



**Office of Attorney General Derek Schmidt**

**INSTRUCTOR GUIDE  
HANDGUN SAFETY AND TRAINING COURSE**

**Personal and Family Protection Act**

**Kansas Concealed Carry Handgun Licensing  
K.S.A. 75 – 7c01 et seq.**

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### Required Handout Materials (Attachments)

- Copy of the document, “Other Prohibited Places – State, Federal and Tribal Properties”
- Copy of the Personal and Family Protection Act, K.S.A. 75-7c01 et seq.
- Copy of the document, “Recognized Non-Resident Concealed Carry Handgun Licenses, and States that Recognize the Kansas Concealed Carry Handgun Licenses”

### Resource Materials (Attachments)

- K.A.R. 16-11-1 through K.A.R. 16-11-8 (Concealed Carry Regulations)
- Self-Defense Statutes: K.S.A. 2011 Supp. 21-5220 through 21-5231
- Acknowledgement Form and Verification of Receipt of Training Materials
- Certificate of Completion (Approved Concealed Carry Training Course)
- Class Roster Report
- Application for Concealed Carry Handgun License
- Application for Certified Instructor

# KANSAS CCHL INSTRUCTOR RESPONSIBILITIES

**Instructors Must Follow the Attorney General's Approved Handgun Safety and Training Course Lesson Plan:** The Attorney General's approved lesson plan, as amended October 19, 2006, is included in the Instructor Guide. Instructors must follow the approved lesson plan when preparing to teach the 8-hour class.

**Concealed Carry Handgun Licensing (CCHL) Training Philosophy:** The Attorney General's approved lesson plan outlines a program of instruction aimed at providing each student with a standardized block of training. While experience and teaching skills vary between instructors, the prescribed lesson plan provides a guideline for each instructor to use in developing their class. This ensures that each student receives the same course of instruction, regardless of the instructor or organization conducting the class.

CCHL instructors have a responsibility to both their students and the public. They are legally bound to present the material they teach thoroughly and professionally. Deviating from the Attorney General's approved lesson plan can result in penalties, both criminally and civilly, for the instructor and any organization they may represent. Instructors have an important role in the Kansas concealed carry program; don't allow personal feelings or prejudices to interfere with the objective of presenting a meaningful course of instruction.

In addition to a very basic handgun course, each student must receive a block of instruction dealing with Kansas law and legal issues relating to firearms. The Attorney General will make every effort to update relevant changes in the law by posting them on the concealed carry website at [www.ag.ks.gov](http://www.ag.ks.gov).

The concealed carry class is not a tactical handgun course, but it does include instruction on ways to secure and conceal a handgun, safe methods of loading and unloading handguns and what to expect when a handgun is used in self-defense.

Although anyone can take a CCHL course, not everyone is eligible to obtain a CCH license. **Instructors should advise their students of the disqualifiers enumerated in K.S.A. 75-7c04(a) by reviewing Section III of the concealed carry application and applicable subsections in 18 U.S.C. 922(g) and (n).**

**Modifications to the CCHL Lesson Plan:** The lesson plan may not be modified without approval of the Attorney General's Concealed Carry Licensing Unit ("CCLU") and must be taught in its entirety. If an instructor desires to include additional elements of training, those elements will not be considered a part of the lesson plan and will require additional training time after the approved lesson plan has been taught. In effect, those additional elements will constitute proprietary training other than the Handgun Safety and Training Course authorized by the Attorney General. Permission from the Attorney General is not needed for such additional training.

Creativity is encouraged, but significant deviation from the lesson plan can result in an instructor's certification being withdrawn. See, K.A.R. 16-11-2 and 16-11-3. For example, if an instructor's class is dominated by extraneous or unrelated material and it fails to adequately cover the required topics, it could be determined that the instructor significantly deviated from the lesson plan. Significant deviation from the approved lesson plan may result in the rejection of a student's application for a CCHL.

**Teaching Methods and Other Considerations:** The methods used to teach a class will vary with each instructor. Instructional videos, PowerPoint presentations, slides, hands on practical exercises and lecture, to name a few, are all acceptable methods of training. Add content to each topic by using established training materials, conducting research and drawing on personal experiences. It is incumbent upon the instructor to provide the substance that will make each topic meaningful to the students. Use only authoritative resources and training aids that are relevant to the topic. A combination of teaching methods will keep the class interesting. Unless the instructor is a dynamic speaker, six straight hours of lecture will likely exhaust students and should be avoided. Use ingenuity, along with the lesson plan, to provide an informative, yet entertaining experience for the students. **Instructors who are not licensed attorneys must not engage in giving legal advice or opinions.**

While some instructors may only accept students who have experience with handguns, most instructors will conduct classes where the students have varying degrees of experience. The rule for tailoring classes is to know the students and teach to the lowest level of their knowledge about handguns and shooting. If one student in the group is a novice, the instruction for the entire group should be at the novice level. Conversely, if the class is comprised of experienced shooters, the instructor may wish to do a review of “handgun basics” but then supplement with advanced handgun techniques for the group. **Remember, under no circumstances can an instructor omit a topic covered in the Attorney General’s approved lesson plan.**

**A word of caution,** before tailoring the class for a group of students who claim to be “experienced” shooters, the instructor must confirm the students’ level of knowledge, skill and experience. The point here is; many people claim to have experience and knowledge that they really do not have (or the information they have is dated and they don't actually remember it). Talk to them, note their responses to the basics and observe how they handle a handgun. If in doubt, teach at the most basic level.

**Training Time vs. Administrative Time:** Administrative time includes, but is not limited to, filling out or reviewing applications, driving to a shooting range and other activities which are not related to training. The approved lesson plan is very specific as to what will be taught during training time. Time spent on administrative items is not included in the required 8-hours of class time. A 10 minute break taken after every 50 minutes of instruction is acceptable and does not require special scheduling or permission.

**Student Evaluations:** Students who do not complete the entire course or who are unable to meet the minimum qualifications are not to be certified by the instructor. Instructors are under no obligation to pass every student who takes their class. On the contrary, instructors who perceive they have a “problem” student who does not actively participate, who is disruptive or demonstrates other problems or issues which concern the instructor should either reschedule the student or release them from the class. For these reasons, instructors must not present certificates of completion until the students successfully complete the training.

**Certificates Attesting to the Successful Completion of the Handgun Safety and Training Class:** The Attorney General has produced, and distributed to all instructors, a standard certificate of completion form. Instructors may photocopy and use the standard form or customize the form for their training program. The certificate must bear the date of completion, the student’s printed name and signature, the student’s driver’s license or state issued ID card number, the instructor’s printed name and signature and the instructor’s certificate number (driver’s license or state issued ID number). Certificates received by the Attorney General with missing or incorrect identifiers or signatures will be returned to the applicant for correction, who in turn may need to contact the instructor for correct information.

Note: Active duty military and their “dependents” are not required to have a Kansas DL or ID in order to apply – see the updated statutes for the definition of a “dependent.”

**Acknowledgement of Receipt for Required Handout Materials:** Instructors are required to maintain a record of acknowledgement that the student received the required handout materials which include the following: 1) a copy of the current statutes governing the Personal and Family Protection Act; 2) a copy of the current list of concealed carry licenses recognized by Kansas and the list of jurisdictions that recognize the Kansas concealed carry license; and 3) the current publication of other places where concealed carry handguns may be prohibited on state, federal and tribal properties. The Attorney General has produced, and distributed to all instructors, a standard acknowledgement form. The acknowledgement must be signed and dated by both the student and the instructor, and retained in the instructor's training file for a period of 5 years. A copy of the acknowledgement form is not submitted with the CCHL application. The CCLU also HIGHLY recommends that the instructor also include a copy of the Kansas self-defense statutes with these three (3) handouts noted above. A separate copy of the self defense statutes can be found in the concealed carry materials at [www.ag.ks.gov](http://www.ag.ks.gov).

**Training Rosters:** Within 10 days of completing a class, the instructor must submit a roster of the students to the CCLU at 120 SW Tenth Ave., Topeka, KS, 66612. The rosters must contain the date of the course, name(s) and ID# of the instructor(s), and the name(s) and ID# of each student. A standard roster form is posted on the Attorney General's website at [www.ag.ks.gov](http://www.ag.ks.gov). Instructors who fail to send rosters of their classes risk getting applicant's applications held-up or denied and also risks the instructor's ability to retain their AG certification to teach CCH classes. See, below.

**Instructor Certification:** Once approved by the Attorney General, a certificate will be issued and mailed to the instructor along with a copy of the Instructor Guide and supporting materials. The certificates do not have an expiration date, but the Attorney General may withdraw the certification if the instructor is negligent or fails to remain in compliance with the eligibility requirements. K.A.R. 16-11-2, 16-11-3. Instructors must notify the CCLU of address changes, contact information or changes in their eligibility requirements. K.A.R. 16-11-3. Instructors that no longer wish to instruct the CCH class are asked to notify the CCLU.

**Instructor Orientation Classes:** Instructors certified after January 14, 2011 must attend the Attorney General's instructor orientation class, led by CCLU staff, within six months of being certified. The orientation sessions are conducted quarterly at various locations in Kansas. The schedule of classes and reservation form are posted on the Attorney General's website under Trainer Resources.

# **LEGAL ISSUES**

# LEGAL ISSUES

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Firearm and Weapon statutes were heavily moved around (specifically, various provisions were moved to new homes within the weapon statutes) so you may have to sift around to find an old provision in the new statutes. The above is just a brief sampling of the changes that occurred in 2011 with the statutory recodification. The Unit has attached a document which should help you navigate these new statutes and compare and find the old and new statutory positions.

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### I. OVERVIEW OF CRIMINAL AND CIVIL LAWS PERTAINING TO HANDGUNS AND THE USE OF DEADLY FORCE

#### A. Introduction – K.S.A. 75-7c01 et seq.: Concealed Carry Handgun License

K.S.A. 75-7c01 et seq., effective July 1, 2006, requires an applicant for a concealed handgun license (“CCH”) to complete 8 hours of course instruction on handgun safety, approved by the Kansas Attorney General (“AG”) in the following areas: (a) safe storage of handguns (b) actual firing of handguns and (c) instruction in the laws of the State of Kansas governing the carrying of a concealed handgun and the use of deadly force. Legal issues relating to the use of deadly force includes criminal and civil legal principles that will be incorporated into other areas of required training, especially the portion of this course dealing with mental conditioning for the use of deadly force and making judgments on the use of force. Therefore, an understanding the legal issues surrounding CCH is a necessary foundation for completing training to obtain or renew a concealed handgun license.

Instructors cannot teach their students all the criminal and civil laws that may affect their carrying and use of a handgun in this length of course. Instructors also cannot give legal advice, unless they are a licensed attorney, about any specific case in which a CCH student, applicant or licensee might be involved. Instructors will review with their students the laws that are required by the KPFPA, and the AG to be taught in this course. Instructors will also cover additional laws that are important to know about.

Instructors will examine the differences between criminal and civil law. These differing procedures mean that licensees have very different rights, risks and liabilities in criminal and civil cases – and a CCH licensee could see both sides of that coin if they draw their handgun and shoot it at someone. Next, instructors will examine criminal laws relating to handguns followed by a review civil laws relating to handguns.

Next, and most important, they will review with students the laws in Kansas concerning justified self defense, both non-deadly and deadly, when used against another person. Students will try to apply these laws to common situations so that they can develop decisive shooting skills; again, if the instructor is not an attorney, the instructor cannot offer legal advice.

Finally, instructors will look briefly at additional laws affecting the students’ right to carry a handgun and will review the legal principles that must be incorporated into a decisive shooting. Keep in mind that the criminal and civil laws reviewed are constantly changing.

#### B. Overview and comparison of criminal and civil law

If you violate a **criminal law**, the State can prosecute you, it can fine you, it can imprison you, and, in the most serious cases, it can even execute you. If you violate a **criminal law**, you may also violate a **civil law** and your victim and/or your victim's family might sue you to recover money from you or obtain a court order against you. It is possible to violate a **civil law** without violating any **criminal law** and vice versa. If you violate only a **civil law**, the person you injure and others related to that person can still sue you to recover money from you or obtain a court order against you. During this course, instructors will present the

criminal and civil laws that apply to carrying, displaying and using a handgun. These laws must be obeyed when carrying a handgun concealed or otherwise. Combining these laws with other considerations, such as tactics, safety, environmental considerations, type of handgun, a person's abilities with a handgun and personal moral values is called judgmental shooting.

## 1. General description of criminal laws

In the State of Kansas, criminal laws are "statutes" that have been enacted by government legislation. In Kansas, the statutes are named "Kansas Revised Statutes," and they are numbered by sections. They are abbreviated "K.S.A. \_\_\_ - \_\_\_\_" (which stands for "Kansas Statutes Annotated" \_\_\_ - \_\_\_\_\_). It is fair to say that criminal laws are affected by politics, compromise, special interests, public pressure, time constraints and the committee process in the legislature. It is also fair to say that criminal laws often contain vague, ambiguous, confusing or even conflicting provisions. Many of the misdemeanor State laws are adopted (and sometimes where allowed, modified) by local city governments so that they can prosecute a violator if allowed by law.

You should not assume that you fully understand a criminal statute by merely reading it. Courts determine the meaning of criminal statutes, and they sometimes do so with confusing results. If a criminal statute is too confusing, or if it conflicts with higher laws, such as the Constitution, the courts may decide that the statute is ineffective, partially unenforceable or wholly unenforceable. The legal principles used by the courts to interpret the meaning of criminal statutes have evolved over centuries, and scholars argue endlessly over how the laws should be interpreted. In other words, you should not assume that you understand the meaning of a criminal law by simply reading a statute and attaching your own meaning or dictionary definitions to it. This is an easy way to get into trouble for the unauthorized practice of law: Person A, who is not a licensed lawyer, has read Statute A on the "proper" way to transport a firearm; Person B posts a question on the internet about how to legally transport a firearm in Kansas; Person A, having read Statute A, proceeds to tell Person B about "what Kansas law says;" Person A is wrong in their reading/interpretation/explanation and Person B gets into legal trouble for improperly transporting a firearm in Kansas. And sometimes, simply adding the caveat "I am not a lawyer" is not enough.

IF YOU ARE NOT A LAWYER WHO CAN REPRESENT A PERSON WHEN THEY TAKE YOUR ADVICE AND GET INTO TROUBLE WITH THE LAW – DO NOT GIVE THEM YOUR "TAKE" OF THE LAW. POINT THEM TO THE STATUTE AND IF THEY STILL HAVE QUESTIONS TELL THEM TO CONTACT AN ATTORNEY.

## II. CRIMINAL PROCEDURE COMPARED TO CIVIL PROCEDURE

Before examining specific criminal and civil laws, it is important to understand important differences between these laws - the differing rules under which the laws are applied. These rules are called "procedure."

### A. Rights applicable to criminal cases which are not applicable to civil cases

In criminal cases, the government prosecutes the accused, who is presumed innocent, until proven guilty "beyond a reasonable doubt". In the course of the criminal investigation and trial, the accused has procedural protections guaranteed by the U.S. Constitution.

#### 1. Self-incrimination - Fifth Amendment to the U.S. Constitution

In the U.S., the government cannot force a person to give potentially incriminating statements.

This protection extends to police questioning and all phases of the trial.

## 2. Double jeopardy - Fifth Amendment to the U.S. Constitution

Generally, the accused cannot be tried twice for the "same crime." While it is possible for each different governmental authority, e.g., federal and state, to try an accused for the same acts, those acts are different crimes under different statutes. Retrials after a mistrial or reversal on appeal do not constitute being tried twice because the first trial never became final.

## 3. Right to counsel - Sixth Amendment to the U.S. Constitution

The accused is entitled to counsel in any felony case. If the accused cannot afford to hire counsel, the court will appoint counsel for the accused. Public defenders are paid by the government to represent accused persons in criminal trials.

## 4. Searches and seizures - Fourth Amendment to the U.S. Constitution

The government is generally prohibited from searching those places in which a suspect has a reasonable expectation of privacy, unless a search warrant is first granted by a court, based upon a showing that there is probable cause to believe a crime has been committed and that the requested search is reasonably calculated to lead evidence of that crime. The area of 4<sup>th</sup> Amendment search and seizure law is extremely complex with numerous exceptions and exceptions to the exceptions – instructors should stick to the basics here and if they get many questions on the topic, refer the questioners to private attorneys.

