. (K.S.A. 21-6205)

- (b) Criminal desecration as described in subsections (a)(2)(B), (a)(2)(C) and (a)(2)(D) is a Class A violation if the property is damaged to the extent of less than \$1,000.
- (c) Criminal desecration as described in subsections (a)(1) and (a)(2)(A) is a Class A violation.

9.9

**ABUSING TOXIC VAPORS.**

- (a) Abusing toxic vapors is knowingly possessing, buying, using, smelling, or inhaling the fumes of toxic vapors with the intent of causing a condition of euphoria, excitement, exhilaration, stupefaction, or dulled senses of the nervous system.
- (b) This section shall not apply to the inhalation of anesthesia or other substances for medical or dental purposes.
- (c) In a prosecution for a violation of this section, evidence that a container lists one or more of the substances which are defined as a toxic vapor as one of its ingredients shall be *prima facie* evidence that the substance in such container contains toxic vapors and emits the fumes thereto. (K.S.A. 65-4165)

Abusing toxic vapors is a Class B violation. In addition to any sentence or fine imposed, 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.

9.10

**HARASSMENT BY TELECOMMUNICATIONS DEVICE.**

- (a) Harassment by telecommunication device is the use of:
  - (1) A telecommunications device to:
    - (A) Knowingly make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious, or indecent;

(B) Make or transmit a call, whether or not conversation ensues, with intent to abuse, threaten or harass an person at the receiving end;

(C) Make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;

(D) Make or cause a telecommunication device to repeatedly ring or activate with intent to harass any person at the receiving end;

(E) Knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall be identified and state that it is a recording; or

(F) Knowingly permit any telecommunications device under one's control to be used in violation of this paragraph.

(2) Telefacsimile communication to send or transmit such communication to a court in the State of Kansas for a use other than court business, with no requirement of culpable mental state.

(b) As used in this section, **telecommunications device** includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto. (K.S.A. Supp. 21-6206)

Harassment by a telecommunication device is a Class A violation.

## 9.11 **FUNERAL PICKETING.**

(a) It is unlawful for any person:

(1) Engage in a public demonstration at any public location within 150 feet of any entrance to any cemetery,

church, mortuary, or other location where a funeral is held or conducted, within one hour prior to the scheduled commencement of a funeral, during a funeral, or within two hours following the completion of a funeral;

- (2) Knowingly obstruct, hinder, impede, or block another person's entry to or exit from a funeral; or
- (3) Knowingly impede vehicles which are part of a funeral procession.

(b) As used in this section:

- (1) **Funeral** means the ceremonies, processions, and memorial services held in connection with the burial or cremation of a person.
- (2) **Public demonstration** means:
  - (A) Any picketing or similar conduct, or
  - (B) Any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral. (K.S.A. Supp. 21-6106)

Violation of this section is a Class B violation. Each day on which a violation occurs shall constitute a separate offense.

9.12 **RESERVED FOR FUTURE USE.**

9.13 **UNLAWFUL POSTING OF POLITICAL PICTURES AND POLITICAL ADVERTISEMENTS.** Unlawful posting of political pictures and political advertisements is the putting up, affixing or fastening of either or both a political picture or a political advertisement to a telegraph, telephone, electric light or power pole. (K.S.A. Supp. 21-5820)

Unlawful posting of political pictures and political advertisements is a Class C violation.

## **ARTICLE 10. OFFENSES AGAINST PUBLIC SAFETY**

10.1 **CRIMINAL USE OF WEAPONS.**

(a) Criminal use of weapons is knowingly:

- (1) 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. This subsection shall not prohibit any ordinary pocket knife, which has a spring, detent or other device which creates a bias towards closure of the blade and which requires hand pressure applied to such spring, detent or device through the blade of the knife to overcome the bias towards closure to assist in the opening of the knife;
  - (2) 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;
  - (3) Carrying on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;
  - (4) Carrying any pistol, revolver or other firearm concealed on one's person except when on the person's land or in the person's abode or fixed place of business;
  - (5) Transporting any firearm in an occupied motor vehicle, unless such firearm is unloaded and encased in a container which completely encloses the firearm;
- or

- (6) Setting a spring gun.
- (b) Subsections (a)(1), (2), (3), (4), and (5) shall not apply to nor affect any of the following:
- (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
  - (2) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
  - (3) Members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or
  - (4) Manufacture of, transportation to, or sale of weapons to a person authorized under subsections (b)(1) through (b)(3) of this section to possess such weapons.
- (c) Subsections (a)(4) and (a)(5) shall not apply to nor affect the following:
- (1) Watchmen, while actually engaged in the performance of the duties of their employment;
  - (2) Licensed hunters or fishermen, while engaged in hunting or fishing;
  - (3) Private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;
  - (4) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;
  - (5) The state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. Supp. 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;
- (6) Special deputy sheriffs in counties over 100,000 population who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer; or
  - (7) The United States attorney for the District of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the District of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed. The provisions of this paragraph shall not apply to any person not in compliance with K.S.A. 75-7c01:7c17.
- (d) Subsection (a)(1) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 *et seq.* in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.
- (e) Subsections (a)(4) and (a)(5) shall not apply to any person carrying a concealed handgun as authorized by K.S.A. Supp. 75-7c01 *et seq.* and amendments thereto. It shall not be violation of this section if a person violates the provisions of K.S.A. Supp. 75-7c03, and amendments thereto, but has an otherwise valid license to carry a concealed handgun which is issued or recognized by this state.

- (f) It shall be a defense that the defendant is within an exemption. (K.S.A. 12-16,124; K.S.A. Supp. 21-6301; K.S.A. Supp. 21-6302)

Violation of this section is a Class A violation.

10.2           **DRAWING A WEAPON UPON ANOTHER.**

- (a) Drawing a weapon upon another person is the drawing of a pistol, revolver, knife or other deadly weapon upon another person by a person not an officer of the law in execution of his or her duty.
- (b) It shall be a defense that the defendant was acting within the scope of K.S.A. Supp. 21-5222; K.S.A. Supp. 21-5223; K.S.A. Supp. 21-5225; K.S.A. Supp. 21-5227; K.S.A. Supp. 21-5228.

Drawing a weapon upon another person is a Class A violation.

