

SENATE BILL No. 21

By Committee on Federal and State Affairs

1-15

AN ACT concerning firearms; relating to definition of firearm; criminal possession of a firearm by a convicted felon; expungement; relating to the personal and family protection act; amending K.S.A. 2012 Supp. 12-16,124, 21-5111, 21-6304, 21-6614, 75-7c03, 75-7c04, 75-7c05, 75-7c07 and 75-7c25 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 12-16,124 is hereby amended to read as follows: 12-16,124. (a) No city or county shall adopt any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the purchase, transfer, ownership, storage or transporting of firearms or ammunition, or any component or combination thereof. Except as provided in subsection (b) of this section and subsection (a) of K.S.A. 2012 Supp. 75-7c11, 75-7c10, and amendments thereto, any such ordinance, resolution or regulation adopted prior to the effective date of this 2007 act shall be null and void.

(b) Nothing in this section shall:

(1) Prohibit a law enforcement officer, as defined in K.S.A. 22-2202, and amendments thereto, from acting within the scope of such officer's duties;

(2) Prohibit a city or county from regulating the manner of openly carrying a loaded firearm on one's person; or in the immediate control of a person, not licensed or recognized under the personal and family protection act while on property open to the public;

(3) Prohibit a city or county from regulating in any manner the carrying of any firearm in any jail, juvenile detention facility, prison, courthouse, courtroom or city hall; or

(4) Prohibit a city or county from adopting an ordinance, resolution or regulation requiring a firearm transported in any air, land or water vehicle to be unloaded and encased in a container which completely encloses the firearm or any less restrictive provision governing the transporting of firearms, provided such ordinance, resolution or regulation shall not apply to persons licensed or recognized under the personal and family protection act.

(c) Except as provided in subsection (b) of this section and subsection (a) of K.S.A. 2012 Supp. 75-7c11, 75-7c10, and amendments thereto,

Proposed Amendments to SB 21
for Committee on _____
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1 no person shall be prosecuted or convicted of a violation of any ordinance,
 2 resolution or regulation of a city or county which regulates the storage or
 3 transportation of a firearm if such person: (1) Is storing or transporting the
 4 firearm without violating any provision of the Kansas criminal code; or (2)
 5 is otherwise transporting the firearm in a lawful manner.

6 (d) No person shall be prosecuted under any ordinance, resolution or
 7 regulation for transporting a firearm in any air, land or water vehicle if the
 8 firearm is unloaded and encased in a container which completely encloses
 9 the firearm.

10 ~~See 2. K.S.A. 2012 Supp. 21-5111 is hereby amended to read as~~
 11 ~~follows: 21-5111. The following definitions shall apply when the words~~
 12 ~~and phrases defined are used in this code, except when a particular context~~
 13 ~~clearly requires a different meaning.~~

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

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

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

19 (d) ~~"Conviction" includes a judgment of guilt entered upon a plea of~~
 20 ~~guilty.~~

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

28 (f) ~~"Deprive permanently" means to:~~

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

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

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

36 (g) ~~"Distribute" means the actual or constructive transfer from one~~
 37 ~~person to another of some item whether or not there is an agency~~
 38 ~~relationship. "Distribute" includes, but is not limited to, sale, offer for sale,~~
 39 ~~furnishing, buying for, delivering, giving, or any act that causes or is~~
 40 ~~intended to cause some item to be transferred from one person to another.~~
 41 ~~"Distribute" does not include acts of administering, dispensing or~~
 42 ~~prescribing a controlled substance as authorized by the pharmacy act of the~~
 43 ~~state of Kansas, the uniform controlled substances act, or otherwise~~

1 authorized by law.

2 (h) "DNA" means deoxyribonucleic acid.

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

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

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

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

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

32 (l) "Expungement" means the sealing of records such that the records
33 are unavailable except to the petitioner and criminal justice agencies as
34 provided by K.S.A. 22-1701 et seq, and amendments thereto, and except
35 as provided in this act.