## 5. Jury trial - Sixth Amendment to the U.S. Constitution

In a criminal case, the accused is generally entitled to a jury trial to determine his guilt or innocence. This right, if triggered, can be waived by the accused.

## B. Civil law procedure

In a civil case, a private party or the party's lawyer prosecutes the case against the defendant. The defendant is not presumed innocent. Each side presents their case, the competing evidence is balanced, and the side with the "greater weight of evidence" or "preponderance of evidence" wins. The Sixth Amendment jury right does not apply to civil cases. Kansas courts, statutes and rules also have limited the types of civil cases to which a right to jury applies. Moreover, under some statutes and rules of procedure, if neither of the parties to a civil suit demands a jury trial within specified times, the right to a jury trial (when it exists) can be lost.

The defendant in a civil case has no protection against searches and seizures and no protection against giving evidence that will hurt his case. Indeed, under Kansas civil procedure, the defendant is **required** to reveal all known evidence that has a bearing on the case, even if the evidence hurts the defendant's case and helps the other side. If the defendant refuses to answer questions, the court (or the jury) can presume the answers would have hurt the defendant's case. The defendant can be asked and required to produce documents and other evidence, and cannot refuse so long as the request is reasonably calculated to lead to the discovery of evidence bearing upon the lawsuit.

The defendant must provide his own counsel, and if he cannot afford to hire a lawyer, the government will not provide one for him. If the defendant loses, he will likely be responsible for court costs and might be required to pay the other side's attorneys' fees and costs. If the defendant injures more than one person, each injured person might be able to sue the

defendant at different times in different courts.

### C. Overview of Differences between Civil and Criminal Law

#### CRIMINAL PROCEDURE

Enforced by Government

Right to Counsel

Right to Jury Trial

Right Against Self-Incrimination

Right Against Unreasonable Searches  
Seizures

Proof of Guilt Required "Beyond A  
Reasonable Doubt

Penalties Include Fines, Imprisonment,  
and even Death

#### CIVIL PROCEDURE

Enforced by individuals (mostly)

No right to counsel unless you can pay

Limited Jury Trial Rights

Silence Can Be Used Against Defendant;  
Defendant Is Required to Disclose All Relevant  
Information

Defendant May be Compelled to Turn Over All  
Relevant Information, Documents, Evidence,  
Witnesses, Etc.

Proof by "Preponderance of the Evidence" or  
"Clear and Convincing Evidence"

Penalties Limited to Money (Primarily) (Most  
Insurance Policies Do Not Cover Intentional  
Shootings)

### D. Summary of differences between civil and criminal law

Criminal laws are enforced by government; the accused is entitled to counsel for serious charges carrying one year or more penalty; the accused has the right to a jury trial; the accused has the Fifth Amendment right against self-incrimination; the accused is protected against unreasonable searches and seizures; the accused must be proven guilty beyond a reasonable doubt; if convicted, punishment is by probation, imprisonment, parole, fines and/or restitution, or execution.

Civil laws are enforced by lawsuits from private persons (plaintiffs), usually with the aid of private lawyers; there is no right to counsel (defendant must hire own counsel); there is no Fifth Amendment right (silence can be used against you); incriminating evidence can be requested or subpoenaed without any showing of probable cause; proof of liability is by preponderance of evidence; right to a jury trial has restrictions; "damages" in the form of monetary judgments are awarded to successful plaintiffs; liability (homeowner's) insurance usually will not cover intentional shootings and may exclude negligent handgun injuries.

### **III. CRIMINAL LAWS CONCERNING USE OF DEADLY FORCE AGAINST ANOTHER** **(Chapter 21, Kansas Statutes)**

#### **A. HOMICIDE OFFENSES:**

##### **21-5401. Capital murder.**

(a) Capital murder is the:

(1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in subsection (a) of K.S.A. 21-5408, and amendments thereto, or aggravated kidnapping, as

defined in subsection (b) of K.S.A. 21-5408, and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;

(2) intentional and premeditated killing of any person pursuant to a contract or agreement to kill such person or being a party to the contract or agreement pursuant to which such person is killed;

(3) intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;

(4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: Rape, as defined in K.S.A. 21-5503, and amendments thereto, criminal sodomy, as defined in subsections (a)(3) or (a)(4) of K.S.A. 21-5504, and amendments thereto or aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 21-5504, and amendments thereto, or any attempt thereof, as defined in K.S.A. 21-5301 and amendments thereto;

(5) intentional and premeditated killing of a law enforcement officer;

(6) intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or

(7) intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in subsection (a) of K.S.A. 21-5408, and amendments thereto, or aggravated kidnapping, as defined in subsection (b) of K.S.A. 21-5408, and amendments thereto, when the kidnapping or aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

(b) For purposes of this section, 'sex offense' means rape, as defined in K.S.A. 21-5503, and amendments thereto, aggravated indecent liberties with a child, as defined in subsection (b) of K.S.A. 21-5506, and amendments thereto, aggravated criminal sodomy, as defined in subsection (b) of K.S.A. 21-5504, and amendments thereto, selling sexual relations, as defined in K.S.A. 21-6419, and amendments thereto, promoting the sale of sexual relations, as defined in K.S.A. 21-6420, and amendments thereto, commercial sexual exploitation of a child, as defined in K.S.A. 21-6422, and amendments thereto, or sexual exploitation of a child, as defined in K.S.A. 21-5510, and amendments thereto.

(c) Capital murder is an off-grid person felony.

*History: L. 1994, ch. 252, § 1; L. 2010, ch. 136, § 36; L. 2013, ch. 120, § 14; July 1, 2013.*

### **21-5402. Murder in the first degree.**

(a) Murder in the first degree is the killing of a human being committed:

(1) Intentionally, and with premeditation; or

(2) in the commission of, attempt to commit, or flight from any inherently dangerous felony.

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section, an "inherently dangerous felony" means:

(1) Any of the following felonies, whether such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as not to be an ingredient of the homicide alleged to be a violation of subsection (a)(2):

(A) Kidnapping, as defined in subsection (a) of K.S.A. 21-5408, and amendments thereto;

(B) aggravated kidnapping, as defined in subsection (b) of K.S.A. 21-5408, and amendments thereto;

(C) robbery, as defined in subsection (a) of K.S.A. 21-5420, and amendments thereto;

- (D) aggravated robbery, as defined in subsection (b) of K.S.A. 21-5420 and amendments thereto;
- (E) rape, as defined in K.S.A. 21-5503, and amendments thereto;
- (F) aggravated criminal sodomy, as defined in subsection (b) of 21-5504, and amendments thereto;
- (G) abuse of a child, as defined in K.S.A. 21-5602, and amendments thereto;
- (H) felony theft of property, as defined in subsection (a)(1) or (a)(3) of 21-5801, and amendments thereto;
- (I) burglary, as defined in subsection (a) of K.S.A. 21-5807, and amendments thereto;
- (J) aggravated burglary, as defined in subsection (b) of K.S.A. 21-5807, and amendments thereto;
- (K) arson, as defined in subsection (a) of K.S.A. 21-5812, and amendments thereto;
- (L) aggravated arson, as defined in subsection (b) of K.S.A. 21-5812, and amendments thereto;
- (M) treason, as defined in K.S.A. 21-5901, and amendments thereto;
- (N) any felony offense as provided in K.S.A. 2009 Supp. 21-5703, 21-5705 or 21-5706, and amendments thereto;
- (O) any felony offense as provided in subsection (a) or (b) of K.S.A. 21-6308, and amendments thereto;
- (P) endangering the food supply, as defined in subsection (a) of K.S.A. 21-6317, and amendments thereto;
- (Q) aggravated endangering the food supply, as defined in subsection (b) of K.S.A. 21-6317, and amendments thereto;
- (R) fleeing or attempting to elude a police officer, as defined in subsection (b) of K.S.A. 8-1568, and amendments thereto; or
- (S) aggravated endangering a child, as defined in subsection (b)(1) of K.S.A. 21-5601, and amendments thereto;
- (T) abandonment of a child, as defined in subsection (a) of 21-5605, and amendments thereto; or
- (U) aggravated abandonment of a child, as defined in subsection (b) of 21-5605, and amendments thereto; and
- (2) any of the following felonies, only when such felony is so distinct from the homicide alleged to be a violation of subsection (a)(2) as to not be an ingredient of the homicide alleged to be a violation of subsection (a)(2):
  - (A) Murder in the first degree, as defined in K.S.A. 21-5402;
  - (B) murder in the second degree, as defined in K.S.A. 21-5403, and amendments thereto;
  - (C) voluntary manslaughter, as defined in subsection (a)(1) of K.S.A. 21-5404, and amendments thereto;
  - (D) aggravated assault, as defined in subsection (b) of K.S.A. 21-5412, and amendments thereto;
  - (E) aggravated assault of a law enforcement officer, as defined in subsection (d) of K.S.A. 21-5412, and amendments thereto;
  - (F) aggravated battery, as defined in subsection (b)(1) of K.S.A. 21-5413, and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in subsection (d) of K.S.A. 21-5413, and amendments thereto.

(d) Murder in the first degree as defined in subsection (a)(2) is an alternative method of proving murder in the first degree and is not a separate crime from murder in the first degree as defined in subsection (a)(1). The provisions of K.S.A. 21-5109, and amendments thereto, are not applicable to murder in the first degree as defined in subsection (a)(2). Murder in the first degree as defined in subsection (a)(2) is not a lesser included offense of murder in the first degree as defined in subsection (a)(1), and is not a lesser included offense of capital murder as defined in K.S.A. 21-5401, and amendments thereto. As set forth in subsection (b) of K.S.A. 21-5109, and amendments thereto, there are no lesser included offenses of murder in the first degree under subsection (a)(2).

*History: L. 1969, ch. 180, § 21-3401; L. 1972, ch. 112, § 1; L. 1989, ch. 87, § 1; L. 1990, ch. 100, § 2; L. 1991, ch. 85, § 4; L. 1992, ch. 298, § 3; L. 1993, ch. 291, § 18; L. 2010, ch. 136, § 37; July 1, 2011; L. 2013, ch. 96, § 2; July 1, 2013.*

#### **21-5403. Murder in the second degree.**

Murder in the second degree is the killing of a human being committed:

(a)(1) Intentionally; or

(2) unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life.

(b) Murder in the second degree as described in:

(1) subsection (a)(1) is a severity level 1, person felony;

(2) subsection (a)(2) is a severity level 2, person felony.

*History: L. 1969, ch. 180, § 21-3402; L. 1992, ch. 298, § 4; L. 1993, ch. 291, § 19; L. 1996, ch. 158, § 6; L. 1999, ch. 164, § 5; L. 2010, ch. 136, § 38; July 1, 2011.*

#### **21-5404. Voluntary manslaughter.**

(a) Voluntary manslaughter is knowingly killing of a human being committed:

(1) Upon a sudden quarrel or in the heat of passion; or

(2) upon an unreasonable but honest belief that circumstances existed that justified use of deadly force under K.S.A. 21-5222, 21-5223 or 21-5225, and amendments thereto.

(b) Voluntary manslaughter is a severity level 3, person felony.

*History: L. 1969, ch. 180, § 21-3403; L. 1992, ch. 298, § 5; L. 1993, ch. 291, § 20; L. 2010, ch. 136, § 39; L. 2011, ch. 30, § 16, July 1.*

#### **21-5405. Involuntary manslaughter.**

(a) Involuntary manslaughter is the killing of a human being committed:

(1) Recklessly;

(2) in the commission of, or attempt to commit, or flight from any felony, other than an inherently dangerous felony as defined in K.S.A. 21-5402, and amendments thereto, that is enacted for the protection of human life or safety or a misdemeanor that is enacted for the protection of human life or safety, including acts described in K.S.A. 8-1566 and subsection (a) of 8-1568, and amendments thereto, but excluding the acts described in K.S.A. 8-1567, and amendments thereto;

(3) in the commission of, or attempt to commit, or flight from an act described in K.S.A. 8-1567, and amendments thereto; or

(4) during the commission of a lawful act in an unlawful manner.

(b) Involuntary manslaughter as defined in:

(1) Subsection (a)(1), (a)(2) or (a)(4) is a severity level 5, person felony; and

(2) subsection (a)(3) is a severity level 4, person felony.

*History: L. 1969, ch. 180, § 21-3404; L. 1979, ch. 90, § 3; L. 1982, ch. 132, § 2; L. 1992, ch. 298, § 6; L. 1993, ch. 291, § 21; L. 1996, ch. 158, § 2; L. 2005, ch. 59, § 1; L. 2010, ch. 136, § 40; July 1, 2011.*

#### **21-5407. Assisting suicide.**

(a) Assisting suicide is:

(1) Knowingly, by force or duress, causing another person to commit or to attempt to commit suicide; or

(2) intentionally assisting another person to commit or to attempt to commit suicide, by:

(A) Providing the physical means by which another person commits or attempts to commit suicide; or

(B) participating in a physical act by which another person commits or attempts to commit suicide.

(b) Assisting suicide as defined in:

(1) Subsection (a)(1) is a severity level 3, person felony; and

(2) subsection (a)(2) is a severity level 9, person felony.

*History: L. 1969, ch. 180, § 21-3406; L. 1992, ch. 298, § 8; L. 1993, ch. 291, § 23; L. 1998, ch. 142, § 3; L. 2010, ch. 136, § 42; July 1, 2011.*

## **B. ASSAULT AND BATTERY OFFENSES**

### **21-5412. Assault; Aggravated Assault; Assault and Aggravated Assault of law enforcement officer.**

(a) Assault is knowingly placing another person in reasonable apprehension of immediate bodily harm;

(b) Aggravated assault is assault, as defined in subsection (a), committed:

(1) With a deadly weapon;

(2) while disguised in any manner designed to conceal identity; or

(3) with intent to commit any felony.

(c) Assault of a law enforcement officer is assault, as defined in subsection (a), committed against:

(1) A uniformed or properly identified state, county or city law enforcement officer while such officer is engaged in the performance of such officer's duty; or

(2) a uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(d) Aggravated assault of a law enforcement officer is assault of a law enforcement officer, as defined in subsection (c), committed:

(1) With a deadly weapon;

(2) while disguised in any manner designed to conceal identity; or

(3) with intent to commit any felony.

(e) (1) Assault is a class C person misdemeanor.

(2) Aggravated assault is a severity level 7, person felony.

(3) Assault of a law enforcement officer is a class A person misdemeanor.

(4) Aggravated assault of a law enforcement officer is a severity level 6, person felony. A person convicted of aggravated assault of a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-6804, and amendments thereto.

*History: L. 1969, ch. 180, § 21-3408; L. 1992, ch. 298, § 9; L. 1994, ch. 291, § 22; L. 2010, ch. 136, § 47; L. 2011, ch. 30, § 18, July 1.*

**21-5413. Battery; Aggravated Battery; Battery and Aggravated Battery of law enforcement officer.**

(a) Battery is:

(1) Knowingly or recklessly causing bodily harm to another person; or

(2) knowingly causing physical contact with another person when done in a rude, insulting or angry manner;

(b) Aggravated battery is:

(1) (A) Knowingly causing great bodily harm to another person or disfigurement of another person;

(B) knowingly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted; or

(C) knowingly causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted;

(2) (A) recklessly causing great bodily harm to another person or disfigurement of another person; or

(B) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

(3)(A) committing an act described in K.S.A. 8-1567, and amendments thereto, when great bodily harm to another person or disfigurement of another person results from such act; or

(B) committing an act described in K.S.A. 8-1567, and amendments thereto, when bodily harm to another person results from such act circumstances whereby great bodily harm, disfigurement or death can result from such act.