10.3           **CRIMINAL DISPOSAL OF FIREARMS.** 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 firearms to any person who is both addicted to and an unlawful user of a controlled substance;
- (c) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (f), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was found not to have been in possession of a firearm at the time of the commission of the offense;
- (d) Selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, that was not found to have been in the possession of a firearm at the

time of the commission of the offense, 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; or

- (e) Selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the offense.
  
- (f) Subsection (d) shall apply to a felony under K.S.A. Supp. 21-5402, K.S.A. Supp. 21-5403, K.S.A. Supp. 21-5404, K.S.A. Supp. 21-5405, K.S.A. Supp. 21-5408, K.S.A. Supp. 21-5412, K.S.A. Supp. 21-5413, K.S.A. Supp. 21-5415, K.S.A. Supp. 21-5420, K.S.A. Supp. 21-5503, K.S.A. Supp. 21-5504, K.S.A. Supp. 21-5505, K.S.A. Supp. 21-5705, K.S.A. Supp. 21-5706, K.S.A. Supp. 21-5807, or K.S.A. 65-4127a, 65-4127b, or 65-4160 through 65-4165, prior to such sections repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony. (K.S.A. Supp. 21-6301, K.S.A. Supp. 21-6303)

Criminal disposal of firearms is a Class A violation.

### 10.3.1

### **CRIMINAL POSSESSION OF A FIREARM.**

- (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 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

- (3) 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.
- (b) Subsection (a)(2) shall not apply to:
- (1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;
  - (2) Any possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;
  - (3) Possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student;
  - (4) Possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or
  - (5) Possession of a handgun by an individual who is licensed by the attorney general to carry a concealed handgun under K.S.A. Supp. 75-7c01 *et seq.*, and amendments thereto. (K.S.A. Supp. 21-6301, K.S.A. Supp. 21-6304)

Violation of subsection (a)(1) or (a)(2) is a Class B violation. Violation of subsection (a)(3) is a Class A violation.

#### 10.4

#### **CONFISCATION, DISPOSITION OF WEAPONS.**

- (a) Upon conviction of a violation of Sections 10.1 or 10.2 of this article, any weapon seized in connection therewith shall remain in the custody of the trial court.

- (b) Any stolen weapon so seized and detained, when no longer needed for evidentiary purposes, shall be returned to the person entitled to possession, if known. All other confiscated weapons when no longer needed for evidentiary purposes, shall in the discretion of the trial court be:
  - (1) Destroyed;
  - (2) Forfeited to the law enforcement agency seizing the weapon for use within such agency, for sale to a properly licensed federal firearms dealer, for trading to a properly licensed federal firearms dealer for other new or used firearms or accessories for use within such agency or for trading to another law enforcement agency for that agency's use; or
  - (3) Forfeited to the Kansas bureau of investigation for law enforcement, testing, comparison, or destruction by the Kansas bureau of investigation forensic laboratory.
- (c) If weapons are sold as authorized by subsection (b), the proceeds of the sale shall be credited to the asset seizure and forfeiture fund of the seizing agency. (K.S.A. Supp. 21-6307)

## 10.5

### **UNLAWFUL DISCHARGE OF FIREARMS.**

Unlawful discharge of firearms is the discharging or firing of any gun, rifle, pistol, revolver or other firearm within the city. This section shall not be construed to apply:

- (a) To the discharge of firearms by any duly authorized law enforcement officer when necessary in the discharge of his or her official duties;
- (b) To the discharge of firearms in any licensed shooting gallery;
- (c) To firing squads for ceremonials; nor
- (d) To a legitimate gunsmith in pursuit of his or her trade.

It shall be a defense that the defendant was acting within the scope of K.S.A. Supp. 21-5222, K.S.A. Supp.

21-5223, K.S.A. Supp. 21-5225, K.S.A. Supp. 21-5227, K.S.A. Supp. 21-5228.

Unlawful discharge of firearms is a Class B violation.

- 10.6        **AIR GUN, AIR RIFLE, BOW AND ARROW, SLINGSHOT, BB GUN OR PAINT BALL GUN.** The unlawful operation of an air gun, air rifle, bow and arrow, slingshot, BB gun or paint ball gun is the shooting, discharging or operating of any air gun, air rifle, bow and arrow, slingshot, BB gun or paint ball gun, within the city, except within the confines of a building or other structure from which the projectiles cannot escape.

Unlawful operation of an air gun, air rifle, bow and arrow, slingshot, BB gun or paint ball gun is a Class C violation.

- 10.7        **SEIZURE OF WEAPON.** The chief of police of the city or his or her duly authorized representative is hereby empowered to seize and hold any air gun, air rifle, bow and arrow, slingshot or BB gun used in violation of section 10.6 of this article, and is further empowered to seize and hold as evidence pending a hearing before a court of competent jurisdiction any air gun, air rifle, bow and arrow, slingshot or BB gun used in violation of Section 10.6.

- 10.8        **UNLAWFUL AIDING, ABETTING.** It shall be unlawful for any person to conspire to or aid and abet in the operation or discharging or causing to be operated or discharged any air gun, air rifle, bow and arrow, BB gun or slingshot except as provided in Section 10.6 within the city, whether individually or in connection with one or more persons or as principal, agent or accessory, and it is further unlawful for every parent or guardian of a minor child who willfully or knowingly permits or directs the operation or discharge of any air gun, air rifle, bow and arrow, BB gun or slingshot by such minor child within the city except as provided in Section 10.6 of this article.

Violation of this section is a Class C violation.

- 10.9        **CARRYING CONCEALED EXPLOSIVES.** Carrying concealed explosives is carrying any explosive or detonating substance on the person in a wholly or partly concealed manner. (K.S.A. Supp. 21-6312)

Carrying concealed explosives is a Class C violation.

10.10 **RESERVED FOR FUTURE USE.**

10.11 **CREATING A HAZARD.** Creating a hazard is:

- (a) Storing or abandoning, in any place accessible to children, a container which has a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside, and failing to remove the door, lock, lid or fastening device on such container;
- (b) Being the owner or otherwise having possession of property upon which a cistern, well or cesspool is located and knowingly failing to cover the same with protective covering of sufficient strength and quality to exclude human beings and domestic animals therefrom; or
- (c) Exposing, abandoning or otherwise leaving any explosive or dangerous substance in a place accessible to children. (K.S.A. Supp. 21-6318)

Creating a hazard is a Class B violation.

