

SENATE BILL No. 355

By Committee on Federal and State Affairs

1-25

1 AN ACT concerning crimes, punishment and criminal procedure; dealing
2 with criminal use of weapons; relating to possession of firearms;
3 amending K.S.A. 2015 Supp. 21-6301, 38-2202, 75-7c25 and 75-7c26
4 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2015 Supp. 21-6301 is hereby amended to read as
8 follows: 21-6301. (a) Criminal use of weapons is knowingly:

9 (1) Selling, manufacturing, purchasing or possessing any bludgeon,
10 sand club, metal knuckles or throwing star;

11 (2) possessing with intent to use the same unlawfully against another,
12 a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged
13 razor, stiletto or any other dangerous or deadly weapon or instrument of
14 like character;

15 (3) setting a spring gun;

16 (4) possessing any device or attachment of any kind designed, used or
17 intended for use in suppressing the report of any firearm;

18 (5) selling, manufacturing, purchasing or possessing a shotgun with a
19 barrel less than 18 inches in length, or any firearm designed to discharge or
20 capable of discharging automatically more than once by a single function
21 of the trigger, whether the person knows or has reason to know the length
22 of the barrel or that the firearm is designed or capable of discharging
23 automatically;

24 (6) possessing, manufacturing, causing to be manufactured, selling,
25 offering for sale, lending, purchasing or giving away any cartridge which
26 can be fired by a handgun and which has a plastic-coated bullet that has a
27 core of less than 60% lead by weight, whether the person knows or has
28 reason to know that the plastic-coated bullet has a core of less than 60%
29 lead by weight;

30 (7) selling, giving or otherwise transferring any firearm with a barrel
31 less than 12 inches long to any person under 18 years of age whether the
32 person knows or has reason to know the length of the barrel;

33 (8) selling, giving or otherwise transferring any firearms to any
34 person who is both addicted to and an unlawful user of a controlled
35 substance;

36 (9) selling, giving or otherwise transferring any firearm to any person

1 who is or has been a mentally ill person subject to *treatment as a*
2 *voluntary patient or subject* to involuntary commitment for care and
3 treatment, as *those terms are* defined in K.S.A. 59-2946, and amendments
4 thereto, or a person with an alcohol or substance abuse problem subject to
5 *treatment as a voluntary patient or subject* to involuntary commitment for
6 care and treatment as *those terms are* defined in K.S.A. 59-29b46, and
7 amendments thereto;

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

10 (11) possessing any firearm by any person, other than a law
11 enforcement officer, in or on any school property or grounds upon which is
12 located a building or structure used by a unified school district or an
13 accredited nonpublic school for student instruction or attendance or
14 extracurricular activities of pupils enrolled in kindergarten or any of the
15 grades one through 12 or at any regularly scheduled school sponsored
16 activity or event whether the person knows or has reason to know that such
17 person was in or on any such property or grounds;

18 (12) refusing to surrender or immediately remove from school
19 property or grounds or at any regularly scheduled school sponsored
20 activity or event any firearm in the possession of any person, other than a
21 law enforcement officer, when so requested or directed by any duly
22 authorized school employee or any law enforcement officer;

23 (13) possessing any firearm by a person who is or has been a
24 mentally ill person subject to involuntary commitment for care and
25 treatment, as defined in K.S.A. 59-2946, and amendments thereto, or
26 persons with an alcohol or substance abuse problem subject to involuntary
27 commitment for care and treatment as defined in K.S.A. 59-29b46, and
28 amendments thereto;~~or~~

29 (14) *possessing any firearm by a person who is or has been a*
30 *mentally ill person voluntarily admitted for care and treatment pursuant to*
31 *K.S.A. 59-2949 or 59-29b49, and amendments thereto; or*

32 (15) possessing a firearm with a barrel less than 12 inches long by
33 any person less than 18 years of age.

