

HOUSE BILL No. 2456

By Committee on Corrections and Juvenile Justice

1-21

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to definitions in the Kansas criminal code; possession; amending
3 K.S.A. 2019 Supp. 21-5111 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2019 Supp. 21-5111 is hereby amended to read as
7 follows: 21-5111. The following definitions shall apply when the words
8 and phrases defined are used in this code, except when a particular context
9 clearly requires a different meaning.

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

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

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

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

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

24 (f) "Deprive permanently" means to:

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

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

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

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

1 "Distribute" does not include acts of administering, dispensing or
2 prescribing a controlled substance as authorized by the pharmacy act of the
3 state of Kansas, the uniform controlled substances act, or otherwise
4 authorized by law.

5 (h) "DNA" means deoxyribonucleic acid.

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

15 For the purposes of this definition:

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

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

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

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

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

39 (m) "Firearm" means any weapon designed or having the capacity to
40 propel a projectile by force of an explosion or combustion.

41 (n) "Forcible felony" includes any treason, murder, voluntary
42 manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated
43 battery, aggravated sodomy and any other felony which involves the use or

1 threat of physical force or violence against any person.

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

6 (p) "Law enforcement officer" means:

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

11 (2) any officer of the Kansas department of corrections or, for the
12 purposes of K.S.A. 2019 Supp. 21-5412 and ~~subsection (d) of K.S.A. 2019~~
13 ~~Supp. 21-5413(d)~~, and amendments thereto, any employee of the Kansas
14 department of corrections; or

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

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

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

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

23 (t) "Person" means an individual, public or private corporation,
24 government, partnership, or unincorporated association.

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

30 (v) "Possession" means *knowingly* having joint or exclusive control
31 over an item ~~with knowledge of or intent to have such control~~ or
32 knowingly keeping some item in *any* place where the person has some
33 measure of access and right of control.

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

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

38 (y) "Prosecutor" means the same as prosecuting attorney in K.S.A.
39 22-2202, and amendments thereto.

40 (z) "Public employee" is a person employed by or acting for the state
41 or by or for a county, municipality or other subdivision or governmental
42 instrumentality of the state for the purpose of exercising their respective
43 powers and performing their respective duties, and who is not a "public

1 officer."

2 (aa) "Public officer" includes the following, whether elected or
3 appointed:

4 (1) An executive or administrative officer of the state, or a county,
5 municipality or other subdivision or governmental instrumentality of or
6 within the state;

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

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

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

15 (5) a law enforcement officer; and

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

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

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

22 (dd) "State" or "this state" means the state of Kansas and all land and
23 water in respect to which the state of Kansas has either exclusive or
24 concurrent jurisdiction, and the air space above such land and water.
25 "Other state" means any state or territory of the United States, the District
26 of Columbia and the Commonwealth of Puerto Rico.

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

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

31 (gg) "Written instrument" means any paper, document or other
32 instrument containing written or printed matter or the equivalent thereof,
33 used for purposes of reciting, embodying, conveying or recording
34 information, and any money, token, stamp, seal, badge, trademark; or other
35 evidence or symbol of value, right, privilege or identification, ~~which~~ *that*
36 is capable of being used to the advantage or disadvantage of some person.

37 Sec. 2. K.S.A. 2019 Supp. 21-5111 is hereby repealed.

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