10.12 **UNLAWFUL FAILURE TO REPORT A WOUND.**

Unlawful failure to report a wound is the failure by an attending physician or other person to report to the chief of police his or her treatment of:

- (a) Any bullet wound, gunshot wound, powder burn or other injury arising from or caused by the discharge of a firearm; or
- (b) Any wound which is likely to or may result in death and is apparently inflicted by a knife, ice pick or other sharp or pointed instrument. (K.S.A. Supp. 21-6319)

Unlawful failure to report a wound is a Class C violation.

10.13        **BARBED WIRE.** It shall be unlawful for any person to construct, set up or maintain any barbed wire or barbed wire fence or enclosure within the city.

Violation of this section is a Class C violation.

10.14        **OPERATION OF A MOTORBOAT OR SAILBOAT.**

- (a) (1) No person born on or after January 1, 1989, shall operate on public waters of this city any motorboat or sailboat unless the person possesses a certificate of completion of an approved boater safety education course of instruction lawfully issued to such person as provided by K.S.A. 32-1101 *et seq.*
- (2) No owner or person in possession of any motorboat or sailboat shall permit another person, who is subject to the requirements in subsection (a)(1), to operate such motorboat or sailboat unless such other person either:
  - (A) Has been lawfully issued a certificate of completion of an approved boater safety education course of instruction as provided by K.S.A. 32-1101 *et seq.*; or
  - (B) Is legally exempt from the requirements of subsection (a)(1).
- (b) The requirement in subsection (a)(1) shall not apply to a person operating a motorboat or sailboat accompanied by and under the direct and audible supervision of a person over 17 years of age who either:
  - (1) Possesses a certificate of completion of an approved boater safety education course; or
  - (2) Is legally exempt from the requirements of subsection (a)(1).
- (c) No person who is charged with a violation of subsection (a)(1) shall be convicted of the violation if such person produces in court or in the office of the arresting officer a certificate of completion of an approved boater safety education course of instruction lawfully issued

to such person and valid at the time of such person's arrest. (K.S.A. 32-1139)

10.15      **OPERATING A VESSEL UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PENALTIES.**

- (a) No person shall operate or attempt to operate any vessel within this city while:
  - (1) The alcohol concentration in the person's blood or breath, at the time or within two hours after the person operated or attempted to operate the vessel is .08 or more;
  - (2) The alcohol concentration in the person's blood or breath, at the time or within two hours after the person operated or attempted to operate the vessel is .02 or more and the person is less than 21 years of age;
  - (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 operating a vessel; 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 operating a vessel.
  
- (b) No person shall operate or attempt to operate any vessel within this city 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) No person shall operate or attempt to operate any vessel within this state for three months after the date of refusal of submitting to a test if such person refuses to submit to a test pursuant to K.S.A. 32-1132, and amendments thereto.

- (e) Except as provided by subsection (f), violation of this section is a violation punishable:
  - (1) On the first conviction, by imprisonment of not more than one year or a fine of not less than \$100 nor more than \$500, or both; and
  - (2) On the second or a subsequent conviction, by imprisonment for not less than 90 days nor more than one year and, in the court's discretion, a fine of not less than \$100 nor more than \$500.
- (f) Subsection (e) shall not apply to or affect a person less than 21 years of age who submits to a breath or blood alcohol test requested pursuant to K.S.A. 32-1132 and amendments thereto and produces a test result of an alcohol concentration of .02 or greater but less than .08. Such person's boating privileges upon the first occurrence shall be suspended for 30 days and upon a second or subsequent occurrence shall be suspended for 90 days.
- (g) In addition to any other penalties prescribed by law or rule and regulation, any person convicted of a violation of this section shall be required to satisfactorily complete a boater safety education course of instruction before such person subsequently operates or attempts to operate any vessel. (K.S.A. Supp. 32-1131)

## 10.16

### **THROWING OBJECTS.**

- (a) Any person who intentionally throws, pushes, pitches or otherwise casts any rock, stone or other object, matter or thing onto a street, road, highway, railroad right-of-way, or upon any vehicle, engine or car, or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock thereon, is guilty of a Class B violation.
- (b) Any person violating subsection (a) who damages any vehicle, engine or car or any train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock lawfully on the street, road, highway or railroad right-of-way by the thrown or cast rock, stone or other object

is guilty of a Class A violation. (K.S.A. Supp. 21-5819)

10.17 **TATTOOING OR BODY PIERCING; PERSONS UNDER AGE 18.** No person shall perform body piercing or tattooing on or to any person under 18 years of age without the prior written and notarized consent of the parent or court appointed guardian of such person and the person giving such consent must be present during the body piercing or tattooing procedure. The written permission and a copy of the letters of guardianship when such permission is given is granted by a guardian, shall be retained by the person administering such body piercing or tattooing for a period of five years. (K.S.A. 65-1953)

Violation of this section is a Class A violation.

10.18 **FAILURE TO PLACE OR MAINTAIN A SMOKE DETECTOR.**

- (a) Every single-family residence shall have at least one smoke detector on every story of the dwelling unit.
- (b) Every structure which:
  - (1) Contains more than one dwelling unit; or
  - (2) Contains at least one dwelling unit and is a mixed-use structure, shall contain at least one smoke detector at the uppermost ceiling of each interior stairwell and on every story in each dwelling unit.
- (c) The owner of a structure shall supply and install all required smoke detectors. The owner of a structure shall test and maintain all smoke detectors except inside rental units, the occupant shall test and maintain all smoke detectors after taking possession of the dwelling unit.
- (d) The smoke detectors required in dwelling units in existence on January 1, 1999, may either be battery-powered or wired into the structure's electrical system, and need not be interconnected. The smoke detectors required

in dwelling units constructed after January 1, 1999, shall be wired permanently into the structure's electrical system.

- (e) For purposes of this section, manufactured homes as defined in K.S.A. 58-4202, and amendments thereto, shall be subject to the federal, manufactured home construction and safety standards established pursuant to 42 U.S.C. § 5403 in lieu of the standards set forth herein. Owners and occupants of such manufactured homes shall be subject to the testing and maintenance standards for smoke detectors required under this section.
- (f) Officials responsible for the enforcement of this section shall not enter a dwelling unit solely for the purpose of determining compliance with the provisions of this section except when:
  - (1) Conducting an inspection prior to the issuance of an occupancy permit or building permit;
  - (2) Responding to a report of a fire in a dwelling unit, except in cases of a false alarm; or
  - (3) Conducting, at the request of the owner or occupant, a home safety inspection. (K.S.A. Supp. 31-162:163)

Failure to place or maintain a smoke detector shall be an unclassified violation. Any fine imposed for a violation of this section shall not exceed \$25.