34 (b) Criminal use of weapons as defined in:

35 (1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9)~~or~~, (a)(12) *or*
36 *(a)(14)* is a class A nonperson misdemeanor;

37 (2) subsection (a)(4), (a)(5) or (a)(6) is a severity level 9, nonperson
38 felony;

39 (3) subsection (a)(10) or (a)(11) is a class B nonperson select
40 misdemeanor;

41 (4) subsection (a)(13) is a severity level 8, nonperson felony; and

42 (5) subsection (a)(~~14~~) (15) is a:

43 (A) Class A nonperson misdemeanor except as provided in subsection

1 (b)(5)(B);

2 (B) severity level 8, nonperson felony upon a second or subsequent
3 conviction.

4 (c) Subsections (a)(1), (a)(2) and (a)(5) shall not apply to:

5 (1) Law enforcement officers, or any person summoned by any such
6 officers to assist in making arrests or preserving the peace while actually
7 engaged in assisting such officer;

8 (2) wardens, superintendents, directors, security personnel and
9 keepers of prisons, penitentiaries, jails and other institutions for the
10 detention of persons accused or convicted of crime, while acting within the
11 scope of their authority;

12 (3) members of the armed services or reserve forces of the United
13 States or the Kansas national guard while in the performance of their
14 official duty; or

15 (4) the manufacture of, transportation to, or sale of weapons to a
16 person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess
17 such weapons.

18 (d) Subsections (a)(4) and (a)(5) shall not apply to any person who
19 sells, purchases, possesses or carries a firearm, device or attachment which
20 has been rendered unserviceable by steel weld in the chamber and
21 marriage weld of the barrel to the receiver and which has been registered
22 in the national firearms registration and transfer record in compliance with
23 26 U.S.C. § 5841 et seq. in the name of such person and, if such person
24 transfers such firearm, device or attachment to another person, has been so
25 registered in the transferee's name by the transferor.

26 (e) Subsection (a)(6) shall not apply to a governmental laboratory or
27 solid plastic bullets.

28 (f) Subsection (a)(4) shall not apply to a law enforcement officer who
29 is:

30 (1) Assigned by the head of such officer's law enforcement agency to
31 a tactical unit which receives specialized, regular training;

32 (2) designated by the head of such officer's law enforcement agency
33 to possess devices described in subsection (a)(4); and

34 (3) in possession of commercially manufactured devices which are:

35 (A) Owned by the law enforcement agency;

36 (B) in such officer's possession only during specific operations; and

37 (C) approved by the bureau of alcohol, tobacco, firearms and
38 explosives of the United States department of justice.

39 (g) Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person
40 employed by a laboratory which is certified by the United States
41 department of justice, national institute of justice, while actually engaged
42 in the duties of their employment and on the premises of such certified
43 laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the

1 manufacture of, transportation to or sale of weapons to such certified
2 laboratory.

3 (h) Subsections (a)(4) and (a)(5) shall not apply to or affect any
4 person or entity in compliance with the national firearms act, 26 U.S.C. §
5 5801 et seq.

6 (i) Subsection (a)(11) shall not apply to:

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

10 (2) possession of any firearm specifically authorized in writing by the
11 superintendent of any unified school district or the chief administrator of
12 any accredited nonpublic school;

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

16 (4) possession of a firearm secured in a motor vehicle by a registered
17 voter who is on the school grounds, which contain a polling place for the
18 purpose of voting during polling hours on an election day; or

19 (5) possession of a concealed handgun by an individual who is not
20 prohibited from possessing a firearm under either federal or state law.

21 (j) Subsections (a)(9) and (a)(13) shall not apply to a person who has
22 received a certificate of restoration pursuant to K.S.A. 2015 Supp. 75-
23 7c26, and amendments thereto.

24 (k) Subsection (a)(~~14~~) (15) shall not apply if such person, less than 18
25 years of age, was:

26 (1) In attendance at a hunter's safety course or a firearms safety
27 course;

28 (2) engaging in practice in the use of such firearm or target shooting
29 at an established range authorized by the governing body of the
30 jurisdiction in which such range is located, or at another private range with
31 permission of such person's parent or legal guardian;

32 (3) engaging in an organized competition involving the use of such
33 firearm, or participating in or practicing for a performance by an
34 organization exempt from federal income tax pursuant to section 501(c)(3)
35 of the internal revenue code of 1986 which uses firearms as a part of such
36 performance;