(c) Battery against a law enforcement officer is:

(1) Battery, as defined in subsection (a)(2), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile detention facility office, or employee, while such officer is engaged in the performance of such officer's duty;

(C) judge, while such judge is engaged in the performance of such judge's duty;

(D) attorney, while such attorney is engaged in the performance of such attorney's duty; or

(E) community corrections officer or court services officer while such officer is engaged in the performance of such officer's duty;

(2) battery, as defined in subsection (a)(1), committed against a:

(A) Uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

(B) uniformed or properly identified state, county or city law enforcement officer, other than a state correctional officer or employee, a city or county correctional officer or employee, a juvenile detention facility officer or employee, while such officer is engaged in the performance of such officer's duty;

*(C) judge, while such judge is engaged in the performance of such judge's duty;*

*(D) attorney, while such attorney is engaged in the performance of such attorney's duty; or*

*(E) community corrections officer or court services officer while such officer is engaged in the performance of such officer's duty;*

(3) battery, as defined in subsection (a) committed against a:

(A) State correctional officer or employee by a person in custody of the secretary of corrections, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(B) *state correctional* officer or employee by a person confined in such juvenile correctional facility, while such officer or employee is engaged in the performance of such officer's or employee's duty;

(C) juvenile detention facility officer or employee by a person confined in such juvenile detention facility, while such officer or employee is engaged in the performance of such officer's or employee's duty; or

(D) city or county correctional officer or employee by a person confined in a city holding facility or county jail facility, while such officer or employee is engaged in the performance of such officer's or employee's duty.

(d) Aggravated battery against a law enforcement officer is:

(1) An aggravated battery, as defined in subsection (b)(1)(A) committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

*(C) judge, while such judge is engaged in the performance of such judge's duty;*

*(D) attorney, while such attorney is engaged in the performance of such attorney's duty; or*

*(E) community corrections officer or court services officer while such officer is engaged in the performance of such officer's duty;*

(2) an aggravated battery, as defined in subsection (b)(1)(B) or (b)(1)(C), committed against a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty;

*(C) judge, while such judge is engaged in the performance of such judge's duty;*

*(D) attorney, while such attorney is engaged in the performance of such attorney's duty; or*

*(E) community corrections officer or court services officer while such officer is engaged in the performance of such officer's duty;*

(3) knowingly causing, with a motor vehicle, bodily harm to a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; or

(B) uniformed or properly identified university or campus police officer while such officer is engaged in the performance of such officer's duty.

(e) Battery against a school employee is a battery, as defined in subsection (a), committed against a school employee in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event, while such employee is engaged in the performance of such employee's duty.

(f) Battery against a mental health employee is a battery, as defined in subsection (a), committed against a mental health employee by a person in the custody of the secretary of social and rehabilitation services, while such employee is engaged in the performance of such employee's duty.

(g) (1) Battery is a class B person misdemeanor.

(2) Aggravated battery as defined in:

(A) Subsection (b)(1)(A) is a severity level 4, person felony;

(B) subsection (b)(1)(B) or (b)(1)(C) is a severity level 7, person felony;

(C) subsection (b)(2)(A) is a severity level 5, person felony; and

(D) subsection (b)(2)(B) is a severity level 8, person felony.

(3) Battery against a law enforcement officer as defined in:

(A) Subsection (c)(1) is a class A person misdemeanor;

(B) subsection (c)(2) is a severity level 7, person felony; and

(C) subsection (c)(3) is a severity level 5, person felony.

(4) aggravated battery against a law enforcement officer as defined in:

(A) Subsection (d)(1) or (d)(3) is a severity level 3, person felony; and

(B) subsection (d)(2) is a severity level 4, person felony.

(5) Battery against a school employee is a class A person misdemeanor.

(6) Battery against a mental health employee is a severity level 7, person felony.

(h) As used in this section:

(1) "Correctional institution" means any institution or facility under the supervision and control of the secretary of corrections;

(2) "state correctional officer or employee" means any officer or employee of the Kansas department of corrections or any independent contractor, or any employee of such contractor, working at a correctional institution;

(3) "juvenile detention facility officer or employee" means any officer or employee of a juvenile detention facility as defined in K.S.A. 2010 Supp. 38-2302, and amendments thereto;

(4) "city or county correctional officer or employee" means any correctional officer or employee of the city or county or any independent contractor, or any employee of such contractor, working at a city holding facility or county jail facility;

(5) "school employee" means any employee of a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12; and

(6) "mental health employee" means an employee of the department of social and rehabilitation services working at Larned state hospital, Osawatomie state hospital and Rainbow mental health facility, Kansas neurological institute and Parsons state hospital and training center and the treatment staff as defined in K.S.A. 59-29a02, and amendments thereto.

*History: L. 1969, ch. 180, § 21-3412; L. 1992, ch. 298, § 11; L. 1993, ch. 291, § 27; L. 1996, ch. 211, § 4; L. 1996, ch. 258, § 13; L. 2001, ch. 177, § 6; L. 2010, ch. 136, § 48; L. 2011, ch. 30, § 19; L. 2015, ch. 90, § 1, July 1.*

#### **21-5414. Domestic Battery**

(a) Domestic battery is:

(1) Knowingly or recklessly causing bodily harm by a family or household member against a family or household member; or

(2) knowingly causing physical contact with a family or household member by a family or household member when done in a rude, insulting or angry manner.

(b) Domestic battery is:

(1) Except as provided in (b)(2) or (b)(3), a class B person misdemeanor and the offender shall be sentenced to not less than 48 consecutive hours nor more than six months' imprisonment and fined not less than \$200, nor more than \$500 or in the court's discretion the court may enter an order which requires the offender to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program;

(2) except as provided in (b)(3), a class A person misdemeanor, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a second time and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The five days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program. The offender shall serve at least five consecutive days imprisonment before the offender is granted probation, suspension or reduction of sentence or parole or is otherwise released. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise directed by the court or department of corrections; and

(3) person felony, if, within five years immediately preceding commission of the crime, an offender is convicted of domestic battery a third or subsequent time, and the offender shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$7,500. The offender convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the offender has served at least 90 days imprisonment. As a condition of any grant of probation, suspension of sentence or parole or of any other release, the offender shall be required to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, unless otherwise ordered by the court of department of corrections. If the offender does not undergo a domestic violence offender assessment conducted by a certified batterer intervention program and follow all recommendations made by such program, the offender shall serve not less than 180 days nor more than one year's imprisonment. The 90 days imprisonment mandated by this paragraph may be served in a work release program only after such offender has served 48 consecutive hours imprisonment, provided such work release program requires such offender to return to confinement at the end of each day in the work release program.

(c) As used in this section:

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

to be the father, regardless of whether they have been married or have lived together at any time; and

(2) for the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:

(A) "Conviction" includes being convicted of a violation of K.S.A. 21-3412a, prior to its repeal, this section or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;

(B) "conviction" includes being convicted of a violation of a law of another state, or an ordinance of any city, or resolution of any county, which prohibits the acts that this section prohibits or entering into a diversion or deferred judgment agreement in lieu of further criminal proceedings in a case alleging a violation of such law, ordinance or resolution;

(C) only convictions occurring in the immediately preceding five years including prior to July 1, 2001, shall be taken into account, but the court may consider other prior convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and

(D) it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(d) A person may enter into a diversion agreement in lieu of further criminal proceedings for a violation of this section or an ordinance of any city or resolution of any county which prohibits the acts that this section prohibits only twice during any five-year period.

*History: L. 2001, ch. 177, § 5; L. 2006, ch. 212, § 24; L. 2008, ch. 175, § 1; L. 2010, ch. 101, § 6; L. 2010, ch. 136, § 49; L. 2011, ch. 30, § 20; L. 2012, ch. 162, §5; May 31.*

## **C. CRIMINAL THREAT AND RESTRAINT OFFENSES:**

### **21-5415. Criminal threat.**

(a) A criminal threat is any threat to:

(1) Commit violence communicated with intent to place another in fear, or to cause the evacuation, lock down or disruption in regular, on-going activities of any building, place of assembly or facility of transportation, or in reckless disregard of the risk of causing such fear or evacuation, lock down or disruption in regular, ongoing activities;

(2) adulterate or contaminate any food, raw agricultural commodity, beverage, drug, animal feed, plant or public water supply; or

(3) expose any animal in this state to any contagious or infectious disease.

(b) Aggravated criminal threat is the commission of a criminal threat, as defined in subsection (a), when a public, commercial or industrial building, place of assembly or facility of transportation is evacuated, locked down or disrupted as to regular, ongoing activities as a result of the threat.

(c) (1) A criminal threat is a severity level 9, person felony.

(2) Aggravated criminal threat is a severity level 5, person felony.

(d) As used in this section, "threat" includes any statement that one has committed any action described by subsection (a).

*History: L. 1969, ch. 180, § 21-3419; L. 1984, ch. 116, § 1; L. 1992, ch. 298, § 14; L. 1993, ch. 291, § 32; L. 2002, ch. 88, § 3; L. 2009, ch. 132, § 3; L. 2010, ch. 136, § 50; July 1, 2011.*

### **21-5411. Criminal restraint.**

(a) Criminal restraint is knowingly and without legal authority restraining another person so as to interfere substantially with such person's liberty.

(b) Criminal restraint is a class A person misdemeanor.

(c) This section shall not apply to acts done in the performance of duty by any law enforcement officer of the state of Kansas or any political subdivision thereof.

(d) Any merchant, or a merchant's agent or employee, who has probable cause to believe that a person has actual possession of and has wrongfully taken, or is about to wrongfully take merchandise from a mercantile establishment, may detain such person on the premises or in the immediate vicinity thereof, in a reasonable manner and for a reasonable period of time for the purpose of investigating the circumstances of such possession. Such reasonable detention shall not constitute an arrest nor criminal restraint.

*History: L. 1969, ch. 180, § 21-3424; L. 1992, ch. 298, § 15; L. 1993, ch. 291, § 38; L. 2010, ch. 136, § 46; July 1, 2011.*

### **21-5408. Kidnapping.**

(a) Kidnapping is the taking or confining of any person, accomplished by force, threat or deception, with the intent to hold such person:

- (1) For ransom, or as a shield or hostage;
- (2) to facilitate flight or the commission of any crime;
- (3) to inflict bodily injury or to terrorize the victim or another; or
- (4) to interfere with the performance of any governmental or political function.

(b) Aggravated kidnapping is kidnapping, as defined in subsection (a), when bodily harm is inflicted upon the person kidnapped.

(c) (1) Kidnapping is a severity level 3, person felony.

(2) Aggravated kidnapping is a severity level I, person felony.

*History: L. 1969, ch. 180, § 21-3420; L. 1992, ch. 239, § 58; L. 1993, ch. 291, § 33; L. 2010, ch. 136, § 43; July 1, 2011.*

## **D. Criminal Trespass, Destruction of Property and Disorderly Conduct Offenses:**

### **21-5813. Criminal damage to property.**

(a) Criminal damage to property is by means other than by fire or explosive:

- (1) Knowingly damaging, destroying, defacing or substantially impairing the use of any property in which another has an interest without the consent of such other person; or
- (2) damaging, destroying, defacing or substantially impairing the use of any property with intent to injure or defraud an insurer or lienholder.

*(b) Aggravated criminal damage to property is criminal damage to property, as defined in subsection (a)(1), if the value or amount of damage exceeds \$5,000, committed with the intent to obtain any regulated scrap metal as defined in K.S.A. 2014 Supp. 50-6,109, and amendments thereto, or any items listed in K.S.A. 2014 Supp. 50-6,111(d), and amendments thereto, upon:*

- (1) Any building, structure, personal property or place used primarily for worship or any religious purpose;*
- (2) any building, structure or place used as a school or as an educational facility;*
- (3) any building, structure or place used by a non-profit or charitable business, corporation, firm, service or association;*

(4) any grave, cemetery, mortuary or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead;

(5) any agricultural property or agricultural infrastructure;

(6) any construction, mining or recycling facility, structure or site;

(7) any utility, utility service, telecommunication, telecommunication service, cable or video service facility, property, building, structure, site or component thereof;

(8) any municipal, county or state building, structure, site or property;

(9) any residential, commercial, industrial or agricultural irrigation, sprinkler or watering system or component thereof;

(10) the infrastructure of any residence, building or structure;

(11) any historical marker, plaque or work of art;

(12) any vehicle or transportation building, facility, structure, site or property; or

(13) any other building, structure, residence, facility, site, place, property, vehicle or any infrastructure thereof.

(c) Criminal damage to property if the property:

(1) Is damaged to the extent of \$25,000 or more is a severity level 7, nonperson felony;

(2) is damaged to the extent of at least \$1,000 but less than \$25,000 is a severity level 9, nonperson felony; and

(3) damaged is of the value of less than \$1,000 or is of the value of \$1,000 or more and is damaged to the extent of less than \$1,000 is a class B nonperson misdemeanor.

(d) Aggravated criminal damage to property is a severity level 6, non-person felony.

(e) (1) As used in subsection (b):

(A) "Infrastructure" includes any fixture to, attachment upon or part of a residence, building or structure's framework, electrical wiring and appurtenances, plumbing or heating and air systems; and

(B) "site" includes any area, place or location set aside for specific use or uses, including, but not limited to, storage, staging, repair, sorting, transportation, planning or organization.

(2) Any of the items or locations listed in subsection (b) shall include the curtilage, adjoining land and any improvements thereupon.

(3) Nothing in subsection (b) shall be construed to require the:

(A) Construction or existence of any door, gate, fence, barrier or wall; or

(B) existence of notice, postings or signs to potential trespassers.

(f) In determining the amount of damage to property, damages may include the cost of repair or replacement of the property that was damaged, the reasonable cost of the loss of production, crops and livestock, reasonable labor costs of any kind, reasonable material costs of any kind and any reasonable costs that are attributed to equipment that is used to abate or repair the damage to the property.

History: L. 1969, ch. 180, § 21-5820; L. 1978, ch. 120, § 31; L. 1984, ch. 119, § 7; L. 1989, ch. 92, § 33; L. 1992, ch. 298, § 78; L. 1993, ch. 291, § 78; L. 1994, ch. 291, § 31; L. 2006, ch. 194, § 17; L. 2010, ch. 136, § 99; L. 2015, ch. 96, § 9, July 1.

**21-5808. Criminal trespass.**

(a) Criminal trespass is entering or remaining upon or in any:

(1) Land, nonnavigable body of water, structure, vehicle, aircraft or watercraft by a person who knows such person is not authorized or privileged to do so, and:

(A) Such person enters or remains therein in defiance of an order not to enter or to leave such premises or property personally communicated to such person by the owner thereof or other authorized person;

(B) such premises or property are posted as provided in 32-1013, and amendments thereto, or in any manner reasonably likely to come to the attention of intruders, or are locked or fenced or otherwise enclosed, or shut or secured against passage or entry; or

(C) such person enters or remains therein in defiance of a restraining order issued pursuant to K.S.A. 60-3105, 60-3106, 60-3107, 60-31a05 or 60-31a06, K.S.A. 23-2707, or K.S.A. 2009 Supp. 38-2243, 38-2244 or 38-2255, and amendments thereto, and the restraining order has been personally served upon the person so restrained; or

(2) public or private land or structure in a manner that interferes with access to or from any health care facility by a person who knows such person is not authorized or privileged to do so and such person enters or remains thereon or therein in defiance of an order not to enter or to leave such land or structure personally communicated to such person by the owner of the health care facility or other authorized person.

(b) Criminal trespass is a class B nonperson misdemeanor. Upon a conviction of a violation of subsection (a)(1)(C), a person shall be sentenced to not less than 48 consecutive hours of imprisonment which shall be served either before or as a condition of any grant of probation or suspension, reduction of sentence or parole.

(c) As used in this section:

(1) "Health care facility" means any licensed medical care facility, certificated health maintenance organization, licensed mental health center or mental health clinic, licensed psychiatric hospital or other facility or office where services of a health care provider are provided directly to patients; and

(2) "health care provider" means any person:

(A) Licensed to practice a branch of the healing arts;

(B) licensed to practice psychology;

(C) licensed to practice professional or practical nursing;

(D) licensed to practice dentistry;

(E) licensed to practice optometry;

(F) licensed to practice pharmacy;

(G) registered to practice podiatry;

(H) licensed as a social worker; or

(I) registered to practice physical therapy.

(d) This section shall not apply to:

(1) A land surveyor, licensed pursuant to article 70 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, and such surveyor's authorized agents and employees who enter upon lands, waters and other premises in the making of a survey; or

(2) railroad property as defined in 21-5809, and amendments thereto, or nuclear generating facility as defined in K.S.A. 2009 Supp. 66-2302, and amendments thereto.

*History: L. 1969, ch. 180, § 21-5821; L. 1979, ch. 92, § 13; L. 1980, ch. 99, § 1; L. 1986, ch. 161, § 3;*

L. 1992, ch. 183, § 6; L. 1993, ch. 291, § 79; L. 1996, ch. 30, § 2; L. 1996, ch. 211, § 2; L. 2002, ch. 141, § 11; L. 2003, ch. 128, § 17; L. 2004, ch. 129, § 1; L. 2006, ch. 194, § 18; L. 2010, ch. 136, § 94; July 1, 2011.