10.19      **SALE OF MEDICINES AND DRUGS THROUGH VENDING MACHINES.**

- (a) Any person, firm or corporation who offers for sale, sells or distributes any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison through or by means of any vending machine or other mechanical device, or who uses any vending machine in or for the sale or distribution of any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic

injection or poison, shall be guilty of illegal sale of medicines and drugs through a vending machine.

- (b) No nonprescription drugs shall be offered for sale or sold through a vending machine in anything other than the manufacturer's original tamper-evident and expiration-dated packet. No more than 12 different nonprescription drug products shall be offered for sale or sold through any one vending machine. Any vending machine in which nonprescription drugs are offered for sale or sold shall be located so that the drugs stored in such vending machine are stored in accordance with drug manufacturer's requirements. Drugs offered for sale or sold in such vending machine shall not be older than the manufacturer's expiration date. Each vending machine through which nonprescription drugs are offered for sale or sold shall have an obvious and legible statement on the machine that identifies the owner of the machine, a toll-free telephone number at which the consumer may contact the owner of the machine, a statement advising the consumer to check the expiration date of the product before using the product and the telephone number of the state board of pharmacy. As used in this subsection, **nonprescription drug** does not include any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison. (K.S.A. Supp. 65-650)

Any violation of this section constitutes an illegal sale of medicines and drugs through a vending machine and is a Class C violation and upon conviction, the violator shall be fined not less than \$25 nor more than \$500.

## 10.20 **OBTAINING A PRESCRIPTION-ONLY DRUG BY FRAUDULENT MEANS.**

- (a) Obtaining a prescription-only drug by fraudulent means is the:
- (1) Making, altering or signing of a prescription order by a person other than a practitioner or mid-level practitioner;

- (2) Delivery of a prescription order, knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;
- (3) Possession of a prescription order with intent to deliver it and knowing it to have been made, altered or signed by a person other than a practitioner or a mid-level practitioner;
- (4) Possession of a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered or signed by a person other than a practitioner or a mid-level practitioner;
- or
- (5) Providing false information to a practitioner or mid-level practitioner for the purpose of obtaining a prescription-only drug.

(b) As used in this section:

- (1) **Pharmacist, practitioner, mid-level practitioner and prescription-only drug** shall have the meanings ascribed thereto by K.S.A. 65-1626 and amendments thereto.
- (2) **Prescription order** means a written, oral or telephone order for a prescription-only drug to be filled by a pharmacist. Prescription order does not mean a drug dispensed pursuant to such an order.

(c) The provisions of this section shall not be applicable to prosecutions involving prescription-only drugs which could be brought under the uniform controlled substances act and to which the provisions of K.S.A. 65-4127a or 65-4127b, or K.S.A. Supp. 65-4160 through 65-4164 and amendments thereto, would be applicable. (K.S.A. Supp. 21-5708)

Obtaining a prescription-only drug by fraudulent means is a Class A violation for the first offense.

## 10.22 ALCOHOL WITHOUT LIQUID MACHINE.

It shall be unlawful for any person to:

- (a) Use any alcohol without liquid machine to inhale alcohol vapor or otherwise introduce alcohol in any form into the human body; or
- (b) Purchase, sell, or offer for sale an alcohol without liquid machine. (K.S.A. Supp. 21-6321)

Violation of this section is a Class A violation.

## 10.23 TRAFFICKING IN COUNTERFEIT DRUGS.

Trafficking in counterfeit drugs is intentionally manufacturing, distributing, dispensing, selling, or delivering for consumption purposes, or holding or offering for sale, any counterfeit drug.

Trafficking in counterfeit drugs which have a retail value of less than \$500 is a Class A violation. (K.S.A. Supp. 65-4167)

## ~~10.24 SMOKING PROHIBITED.~~

- ~~(a) No person shall smoke in an enclosed area or at a public meeting including, but not limited to:
  - ~~(1) Public places;~~
  - ~~(2) taxicabs and limousines;~~
  - ~~(3) restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple residential facilities;~~
  - ~~(4) restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests;~~
  - ~~(5) access points of all buildings and facilities not exempted pursuant to subsection (d); and~~
  - ~~(6) any place of employment.~~~~
- ~~(b) Each employer having a place of employment that is an enclosed area shall provide a~~

~~smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy upon request to any current or prospective employee.~~

- ~~(c) Notwithstanding any other provision of this section, 10.25 or 10.26, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.~~
- ~~(d) The provisions of this section shall not apply to:
  - ~~(1) The outdoor areas of any building or facility beyond the access points of such building or facility;~~
  - ~~(2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto;~~
  - ~~(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;~~
  - ~~(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;~~
  - ~~(5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;~~~~

- ~~(6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;~~
- ~~(7) tobacco shops;~~
- ~~(8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and~~
- ~~(9) a private club in designated areas where minors are prohibited. (K.S.A. Supp. 21-6110)~~

~~**10.25 SMOKING; POSTING PREMISES.** The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall post or cause to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking is prohibited by state law. (K.S.A. Supp. 21-6111)~~

~~**10.26 SMOKING PROHIBITED; PENALTIES**~~

- ~~(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of sections 10.24 through 10.26.~~
- ~~(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person:~~

- ~~(1) Has knowledge that smoking is occurring; and~~
  - ~~(2) Acquiesces to the smoking under the totality of the circumstances.~~
- ~~(c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of 10.24.~~
- ~~(d) Any person who violates any provision of sections 10.24 through 10.26, shall be guilty of a cigarette or tobacco infraction punishable by a fine:~~
- ~~(1) Not exceeding \$100 for the first violation;~~
  - ~~(2) not exceeding \$200 for a second violation within a one year period after the first violation; or~~
  - ~~(3) Not exceeding \$500 for a third or subsequent violation within a one year period after the first violation.~~
- ~~For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.~~
- ~~(e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d).~~
- ~~(f) No employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer reports or attempts to prosecute a violation of any of the provisions of sections 10.24 through 10.26. (K.S.A. Supp. 21 6112)~~

## ARTICLE 11. OFFENSES AGAINST PUBLIC MORALS

### 11.1 PROMOTING OBSCENITY.

- (a) Promoting obscenity is knowingly or recklessly:
  - (1) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device;
  - (2) Possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or device;
  - (3) Offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material or obscene device; or
  - (4) Producing, presenting, or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.
  