37 (4) hunting or trapping pursuant to a valid license issued to such
38 person pursuant to article 9 of chapter 32 of the Kansas Statutes
39 Annotated, and amendments thereto;

40 (5) traveling with any such firearm in such person's possession being
41 unloaded to or from any activity described in subsections (k)(1) through
42 (k)(4), only if such firearm is secured, unloaded and outside the immediate
43 access of such person;

1 (6) on real property under the control of such person's parent, legal
2 guardian or grandparent and who has the permission of such parent, legal
3 guardian or grandparent to possess such firearm; or

4 (7) at such person's residence and who, with the permission of such
5 person's parent or legal guardian, possesses such firearm for the purpose of
6 exercising the rights contained in K.S.A. 2015 Supp. 21-5222, 21-5223 or
7 21-5225, and amendments thereto.

8 (l) As used in this section, "throwing star" means any instrument,
9 without handles, consisting of a metal plate having three or more radiating
10 points with one or more sharp edges and designed in the shape of a
11 polygon, trefoil, cross, star, diamond or other geometric shape,
12 manufactured for use as a weapon for throwing.

13 Sec. 2. K.S.A. 2015 Supp. 38-2202 is hereby amended to read as
14 follows: 38-2202. As used in the revised Kansas code for care of children,
15 unless the context otherwise indicates:

16 (a) "Abandon" or "abandonment" means to forsake, desert or, without
17 making appropriate provision for substitute care, cease providing care for
18 the child.

19 (b) "Adult correction facility" means any public or private facility,
20 secure or nonsecure, which is used for the lawful custody of accused or
21 convicted adult criminal offenders.

22 (c) "Aggravated circumstances" means the abandonment, torture,
23 chronic abuse, sexual abuse or chronic, life threatening neglect of a child.

24 (d) "Child in need of care" means a person less than 18 years of age
25 at the time of filing of the petition or issuance of an ex parte protective
26 custody order pursuant to K.S.A. 2015 Supp. 38-2242, and amendments
27 thereto, who:

28 (1) Is without adequate parental care, control or subsistence and the
29 condition is not due solely to the lack of financial means of the child's
30 parents or other custodian;

31 (2) is without the care or control necessary for the child's physical,
32 mental or emotional health;

33 (3) has been physically, mentally or emotionally abused or neglected
34 or sexually abused;

35 (4) has been placed for care or adoption in violation of law;

36 (5) has been abandoned or does not have a known living parent;

37 (6) is not attending school as required by K.S.A. 72-977 or 72-1111,
38 and amendments thereto;

39 (7) except in the case of a violation of K.S.A. 41-727, ~~K.S.A. 74-~~
40 ~~8810(j), K.S.A. 79-3321(m) or (n), or K.S.A. 2015 Supp. 21-6301(a)(14)~~
41 ~~(15)~~, and amendments thereto, or, except as provided in paragraph (12),
42 does an act which, when committed by a person under 18 years of age, is
43 prohibited by state law, city ordinance or county resolution but which is

1 not prohibited when done by an adult;

2 (8) while less than 10 years of age, commits any act which if done by
3 an adult would constitute the commission of a felony or misdemeanor as
4 defined by K.S.A. 2015 Supp. 21-5102, and amendments thereto;

5 (9) is willfully and voluntarily absent from the child's home without
6 the consent of the child's parent or other custodian;

7 (10) is willfully and voluntarily absent at least a second time from a
8 court ordered or designated placement, or a placement pursuant to court
9 order, if the absence is without the consent of the person with whom the
10 child is placed or, if the child is placed in a facility, without the consent of
11 the person in charge of such facility or such person's designee;

12 (11) has been residing in the same residence with a sibling or another
13 person under 18 years of age, who has been physically, mentally or
14 emotionally abused or neglected, or sexually abused;

15 (12) while less than 10 years of age commits the offense defined in
16 K.S.A. 2015 Supp. 21-6301(a)(14), and amendments thereto; or

17 (13) has had a permanent custodian appointed and the permanent
18 custodian is no longer able or willing to serve.