### **21-6203. Disorderly conduct.**

(a) Disorderly conduct is one or more of the following acts that the person knows or should know will alarm, anger or disturb others or provoke an assault or other breach of the peace:

- (1) Brawling or fighting;
- (2) disturbing an assembly, meeting or procession, not unlawful in its character; or
- (3) using fighting words or engaging in noisy conduct tending reasonably to arouse alarm, anger or resentment in others.

(b) Disorderly conduct is a class C misdemeanor.

(c) As used in this section, "fighting words" means words that by their very utterance inflict injury or tend to incite the listener to an immediate breach of the peace.

*History: L. 1969, ch. 180, § 21-4101; July 1, 1970; L. 2010, ch. 136, § 181; July 1, 2011.*

## **E. CRIMINAL USE OF WEAPONS – FIREARMS OFFENSES**

### **21-6301. Criminal use of weapons.**

(a) Criminal use of weapons is knowingly:

- (1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club, metal knuckles or throwing star;
- (2) possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, 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;
- (8) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;
- (9) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments

thereto;

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

(11) possessing any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades 1 through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;

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

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

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

(b) Criminal use of weapons as defined in:

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

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

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

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

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

(A) Class A nonperson misdemeanor except as provided in subsection (b)(5)(B);

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

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

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

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

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

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

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

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

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

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

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

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

(A) Owned by the law enforcement agency;

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

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

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

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

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

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

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

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

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

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

(j) Subsections (a)(9) and (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2010 Supp. 75-7c26, and amendments thereto.

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

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

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

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

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

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

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

(7) at such person's residence and who, with the permission of such person's parent or legal

guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. 21-5222, 21-5223, or 21-5225, and amendments thereto.

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

*History: L. 1969, ch. 180, § 21-4201; L. 1978, ch. 365, § 1; L. 1981, ch. 145, § 1; L. 1982, ch. 135, § 2; L. 1982, ch. 136, § 1; L. 1986, ch. 126, § 1; L. 1992, ch. 298, § 67; L. 1993, ch. 291, § 146; L. 1996, ch. 149, § 4; L. 1999, ch. 164, § 12; L. 2002, ch. 123, § 3; L. 2004, ch. 83, § 1; L. 2006, ch. 32, § 20; L. 2008, ch. 103, § 2; L. 2009, ch. 92, § 1; L. 2010, ch. 140, § 15, L. 2010, ch. 136, § 186; L. 2011, ch. 30, § 48; L. 2013, ch. 88, § 2; L. 2014, ch. 97, § 11; L. 2015, ch. 16, § 2, July 1.*

### **21-6302. Criminal carrying of a weapon.**

(a) Criminal carrying of a weapon is knowingly carrying:

- (1) Any bludgeon, sandclub, metal knuckles or throwing star;
- (2) concealed on one's person, billy, blackjack, slungshot, or any other dangerous or deadly weapon or instrument of like character;
- (3) on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance;
- (4) any pistol, revolver or other firearm concealed on one's person *if such person is under 21 years of age*, except when on *such* person's land or in the person's abode or fixed place of business; or

(5) a shotgun with a barrel less than 18 inches in length or any other 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.

(b) Criminal carrying of a weapon as defined in:

- (1) Subsections (a)(1), (a)(2), (a)(3) or (a)(4) is a class A nonperson misdemeanor; and
- (2) subsection (a)(5) is a severity level 9, nonperson felony.

(c) Subsection (a) shall not apply to:

- (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
- (2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

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

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

(d) Subsection (a)(5) shall not apply to:

(1) Any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor;

(2) any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsection (a)(5) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory; or

(3) any person or entity in compliance with the national firearms act, 26 U.S.C. 5801 et seq.

(e) As used in this section, "throwing star" means the same as prescribed by K.S.A. 21-6301, and amendments thereto.

*History: L. 1969, ch. 180, § 21-4201; L. 1978, ch. 365, § 1; L. 1981, ch. 145, § 1; L. 1982, ch. 135, § 2; L. 1982, ch. 136, § 1; L. 1986, ch. 126, § 1; L. 1992, ch. 298, § 67; L. 1993, ch. 291, § 146; L. 1996, ch. 149, § 4; L. 1999, ch. 164, § 12; L. 2002, ch. 123, § 3; L. 2004, ch. 83, § 1; L. 2006, ch. 32, § 20; L. 2008, ch. 103, § 2; L. 2009, ch. 92, § 1; L. 2010, ch. 140, § 15, L. 2010, ch. 136, § 187; L. 2011, ch. 30, § 49, July 1; L. 2013, ch. 133, § 8; L. 2013, ch. 105, § 4; L. 2015, ch. 16, § 3, July 1.*

### **21-6303. Criminal distribution of firearms to a felon.**

(a) Criminal distribution of firearms to a felon is knowingly:

(1) Selling, giving or otherwise transferring any firearm to any person who, within the preceding five years, has been convicted of a felony, other than those specified in subsection (c), under the laws of this or any other jurisdiction or has been released from imprisonment for a felony and was not found to have been in possession of a firearm at the time of the commission of the felony;

(2) selling, giving or otherwise transferring any firearm to any person who, within the preceding 10 years, has been convicted of a felony to which this subsection applies, but was not found to have been in possession of a firearm at the time of the commission of the felony, or has been released from imprisonment for such a felony, and has not had the conviction of such felony expunged or been pardoned for such felony; or

(3) selling, giving or otherwise transferring any firearm to any person who has been convicted of a felony under the laws of this or any other jurisdiction and was found to have been in possession of a firearm at the time of the commission of the felony.

(b) Criminal distribution of firearms to a felon is a class A nonperson misdemeanor.

(c) Subsection (a)(2) shall apply to a felony under K.S.A. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, subsection (b) or (d) of 21-5412, subsection (b) or (d) of 21-5413, subsection (a) of 21-5415, subsection (b) of 21-5420, 21-5503, subsection (b) of 21-5504, subsection (b) of 21-5505, subsection (b) of 21-5807, and amendments thereto, K.S.A. 2010 Supp. 21-36a05 or 21-36a06, and amendments thereto, or K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b, 65-4160 through 65-4165, prior to their repeal, or a crime under a law of another jurisdiction which is substantially the same as such felony.

(d) It is not a defense that the distributor did not know or have reason to know:

(1) The precise felony the recipient committed;

(2) that the recipient was in possession of a firearm at the time of the commission of the recipient's prior felony; or

(3) that the convictions for such felony have not been expunged or pardoned.

*History: L. 1969, ch. 180, § 21-4203; L. 1990, ch. 102, § 1; L. 1992, ch. 298, § 69; L. 1993, ch. 291, § 148; L. 1994, ch. 348, § 3; L. 1996, ch. 158, § 3; L. 2006, ch. 213, § 13; L. 2009, ch. 32, § 28, L. 2010, ch. 136, § 188; L. 2011, ch. 30, § 50, July 1.*

## **21-6304. Criminal possession of a firearm.**

(a) Criminal possession of a weapon by a convicted felon is possession of any weapon by a person who:

(1) Has been convicted of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 21-36a01 through 21-36a17, prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 21-36a01 through 21-36a17, prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, and was found to have been in possession of a firearm at the time of the commission of the crime;

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

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

(A) Felony under K.S.A. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, subsection (b) or (d) of 21-5412, subsection (b) or (d) of section 21-5413, subsection (a) of 21-5415, subsection (b) of 21-5420, 21-5503, subsection (b) of 21-5504, subsection (b) of 21-5505, subsection (b) of 21-5807, and amendments thereto; article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto; K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b, 65-4159 through 65-4165 or 65-7006, prior to their repeal; an attempt, conspiracy or criminal solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 21-5301, 21-5302 or 21-5303, and amendments thereto, of any such felony; or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such felony, was not found to have been in possession of a firearm at the time of the commission of the crime, and has not had the conviction of such crime expunged or been pardoned for such crime. The provisions of subsection (j)(2)\*\* of K.S.A. 21-6614, and amendments thereto, shall not apply to an individual who has had a conviction under this paragraph expunged; [**\*\*NOTE: Subsection (j)(2) of K.S.A. 21-6614 is, as of 2014, under subsection (k)(2)] or**

(B) nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such non-person felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the crime.

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

(c) As used in this section:

(1) "Knife" means a dagger, dirk, switchblade, stiletto, straight-edged razor or any other dangerous or deadly cutting instrument of like character; and

(2) "Weapon" means a firearm or a knife.

*History: L. 1969, ch. 180, § 21-4204; L. 1970, ch. 124, § 8; L. 1990, ch. 102, § 2; L. 1991, ch. 85, § 1;*

L. 1992, ch. 298, § 70; L. 1993, ch. 291, § 149; L. 1994, ch. 348, § 4; L. 1995, ch. 92, § 2; L. 1996, ch. 158, § 4; L. 2006, ch. 210, § 14; L. 2009, ch. 32, § 29, L. 2010, ch. 88, § 3, April 15; L. 2010, ch. 140, § 16; L. 2010, ch. 136, § 189; L. 2011, ch. 30, § 51, L. 2011, ch. 91, § 34, L. 2013, ch. 36, § 2; L. 2014, ch. 97, § 12; July 1.

#### **21-6305. Aggravated weapons violation by a convicted felon.**

(a) Aggravated weapons violation by a convicted felon is a violation of any of the provisions of subsections (a)(1) through (a)(6) of 21-6301 or 21-6302, and amendments thereto, by a person who:

(1) Within five years preceding such violation has been convicted of a nonperson felony under the laws of Kansas or in any other jurisdiction which is substantially the same as such crime or has been released from imprisonment for such nonperson felony; or

(2) has been convicted of a person felony under the laws of Kansas or in any other jurisdiction which is substantially the same as such crime or has been released from imprisonment for such crime, and has not had the conviction of such crime expunged or been pardoned for such crime.

(b) (1) Aggravated weapons violation by a convicted felon is a severity level 9, nonperson felony for a violation of subsections (a)(1) through (a)(5) or subsection (a)(9) of K.S.A. 21-4201, prior to its repeal, or subsection (a)(1) through (a)(3) of 21-6301 or subsection (a)(1) through (a)(4) of 21-6302, and amendments thereto.

(2) Aggravated weapons violation is a severity level 8, nonperson felony for a violation of subsections (a)(6), (a)(7) and (a)(8) of K.S.A. 21-4201, prior to its repeal, or subsection (a)(4) through (a)(6) of 21-6301 or subsection (a)(5) of 21-6302, and amendments thereto.

*History: L. 1969, ch. 180, § 21-4202; L. 1970, ch. 124, § 7; L. 1992, ch. 298, § 68; L. 1993, ch. 291, § 147; L. 1994, ch. 291, § 40; L. 1994, ch. 348, § 2; L. 2010, ch. 136, § 190; L. 2011, ch. 30, § 52, July 1, 2011.*

#### **21-6306. Defacing identification marks of a firearm.**

(a) Defacing identification marks of a firearm is intentionally changing, altering, removing or obliterating the name of the maker, model, manufacturer's number or other mark of identification of any firearm.

(b) Defacing identification marks of a firearm is a severity level 10, nonperson felony.

(c) Possession of any firearm upon which any such mark has been intentionally changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same.

*History: L. 1969, ch. 180, § 21-4205; L. 1992, ch. 239, § 203; L. 1993, ch. 291, § 150; L. 2008, ch. 103, § 1; L. 2010, ch. 136, § 191; July 1, 2011.*

#### **21-6308. Criminal discharge of a firearm.**

(a) Criminal discharge of a firearm is the:

(1) Reckless and unauthorized discharge of any firearm:

(A) At a dwelling, building or structure in which there is a human being whether the person discharging the firearm knows or has reason to know that there is a human being present;

(B) at a motor vehicle, aircraft, watercraft, train, locomotive, railroad car, caboose, rail-mounted work equipment or rolling stock or other means of conveyance of persons or property in which there is a human being whether the person discharging the firearm knows or has reason to know that there is a human being present;

(2) reckless and unauthorized discharge of any firearm at a dwelling in which there is no

human being; or

(3) discharge of any firearm:

(A) Upon any land or nonnavigable body of water of another, without having obtained permission of the owner or person in possession of such land; or

(B) upon or from any public road, public road right-of-way or railroad right-of-way except as otherwise authorized by law.

(b) Criminal discharge of a firearm as defined in:

(1) Subsection (a)(1) is a:

(A) Severity level 7, person felony except as provided in subsection (b)(1)(B) or (b)(1)(C);

(B) severity level 3, person felony if such criminal discharge results in great bodily harm to a person during the commission thereof; or

(C) severity level 5, person felony if such criminal discharge results in bodily harm to a person during the commission thereof;

(2) subsection (a)(2) is a severity level 8, person felony; and

(3) subsection (a)(3) is a class C misdemeanor.

(c) Subsection (a)(1) shall not apply if the act is a violation of K.S.A. 21-5412(d), and amendments thereto.

(d) Subsection (a)(3) shall not apply to any of the following:

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

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

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

(4) watchmen, while actually engaged in the performance of the duties of their employment;

(5) private detectives licensed by the state to carry the firearm involved, while actually engaged in the duties of their employment;

(6) detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;

(7) the state fire marshal, the state fire marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157, and amendments thereto; or

(8) the United States attorney for the district of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant United States attorney if authorized by the United States attorney for the district of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties.

*History: L. 1986, ch. 126, § 2; L. 1992, ch. 21, § 1; L. 1993, ch. 291, §§ 73, 158; L. 1994, ch. 348, § 17; L. 1996, ch. 30, § 4; L. 1996, ch. 258, § 9; L. 2009, ch. 92, § 2; L. 2010, ch. 136, § 193; L. 2015,*

**K.S.A. 21-6308a**

- (a) Unlawful discharge of a firearm is the reckless discharge of a firearm within or into the corporate limits of any city.
- (b) This section shall not apply to the discharge of any firearm within or into the corporate limits of any city if:
  - (1) The firearm is discharged in the lawful defense of one's person, another person or one's property;
  - (2) The firearm is discharged at a private or public shooting range;
  - (3) The firearm is discharged to lawfully take wildlife unless prohibited by the department of wildlife, parks and tourism or the governing body of the city;
  - (4) The firearm is discharged by authorized law enforcement officers, animal control officers or a person who has a wildlife control permit issued by the Kansas department of wildlife, parks and tourism;
  - (5) The firearm is discharged by special permit of the chief of police or by the sheriff when the city has no police department;
  - (6) The firearm is discharged using blanks; or
  - (7) The firearm is discharged in lawful self-defense or defense of another person against an animal attack.
- (c) A violation of subsection (a) shall be a class B nonperson misdemeanor.

**21-6309. Unauthorized possession of a firearm on the grounds of or within certain state-owned or leased buildings and county courthouses.**

- (a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm:
  - (1) Within any building located within the capitol complex;
  - (2) within the governor's residence;
  - (3) on the grounds of or in any building on the grounds of the governor's residence;
  - (4) within any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building; or
  - (5) within any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse.
- (b) Violation of this section is a class A misdemeanor.
- (c) This section shall not apply to:
  - (1) A commissioned law enforcement officer;
  - (2) a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state;
  - (3) any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer; or
  - (4) a member of the military of this state or the United States engaged in the performance of duties.
- (d) It is not a violation of this section for:
  - (1) *The* governor, the governor's immediate family, or specifically authorized guest of the governor to possess a firearm within the governor's residence or on the grounds of or in any building

on the grounds of the governor's residence;

(2) *the* United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a firearm within any county courthouse and court-related facility, subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district; or

(3) law enforcement officers, as that term is defined in K.S.A. 2014 Supp. 75-7c22, and amendments thereto, who satisfy the requirements of either K.S.A. 2014 Supp. 75-7c22(a) or (b), and amendments thereto, to possess a firearm; or

(4) *An individual to possess a concealed handgun provided such individual is not prohibited from possessing a firearm under either federal or state law.*

(e) Notwithstanding the provisions of this section, any county may elect by passage of a resolution that the provisions of subsection (d)(2) shall not apply to such county's courthouse or court-related facilities if such:

(1) Buildings have adequate security measures to ensure that no weapons are permitted to be carried into such buildings;

(2) county also has a policy or regulation requiring all law enforcement officers to secure and store such officer's firearm upon entering the courthouse or court-related facility. Such policy or regulation may provide that it does not apply to court security or sheriff's office personnel for such county; and

(3) buildings have a sign conspicuously posted at each entryway into such *building* stating that the provisions of subsection (d)(2) do not apply to such *building*.