- (b) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:
  - (1) The materials or devices were promoted to emphasize their prurient appeal; or
  - (2) The person is not a wholesaler and promotes the materials or devices in the course of the person's business.
  
- (c) (1) Any material or performance is **obscene** if:
  - (A) The average person applying contemporary community standards

- would find that the material or performance, taken as a whole, appeals to the prurient interest;
- (B) The average person applying contemporary community standards would find that the material or performance has patently offensive representations or descriptions of (i) ultimate sexual acts, normal, or perverted, actual or simulated, including sexual intercourse or sodomy, or (ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and
- (C) Taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political, or scientific value.
- (2) **Material.** Any tangible thing which is capable of being used or adopted to arouse interest, whether throughout the medium of reading, observation, sound or other manner.
- (3) **Obscene Device.** A device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.
- (4) **Performance.** Any play, motion, picture, dance or other exhibition performed before an audience.
- (5) **Sexual Intercourse** and **Sodomy** have the meaning provided by K.S.A. Supp. 21-5501 and amendments thereto.
- (6) **Wholesaler.** A person who sells, distributes or offers for sale or distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish, or produce such materials or devices.
- (d) It is a defense to a prosecution for obscenity that:

- (1) The persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;
  - (2) The defendant is an officer, director, trustee, or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or
  - (3) The allegedly obscene material or obscene device was purchased, leased, or otherwise acquired by a public, private, or parochial school, college, or university, and that such material was either sold, leased, distributed, or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
- (e) The provisions of this section prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public. (K.S.A. Supp. 21-6401)

Promoting obscenity is a class A violation on conviction of a first offense.

**PROMOTING OBSCENITY TO MINORS.**

- (a) Promoting obscenity to minors is promoting obscenity where the recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.
- (b) It shall be an affirmative defense to any prosecution under this section that:
  - (1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that such minor was 18 years old or more.
  - (2) The allegedly obscene material was purchased, leased, or otherwise acquired by a public, private, or parochial school, college, or university, and that such material was either sold, leased, distributed, or disseminated by a teacher, instructor, professor, or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
  - (3) The defendant is an officer, director, trustee, or employee of a public library and the allegedly obscene material was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.
  - (4) An exhibition in a state of nudity is for a bona fide scientific or medical purposes, or for an educational or cultural purpose for a bona fide school, museum, or library. (K.S.A. Supp. 21-6401)

Promoting obscenity to minors is a Class A violation on conviction of the first offense.

**COMMERCIALIZATION OF WILDLIFE.**

- (a) Commercialization of wildlife is knowingly committing any of the following, except as permitted by statute or rules and regulations:
- (1) Capturing, killing, or possessing, for profit or commercial purposes, all or any part of any wildlife protected by this section;
  - (2) Selling, bartering, purchasing, or offering to sell, barter or purchase, for profit or commercial purposes, all or any part of any wildlife protected by this section;
  - (3) Shipping, exporting, importing, transporting or carrying; causing to be shipped, exported, imported, transported, or carried; or delivering or receiving for shipping, exporting, importing, transporting, or carrying all or any part of any wildlife protected by this section, for profit or commercial purposes; or
  - (4) Purchasing, for personal use or consumption, all or any part of any wildlife protected by this section.
- (b) The wildlife protected by this section and the minimum value thereof are as follows:
- (1) Eagles, \$1,000;
  - (2) Deer or antelope, \$1,000;
  - (3) Elk or buffalo, \$1,500;
  - (4) Furbearing animals, except bobcats, \$25;
  - (5) Bobcats, \$200;
  - (6) Wild turkey, \$200;
  - (7) Owls, hawks, falcons, kites, harriers, or ospreys, \$500;
  - (8) Game birds, migratory game birds, resident and migratory nongame birds, game animals and nongame animals, \$50 unless a higher amount is specified above;
  - (9) Fish and mussels, the value for which shall be no less than the value listed for the appropriate fish or mussels species in the monetary values of freshwater fish or mussels and fish kill counting

- guidelines of the American fisheries society, special publication number 30;
- (10) Turtles, \$25 each for unprocessed turtle or \$16 per pound or fraction of a pound for processed turtle parts;
  - (11) Bullfrogs, \$4, whether dressed or not dressed;
  - (12) Any wildlife classified as threatened or endangered, \$500 unless a higher amount is specified above; and
  - (13) Any other wildlife not listed above, \$25.

- (c) Possession of wildlife, in whole or in part, captured, or killed in violation of law and having an aggregate value of \$1,000 or more, as specified in subsection (b), is prima facie evidence of possession for profit or commercial purposes.

Commercialization of wildlife having an aggregate value of less than \$1000, as specified in subsection (b), is a class A violation. (K.S.A. Supp. 32-1005)

In addition to any other penalty provided by law, a court convicting a person of the crime of commercialization of wildlife may:

- (1) Confiscate all equipment used in the commission of the crime and may revoke for a period of up to 10 years all licenses and permits issued to the convicted person by the Kansas Department of Wildlife and Parks;
  - (2) Order restitution to be paid to the Kansas Department of Wildlife and Parks for the wildlife taken, which restitution shall be in an amount not less than the aggregate value of the wildlife, as specified in subsection (b).
- (d) The provisions of this section shall apply only to wildlife illegally harvested and possessed by any person having actual knowledge that such wildlife was illegally harvested.

**MATERIAL HARMFUL TO MINORS.**

- (a) No person having custody, control or supervision of any commercial establishment shall knowingly:
  - (1) Display any material or device which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material or device;
  - (2) Sell, furnish, present, distribute or disseminate to a minor, or otherwise allowing a minor to view, with or without consideration, any material or device which is harmful to minors; or
  - (3) Present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.
  
- (b) Violation of subsection (a) is a Class B violation.
  
- (c) Notwithstanding the provisions of K.S.A. Supp. 21-5204 to the contrary, it shall be an affirmative defense to any prosecution under this section that:
  - (1) The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.
  - (2) The defendant is an officer, director, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.
  - (3) An exhibition in a state of nudity is for a bona fide scientific or medical purpose,

or for an educational or cultural purpose for a bona fide school, museum or library.

- (4) With respect to a prosecution for an act described by subsection (a)(1), the allegedly harmful material was kept behind blinder racks.
- (5) With respect to a prosecution for an act described by subsection (a)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.
- (6) With respect to a prosecution for an act described by subsection (a)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.