19 (e) "Citizen review board" is a group of community volunteers
20 appointed by the court and whose duties are prescribed by K.S.A. 2015
21 Supp. 38-2207 and 38-2208, and amendments thereto.

22 (f) "Civil custody case" includes any case filed under chapter 23 of
23 the Kansas Statutes Annotated, and amendments thereto, the Kansas
24 family law code, article 11; of chapter 38 of the Kansas Statutes
25 Annotated, and amendments thereto, determination of parentage, article 21
26 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto,
27 adoption and relinquishment act, or article 30 of chapter 59 of the Kansas
28 Statutes Annotated, and amendments thereto, guardians and conservators.

29 (g) "Court-appointed special advocate" means a responsible adult
30 other than an attorney guardian ad litem who is appointed by the court to
31 represent the best interests of a child, as provided in K.S.A. 2015 Supp.
32 38-2206, and amendments thereto, in a proceeding pursuant to this code.

33 (h) "Custody" whether temporary, protective or legal, means the
34 status created by court order or statute which vests in a custodian, whether
35 an individual or an agency, the right to physical possession of the child and
36 the right to determine placement of the child, subject to restrictions placed
37 by the court.

38 (i) "Extended out of home placement" means a child has been in the
39 custody of the secretary and placed with neither parent for 15 of the most
40 recent 22 months beginning 60 days after the date at which a child in the
41 custody of the secretary was removed from the home.

42 (j) "Educational institution" means all schools at the elementary and
43 secondary levels.

1 (k) "Educator" means any administrator, teacher or other professional
2 or paraprofessional employee of an educational institution who has
3 exposure to a pupil specified in K.S.A. 72-89b03(a), and amendments
4 thereto.

5 (l) "Harm" means physical or psychological injury or damage.

6 (m) "Interested party" means the grandparent of the child, a person
7 with whom the child has been living for a significant period of time when
8 the child in need of care petition is filed, and any person made an
9 interested party by the court pursuant to K.S.A. 2015 Supp. 38-2241, and
10 amendments thereto, or Indian tribe seeking to intervene that is not a party.

11 (n) "Jail" means:

12 (1) An adult jail or lockup; or

13 (2) a facility in the same building or on the same grounds as an adult
14 jail or lockup, unless the facility meets all applicable standards and
15 licensure requirements under law and there is: (A) Total separation of the
16 juvenile and adult facility spatial areas such that there could be no
17 haphazard or accidental contact between juvenile and adult residents in the
18 respective facilities; (B) total separation in all juvenile and adult program
19 activities within the facilities, including recreation, education, counseling,
20 health care, dining, sleeping and general living activities; and (C) separate
21 juvenile and adult staff, including management, security staff and direct
22 care staff such as recreational, educational and counseling.

23 (o) "Juvenile detention facility" means any secure public or private
24 facility used for the lawful custody of accused or adjudicated juvenile
25 offenders which must not be a jail.

26 (p) "Juvenile intake and assessment worker" means a responsible
27 adult authorized to perform intake and assessment services as part of the
28 intake and assessment system established pursuant to K.S.A. 75-7023, and
29 amendments thereto.

30 (q) "Kinship care" means the placement of a child in the home of the
31 child's relative or in the home of another adult with whom the child or the
32 child's parent already has a close emotional attachment.

33 (r) "Law enforcement officer" means any person who by virtue of
34 office or public employment is vested by law with a duty to maintain
35 public order or to make arrests for crimes, whether that duty extends to all
36 crimes or is limited to specific crimes.

37 (s) "Multidisciplinary team" means a group of persons, appointed by
38 the court under K.S.A. 2015 Supp. 38-2228, and amendments thereto,
39 which has knowledge of the circumstances of a child in need of care.