(f) As used in this section:

(1) "Adequate security measures" shall have the same meaning as the term is defined in K.S.A. 2013 Supp. 75-7c20, and amendments thereto;

(2) "possession" means having joint or exclusive control over a firearm or having a firearm in a place where the person has some measure of access and right of control; and

(3) "capitol complex" means the same as in K.S.A. 75-4514, and amendments thereto.

(g) For the purposes of *subsections* (a)(1), (a)(4) and (a)(5), "building" and "courthouse" shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

*History: L. 1991, ch. 89, § 1; L. 1992, ch. 298, § 80; L. 1993, ch. 291, § 157; L. 2006, ch. 210, § 10; L. 2009, ch. 92, § 3; L. 2010, ch. 140, § 17; L. 2010, ch. 136, § 194; L. 2011, ch. 30, § 54, L. 2011, ch. 91, § 35; L. 2013, ch. 105, § 5; L. 2015, ch. 16, § 5, July 1.*

### **21-6332. Possession of a Firearm Under the Influence**

(a) Possession of a firearm under the influence is knowingly possessing or carrying a loaded firearm on or about such person, or within such person's immediate access and control while in a vehicle, while under the influence of alcohol or drugs, or both, to such a degree as to render such person incapable of safely operating a firearm.

(b) Possession of a firearm under the influence is a class A nonperson misdemeanor.

(c) This section shall not apply to:

(1) A person who possesses or carries a firearm while in such person's own dwelling or place of business or on land owned or possessed by such person; or

(2) the transitory possession or use of a firearm during an act committed in self-defense or in

defense of another person or any other act committed if legally justified or excused, provided such possession or use lasts no longer than is immediately necessary.

(d) If probable cause exists for a law enforcement officer to believe a person is in possession of a firearm under the influence of alcohol or drugs, or both, such law enforcement officer shall request such person submit to one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs. The selection of the test or tests shall be made by the officer.

(e)(1) If a law enforcement officer requests a person to submit to a test of blood under this section, the withdrawal of blood at the direction of the officer may be performed only by:

(A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse;

(C) any qualified medical technician, including, but not limited to, an emergency medical technician-intermediate, mobile intensive care technician, an emergency medical technician-intermediate/defibrillator, an advanced emergency medical technician or a paramedic, as those terms are defined in K.S.A. 65-6112, and amendments thereto, authorized by medical protocol; or

(D) a phlebotomist.

(2) A law enforcement officer may direct a medical professional described in this subsection to draw a sample of blood from a person if the person has given consent or upon meeting the requirements of subsection (d).

(3) When so directed by a law enforcement officer through a written statement, the medical professional shall withdraw the sample as soon as practical and shall deliver the sample to the law enforcement officer or another law enforcement officer as directed by the requesting law enforcement officer as soon as practical, provided the collection of the sample does not jeopardize the person's life, cause serious injury to the person or seriously impede the person's medical assessment, care or treatment. The medical professional authorized herein to withdraw the blood and the medical care facility where the blood is drawn may act on good faith that the requirements have been met for directing the withdrawing of blood once presented with the written statement provided for under this subsection. The medical professional shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to withdraw blood and the medical care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

(4) Such sample or samples shall be an independent sample and not be a portion of a sample collected for medical purposes. The person collecting the blood sample shall complete the collection portion of a document provided by law enforcement.

(5) If a sample is to be taken under authority of a search warrant, and the person must be restrained to collect the sample pursuant to this section, law enforcement shall be responsible for applying any such restraint utilizing acceptable law enforcement restraint practices. The restraint shall be effective in controlling the person in a manner not to jeopardize the person's safety or that of the medical professional or attending medical or health care staff during the drawing of the sample and without interfering with medical treatment.

(6) A law enforcement officer may request a urine sample upon meeting the requirements of subsection (d).

(7) If a law enforcement officer requests a person to submit to a test of urine under this section, the collection of the urine sample shall be supervised by:

(A) A person licensed to practice medicine and surgery, licensed as a physician's assistant, or a person acting under the direction of any such licensed person;

(B) a registered nurse or a licensed practical nurse; or

(C) a law enforcement officer of the same sex as the person being tested.

The collection of the urine sample shall be conducted out of the view of any person other than the persons supervising the collection of the sample and the person being tested, unless the right to privacy is waived by the person being tested. When possible, the supervising person shall be a law

enforcement officer. The results of qualitative testing for drug presence shall be admissible in evidence and questions of accuracy or reliability shall go to the weight rather than the admissibility of the evidence. If the person is medically unable to provide a urine sample in such manner due to the injuries or treatment of the injuries, the same authorization and procedure as used for the collection of blood in paragraphs (2) and (3) shall apply to the collection of a urine sample.

(8) The person performing or assisting in the performance of any such test and the law enforcement officer requesting any such test who is acting in accordance with this section shall not be liable in any civil and criminal proceeding involving the action.

(f)(1) The person's refusal shall be admissible in evidence against the person at any trial on a charge arising out of possession of a firearm under the influence of alcohol or drugs, or both.

(2) Failure of a person to provide an adequate breath sample or samples as directed shall constitute a refusal unless the person shows that the failure was due to physical inability caused by a medical condition unrelated to any ingested alcohol or drugs.

(3) In any criminal prosecution for a violation of this section, if the court finds that a person refused to submit to testing when requested pursuant to this section, the county or district attorney, upon petition to the court, may recover on behalf of the state, in addition to the criminal penalties provided in this section, a civil penalty not exceeding \$1,000 for each violation.

(g) If a person who holds a valid license to carry a concealed handgun issued pursuant to K.S.A. 75-7c01 et seq., and amendments thereto, is convicted of a violation of this section, such person's license to carry a concealed handgun shall be revoked for a minimum of one year for a first offense and three years for a second or subsequent offense.

(h) In any criminal prosecution for possession of a firearm under the influence of alcohol or drugs, or both, evidence of the concentration of alcohol or drugs in the defendant's blood, urine, breath or other bodily substance may be admitted and shall give rise to the following:

(1) If the alcohol concentration is less than .08, that fact may be considered with other competent evidence to determine if the defendant was under the influence of alcohol or drugs, or both.

(2) If the alcohol concentration is .08 or more, it shall be prima facie evidence that the defendant was under the influence of alcohol.

(3) If there was present in the defendant's bodily substance any narcotic, hypnotic, somnifacient, stimulating or other drug which has the capacity to render the defendant incapacitated, that fact may be considered to determine if the defendant was under the influence of alcohol or drugs, or both.

(i) The provisions of subsection (h) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was under the influence of alcohol or drugs, or both.

(j) Upon the request of any person submitting to testing under this section, a report of the results of the testing shall be made available to such person.

*History: Laws 2014, ch. 97, § 6, eff. July 1, 2014.*

## **F. MUNICIPAL CODES/COUNTY RESOLUTIONS**

1. Vary widely from city to city; county to county.
2. May generally regulate conduct as long as not in contradiction to state or federal law.
3. Local cities and counties may adopt their own ordinances/resolutions dealing with

firearms in a manner as set out in K.S.A. 12-16,124.

**4. K.S.A. 2005 Supp 12-16,124. Firearms, regulation by city and county, limitations.**

(a) No city or county shall adopt or enforce any ordinance, resolution or regulation, and no agent of any city or county shall take any administrative action, governing the *requirement of fees, licenses or permits for, the commerce in or the sale, purchase, transfer, ownership, storage, carrying, transporting or taxation* of firearms or ammunition, or any component or combination thereof, other than those expressly authorized by statute. .

(b) Any ordinance, resolution, or regulation prohibited by subsection (a) that was adopted prior to *July 1, 2015*, shall be null and void.

(c) Nothin in this section shall:

(1) Prohibit a city or county from adopting and enforcing any ordinance, resolution or regulation relating to the personnel policies of such city or county and the carrying or firearms by employees of such city or county, except that any such ordinance, resolution or regulation shall comply with the provisions of K.S.A. 2013 Supp. 75-7c01 et seq., and amendments thereto;

(2) prohibit a city or county from adopting any ordinance, resolution or regulation pursuant to K.S.A. 2013 Supp. 75-7c20, and amendments thereto;

(3) 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; *or*

*(4) prohibit a city or county from levying and collecting any retailers' sales tax on the sale of firearms, ammunition or any component or combination thereof as authorized by K.S.A. 12-189, and amendments thereto.*

*L. 2005, ch. 141, § 10; L. 2007, ch. 166, § 1; L. 2013, ch. 36, § 1; L. 2014, ch. 97, § 7; L. 2015, ch. 93, § 1, July 1.*

**G. LAWFUL USE OF FORCE FOR DEFENSE**

**21-5220. Use of force; construction and application.**

The provisions of K.S.A. 21-5220 through 21-5230, and amendments thereto, are to be construed and applied retroactively.

*History: L. 2010, ch. 124, § 1; April 29; L. 2011, ch. 30, § 3; July 1.*

**21-5221. Use of force; definitions.**

(a) As used in article 32 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, K.S.A. 21-5202 through 21-5208, 21-5210 through 21-5212, and 21-5220 through 21-5231, and K.S.A. 21-3212a, 21-3220 and 21-3221, and amendments thereto:

(1) "Use of force" means any or all of the following directed at or upon another person or thing:

(A) Words or actions that reasonably convey the threat of force, including threats to cause death or great bodily harm to a person;

(B) the presentation or display of the means of force; or

(C) the application of physical force, including by a weapon or through the actions of another.

(2) "Use of deadly force" means the application of any physical force described in paragraph

(1) which is likely to cause death or great bodily harm to a person. Any threat to cause death or great bodily harm, including, but not limited to, by the display or production of a weapon, shall not constitute use of deadly force, so long as the actor's purpose is limited to creating an apprehension that the actor will, if necessary, use deadly force in defense of such actor or another or to affect a lawful arrest.

(b) An actor who threatens deadly force as described in subsection (a)(1) shall be subject to the determination in subsection (a) of K.S.A. 21-3211, prior to its repeal, or subsection (a) of K.S.A. 21-5222, and amendments thereto, and not to the determination in subsection (b) of K.S.A. 21-3211, prior to its repeal, or subsection (b) of K.S.A. 21-5222, and amendments thereto.

*History: L. 2010, ch. 124, § 1; April 29; L. 2011, ch. 30, § 4; July 1.*

#### **21-5222. Use of force in defense of a person.**

(a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

*History: L. 1969, ch. 180, § 21-3211; L. 2006, ch. 194, § 3; L. 2010, ch. 124, § 4; L. 2010, ch. 136, § 21; L. 2011, ch. 30, § 7, July 1.*

#### **21-5223. Use of force in defense of dwelling.**

(a) A person is justified in the use of force against another when and to the extent that it appears to such person and such person reasonably believes that such use of force is necessary to prevent or terminate such other's unlawful entry into or attack upon such person's dwelling, place of work or occupied vehicle.

(b) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, place of work or occupied vehicle if such person reasonably believes that such use of deadly force is necessary to prevent imminent death or great bodily harm to such person or another.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person's dwelling, place of work or occupied vehicle.

*History: L. 1969, ch. 180, § 21-3212; L. 2006, ch. 194, § 4; L. 2010, ch. 124, § 5; L. 2010, ch. 136, § 22; L. 2011, ch. 30, § 8, July 1.*

#### **21-5224. Use of force; presumptions.**

(a) For the purposes of K.S.A. 21-3211 and 21-3212, prior to their repeal, or K.S.A. 21-5222 and 21-5223, and amendments thereto, a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

(1) The person against whom the force is used, at the time the force is used:

(A) Is unlawfully or forcefully entering, or has unlawfully or forcefully entered, and is present within, the dwelling, place of work or occupied vehicle of the person using force; or

(B) has removed or is attempting to remove another person against such other person's will

from the dwelling, place of work or occupied vehicle of the person using force; and

(2) the person using force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

(b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

(1) The person against whom the force is used has a right to be in, or is a lawful resident of, the dwelling, place of work or occupied vehicle of the person using force, and is not subject to any order listed in K.S.A. 21-3843, prior to its repeal, or K.S.A. 21-5924, and amendments thereto, that would prohibit such person's presence in the property;

(2) the person sought to be removed is a child, grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the force is used;

(3) the person using force is engaged in the commission of a crime, attempting to escape from a location where a crime has been committed, or is using the dwelling, place of work or occupied vehicle to further the commission of a crime; or

(4) the person against whom the force is used is a law enforcement officer who has entered or is attempting to enter a dwelling, place of work or occupied vehicle in the lawful performance of such officer's lawful duties, and the person using force knows or reasonably should know that the person who has entered or is attempting to enter is a law enforcement officer.

*History: L. 2010, ch. 124, § 3; April 29; L. 2011, ch. 30, § 2; July 1.*

#### **21-5225. Use of force in defense of property other than a dwelling.**

A person who is lawfully in possession of property other than a dwelling, place of work or occupied vehicle is justified in the use of force against another for the purpose of preventing or terminating an unlawful interference with such property. Only such use of force as a reasonable person would deem necessary to prevent or terminate the interference may intentionally be used.

*History: L. 1969, ch. 180, § 21-3213; L. 2010, ch. 124, § 6; L. 2010, ch. 136, § 23; L. 2011, ch. 30, § 9, July 1.*

#### **21-5226. Use of force by an aggressor.**

The justification described in sections K.S.A. 21-3211, 21-3212 and 21-3213, prior to their repeal, or K.S.A. 21-5222, 21-5223, and 21-5225, and amendments thereto, is not available to a person who:

(a) Is attempting to commit, committing, or escaping from the commission of a forcible felony; or

(b) Initially provokes the use of any force against himself such person or another, with intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(c) Otherwise initially provokes the use of any force against himself such person or another, unless:

(1) Such person has reasonable grounds to believe that such person is in imminent danger of death or great bodily harm, and such person has exhausted every reasonable means to escape such danger other than the use of deadly force, or

(2) In good faith, such person withdraws from physical contact with the assailant and indicates clearly to the assailant that such person desires to withdraw and terminate the use of such force, but the assailant continues or resumes the use of such force.

*History: L. 1969, ch. 180, § 21-3214; L. 2010, ch. 124, § 7; L. 2010, ch. 136, § 24; L. 2011, ch. 30, § 10, July 1.*

**21-5227. Law enforcement officer making arrest.**

(a) A law enforcement officer, or any person whom such officer has summoned or directed to assist in making a lawful arrest, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and of the use of any force which such officer reasonably believes to be necessary to defend the officer's self or another from bodily harm while making the arrest. However, such officer is justified in using deadly force only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving death or great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.

(b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

*History: L. 1969, ch. 180, § 21-3215; L. 1990, ch. 98, § 1; L. 1993, ch. 69, § 1; L. 2010, ch. 124, § 8; L. 2010, ch. 136, § 25; L. 2011, ch. 30, § 11, July 1.*

**21-5228. Private person making arrest.**

(a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which such person would be justified in using if such person were summoned or directed by a law enforcement officer to make such arrest, except that such person is justified in the use of deadly force only when such person reasonably believes that such force is necessary to prevent death or great bodily harm to such person or another.

(b) A private person who is summoned or directed by a law enforcement officer to assist in making an arrest which is unlawful, is justified in the use of any force which such person would be justified in using if the arrest were lawful.

*History: L. 1969, ch. 180, § 21-3216; L. 2010, ch. 124, § 9; L. 2010, ch. 136, § 26; L. 2011, ch. 30, § 12, July 1.*

**21-5229. Resisting arrest.**

A person is not authorized to use force to resist an arrest which such person knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful.

*History: L. 1969, ch. 180, § 21-3217; L. 2010, ch. 124, § 10; L. 2010, ch. 136, § 27; July 1, 2011.*

**21-5230. No Duty to Retreat.**

A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has no duty to retreat and has the right to stand such person's ground and use any force which such person would be justified in using under article 32 of chapter 21 of the Kansas Statute Annotated, prior to their repeal, or K.S.A. 21-5202 through 21-5208 and K.S.A. 21-5222 through 21-5228, and amendments thereto.