(d) As used in this section:

- (1) **Blinder rack** means a device in which material is displayed in such a manner that the lower 2/3 of the material is not exposed to view.
- (2) **Harmful to minors** means that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (a) (1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:
  - (A) The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;
  - (B) The average adult person applying contemporary community standards

would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

- (C) A reasonable person would find that the material or performance lacks serious literary, scientific, education, artistic or political value for minors.
- (3) **Material** means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape or video tape.
- (4) **Minor** means any unmarried person under 18 years of age.
- (5) **Nudity** means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement.
- (6) **Performance** means any motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
- (7) **Sadomasochistic abuse** means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
- (8) **Sexual conduct** means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.

(9) **Sexual excitement** means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(e) The provisions of this section shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting, distributing or disseminating such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk. (K.S.A. Supp. 21-6402)

11.8 **GAMBLING.** Definitions of gambling terms used in this section shall be as follows:

- (a) A **bet** is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:
- (1) Bona fide business transactions which are valid under the laws of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
  - (2) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;
  - (3) A lottery as defined in this section;
  - (4) Any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;

- (5) A lottery operated by the state pursuant to the Kansas lottery act;
  - (6) Any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
  - (7) Tribal gaming.
- (b) A **lottery** is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include:
- (1) A lottery operated by the state pursuant to the Kansas lottery act; or
  - (2) Tribal gaming.
- (c) **Consideration** means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

As used in this subsection consideration does not include:

- (1) Sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations;

- (2) Sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas lottery act;
  - (3) Sums of money paid by or for participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
  - (4) Sums of money paid by or for a person to participate in tribal gaming.
- (d) (1) **Gambling device** means:
- (A) Any so-called **slot machine** or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and (i) which when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
  - (B) Any other machine, mechanical device, electronic device or other contrivance (including, but not limited to, roulette wheels and similar devices) which is equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits removed or is otherwise designed, manufactured or altered primarily for use in connection with gambling, and (i) which when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
  - (C) Any subassembly or essential part intended to be used in connection

with any such machine, mechanical device, electronic device or other contrivance, but which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or

- (D) Any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet.

The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(2) **Gambling device** does not include:

- (A) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;
- (B) Any machine, mechanical device, electronic device or other contrivance, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (i) which when operated does not deliver, as a result of chance, any money, or (ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;
- (C) Any so-called claw, crane or digger machine and similar devices which are designed and manufactured

primarily for use at carnivals or county or state fairs; or

(D) Any machine, mechanical device, electronic device or other contrivance used in tribal gaming.

(e) A **gambling place** is any place, room, building, vehicle, tent or location which is used for any of the following:

- (1) Making and settling bets;
- (2) Receiving, holding, recording or forwarding bets or offers to bet;
- (3) Conducting lotteries; or
- (4) Playing gambling devices.

Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(f) **Tribal gaming** has the meaning provided by K.S.A. 74-9802, as amended.

(g) **Gambling** is:

- (1) Making a bet; or
- (2) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device. (K.S.A. Supp. 21-6403; K.S.A. Supp. 21-6404)

Gambling is a Class B violation.

11.9 **PERMITTING PREMISES TO BE USED FOR COMMERCIAL GAMBLING.** Permitting premises to be used for commercial gambling is intentionally:

- (a) Granting the use or allowing the continued use of a place as a gambling place; or
- (b) Permitting another to set up a gambling device for use in a place under the offender's control. (K.S.A. Supp. 21-6406)

Permitting premises to be used for commercial gambling is a Class B violation.

11.10 **POSSESSION OF A GAMBLING DEVICE.**

- (a) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee or otherwise, of any gambling device.
- (b) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.
- (c) It shall be a defense to a prosecution under this section that the gambling device is possessed or under custody or control of a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 *et seq.*) or a transporter under contract with such manufacturer with intent to transfer for use:
  - (1) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;
  - (2) By a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;
  - (3) In a state other than the State of Kansas; or
  - (4) In tribal gaming. (K.S.A. Supp. 21-6408)

Possession of a gambling device is a Class B violation.

~~11.11 **CRUELTY TO ANIMALS.**~~

- ~~(a) Cruelty to animals is:~~

- ~~(1) Intentionally and maliciously killing, injuring, maiming, torturing, burning, or mutilating any animal;~~
  - ~~(2) Intentionally abandoning or leaving any animal in any place without making provisions for its proper care;~~
  - ~~(3) Having physical custody of any animal and failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is need for the health or well-being of such kind of animal;~~
  - ~~(4) Intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment; or~~
  - ~~(5) Intentionally causing any physical injury other than the acts described in subsection (a)(1).~~
- ~~(b) The provisions of this section shall not apply to:~~
- ~~(1) Normal or accepted veterinary practices;~~
  - ~~(2) Bona fide experiments carried on by commonly recognized research facilities;~~
  - ~~(3) Killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of Chapter 32 or Chapter 47 of the Kansas Statutes Annotated;~~
  - ~~(4) Rodeo practices accepted by the rodeo cowboys' association;~~
  - ~~(5) The humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the request of the owner thereof, or by any officer or agent of an incorporated humane society, the operator of an animal~~

- ~~shelter or pound, a local or state health officer or a licensed veterinarian three business days following the receipt of any such animal at such society, shelter or pound;~~
- ~~(6) With respect to farm animals, normal or accepted practices of animal husbandry including the normal and accepted practices for the slaughter of such animals for food or by products and the careful or thrifty management of one's herd or animals, including animal care practices common in the industry or region;~~
  - ~~(7) The killing of any animal by any person at any time which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;~~
  - ~~(8) An animal control officer trained by a licensed veterinarian in the use of a tranquilizer gun, using such gun with the appropriate dosage for the size of the animal, when such animal is vicious or could not be captured after reasonable attempts using other methods;~~
  - ~~(9) Laying an equine down for medical or identification purposes;~~
  - ~~(10) Normal or accepted practices of pest control, as defined in subsection (x) of K.S.A. 2-2438a, and amendments thereto; or~~
  - ~~(11) Accepted practices of animal husbandry pursuant to regulations promulgated by the United States department of agriculture for domestic pet animals under the animal welfare act, public law 89-544, as amended and in effect on July 1, 2006.~~
- ~~(c) As used in this section, (1) **Equine** means a horse, pony, mule, jenny, donkey or hinny; (2) **Maliciously** means a state of mind characterized by actual evil-mindedness or specific intent to do a harmful act without a reasonable justification or excuse. (K.S.A. Supp. 21-6412)~~

~~(d) Cruelty to animals as described in subsection (a)(1) is a felony and cannot be prosecuted in municipal court.~~

~~On first conviction, cruelty to animals is a Class A violation, as defined in subsections (a)(2), (a)(3), (a)(4), and (a)(5).~~

## 11.12 **COCKFIGHTING.**

- (a) Unlawful possession of cockfighting paraphernalia is possession of spurs, gaffs, swords, leather training spur covers, or anything worn by a gamecock during a fight to further the killing power of such gamecock.
- (b) Unlawful attendance of cockfighting is entering or remaining on the premises where the unlawful conduct of cockfighting is occurring. (K.S.A. Supp. 21-6417)

Unlawful possession of cockfighting paraphernalia is a Class A violation.

