

HOUSE BILL No. 2778

By Committee on Federal and State Affairs

Requested by Representative Hoye

2-12

AN ACT concerning crimes, punishment and criminal procedure; relating to firearms; removing the current exception to the criminal use of weapons statute that allows any individual over the age of 21 or with a provisional license to possess a concealed handgun in or on school property or grounds or at any regularly scheduled school-sponsored activity or event if not otherwise prohibited under either federal or state law; amending K.S.A. 21-6301 and repealing the existing section.

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

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

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

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

(3) setting a spring gun;

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

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

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

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

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

4 (9) selling, giving or otherwise transferring any firearm to any person
5 who is or has been a mentally ill person subject to involuntary
6 commitment for care and treatment, as defined in K.S.A. 59-2946, and
7 amendments thereto, or a person with an alcohol or substance abuse
8 problem subject to involuntary commitment for care and treatment as
9 defined in K.S.A. 59-29b46, and amendments thereto;

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

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

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

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

31 (14) possessing a firearm with a barrel less than 12 inches long by
32 any person less than 18 years of age;

33 (15) possessing any firearm while a fugitive from justice;

34 (16) possessing any firearm by a person who is an alien illegally or
35 unlawfully in the United States;

36 (17) possessing any firearm by a person while such person is subject
37 to a court order that:

38 (A) Was issued after a hearing, of which such person received actual
39 notice, and at which such person had an opportunity to participate;

40 (B) restrains such person from harassing, stalking or threatening an
41 intimate partner of such person or a child of such person or such intimate
42 partner, or engaging in other conduct that would place an intimate partner
43 in reasonable fear of bodily injury to the partner or the child; and

1 (C) (i) includes a finding that such person represents a credible threat
2 to the physical safety of such intimate partner or child; or

3 (ii) by its terms explicitly prohibits the use, attempted use or
4 threatened use of physical force against such intimate partner or child that
5 would reasonably be expected to cause bodily injury; or

6 (18) possessing any firearm by a person who, within the preceding
7 five years, has been convicted of a misdemeanor for a domestic violence
8 offense, or a misdemeanor under a law of another jurisdiction which is
9 substantially the same as such misdemeanor offense.

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

11 (1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9) or (a)(12) is a
12 class A nonperson misdemeanor;

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

15 (3) subsection (a)(10) or (a)(11) is a class B nonperson select
16 misdemeanor;

17 (4) subsection (a)(13), (a)(15), (a)(16), (a)(17) or (a)(18) is a severity
18 level 8, nonperson felony; and

19 (5) subsection (a)(14) is a:

20 (A) Class A nonperson misdemeanor except as provided in subsection
21 (b)(5)(B); *and*

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

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

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

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

32 (3) members of the armed services or reserve forces of the United
33 States or the Kansas national guard while in the performance of their
34 official duty; or

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

38 (d) Subsections (a)(4) and (a)(5) shall not apply to any person who
39 sells, purchases, possesses or carries a firearm, device or attachment which
40 has been rendered unserviceable by steel weld in the chamber and
41 marriage weld of the barrel to the receiver and which has been registered
42 in the national firearms registration and transfer record in compliance with
43 26 U.S.C. § 5841 et seq. in the name of such person and, if such person

1 transfers such firearm, device or attachment to another person, has been so
2 registered in the transferee's name by the transferor.

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

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

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

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

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

12 (A) Owned by the law enforcement agency;

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

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

16 (g) Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person
17 employed by a laboratory which is certified by the United States
18 department of justice, national institute of justice, while actually engaged
19 in the duties of their employment and on the premises of such certified
20 laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the
21 manufacture of, transportation to or sale of weapons to such certified
22 laboratory.

23 (h) Subsections (a)(4) and (a)(5) shall not apply to or affect any
24 person or entity in compliance with the national firearms act, 26 U.S.C. §
25 5801 et seq.

26 (i) (1) Subsection (a)(4) shall not apply to or affect any person in
27 possession of a device or attachment designed, used or intended for use in
28 suppressing the report of any firearm, if such device or attachment satisfies
29 the description of a Kansas-made firearm accessory as set forth in K.S.A.
30 50-1204, and amendments thereto.

31 (2) The provisions of this subsection shall apply to any violation of
32 subsection (a)(4) that occurred on or after April 25, 2013.

33 (j) Subsection (a)(11) shall not apply to:

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

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

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

43 (4) possession of a firearm secured in a motor vehicle by a registered

1 voter who is on the school grounds, which contain a polling place for the
2 purpose of voting during polling hours on an election day; or

3 ~~(5) possession of a concealed handgun by an individual who is not~~
4 ~~prohibited from possessing a firearm under either federal or state law, and~~
5 ~~who is either: (A) 21 years of age or older; or (B) possesses a valid~~
6 ~~provisional license issued pursuant to K.S.A. 75-7c03, and amendments~~
7 ~~thereto, or a valid license to carry a concealed handgun issued by another~~
8 ~~jurisdiction that is recognized in this state pursuant to K.S.A. 75-7c03, and~~
9 ~~amendments thereto.~~

10 (k) Subsections (a)(9) and (a)(13) shall not apply to a person who has
11 received a certificate of restoration pursuant to K.S.A. 75-7c26, and
12 amendments thereto.

13 (l) Subsection (a)(14) shall not apply if such person, less than 18
14 years of age, was:

15 (1) In attendance at a hunter's safety course or a firearms safety
16 course;

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

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

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

29 (5) traveling with any such firearm in such person's possession being
30 unloaded to or from any activity described in subsections (l)(1) through (l)
31 (4), only if such firearm is secured, unloaded and outside the immediate
32 access of such person;

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

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

40 (m) As used in this section:

41 (1) "Domestic violence" means the use or attempted use of physical
42 force, or the threatened use of a deadly weapon, committed against a
43 person with whom the offender is involved or has been involved in a

1 dating relationship or is a family or household member.

2 (2) "Fugitive from justice" means any person having knowledge that
3 a warrant for the commission of a felony has been issued for the
4 apprehension of such person under K.S.A. 22-2713, and amendments
5 thereto.

6 (3) "Intimate partner" means, with respect to a person, the spouse of
7 the person, a former spouse of the person, an individual who is a parent of
8 a child of the person or an individual who cohabitates or has cohabitated
9 with the person.

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

15 Sec. 2. K.S.A. 21-6301 is hereby repealed.

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