40 (t) "Neglect" means acts or omissions by a parent, guardian or person
41 responsible for the care of a child resulting in harm to a child, or
42 presenting a likelihood of harm, and the acts or omissions are not due
43 solely to the lack of financial means of the child's parents or other

1 custodian. Neglect may include, but shall not be limited to:

2 (1) Failure to provide the child with food, clothing or shelter
3 necessary to sustain the life or health of the child;

4 (2) failure to provide adequate supervision of a child or to remove a
5 child from a situation which requires judgment or actions beyond the
6 child's level of maturity, physical condition or mental abilities and that
7 results in bodily injury or a likelihood of harm to the child; or

8 (3) failure to use resources available to treat a diagnosed medical
9 condition if such treatment will make a child substantially more
10 comfortable, reduce pain and suffering, or correct or substantially diminish
11 a crippling condition from worsening. A parent legitimately practicing
12 religious beliefs who does not provide specified medical treatment for a
13 child because of religious beliefs shall not for that reason be considered a
14 negligent parent; however, this exception shall not preclude a court from
15 entering an order pursuant to K.S.A. 2015 Supp. 38-2217(a)(2), and
16 amendments thereto.

17 (u) "Parent" when used in relation to a child or children, includes a
18 guardian and every person who is by law liable to maintain, care for or
19 support the child.

20 (v) "Party" means the state, the petitioner, the child, any parent of the
21 child and an Indian child's tribe intervening pursuant to the Indian child
22 welfare act.

23 (w) "Permanency goal" means the outcome of the permanency
24 planning process which may be reintegration, adoption, appointment of a
25 permanent custodian or another planned permanent living arrangement.

26 (x) "Permanent custodian" means a judicially approved permanent
27 guardian of a child pursuant to K.S.A. 2015 Supp. 38-2272, and
28 amendments thereto.

29 (y) "Physical, mental or emotional abuse" means the infliction of
30 physical, mental or emotional harm or the causing of a deterioration of a
31 child and may include, but shall not be limited to, maltreatment or
32 exploiting a child to the extent that the child's health or emotional well-
33 being is endangered.

34 (z) "Placement" means the designation by the individual or agency
35 having custody of where and with whom the child will live.

36 (aa) "Relative" means a person related by blood, marriage or adoption
37 but, when referring to a relative of a child's parent, does not include the
38 child's other parent.

39 (bb) "Secretary" means the secretary of the department for children
40 and families or the secretary's designee.

41 (cc) "Secure facility" means a facility, other than a staff secure
42 facility which is operated or structured so as to ensure that all entrances
43 and exits from the facility are under the exclusive control of the staff of the

1 facility, whether or not the person being detained has freedom of
2 movement within the perimeters of the facility, or which relies on locked
3 rooms and buildings, fences or physical restraint in order to control
4 behavior of its residents. No secure facility shall be in a city or county jail.

5 (dd) "Sexual abuse" means any contact or interaction with a child in
6 which the child is being used for the sexual stimulation of the perpetrator,
7 the child or another person. Sexual abuse shall include allowing,
8 permitting or encouraging a child to engage in the sale of sexual relations
9 or commercial sexual exploitation of a child, or to be photographed, filmed
10 or depicted in pornographic material. Sexual abuse also shall include
11 allowing, permitting or encouraging a child to engage in aggravated
12 human trafficking, as defined in K.S.A. 2015 Supp. 21-5426(b), and
13 amendments thereto, if committed in whole or in part for the purpose of
14 the sexual gratification of the offender or another.

15 (ee) "Shelter facility" means any public or private facility or home,
16 other than a juvenile detention facility or staff secure facility, that may be
17 used in accordance with this code for the purpose of providing either
18 temporary placement for children in need of care prior to the issuance of a
19 dispositional order or longer term care under a dispositional order.

20 (ff) "Staff secure facility" means a facility described in K.S.A. 2015
21 Supp. 65-535, and amendments thereto: (1) That does not include
22 construction features designed to physically restrict the movements and
23 activities of juvenile residents who are placed therein; (2) that may
24 establish reasonable rules restricting entrance to and egress from the
25 facility; and (3) in which the movements and activities of individual
26 juvenile residents may, for treatment purposes, be restricted or subject to
27 control through the use of intensive staff supervision. No staff secure
28 facility shall be in a city or county jail.

29 (gg) "Transition plan" means, when used in relation to a youth in the
30 custody of the secretary, an individualized strategy for the provision of
31 medical, mental health, education, employment and housing supports as
32 needed for the adult and, if applicable, for any minor child of the adult, to
33 live independently and specifically provides for the supports and any
34 services for which an adult with a disability is eligible including, but not
35 limited to, funding for home and community based services waivers.