*History: L. 2006, ch. 194, § 1; L. 2010, ch. 124, § 10; L. 2010, ch. 136, § 28; L. 2011, ch. 30, § 13; July 1.*

## **21-5231. Use of force; immunity from prosecution or liability; investigation.**

(a) A person who uses force which, subject to the provisions of K.S.A. 21-5226, and amendments thereto, is justified pursuant to K.S.A. 21-5222, 21-5223 or 21-5225, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, "criminal prosecution" includes arrest, detention in custody and charging or prosecution of the defendant.

(b) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (a), but the agency shall not arrest the person for using force unless it determines that there is probable cause for the arrest.

(c) A county or district attorney or other prosecutor may commence a criminal prosecution upon a determination of probable cause.

*History: L. 2006, ch. 194, § 2; L. 2007, ch. 169, § 1; L. 2010, ch. 136, § 29; July 1, 2011.*

## **H. DEFINITIONS:**

1. KSA 2011 Supp. 21-5111: "Firearm' means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion."
2. K.S.A. 75-7c02(b): "'Handgun' means 'firearm,'\* as defined in K.S.A. 75-7b01, and amendments thereto ." [\*For the purposes of the Kansas Personal and Family Protection Act.]

## **I. FEDERAL LAWS**

1. **18 U.S.C. 922** (specifically subsections (g) and (n) emboldened below – see, K.S.A. 75-7c04)

(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that--

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United

States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, unless--

(A) the manufacture of such ammunition is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) the manufacture of such ammunition is for the purpose of exportation; or

(C) the manufacture or importation of such ammunition is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, unless such sale or delivery--

(A) is for the use of the United States, any department or agency of the United States, any State, or any department, agency, or political subdivision of a State;

(B) is for the purpose of exportation; or

(C) is for the purpose of testing or experimentation and has been authorized by the Attorney General;

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver--

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer, importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of

evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers, and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if--

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of the locality to which the firearm will be delivered are

.....

Signature ..... Date ....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

- (A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and
- (B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
- (9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

**(g) It shall be unlawful for any person—**

- (1) Who has been convicted in any court of, a ***crime punishable by imprisonment for a term exceeding one year***;
- (2) Who is a ***fugitive from justice***;
- (3) Who is an ***unlawful user of or addicted to any controlled substance*** (as defined in section 102 of the Controlled Substances Act (21 USC 802));
- (4) Who has been ***adjudicated as a mental defective*** or who has been ***committed to a mental institution***;
- (5) Who, being an ***alien***—
  - (A) Is illegally or unlawfully in the United States; or
  - (B) Except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 USC 1101(a)(26)));
- (6) Who has been ***discharged*** from the Armed Forces under ***dishonorable*** conditions;
- (7) Who, having been a citizen of the United States, has ***renounced his citizenship***;
- (8) Who is subject to a court order that—
  - (A) Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

- (B) Restrains such person from harassing, stalking or threatening an **intimate partner** of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
- (C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) Who has been convicted of a **misdemeanor crime of domestic violence**,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any **firearm** or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment--

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

(m) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector knowingly to make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which he is required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder.

**(n) It shall be unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce any firearm or ammunition or receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.**

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to--

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

(p)(1) It shall be unlawful for any person to manufacture, import, sell, ship, deliver, possess, transfer, or receive

any firearm--

(A) that, after removal of grips, stocks, and magazines, is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar; or

(B) any major component of which, when subjected to inspection by the types of x-ray machines commonly used at airports, does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(2) For purposes of this subsection--

(A) the term "firearm" does not include the frame or receiver of any such weapon;

(B) the term "major component" means, with respect to a firearm, the barrel, the slide or cylinder, or the frame or receiver of the firearm; and

(C) the term "Security Exemplar" means an object, to be fabricated at the direction of the Attorney General, that is--

(i) constructed of, during the 12-month period beginning on the date of the enactment of this subsection, 3.7 ounces of material type 17-4 PH stainless steel in a shape resembling a handgun; and

(ii) suitable for testing and calibrating metal detectors:

*Provided, however,* That at the close of such 12-month period, and at appropriate times thereafter the Attorney General shall promulgate regulations to permit the manufacture, importation, sale, shipment, delivery, possession, transfer, or receipt of firearms previously prohibited under this subparagraph that are as detectable as a "Security Exemplar" which contains 3.7 ounces of material type 17-4 PH stainless steel, in a shape resembling a handgun, or such lesser amount as is detectable in view of advances in state-of-the-art developments in weapons detection technology.

(3) Under such rules and regulations as the Attorney General shall prescribe, this subsection shall not apply to the manufacture, possession, transfer, receipt, shipment, or delivery of a firearm by a licensed manufacturer or any person acting pursuant to a contract with a licensed manufacturer, for the purpose of examining and testing such firearm to determine whether paragraph (1) applies to such firearm. The Attorney General shall ensure that rules and regulations adopted pursuant to this paragraph do not impair the manufacture of prototype firearms or the development of new technology.

(4) The Attorney General shall permit the conditional importation of a firearm by a licensed importer or licensed manufacturer, for examination and testing to determine whether or not the unconditional importation of such firearm would violate this subsection.

(5) This subsection shall not apply to any firearm which--

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Attorney General and the Administrator of the Federal Aviation Administration, as necessary for military or intelligence applications; and

(B) is manufactured for and sold exclusively to military or intelligence agencies of the United States.

(6) This subsection shall not apply with respect to any firearm manufactured in, imported into, or possessed in the United States before the date of the enactment of the Undetectable Firearms Act of 1988.

(q)(1) The Congress finds and declares that--

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves--even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm--

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is--

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm--

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

(r) It shall be unlawful for any person to assemble from imported parts any semiautomatic rifle or any shotgun which is identical to any rifle or shotgun prohibited from importation under section 925(d)(3) of this chapter as not being particularly suitable for or readily adaptable to sporting purposes except that this subsection shall not apply to--

(1) the assembly of any such rifle or shotgun for sale or distribution by a licensed manufacturer to the United States or any department or agency thereof or to any State or any department, agency, or political subdivision thereof; or

(2) the assembly of any such rifle or shotgun for the purposes of testing or experimentation authorized by the Attorney General.

(s)(1) Beginning on the date that is 90 days after the date of enactment of this subsection and ending on the day before the date that is 60 months after such date of enactment, it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer a handgun (other than the return of a handgun to the person from whom it was received) to an individual who is not licensed under section 923, unless--

(A) after the most recent proposal of such transfer by the transferee--

(i) the transferor has--

(I) received from the transferee a statement of the transferee containing the information described in paragraph (3);

(II) verified the identity of the transferee by examining the identification document presented;

(III) within 1 day after the transferee furnishes the statement, provided notice of the contents of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(IV) within 1 day after the transferee furnishes the statement, transmitted a copy of the statement to the chief law enforcement officer of the place of residence of the transferee; and

(ii)(I) 5 business days (meaning days on which State offices are open) have elapsed from the date the transferor furnished notice of the contents of the statement to the chief law enforcement officer, during which period the transferor has not received information from the chief law enforcement officer that receipt or possession of the handgun by the transferee would be in violation of Federal, State, or local law; or

(II) the transferor has received notice from the chief law enforcement officer that the officer has no information indicating that receipt or possession of the handgun by the transferee would violate Federal, State, or local law;

(B) the transferee has presented to the transferor a written statement, issued by the chief law enforcement officer of the place of residence of the transferee during the 10-day period ending on the date of the most recent proposal of such transfer by the transferee, stating that the transferee requires access to a handgun because of a threat to the life of the transferee or of any member of the household of the transferee;

(C)(i) the transferee has presented to the transferor a permit that--

(I) allows the transferee to possess or acquire a handgun; and (II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of the law;

(D) the law of the State requires that, before any licensed importer, licensed manufacturer, or licensed dealer completes the transfer of a handgun to an individual who is not licensed under section 923, an authorized government official verify that the information available to such official does not indicate that possession of a handgun by the transferee would be in violation of law;

(E) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(F) on application of the transferor, the Attorney General has certified that compliance with subparagraph

(A)(i)(III) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the transferor at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer; and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(2) A chief law enforcement officer to whom a transferor has provided notice pursuant to paragraph (1)(A)(i)(III) shall make a reasonable effort to ascertain within 5 business days whether receipt or possession would be in violation of the law, including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General.

(3) The statement referred to in paragraph (1)(A)(i)(I) shall contain only--

(A) the name, address, and date of birth appearing on a valid identification document (as defined in section 1028(d)(1)) of the transferee containing a photograph of the transferee and a description of the identification used;

(B) a statement that the transferee--

(i) is not under indictment for, and has not been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, and has not been convicted in any court of a misdemeanor crime of domestic violence;

(ii) is not a fugitive from justice;

(iii) is not an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act);

(iv) has not been adjudicated as a mental defective or been committed to a mental institution;

(v) is not an alien who--

(I) is illegally or unlawfully in the United States; or

(II) subject to subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(vi) has not been discharged from the Armed Forces under dishonorable conditions; and

(vii) is not a person who, having been a citizen of the United States, has renounced such citizenship;

(C) the date the statement is made; and

(D) notice that the transferee intends to obtain a handgun from the transferor.

(4) Any transferor of a handgun who, after such transfer, receives a report from a chief law enforcement officer containing information that receipt or possession of the handgun by the transferee violates Federal, State, or local law shall, within 1 business day after receipt of such request, communicate any information related to the transfer that the transferor has about the transfer and the transferee to--

(A) the chief law enforcement officer of the place of business of the transferor; and

(B) the chief law enforcement officer of the place of residence of the transferee.

(5) Any transferor who receives information, not otherwise available to the public, in a report under this subsection shall not disclose such information except to the transferee, to law enforcement authorities, or pursuant to the direction of a court of law.

(6)(A) Any transferor who sells, delivers, or otherwise transfers a handgun to a transferee shall retain the copy

of the statement of the transferee with respect to the handgun transaction, and shall retain evidence that the transferor has complied with subclauses (III) and (IV) of paragraph (1)(A)(i) with respect to the statement.

(B) Unless the chief law enforcement officer to whom a statement is transmitted under paragraph (1)(A)(i)(IV) determines that a transaction would violate Federal, State, or local law--

(i) the officer shall, within 20 business days after the date the transferee made the statement on the basis of which the notice was provided, destroy the statement, any record containing information derived from the statement, and any record created as a result of the notice required by paragraph (1)(A)(i)(III);

(ii) the information contained in the statement shall not be conveyed to any person except a person who has a need to know in order to carry out this subsection; and

(iii) the information contained in the statement shall not be used for any purpose other than to carry out this subsection.

(C) If a chief law enforcement officer determines that an individual is ineligible to receive a handgun and the individual requests the officer to provide the reason for such determination, the officer shall provide such reasons to the individual in writing within 20 business days after receipt of the request.

(7) A chief law enforcement officer or other person responsible for providing criminal history background information pursuant to this subsection shall not be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a handgun to a person whose receipt or possession of the handgun is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a handgun.

(8) For purposes of this subsection, the term "chief law enforcement officer" means the chief of police, the sheriff, or an equivalent officer or the designee of any such individual.

(9) The Attorney General shall take necessary actions to ensure that the provisions of this subsection are published and disseminated to licensed dealers, law enforcement officials, and the public.

(t)(1) Beginning on the date that is 30 days after the Attorney General notifies licensees under section 103(d) of the Brady Handgun Violence Prevention Act that the national instant criminal background check system is established, a licensed importer, licensed manufacturer, or licensed dealer shall not transfer a firearm to any other person who is not licensed under this chapter, unless--

(A) before the completion of the transfer, the licensee contacts the national instant criminal background check system established under section 103 of that Act;

(B)(i) the system provides the licensee with a unique identification number; or

(ii) 3 business days (meaning a day on which State offices are open) have elapsed since the licensee contacted the system, and the system has not notified the licensee that the receipt of a firearm by such other person would violate subsection (g) or (n) of this section; and

(C) the transferor has verified the identity of the transferee by examining a valid identification document (as defined in section 1028(d) of this title) of the transferee containing a photograph of the transferee.

(2) If receipt of a firearm would not violate subsection (g) or (n) or State law, the system shall--

(A) assign a unique identification number to the transfer;

(B) provide the licensee with the number; and

(C) destroy all records of the system with respect to the call (other than the identifying number and the date the number was assigned) and all records of the system relating to the person or the transfer.

(3) Paragraph (1) shall not apply to a firearm transfer between a licensee and another person if--

(A)(i) such other person has presented to the licensee a permit that--

(I) allows such other person to possess or acquire a firearm; and

(II) was issued not more than 5 years earlier by the State in which the transfer is to take place; and

(ii) the law of the State provides that such a permit is to be issued only after an authorized government official has verified that the information available to such official does not indicate that possession of a firearm by such other person would be in violation of law;

(B) the Attorney General has approved the transfer under section 5812 of the Internal Revenue Code of 1986; or

(C) on application of the transferor, the Attorney General has certified that compliance with paragraph (1)(A) is impracticable because--

(i) the ratio of the number of law enforcement officers of the State in which the transfer is to occur to the number of square miles of land area of the State does not exceed 0.0025;

(ii) the business premises of the licensee at which the transfer is to occur are extremely remote in relation to the chief law enforcement officer (as defined in subsection (s)(8)); and

(iii) there is an absence of telecommunications facilities in the geographical area in which the business premises are located.

(4) If the national instant criminal background check system notifies the licensee that the information available to the system does not demonstrate that the receipt of a firearm by such other person would violate subsection (g)

or (n) or State law, and the licensee transfers a firearm to such other person, the licensee shall include in the record of the transfer the unique identification number provided by the system with respect to the transfer.

(5) If the licensee knowingly transfers a firearm to such other person and knowingly fails to comply with paragraph (1) of this subsection with respect to the transfer and, at the time such other person most recently proposed the transfer, the national instant criminal background check system was operating and information was available to the system demonstrating that receipt of a firearm by such other person would violate subsection (g) or (n) of this section or State law, the Attorney General may, after notice and opportunity for a hearing, suspend for not more than 6 months or revoke any license issued to the licensee under section 923, and may impose on the licensee a civil fine of not more than \$5,000.

(6) Neither a local government nor an employee of the Federal Government or of any State or local government, responsible for providing information to the national instant criminal background check system shall be liable in an action at law for damages--

(A) for failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful under this section; or

(B) for preventing such a sale or transfer to a person who may lawfully receive or possess a firearm.

(u) It shall be unlawful for a person to steal or unlawfully take or carry away from the person or the premises of a person who is licensed to engage in the business of importing, manufacturing, or dealing in firearms, any firearm in the licensee's business inventory that has been shipped or transported in interstate or foreign commerce.

*[(v), (w) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]*

(x)(1) It shall be unlawful for a person to sell, deliver, or otherwise transfer to a person who the transferor knows or has reasonable cause to believe is a juvenile--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(2) It shall be unlawful for any person who is a juvenile to knowingly possess--

(A) a handgun; or

(B) ammunition that is suitable for use only in a handgun.

(3) This subsection does not apply to--

(A) a temporary transfer of a handgun or ammunition to a juvenile or to the possession or use of a handgun or ammunition by a juvenile if the handgun and ammunition are possessed and used by the juvenile--

(i) in the course of employment, in the course of ranching or farming related to activities at the residence of the juvenile (or on property used for ranching or farming at which the juvenile, with the permission of the property owner or lessee, is performing activities related to the operation of the farm or ranch), target practice, hunting, or a course of instruction in the safe and lawful use of a handgun;

(ii) with the prior written consent of the juvenile's parent or guardian who is not prohibited by Federal, State, or local law from possessing a firearm, except--

(I) during transportation by the juvenile of an unloaded handgun in a locked container directly from the place of transfer to a place at which an activity described in clause (i) is to take place and transportation by the juvenile of that handgun, unloaded and in a locked container, directly from the place at which such an activity took place to the transferor; or

(II) with respect to ranching or farming activities as described in clause (i), a juvenile may possess and use a handgun or ammunition with the prior written approval of the juvenile's parent or legal guardian and at the direction of an adult who is not prohibited by Federal, State or local law from possessing a firearm;

(iii) the juvenile has the prior written consent in the juvenile's possession at all times when a handgun is in the possession of the juvenile; and

(iv) in accordance with State and local law;

(B) a juvenile who is a member of the Armed Forces of the United States or the National Guard who possesses or is armed with a handgun in the line of duty;

(C) a transfer by inheritance of title (but not possession) of a handgun or ammunition to a juvenile; or

(D) the possession of a handgun or ammunition by a juvenile taken in defense of the juvenile or other persons against an intruder into the residence of the juvenile or a residence in which the juvenile is an invited guest.

