

SENATE BILL No. 94

By Committee on Federal and State Affairs

1-29

1 AN ACT concerning certain crimes and punishments; amending K.S.A.
2 2012 Supp. 21-5111 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2012 Supp. 21-5111 is hereby amended to read as
6 follows: 21-5111. The following definitions shall apply when the words
7 and phrases defined are used in this code, except when a particular context
8 clearly requires a different meaning.

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

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

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

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

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

23 (f) "Deprive permanently" means to:

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

26 (2) retain property without intent to restore the same or with intent to
27 restore it to the owner only if the owner purchases or leases it back, or
28 pays a reward or other compensation for its return; or

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

31 (g) "Distribute" means the actual or constructive transfer from one
32 person to another of some item whether or not there is an agency
33 relationship. "Distribute" includes, but is not limited to, sale, offer for sale,
34 furnishing, buying for, delivering, giving, or any act that causes or is
35 intended to cause some item to be transferred from one person to another.
36 "Distribute" does not include acts of administering, dispensing or

1 prescribing a controlled substance as authorized by the pharmacy act of the
2 state of Kansas, the uniform controlled substances act, or otherwise
3 authorized by law.

4 (h) "DNA" means deoxyribonucleic acid.

5 (i) "Domestic violence" means an act or threatened act of violence
6 against a person with whom the offender is involved or has been involved
7 in a dating relationship, or an act or threatened act of violence against a
8 family or household member by a family or household member. Domestic
9 violence also includes any other crime committed against a person or
10 against property, or any municipal ordinance violation against a person or
11 against property, when directed against a person with whom the offender is
12 involved or has been involved in a dating relationship or when directed
13 against a family or household member by a family or household member.

14 For the purposes of this definition:

15 (1) "Dating relationship" means a social relationship of a romantic
16 nature. In addition to any other factors the court deems relevant, the trier
17 of fact may consider the following when making a determination of
18 whether a relationship exists or existed: Nature of the relationship, length
19 of time the relationship existed, frequency of interaction between the
20 parties and time since termination of the relationship, if applicable.

21 (2) "Family or household member" means persons 18 years of age or
22 older who are spouses, former spouses, parents or stepparents and children
23 or stepchildren, and persons who are presently residing together or have
24 resided together in the past, and persons who have a child in common
25 regardless of whether they have been married or have lived together at any
26 time. Family or household member also includes a man and woman if the
27 woman is pregnant and the man is alleged to be the father, regardless of
28 whether they have been married or have lived together at any time.

29 (j) "Domestic violence offense" means any crime committed whereby
30 the underlying factual basis includes an act of domestic violence.

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

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

38 (m) "Firearm" means any weapon designed or having the capacity to
39 propel a projectile by force of an explosion or combustion, *including a*
40 *starter gun, which will or is designed to or may readily be converted to*
41 *expel a projectile by the action of an explosive. "Firearm" does not*
42 *include an antique firearm. For purposes of this subsection, the term*
43 *"antique firearm" means:*

1 (1) *Any firearm, including any firearm with a matchlock, flintlock,*
2 *percussion cap or similar type of ignition system, manufactured in or*
3 *before 1898;*

4 (2) *any replica of any firearm described in subsection (m)(1) if such*
5 *replica: (A) Is not designed or redesigned for using rimfire or*
6 *conventional centerfire fixed ammunition; or (B) uses rimfire or*
7 *conventional centerfire fixed ammunition which is no longer manufactured*
8 *in the United States and which is not readily available in the ordinary*
9 *channels of commercial trade; and*

10 (3) *any muzzle loading rifle, muzzle loading shotgun or muzzle*
11 *loading pistol, which is designed to use black powder, or a black powder*
12 *substitute, and which cannot use fixed ammunition. For purposes of this*
13 *paragraph, "antique firearm" shall not include any weapon which*
14 *incorporates a firearm frame or receiver, any firearm which is converted*
15 *into a muzzle loading weapon or any muzzle loading weapon which can be*
16 *readily converted to fire fixed ammunition by replacing the barrel, bolt,*
17 *breechblock or any combination thereof.*

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

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

26 (p) "Law enforcement officer" means:

27 (1) Any person who by virtue of such person's office or public
28 employment is vested by law with a duty to maintain public order or to
29 make arrests for crimes, whether that duty extends to all crimes or is
30 limited to specific crimes;

31 (2) any officer of the Kansas department of corrections or, for the
32 purposes of K.S.A. 2012 Supp. 21-5412 and subsection (d) of K.S.A. 2012
33 Supp. 21-5413, and amendments thereto, any employee of the Kansas
34 department of corrections; or

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

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

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

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

43 (t) "Person" means an individual, public or private corporation,

1 government, partnership, or unincorporated association.

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

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

11 (w) "Property" means anything of value, tangible or intangible, real
12 or personal.

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

15 (y) "Prosecutor" means the same as prosecuting attorney in K.S.A.
16 22-2202, and amendments thereto.

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

22 (aa) "Public officer" includes the following, whether elected or
23 appointed:

24 (1) An executive or administrative officer of the state, or a county,
25 municipality or other subdivision or governmental instrumentality of or
26 within the state;

27 (2) a member of the legislature or of a governing board of a county,
28 municipality, or other subdivision of or within the state;

29 (3) a judicial officer, which shall include a judge of the district court,
30 juror, master or any other person appointed by a judge or court to hear or
31 determine a cause or controversy;

32 (4) a hearing officer, which shall include any person authorized by
33 law or private agreement, to hear or determine a cause or controversy and
34 who is not a judicial officer;

35 (5) a law enforcement officer; and

36 (6) any other person exercising the functions of a public officer under
37 color of right.

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

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

42 (dd) "State" or "this state" means the state of Kansas and all land and
43 water in respect to which the state of Kansas has either exclusive or

1 concurrent jurisdiction, and the air space above such land and water.
2 "Other state" means any state or territory of the United States, the District
3 of Columbia and the Commonwealth of Puerto Rico.

4 (ee) "Stolen property" means property over which control has been
5 obtained by theft.

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

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

14 Sec. 2. K.S.A. 2012 Supp. 21-5111 is hereby repealed.

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