36 (hh) "Youth residential facility" means any home, foster home or
37 structure which provides 24-hour-a-day care for children and which is
38 licensed pursuant to article 5 of chapter 65 of the Kansas Statutes
39 Annotated, and amendments thereto.

40 Sec. 3. K.S.A. 2015 Supp. 75-7c25 is hereby amended to read as
41 follows: 75-7c25. (a) ~~After July 1, 2007,~~ All orders of involuntary
42 commitment for care and treatment pursuant to K.S.A. 59-2966 or 59-
43 29b66, and amendments thereto, and any orders of termination of

1 discharge shall be immediately forwarded to the Kansas bureau of
2 investigation for entry into the appropriate state and federal databases.

3 (b) Upon a finding that the mentally ill person is a danger to self or
4 others, the court shall notify the mentally ill person subject to *voluntary or*
5 involuntary commitment for care and treatment that it is a violation of the
6 law to possess a firearm. Upon a finding that a proposed patient is a person
7 with an alcohol or substance abuse problem subject to *voluntary or*
8 involuntary commitment for care and treatment, the court shall notify the
9 person that it is a violation of the law to possess a firearm. Upon release,
10 ~~the state hospital~~ *treatment facility* shall notify the patient that it is a
11 violation of the law for the patient to possess a firearm and provide
12 information to the patient regarding the restoration procedure.

13 (c) *The names of all persons voluntarily admitted for care and*
14 *treatment pursuant to K.S.A. 59-2949 or 59-29b49, and amendments*
15 *thereto, shall be immediately forwarded to the Kansas bureau of*
16 *investigation for entry into the appropriate state and federal databases.*

17 Sec. 4. K.S.A. 2015 Supp. 75-7c26 is hereby amended to read as
18 follows: 75-7c26. On and after July 1, 2007, (a) a person who has been
19 discharged pursuant to K.S.A. 59-2973 or 59-29b73, and amendments
20 thereto, may file a petition in the court where treatment was ordered
21 pursuant to K.S.A. 59-2966 or 59-29b66, and amendments thereto, for the
22 restoration of the ability to legally possess a firearm.

23 (b) Notice of the filing of such petition shall be served on the
24 petitioner who originally filed the action pursuant to K.S.A. 59-2952, 59-
25 2957, 59-29b52 or 59-29b57, and amendments thereto, or the petitioner's
26 attorney and the county or district attorney as appropriate.

27 (c) If the court finds the person is no longer likely to cause harm to
28 such person's self or others, the court shall issue a certificate of restoration
29 to the person. Such restoration shall have the effect of restoring the
30 person's ability to legally possess a firearm, and the certification of
31 restoration shall so state.

32 (d) The certificate of registration issued pursuant to this section shall
33 only apply to the possession of a firearm for the purposes of an alleged
34 violation of ~~subsection (a)(7) of~~ K.S.A. 21-4204(a)(7), prior to its repeal,
35 or ~~subsection (a)(13) of section~~ K.S.A. 2015 Supp. 21-6301(a)(13), and
36 amendments thereto.

37 (e) *A person who has been discharged pursuant to K.S.A. 59-2950 or*
38 *59-29b50, and amendments thereto, may file a petition in the court where*
39 *treatment was ordered for restoration of the ability to legally possess a*
40 *firearm. If the court finds the person is no longer likely to cause harm to*
41 *such person's self or others, the court shall issue a certificate of*
42 *restoration to the person. Such restoration shall have the effect of*
43 *restoring the person's ability to legally possess a firearm, and the*

1 *certification of restoration shall so state.*

2 *(f) The court shall forward a copy of the certificate of restoration to*
3 *the Kansas bureau of investigation for the deletion of the person's name*
4 *from the appropriate state and federal databases.*

5 Sec. 5. K.S.A. 2015 Supp. 21-6301, 38-2202, 75-7c25 and 75-7c26
6 are hereby repealed.

7 Sec. 6. This act shall take effect and be in force from and after its
8 publication in the statute book.