Unlawful attendance of cockfighting is a Class B violation.

## **ARTICLE 12. VIOLATIONS, PENALTIES**

### 12.1 **CLASSES OF VIOLATIONS AND CONFINEMENT.**

- (a) For the purpose of sentencing, the following classes of violations and the punishment and the terms of confinement authorized for each class are established:
  - (1) Class A, the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one year;
  - (2) Class B, the sentence for which shall be a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed six months;
  - (3) Class C, the sentence for which shall be a definite term of confinement in the city

- or county jail which shall be fixed by the court and shall not exceed one month;
- (4) Unclassified violations, which shall include all offenses declared to be violations without specification as to class, the sentence for which shall be in accordance with the sentence specified in the section that defines the offense; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a Class C violation.
- (b) Upon conviction of a violation, a person may be punished by a fine, as provided in Section 12.2 of this article, instead of or in addition to confinement, as provided in this section.
  - (c) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the violation was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the administrative judge of the judicial district or licensed by the secretary of social and rehabilitation services. (K.S.A. Supp. 21-6602)

## 12.2

### **FINES.**

- (a) A person convicted of a violation may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:
  - (1) Class A violation, a sum not exceeding \$2,500.
  - (2) Class B violation, a sum not exceeding \$1,000.
  - (3) Class C violation, a sum not exceeding \$500.
  - (4) Unclassified violation, any sum authorized by the section that defines the offense. If no penalty is provided in such law, the fine shall not exceed the fine provided herein for a Class C violation.

- (b) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender. (K.S.A. Supp. 21-6611)

### **ARTICLE 13. MISCELLANEOUS**

- 13.1       **APPLICATION; KANSAS CRIMINAL CODE.** The provisions of the Kansas Criminal Code (K.S.A. Supp. 21-5101:6712, inclusive and amendments thereto), which are in their nature applicable to the jurisdiction of the city and in respect to which no special provision is made by ordinance of the city are applicable to this criminal code.
  
- 13.2       **SEVERABILITY.** If any provision of this code is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the code and the applicability thereof to other persons and circumstances shall not be affected thereby.

## INDEX

Section

ABUSING TOXIC VAPORS.....	9.9
ADMINISTRATION OF A SUBSTANCE, UNLAWFUL.....	3.11
AIDING, ABETTING .....	10.8
AIR GUN, AIR RIFLE, BOW AND ARROW, SLINGSHOT, BB GUN OR PAINT BALL GUN .....	10.6
ALCOHOL WITHOUT LIQUID MACHINE .....	10.22
ANIMALS; CRUELTY .....	11.11
APPLICATION; KANSAS CRIMINAL CODE .....	13.1
ASSAULT .....	3.3
ASSEMBLY; UNLAWFUL; REMAINING AT.....	9.2
ATTEMPT .....	2.1
BARBED WIRE .....	10.13
BATTERY .....	3.1
BATTERY; DOMESTIC.....	3.1.1
BATTERY AGAINST A LAW ENFORCEMENT OFFICER.....	3.2
BODY PIERCING; PERSONS UNDER 18 YEARS OF AGE.....	10.17
CARRYING CONCEALED EXPLOSIVES.....	10.9
CLASSES OF VIOLATIONS AND CONFINEMENT .....	12.1
COCKFIGHTING .....	11.12
COMMERCIALIZATION OF WILDLIFE.....	11.3
COMPOUNDING AN OFFENSE .....	7.1
COMPUTER TRESPASS/COMPUTER PASSWORD DISCLOSURE.....	6.20
CONFISCATION, DISPOSITION OF WEAPONS .....	10.4
CONSPIRACY .....	2.2
CONTRIBUTING TO A CHILD'S MISCONDUCT OR DEPRIVATION .....	5.1
CORPORATIONS: CRIMINAL RESPONSIBILITY; INDIVIDUAL LIABILITY .....	1.3
COUNTERFEIT DRUGS; TRAFFICKING IN .....	10.23
CREATING A HAZARD .....	10.11
CRIMINAL DAMAGE TO PROPERTY .....	6.6
CRIMINAL HUNTING .....	6.22
DAMAGE TO PROPERTY .....	6.6
DAMAGING SEWERS .....	6.15
DEFAMATION .....	3.9
DEFINITIONS.....	1.1
DENIAL OF CIVIL RIGHTS.....	8.1
DEPOSITS IN SEWERS .....	6.14

DEPRIVATION OF PROPERTY .....	6.5
DESECRATION .....	9.8
DISCHARGE OF FIREARMS.....	10.5
DISORDERLY CONDUCT.....	9.1
DISPOSAL OF FIREARMS .....	10.3
DOMESTIC BATTERY .....	3.1.1
DRAWING A WEAPON UPON ANOTHER .....	10.2
EAVESDROPPING.....	3.10
ELECTIONEERING.....	7.14
ENDANGERING A CHILD .....	5.4
EQUITY SKIMMING .....	6.19
ESCAPE FROM CUSTODY .....	7.3
FAILURE TO REPORT A WOUND .....	10.12
FALSE IMPERSONATION .....	7.11
FALSE SIGNING OF PETITION.....	7.10
FALSELY REPORTING AN OFFENSE .....	7.5
FINES .....	12.2
FUNERAL PICKETING .....	9.11
FURNISHING ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE TO A MINOR .....	5.2
GAMBLING.....	11.8
GIVING A FALSE ALARM.....	9.7
GIVING A WORTHLESS CHECK.....	6.16
HARASSMENT BY TELECOMMUNICATIONS DEVICE .	9.10
HOSTING MINORS CONSUMING ALCOHOLIC LIQUOR OR CEREAL MALT BEVERAGE.....	5.3
INTENT; PERMANENTLY DEPRIVE .....	6.2
INTERFERENCE; ADMINISTRATION OF JUSTICE .....	7.4
INTERFERENCE; CONDUCT, PUBLIC BUSINESS IN PUBLIC BUILDING .....	7.12
INTERFERENCE WITH FIREFIGHTER .....	3.5
INTERFERENCE WITH POLICE DOGS.....	7.13
LEWD, LASCIVIOUS BEHAVIOR .....	4.1
LIABILITY FOR OFFENSES OF ANOTHER.....	1.2
LITTERING.....	6.8
MAINTAINING OR PERMITTING A PUBLIC NUISANCE ..	9.5
MANUFACTURE OR DISPOSAL OF FALSE TOKENS.....	6.11
MATERIAL HARMFUL TO MINORS .....	11.7