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

42 (1) any firearm, including any firearm with a matchlock, flintlock,
43 percussion cap or similar type of ignition system, manufactured in or

1 before 1908;

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

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

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

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

24 ~~(p) "Law enforcement officer" means:~~
25 ~~(1) Any person who by virtue of such person's office or public~~
26 ~~employment is vested by law with a duty to maintain public order or to~~
27 ~~make arrests for crimes, whether that duty extends to all crimes or is~~
28 ~~limited to specific crimes;~~

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

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

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

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

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

41 ~~(t) "Person" means an individual, public or private corporation,~~
42 ~~government, partnership, or unincorporated association.~~

43 ~~(u) "Personal property" means goods, chattels, effects, evidences of~~

1 rights in action and all written instruments by which any pecuniary
2 obligation, or any right or title to property, real or personal, shall be
3 created, acknowledged, assigned, transferred, increased, defeated,
4 discharged, or dismissed.

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

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

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

13 (y) "Prosecutor" means the same as prosecuting attorney in K.S.A.
14 22-2202 and amendments thereto.

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

20 (aa) "Public officer" includes the following, whether elected or
21 appointed:

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

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

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

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

33 (5) a law enforcement officer; and

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

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

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

40 (dd) "State" or "this state" means the state of Kansas and all land and
41 water in respect to which the state of Kansas has either exclusive or
42 concurrent jurisdiction, and the air space above such land and water.
43 "Other state" means any state or territory of the United States, the District

1 of Columbia and the Commonwealth of Puerto Rico.

2 (ee) ~~"Stolen property" means property over which control has been~~
3 ~~obtained by theft.~~

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

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

12 Sec. 3. K.S.A. 2012 Supp. 21-6304 is hereby amended to read as
13 follows: 21-6304. (a) Criminal possession of a firearm by a convicted
14 felon is possession of any firearm by a person who:

15 (1) Has been convicted of a person felony or a violation of article 57
16 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto,
17 or any violation of any provision of the uniform controlled substances act
18 prior to July 1, 2009, or a crime under a law of another jurisdiction which
19 is substantially the same as such felony or violation, or was adjudicated a
20 juvenile offender because of the commission of an act which if done by an
21 adult would constitute the commission of a person felony or a violation of
22 article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments
23 thereto, or any violation of any provision of the uniform controlled
24 substances act prior to July 1, 2009, and was found to have been in
25 possession of a firearm at the time of the commission of the crime;

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

34 (3) within the preceding 10 years, has been convicted of a:

35 (A) Felony under K.S.A. 2012 Supp. 21-5402, 21-5403, 21-5404, 21-
36 5405, 21-5408, subsection (b) or (d) of 21-5412, subsection (b) or (d) of
37 21-5413, subsection (a) of 21-5415, subsection (b) of 21-5420, 21-5503,
38 subsection (b) of 21-5504, subsection (b) of 21-5505, and subsection (b) of
39 21-5807, and amendments thereto; article 57 of chapter 21 of the Kansas
40 Statutes Annotated, and amendments thereto; K.S.A. 21-3401, 21-3402,
41 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-
42 3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716,
43 65-4127a, 65-4127b, 65-4159 through 65-4165 or 65-7006, prior to their

1 repeal; an attempt, conspiracy or criminal solicitation as defined in K.S.A.
2 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2012 Supp.
3 21-5301, 21-5302 or 21-5303, and amendments thereto, of any such
4 felony; or a crime under a law of another jurisdiction which is
5 substantially the same as such felony, has been released from
6 imprisonment for such felony, or was adjudicated as a juvenile offender
7 because of the commission of an act which, if done by an adult would
8 constitute the commission of such felony, was not found to have been in
9 possession of a firearm at the time of the commission of the crime, and has
10 not had the conviction of such crime expunged or been pardoned for such
11 crime. *The provisions of subsection (1)(2) of K.S.A. 2012 Supp. 21-6614,
12 and amendments thereto, shall not apply to an individual who has had a
13 conviction under this paragraph expunged, or*
14 (B) nonperson felony under the laws of Kansas or a crime under the
15 laws of another jurisdiction which is substantially the same as such
16 nonperson felony, has been released from imprisonment for such
17 nonperson felony or was adjudicated as a juvenile offender because of the
18 commission of an act which if done by an adult would constitute the
19 commission of a nonperson felony, and was found to have been in
20 possession of a firearm at the time of the commission of the crime.

21 (b) Criminal possession of a firearm by a convicted felon is a severity
22 level 8, nonperson felony.