(4) A handgun or ammunition, the possession of which is transferred to a juvenile in circumstances in which the transferor is not in violation of this subsection shall not be subject to permanent confiscation by the Government if its possession by the juvenile subsequently becomes unlawful because of the conduct of the juvenile, but shall be returned to the lawful owner when such handgun or ammunition is no longer required by the Government for the purposes of investigation or prosecution.

(5) For purposes of this subsection, the term "juvenile" means a person who is less than 18 years of age.

(6)(A) In a prosecution of a violation of this subsection, the court shall require the presence of a juvenile defendant's parent or legal guardian at all proceedings.

(B) The court may use the contempt power to enforce subparagraph (A).

(C) The court may excuse attendance of a parent or legal guardian of a juvenile defendant at a proceeding in a prosecution of a violation of this subsection for good cause shown.

(y) Provisions relating to aliens admitted under nonimmigrant visas--

(1) Definitions.--In this subsection--

(A) the term "alien" has the same meaning as in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)); and

(B) the term "nonimmigrant visa" has the same meaning as in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)).

(2) Exceptions.--Subsections (d)(5)(B), (g)(5)(B), and (s)(3)(B)(v)(II) do not apply to any alien who has been lawfully admitted to the United States under a nonimmigrant visa, if that alien is--

(A) admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;

(B) an official representative of a foreign government who is--

(i) accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States; or

(ii) en route to or from another country to which that alien is accredited;

(C) an official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State; or

(D) a foreign law enforcement officer of a friendly foreign government entering the United States on official law enforcement business.

(3) Waiver--

(A) Conditions for waiver.--Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5), if--

(i) the individual submits to the Attorney General a petition that meets the requirements of subparagraph (C); and

(ii) the Attorney General approves the petition.

(B) Petition.--Each petition under subparagraph (B) shall--

(i) demonstrate that the petitioner has resided in the United States for a continuous period of not less than 180 days before the date on which the petition is submitted under this paragraph; and

(ii) include a written statement from the embassy or consulate of the petitioner, authorizing the petitioner to acquire a firearm or ammunition and certifying that the alien would not, absent the application of subsection (g)(5)(B), otherwise be prohibited from such acquisition under subsection (g).

(C) Approval of petition.--The Attorney General shall approve a petition submitted in accordance with this paragraph, if the Attorney General determines that waiving the requirements of subsection (g)(5)(B) with respect to the petitioner--

(i) would be in the interests of justice; and

(ii) would not jeopardize the public safety.

(z) Secure gun storage or safety device.--

(1) In general.--Except as provided under paragraph (2), it shall be unlawful for any licensed importer, licensed manufacturer, or licensed dealer to sell, deliver, or transfer any handgun to any person other than any person licensed under this chapter, unless the transferee is provided with a secure gun storage or safety device (as defined in section 921(a)(34)) for that handgun.

(2) Exceptions.--Paragraph (1) shall not apply to--

(A)(i) the manufacture for, transfer to, or possession by, the United States, a department or agency of the United States, a State, or a department, agency, or political subdivision of a State, of a handgun; or

(ii) the transfer to, or possession by, a law enforcement officer employed by an entity referred to in clause (i) of a handgun for law enforcement purposes (whether on or off duty); or

(B) the transfer to, or possession by, a rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State of a handgun for purposes of law enforcement (whether on or off duty);

(C) the transfer to any person of a handgun listed as a curio or relic by the Secretary pursuant to section 921(a)(13); or

(D) the transfer to any person of a handgun for which a secure gun storage or safety device is temporarily unavailable for the reasons described in the exceptions stated in section 923(e), if the licensed manufacturer, licensed importer, or licensed dealer delivers to the transferee within 10 calendar days from the date of the

delivery of the handgun to the transferee a secure gun storage or safety device for the handgun.

(3) Liability for use.--

(A) In general.--Notwithstanding any other provision of law, a person who has lawful possession and control of a handgun, and who uses a secure gun storage or safety device with the handgun, shall be entitled to immunity from a qualified civil liability action.

(B) Prospective actions.--A qualified civil liability action may not be brought in any Federal or State court.

(C) Defined term.--As used in this paragraph, the term "qualified civil liability action"--

(i) means a civil action brought by any person against a person described in subparagraph (A) for damages resulting from the criminal or unlawful misuse of the handgun by a third party, if--

(I) the handgun was accessed by another person who did not have the permission or authorization of the person having lawful possession and control of the handgun to have access to it; and

(II) at the time access was gained by the person not so authorized, the handgun had been made inoperable by use of a secure gun storage or safety device; and

(ii) shall not include an action brought against the person having lawful possession and control of the handgun for negligent entrustment or negligence per se.

## 2. 18 USC 921

(a) As used in this chapter--

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means--

(A) any explosive, incendiary, or poison gas--

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term “short-barreled shotgun” means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.

(7) The term “rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term “short-barreled rifle” means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term “importer” means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term “licensed importer” means any such person licensed under the provisions of this chapter.

(10) The term “manufacturer” means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term “licensed manufacturer” means any such person licensed under the provisions of this chapter.

(11) The term “dealer” means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term “licensed dealer” means any dealer who is licensed under the provisions of this chapter.

(12) The term “pawnbroker” means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term “collector” means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term “licensed collector” means any such person licensed under the provisions of this chapter.

(14) The term “**indictment**” includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term “**fugitive from justice**” means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term “antique firearm” means--

(A) any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica--

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term “antique firearm” shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(17)(A) The term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term “armor piercing ammunition” means--

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term “armor piercing ammunition” does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term “Attorney General” means the Attorney General of the United States”

(19) The term “published ordinance” means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter.

(20) The term “**crime punishable by imprisonment for a term exceeding one year**” does not include--  
(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or  
(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

*[NOTE: Tenth Circuit case law, interpreting a Wyoming expungement procedure, holds that an “expungement” must completely destroy the record from the individual’s criminal history in order to be considered an “expungement” by Federal standards. See Wyoming ex rel. Crank, 539 F.3d 1236 (10<sup>th</sup> Cir. 2008). While that case was interpreting the expungement provision for purposes of 18 USC 922(g)(9)(misdemeanor crimes of domestic violence) and 18 USC 921(a)(33)(same), individuals who have “expunged” felony histories that are still accessible for various purposes (as Kansas expunged records are) may still **not** be lawful to possess firearms per Kansas law. Specifically, in Kansas, the expungement of a felony history generally has **no effect** on one’s ability to begin possessing firearms. See K.S.A. 21-6614(k) and 21-6304(a). There is one group of instances where that general rule will not apply. See KSA 21-6304(a)(3)(A).]*

(21) The term “engaged in the business” means--

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B), a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term “with the principal objective of livelihood and profit” means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: *Provided*, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism. For purposes of this paragraph, the term “terrorism” means activity, directed against United States persons, which--

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended--

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term “machinegun” has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms “firearm silencer” and “firearm muffler” mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term “**school zone**” means--

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term “**school**” means a school which provides elementary or secondary education, as determined under State law.

(27) The term “motor vehicle” has the meaning given such term in section 13102 of title 49, United States Code.

(28) The term “semiautomatic rifle” means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term “handgun” means--

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

*[(30), (31) Repealed. Pub.L. 103-322, Title XI, § 110105(2), Sept. 13, 1994, 108 Stat. 2000]*

(32) The term “**intimate partner**” means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)(A) Except as provided in subparagraph (C), the term “**misdemeanor crime of domestic violence**” means an offense that--

(i) is a misdemeanor under Federal, State, or Tribal law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

**[NOTE: See the above note regarding expungements and 10<sup>th</sup> Circuit case law on that point. Even if someone expunges a misdemeanor conviction that qualifies as a misdemeanor crime of domestic violence does not mean that the individual will be free from this federal firearms prohibition. Such an individual needs to seek private legal counsel to determine their ability or inability to possess firearms and determine, what, if any, remedies they may have.]**

(34) The term “secure gun storage or safety device” means--

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

(35) The term “body armor” means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.

(b) For the purposes of this chapter, a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.

**3. 27 CFR 478.11** (definitions for terms found within 18 USC 922 *et seq.*) (because of its listing of “semiautomatic assault weapon[s],” this provision was too lengthy to include here; please research this federal regulation via online search engine to review the definitions it incorporates – some are identical to those under 18 USC 921.)

### **2013 Amendments to Concealed Carry Law (See also, 2015 Amendments for updates to some of the 2013 changes)**

In 2013, a couple pieces of legislation had direct impact on the Personal and Family Protection Act. One piece was Senate Bill 21 (with primary amendments to 75-7c03 and the other is Senate Substitute for House Bill 2052 with critical additions of K.S.A. 75-7c20 and 7c21. Senate Bill 21 is an Attorney General-sponsored legislation with a key nugget to expand the recognition of other States’ concealed carry licenses.

SB 21 extends Kansas’ recognition of non Kansas CCL licenses. Kansas now honors all **valid** (non expired) concealed carry licenses from any other state **but that recognition only applies to those who are not residents** of Kansas. SB 21 also installed certain procedural mechanisms for new residents to Kansas (new as of July 1, 2010, or after) who want to utilize a “valid” CCL from another state to continue carrying in Kansas. Please consult the FAQ pages and/or K.S.A. 75-7c03 for explanations of the entire process required for new residents to Kansas. .

The key item from House Bill 2052, now codified at K.S.A. 75-7c20 and 75-7c21, was a mechanism put in place to begin the process of opening state and municipal buildings to licensed concealed

carry. The legislation did not require *private* businesses to comply with the “adequate security measures” mandate of Section 2.

Those public buildings which are affected by 75-7c20 have the options of:

- (a) allowing licensed CCH into the building,
- (b) exercising an ‘exemption’ (which can remove the building from having to install the “adequate security measures”); or
- (c) installing “adequate security measures” (metal detection equipment & personnel at public entrances);

There are two 4-year exemptions in length but one of them is only available to certain state or municipal buildings. See, 75-7c20 (i)-(j).

The above descriptions of SB 21 and HB 2052 are very brief summaries of the critical components of those legislations. Each Bill contains amendments to various other state laws too. For a full reading of these legislations, you can find their language at [www.kslegislature.org](http://www.kslegislature.org) by simply clicking on the “Bills & Laws” tab at top of page and typing in the Bill’s number where prompted (be sure to select the “enrolled” version). The Attorney General’s website will also contain further information on these amendments.

### **2014 Amendments to Concealed Carry Law (Again, see 2015 Amendments for further updates).**

The predominant modification directly to CCH statutes came in the form of the addition of K.S.A. 75-7c04(a)(3) where those with qualifying 21-6304(a)(3)(A) adult convictions or juvenile adjudications are no longer eligible to obtain or maintain their Kansas CCH license. This modification, and several other firearm modifications, was made through 2014 House Bill 2578 which is found under Chapter 97 of the 2014 Kansas Session Laws. For more information about those modifications and other, please consult the law directly.

### **2015 Amendments to Concealed Carry Law**

The changes to Kansas’ firearms laws brought about this year ultimately allow lawful persons, 21 years and over, the ability to carry concealed lawful firearms **without** being licensed by the State in order to do so. Those changes noted above from 2013 are now equally applicable to those individuals who qualify to lawfully carry concealed handguns with or without a license.

A couple major points of interest that will separate licensed and unlicensed CCH: unlicensed CCH will **not** be recognized in the majority of other States that currently recognize the Kansas CCH license – most States continue to require a State-issued CCH in order to lawfully CCH in their jurisdiction as well.

Also, the CCH license (and other federally-set-out exceptions) will allow Kansans the ability to have loaded firearms within 1000 feet (a “school zone”) of the grounds of a K-12 school in Kansas. Simply because Kansas allows its lawful residents to carry firearms within a 1000 feet of K-12 grounds, does not mean that doing so will not violate the federal Gun Free School Zones Act of 18 USC 922(q). See, 18 USC 927 (those state firearm laws which are directly in conflict with the federal firearm provisions are deemed preempted by the applicable federal law.)

Both the licensed and unlicensed concealed carry of firearms – as well as the open carry of firearms – are all subject to the appropriate Attorney General-approved signage that restricts individuals from carrying firearms within buildings.

Other changes in 2015 include:

CCH and the “(a)(3)(A)” prohibition: Prior felony adult convictions/juvenile adjudications that meet the criteria of 21-6304(a)(3)(A) are no longer CCH prohibiting incidents once they have been removed from that statute’s grasp - either by the elapse of time or by expungement or pardon of the offense.

#### **IV. CIVIL LAWS IMPACTING ON USE OF HANDGUNS**

##### **A. Explanation of sources of civil law , i.e., court made law (common law) and statutory law**

There are two sources of civil laws: (1) the rules that have evolved over the centuries as a result of "reported" or "published" court decisions, *i.e.*, "common law," and (2) rules that have been passed by the legislature, *i.e.*, statutes or printed laws.

Common law consists of the cases that have been put into the law books. Newspaper and magazine accounts of trials do not count. They are not precedents until they have been printed in law books known as “reporters.” Over many years, the common law has developed rules, which if violated, may give someone the right to sue the violator.

In Kansas and the United States, many of the **civil laws** are not written into statutes. They are legal principles that come from hundreds of years of court decisions. These principles are continually being changed by more court decisions and legislation.

Under civil law, if a person kills, wounds, strikes or threatens someone with a firearm under circumstances where that person has violated a legal "duty" owed to the victim, that person can be sued by the victim (if alive), the victim's estate (if the victim is dead) or certain persons related to the victim for wrongful death, loss of consortium (*e.g.*, loss of love, affection, sexual ability), funeral expenses, medical expenses, loss of income and other civil remedies and damages, including punitive damages. Under Kansas civil law, firearm owners owe the highest duty of care to others when it comes to those firearms causing harm or damage. In Kansas, the same legal “justifications” are defenses to civil lawsuits and criminal charges. A legal "duty" can be created by statute, contract, or circumstances where the law imposes a duty on someone. For example, there is no duty to avoid harming or killing an assailant who is attacking with a deadly handgun, but there is a duty to avoid harming or killing another person who might become the victim of a stray bullet fired at the assailant.

Now, let's look at some examples of civil laws that affect carrying of a firearm, concealed or openly.

A. Intentional torts: These are acts which are done intentionally, rather than accidentally. Intentionally shooting or striking a person without justification is an intentional tort.

1. Battery is an offensive or harmful touching of another in violation of a duty owed to that person. Generally, everyone has a duty to everyone else to avoid such an offensive touching. However, a battery can be committed without personally touching the other person. If a person puts into force or action the means by which the offensive or harmful touching occurs, that person has committed a battery. For example, if a person intentionally shoots a victim without justification, that person has committed a battery despite having not directly touched or contacted the victim. The victim can sue that person for the resulting damages.
2. Assault is a threatened harmful or offensive contact. Think of it as a threatened battery without the need for actual contact. Intentionally pointing a firearm at a victim without justification is an assault in the civil arena. The victim can sue the person who pointed the firearm for assault and recover the

resulting damages for fright, mental duress, false imprisonment, etc.

3. False arrest or false imprisonment occurs when a person restrains someone's freedom without legal right or justification. For example, if a person points a firearm at the victim and restrains the victim's freedom, without justification, the victim can sue that person for false imprisonment. There need not have been an actual arrest or imprisonment in order to trigger the right to sue. Use of a firearm to restrain the person's freedom without justification is likely a false arrest or false imprisonment, and the victim can sue for damages, including mental anguish, etc.

#### B. Negligence - accidental discharge, accidental shooting

1. Negligence is a tort best known as an "accident." In other words, a person who did not intentionally harm the victim or the victim's property, but accidentally harmed the victim or the victim's property in violation of a duty to the victim has probably acted negligently. Careless or improper use of handguns can easily lead to being sued for negligence.

(a) Accidental discharge of firearm can easily lead to being sued for negligence. Obviously, if a person accidentally shoots a firearm and strikes a victim or the victim's property, damage will likely result. The victim can sue that person for negligence.

(b) Accidental shooting of a person, animal or property can also result when a person intentionally shoots a firearm in the mistaken belief that the bullet will not strike any person, animal or property. Signs warning against shooting a firearm within 1/4 mile of an occupied structure are intended to guard against the negligent injury or damage that can result from such conduct. Shooting a firearm blindly through bushes or trees without justification and hitting someone or someone's animal or property can result in being sued for negligence and the resulting damages.