MISTREATMENT OF CONFINED PERSON .....	3.7
MOTOR VEHICLE DEALERS; SELLING MOTOR VEHICLES WITHOUT A LICENSE .....	6.18
OBSTRUCTING LEGAL PROCESS OR OFFICIAL DUTY .....	7.2
OBTAINING A PRESCRIPTION-ONLY DRUG BY FRAUDULENT MEANS .....	10.20
OPERATING A VESSEL UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.....	10.15
OPERATION OF A MOTORBOAT OR SAILBOAT .....	10.14
PATRONIZING A PROSTITUTE.....	4.5
PERFORMANCE OF UNAUTHORIZED OFFICIAL ACT .....	7.6
PERMITTING PREMISES TO BE USED FOR COMMERCIAL GAMBLING .....	11.9
PICKETING OF FUNERALS .....	9.11
POSSESSION OF A GAMBLING DEVICE.....	11.10
POSSESSION OF A FIREARM.....	10.3.1
POSTING LAND.....	6.21
POSTING OF POLITICAL PICTURES AND POLITICAL ADVERTISEMENTS.....	9.13
PRIVACY; BREACH OF .....	3.12
PROMOTING PROSTITUTION.....	4.4
PROMOTING OBSCENITY.....	11.1
PROMOTING OBSCENITY TO MINORS .....	11.2
PROSTITUTION.....	4.3
PROTECTION FROM ABUSE ORDER; VIOLATION OF .....	3.8
PROTECTIVE ORDER, VIOLATION OF.....	3.8.1
PURCHASE, CONSUMPTION OR POSSESSION OF ALCOHOLIC LIQUOR OR CMB BY A MINOR;18-21. ...	5.8
PURCHASE OR POSSESSION OF CIGARETTES OR TOBACCO PRODUCTS BY A MINOR .....	5.6
RECORDING DEVICE; UNLAWFUL USE OF .....	6.23
RESTRAINT .....	3.6
RIOT .....	9.4
SALE OF MEDICINES AND DRUGS THROUGH VENDING MACHINES.....	10.19
SCRAP METAL; UNLAWFULLY BUYING .....	6.25
SCRAP METAL; UNLAWFULLY SELLING.....	6.24
SEIZURE OF WEAPON.....	10.7

SELLING, GIVING OR FURNISHING CIGARETTES OR TOBACCO PRODUCTS TO A MINOR .....	5.7
SERIAL NUMBERS .....	6.12
SEVERABILITY .....	13.2
SEXUAL BATTERY .....	3.2.1
SIMULATING LEGAL PROCESS .....	7.7
SMOKE DETECTOR; FAILURE TO PLACE OR MAINTAIN .....	10.18
SMOKING PROHIBITED .....	10.24
SMOKING PROHIBITED; PENALTIES .....	10.26
SMOKING; POSTING PREMISES .....	10.25
STALKING .....	3.13
TAMPERING WITH A LANDMARK .....	6.9
TAMPERING WITH A TRAFFIC SIGNAL .....	6.10
TAMPERING WITH PUBLIC NOTICE .....	7.9
TAMPERING WITH PUBLIC RECORD .....	7.8
TATTOOING; PERSONS UNDER 18 YEARS OF AGE .....	10.17
THEFT .....	6.1
THEFT; LOST, MISLAID PROPERTY .....	6.3
THROWING OBJECTS .....	10.16
TOBACCO PRODUCTS; POSSESSION BY MINOR .....	5.6
TOBACCO PRODUCTS; SELLING, GIVING OR FURNISHING TO A MINOR .....	5.7
TRESPASS .....	6.7
TRESPASSING ON RAILROAD PROPERTY .....	6.7.1
USE OF A FINANCIAL CARD .....	6.17
USE OF WEAPONS .....	10.1
VIOLATION OF A PROTECTIVE ORDER .....	3.8.1
WATERCRAFT; LIFESAVING DEVICES REQUIRED .....	5.5
WEAPONS; CRIMINAL USE .....	10.1
WEAPONS; DISPOSITION .....	10.4
WITHHOLDING POSSESSION OF PUBLIC PROPERTY .....	6.13
WORTHLESS CHECK, GIVING .....	6.16

**CHANGES IN UNIFORM PUBLIC OFFENSE CODE  
FOR 2011**

The following represent the changes in the Uniform Public Offense Code from the 2010 edition to the 2011 edition.

- Section 3.3            Assault and Assault of a Law Enforcement Officer.**
  
- Section 3.12        Breach of Privacy.**
  
- Section 6.1         Theft.**
  
- Section 6.24        Unlawfully Selling Scrap Metal.**
  
- Section 6.25        Unlawfully Buying Scrap Metal.**
  
- Section 9.2         Unlawful Assembly; Remaining at an Unlawful Assembly.**
  
- Section 9.5         Maintaining or Permitting a Public Nuisance.**
  
- Section 9.10        Harassment by Telecommunications Device.**

**Editor’s Note:** The 2010 Kansas Legislature, in House Bill 2661, acted to give municipal courts jurisdiction over the following felony level offenses: Domestic Battery, K.S.A. Supp. 21-5414; Theft, K.S.A. Supp. 21-5801; Giving a Worthless Check, K.S.A. Supp. 21-5821, and Possession of Marijuana, K.S.A. Supp. 21-5706. Because of concerns about sentencing issues and cost, the Editor determined that those changes would not be included in this Code. Should a city wish to prosecute those felony offences in municipal court, a separate ordinance will need to be adopted.