23 Sec. 4. K.S.A. 2012 Supp. 21-6614 is hereby amended to read as
24 follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d) and
25 (e), any person convicted in this state of a traffic infraction, cigarette or
26 tobacco infraction, misdemeanor or a class D or E felony, or for crimes
27 committed on or after July 1, 1993, nondrug crimes ranked in severity
28 levels 6 through 10, or for crimes committed on or after July 1, 1993, but
29 prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid,
30 or for crimes committed on or after July 1, 2012, any felony ranked in
31 severity level 5 of the drug grid may petition the convicting court for the
32 expungement of such conviction or related arrest records if three or more
33 years have elapsed since the person: (A) Satisfied the sentence imposed; or
34 (B) was discharged from probation, a community correctional services
35 program, parole, postrelease supervision, conditional release or a
36 suspended sentence.

37 (2) Except as provided in subsections (b), (c), (d) and (e), any person
38 who has fulfilled the terms of a diversion agreement may petition the
39 district court for the expungement of such diversion agreement and related
40 arrest records if three or more years have elapsed since the terms of the
41 diversion agreement were fulfilled.

42 (b) Except as provided in subsections (c), (d) and (e), no person may
43 petition for expungement until five or more years have elapsed since the

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1 person satisfied the sentence imposed, the terms of a diversion agreement
2 or was discharged from probation, a community correctional services
3 program, parole, postrelease supervision, conditional release or a
4 suspended sentence, if such person was convicted of a class A, B or C
5 felony, or for crimes committed on or after July 1, 1993, if convicted of an
6 off-grid felony or any nondrug crime ranked in severity levels 1 through 5,
7 or for crimes committed on or after July 1, 1993, but prior to July 1, 2012,
8 any felony ranked in severity levels 1 through 3 of the drug grid, or for
9 crimes committed on or after July 1, 2012, any felony ranked in severity
10 levels 1 through 4 of the drug grid, or:

11 (1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its
12 repeal, or K.S.A. 2012 Supp. 21-5406, and amendments thereto, or as
13 prohibited by any law of another state which is in substantial conformity
14 with that statute;

15 (2) driving while the privilege to operate a motor vehicle on the
16 public highways of this state has been canceled, suspended or revoked, as
17 prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by
18 any law of another state which is in substantial conformity with that
19 statute;

20 (3) perjury resulting from a violation of K.S.A. 8-261a, and
21 amendments thereto, or resulting from the violation of a law of another
22 state which is in substantial conformity with that statute;

23 (4) violating the provisions of the fifth clause of K.S.A. 8-142, and
24 amendments thereto, relating to fraudulent applications or violating the
25 provisions of a law of another state which is in substantial conformity with
26 that statute;

27 (5) any crime punishable as a felony wherein a motor vehicle was
28 used in the perpetration of such crime;

29 (6) failing to stop at the scene of an accident and perform the duties
30 required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and
31 amendments thereto, or required by a law of another state which is in
32 substantial conformity with those statutes;

33 (7) violating the provisions of K.S.A. 40-3104, and amendments
34 thereto, relating to motor vehicle liability insurance coverage; or

35 (8) a violation of K.S.A. 21-3405b, prior to its repeal.

36 (c) No person may petition for expungement until 10 or more years
37 have elapsed since the person satisfied the sentence imposed, the terms of
38 a diversion agreement or was discharged from probation, a community
39 correctional services program, parole, postrelease supervision, conditional
40 release or a suspended sentence, if such person was convicted of a
41 violation of K.S.A. 8-1567, and amendments thereto, including any
42 diversion for such violation.

43 (d) There shall be no expungement of convictions for the following

1 and treatment pursuant to K.S.A. 59-2966 or 59-29b66, and amendments
2 thereto, and any orders of termination of discharge shall be immediately
3 forwarded to the Kansas bureau of investigation for entry into the
4 appropriate state and federal databases.

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

15 Sec. 10. K.S.A. 2012 Supp. 12-16, 124, 21-5111, 21-6304, 21-6614,
16 75-7c03, 75-7c04, 75-7c05, 75-7c07 and 75-7c25 are hereby repealed.

17 Sec. 11. This act shall take effect and be in force from and after its
18 publication in the statute book.

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