(c) Shooting at a criminal, even with legal justification and hitting a bystander may constitute negligence. The defender should contact a private attorney and consult the self-defense laws to determine one's legal defenses to a pending or contemplated law suit.

### **V. "JUSTIFICATION" FOR USE OF DEADLY FORCE - THE KEY TO KNOWING WHEN A FIREARM CAN BE USED AGAINST ANOTHER PERSON**

Up to now, the focus has been on the laws that prohibit using a firearm. Now, the focus will shift to the circumstances under which the law "justifies" use of deadly force. This is a critical part of the legal studies in this course.

Even though the law might justify use of physical or deadly force against one person, that force may not be used recklessly to injure an innocent bystander. There is no justification for the reckless injury or killing of an innocent bystander. In addition, negligently injuring or killing an innocent bystander can lead to a civil negligence lawsuit.

#### 1. **Self-defense:** K.S.A. 2011 Supp. 21-5222

Self-defense is a critically important part of CCH training on the lawful use of deadly force! Self-defense, by far, is the most likely reason for the justified use of a firearm against another human being. Several scenarios will be reviewed as part of your judgmental shooting training.

You would be justified in threatening or using **physical force** against another person when and to the extent a reasonable person in your position would believe that physical force is immediately necessary to protect yourself against the aggressor's use or attempted use of **unlawful physical force**. You would be justified in using **deadly physical force** when a reasonable person in your

position would believe that deadly physical force is immediately necessary to protect yourself against the aggressor's use or attempted use of **unlawful deadly physical force**.

It is important that you and your students understand that the law permits a *measured* self-defense. Generally, you can only use the force necessary to resist the unlawful force. You can resist unlawful physical force with physical force. You can resist unlawful deadly force with deadly force. **However**, there have been a few modifications with the 2010 Legislative session, see below.

Certain presumptions of reasonableness were created in more recently enacted statute when looking at the use of deadly force. These presumptions arise where someone "is unlawfully or forcefully entering, has unlawfully or forcefully entered, and is present within" another's home, place of work or occupied vehicle; or where someone is essentially being kidnapped from the dwelling, place of work or occupied vehicle of the individual using the defensive force. There are instances where these presumptions do not apply so Licensees must understand these situations and when they can backfire on them.

Also new in 2010 were definitions for what constitutes the "use of force" and what constitutes the "use of deadly force." "Use of deadly force" will really boil down to an individual applying force which is likely to cause death or great bodily harm; the definition for "use of force" now encompasses (and "use of deadly force" explicitly casts out) any threat to use deadly force or display of a deadly weapon.

2. There are important **limitations on self-defense**. You cannot use force against a police officer, even if you believe you are being illegally arrested, unless the physical force used by the police officer exceeds that allowed by law. You cannot provoke a fight and then act in self-defense, unless (a) you first withdraw from the fight or clearly communicate your intent to withdraw, but you believe you cannot safely withdraw, and (b) the other person nevertheless continues or attempts to use unlawful physical or deadly force against you.

3. **Duress** is often confused with self-defense, but it is different. If someone puts a gun to your head and threatens to kill you unless you do as you are told, you are being asked to act under duress. Although duress is a defense to committing many crimes, duress is never a defense to shooting someone. Even if someone is threatening you or a loved one with death, the law does not permit you to shoot an innocent third person to avoid that threat; naturally, however, you would be justified to shoot the person placing you under duress.

4. **Defense of another person** – K.S.A. 2011 Supp. 21-5222

The rules for determining whether you are justified in using deadly force to defend someone else are similar to those for self-defense.

You would be justified in threatening or using physical force or deadly physical force against another person to protect a third person if, under the circumstances known to you, a reasonable person would believe (1) that the third person would be justified to use such force against the other person, and (2) a reasonable person would believe that your intervention is immediately necessary to protect the third person.

5. **Defense of property** - Use of force in defense of dwelling, K.S.A. 2011 Supp. 21-5223;

Defense of property other than a dwelling, K.S.A. 21-5225 (see above amended statutory language).

## **VI. FEDERAL "DOMESTIC VIOLENCE" PROHIBITION AGAINST GUN POSSESSION**

*Omnibus Consolidated Appropriations Act of 1997 (amending the Gun Control Act of 1968);  
18 U.S.C. § 922(g)(9).*

Under a federal law, which became effective September 30, 1996, and which applies **retroactively**, it is unlawful for any person who has been convicted of a "misdemeanor crime of domestic violence" ("MCDV") to possess, ship, transport, or receive handguns or ammunition. According to a November 26, 1996 BATF letter to "All State and Local Law Enforcement Officials," anyone who has been convicted of any misdemeanor crime of domestic violence must surrender all handguns and ammunition or face federal prosecution – this applies to any criminal violation even if the convicting statute/ordinance/regulation does not contain the term "domestic." The BATF has asked local law enforcement to cooperate with it in enforcing this new law.

Under Federal law, a misdemeanor crime of domestic violence includes any misdemeanor involving the use or attempted use of physical force, or the threatened use of a deadly weapon against a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim. The new federal law does not exempt governmental employees, *i.e.*, police officers and others in government service who have been convicted of "domestic violence" cannot possess guns or ammunition, even in the performance of their duties. BATF has warned local law enforcement agencies to consider "appropriate action" against their employees who fall under the new law. The BATF has threatened criminal penalties against such persons who continue to possess guns or ammunition and has warned that the guns and ammunition of such persons are subject to seizure and forfeiture.

This federal law contains confusing, complicated exceptions, such as pardons, whether the person was represented by counsel, etc. These exceptions may make the law very difficult to understand for some. Any person who was convicted of any misdemeanor offense due to a physical altercation with a family member, again, regardless of the ultimate convicting statute / ordinance / regulation, should consult an attorney regarding continued possession of handguns or ammunition.

**NOTE: The 2008 10<sup>th</sup> Circuit Court of Appeals decision (Wyoming ex rel Crank v. United States, 539 F.3d 1236) from Wyoming may also apply in Kansas. This decision found that a Wyoming expungement of a Wyoming qualifying MCDV conviction WILL NOT relieve any prohibition on possessing firearms that results from 18 USC 922(g)(9). Kansas and Wyoming have similar expungement statutes with respect to how a conviction is viewed/utilized after its expungement. The Court agreed with the BATFE's interpretation of Wyoming laws that because the Wyoming statute at issue did not completely purge the record of conviction – similar to what occurs (or does not occur) in Kansas - then that was not a true "expungement" of the conviction. The 10<sup>th</sup> Circuit could disagree with respect to Kansas' expungement statute, they could overturn their holding in Crank or the US Supreme Court could eventually rule that this decision is not appropriate; but until one or more of those results occur, DO NOT let students assume that their expunged MCDV conviction is no longer considerable.**

## **VII. KANSAS CCH PERMIT APPLICABILITY OUTSIDE OF KANSAS**

Remember that your CCH permit carries no force of law outside Kansas, unless recognized by another state. Some states will unilaterally recognize Kansas permits and some states will require formal mutual recognition agreements with Kansas (*i.e.*, reciprocity agreements.) Kansas currently recognizes all licenses/permits from the other 48 states that similarly issue a CCH license or permit. Keep in mind, a couple major caveats to that recognition: Kansas only honors the concealed carry of handguns by those licenses (any other weapon their home state allows to be carried with that license/permit will not be recognized in Kansas); and the recognition is only for non-residents of Kansas. Residents of Kansas with non-Kansas CCH license or permit may carry concealed firearms in Kansas without a license now, if they are lawful and at least 21, due to the 2015 changes to Kansas' firearms laws.

NOTE: You are responsible for knowing the gun laws in any state, city, town or county where you carry a gun. Since the laws in all the states constantly change, the recognition list will continue to change. For current information, you should check with the Kansas Attorney General's web site at [www.ag.ks.gov](http://www.ag.ks.gov), or the appropriate state, city, town or county before traveling outside Kansas to learn about new recognition information - such as, whether your CCH permit is recognized currently at your travel destination, and whether a permit from out-of-state is recognized in Kansas.

## **VIII. FEDERAL GUN FREE SCHOOL ZONES - AND OTHER PLACES YOU CAN NOT CARRY YOUR GUN.**

### **1. Federal Gun Free School Zones Act:** **BACKGROUND OF THE LAW**

In 1991, the U.S. Congress passed the "Gun Free School Zones Act," 18 U.S.C. § 922(q). The Act purported to regulate the carrying and discharge of handguns in federally created "school zones" (*i.e.*, within 1000 feet of elementary and secondary private and public school property). In the case *U.S. v. Lopez*, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), the U.S. Supreme Court ruled that the 1991 "Gun Free School Zones Act" was unconstitutional because Congress had exceeded its authority under the Constitution's "Commerce Clause." The *Lopez* case marked the first time since Franklin D. Roosevelt "packed" the Supreme Court with additional justices in the 1930s that the Supreme Court had limited Congress' power under the "Commerce Clause."

In the closing days of the 1996 U.S. Congress, a new "Gun Free School Zones Act" was attached to a 2,000+ page omnibus spending bill, Congress approved the bill, and the President signed it into law.

### **WHAT THE LAW SAYS**

There are two parts to the new "Gun Free School Zones Act." The first part makes it unlawful to "knowingly possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U.S.C. § 922(q). There are seven exceptions to this prohibition:

1. possession of a firearm on private property not on school grounds;
2. **if the individual is licensed by the State in which the school zone is located to carry a firearm, and the licensing requirements include verification that the individual is qualified under law to receive the license;**
3. if the firearm is not loaded and is in a locked container or locked handgun rack on a motor vehicle;
4. if the firearm is possessed by an individual for use in a program approved by the school;
5. if the firearm is possessed by an individual with a contract with the school [*e.g.*, school security guards];
6. if the firearm is possessed by a law enforcement officer acting in his or her official capacity; and
7. if the firearm is unloaded and possessed by an individual enroute to hunting with the permission of the school authorities.

The second part of the "Gun Free School Zones Act" prohibits the knowing or reckless

discharge or attempted discharge of a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone. There are four exceptions to the prohibition against discharging or attempting to discharge a firearm in a school zone:

1. on private property that is not part of a school ground;
2. as part of a training program approved by the school;
3. by an individual under contract with the school [e.g., security guard]; and
4. by a law enforcement officer acting in an official capacity.

For the Kansas resident, the "Gun Free School Zones Act" restricts rights under state law. As explained earlier in this treatise, under Kansas law, a person may use a firearm to defend against imminent threat of death or serious bodily injury or to stop specified criminal acts (e.g., rape, robbery, kidnapping, etc.). However, it is illegal under the "Gun Free School Zones Act" to knowingly or recklessly discharge or attempt to discharge a gun within a federal school zone.

A violation of the "Gun Free School Zones Act" carries a federal penalty of a fine and imprisonment for up to five years. 18 U.S.C. § 924(a)(4). Since self-defense and other Kansas "justification" laws do not apply to the "Gun Free School Zones Act," a person who knowingly discharges a firearm in a federal school zone in self-defense or to save children from an armed madman would be subject to prosecution by federal authorities and sentencing up to five years in federal prison. No doubt the members of congress who voted for the "Gun Free School Zones Act" would assert that no federal prosecutor would pursue such a case. But if no federal prosecutor should pursue such a case, why does the "Gun Free School Zones Act" make no exceptions for those who use a firearm legally under state law? The reality is that people have been prosecuted and imprisoned in the United States for unlawfully discharging a firearm while lawfully acting in justified self-defense. Therefore, you should be aware that, if you fire your gun within a federal school zone to justifiably defend yourself or someone else, you risk federal criminal prosecution.

## 2. Indian Reservations

Because each Indian tribe makes rules that apply on its reservation, the handgun regulations on Indian reservations may vary greatly. Some reservations may prohibit non-Indians from carrying guns on the reservations, except with the permission of the tribal council. Therefore, your CCH permit may not be recognized as valid on an Indian reservation. Permit holders are responsible for knowing and complying with firearms regulations on the reservations.

## 3. Military Reservations

Most military reservations are clearly posted to prohibit the carrying of handguns without the consent of the post or base commander. As with Indian reservations, so long as you remain on state or federal highways that pass through military reservations, your CCH permit may be honored in Kansas. If Kansas CCH are acceptable in another state, the same rule would likely apply if you travel on state or federal highways across military reservations in that state. Always confer with military base officials before traveling onto a military base with a firearm.

## 4. Airports

Unless otherwise indicated, persons may possess handguns in an airport except at or beyond security checkpoints. Because airports have been conspicuously posted for many years, most people are aware that they may not carry a firearm past the security check point in U.S. airports. You

must check your firearm, unloaded, (along with any ammunition) with your luggage. A CCH permit does not permit you to carry your firearm through the security check point. Check with Airport officials for the proper manner and documentation required in order to check a firearm when flying.

## **IX. MAINTAINING CONTROL OF YOUR HANDGUN**

The greatest liability exposure you face when carrying a firearm for self-defense is the prospect that you will get used to carrying it. As you become accustomed to carrying a firearm, you risk becoming complacent about safeguarding it. Police officers know how complacency can lead to losing control of a gun - it is quite common. The results can be devastating.

Never, never leave your firearm accessible to others. If you carry it in a purse, briefcase or other carrying case, never leave it unattended for even a moment. Keep it in your possession at all times. If you are unwilling to accept this responsibility, you should not carry your firearm. Strange as it may seem, even police officers have been known to lay down handguns during breaks, rest room visits, lunches, physical activities, etc. and forget, leaving handguns to be found by others. It can happen to anyone, so beware, think and assume the responsibility that goes with carrying a firearm.

The Kansas courts have expressed their willingness to extend civil liability to such situations. If you provide a gun to a juvenile, a drunk, a mentally defective person, etc., accidentally or intentionally, and it is used by that person in a shooting, you risk serious civil law liability exposure.

## **X. GENERAL RULES**

A. When carrying concealed, do not "advertise" that you are doing so. Carrying a concealed firearm is not a game - it is a means of self-defense that carries grave responsibility. There are many people who detest or fear handguns. Keep your firearm out of sight, attempt at all costs to avoid "printing," and respectfully decline requests to show it to others in any public setting. The wisdom of this rule is highlighted by the law in states like Florida and Texas (not Kansas) and some foreign countries to the effect that displaying a lawfully concealed handgun is a criminal offense.

In addition, concealment of your firearm gives you an important tactical edge if you are confronted with a life threatening situation. The average assailant does not expect his next victim to be carrying a firearm. The tactical advantage of surprise and the important one or two seconds that the surprise might buy you will be lost if your assailant knows you are armed.

B. The Kansas concealed carry handgun permit does not grant you a right to carry a firearm concealed or otherwise, in any other state, unless that other state recognizes the Kansas permit. If you use your Kansas CCH permit to carry a concealed gun in another state, the Attorney General will attempt to keep an up-to-date posting of which other States recognize the Kansas CCH license, but this list is no guarantee - you will be responsible for following that state's laws regarding the carrying and use of handguns! Kansas law does not follow you to other states!

C. Do not freely show your concealed firearm to friends and associates upon request. You risk accidental shootings, accidentally alarming or offending bystanders, accidentally committing assault or reckless endangerment, and a variety of other problems. Your instructor can give you examples.

D. Remember, the success or failure of Kansas's concealed carry law depends, in large part, upon how you exercise this valuable right.

## **XI. REVIEW OF LEGAL PRINCIPLES AND POSSIBLE TEST QUESTIONS**

**SAFETY  
CONSIDERATIONS**

**And**

**INTERFACING WITH  
LAW ENFORCEMENT**

## **HANDGUN SAFETY CONSIDERATIONS**

### 1. Four Basic Handgun/Shooting Safety Rules

- A. All handguns are considered loaded (never assume anything – check it)
- B. Always point handguns in a safe direction (downrange, the ground, etc.), until on target and ready to fire
- C. Always keep your trigger finger straight along the frame until on target and ready to fire
- D. Always know your target and what's behind it (bystanders, traffic, etc.)

REMEMBER: Maintain control of your handgun (if not in possession, lock it up)

### 2. Dry Firing and Cleaning

- A. Unload the firearm in a safe manner
- B. Place all ammo in a separate room
- C. Visually and physically inspect the firearm to make sure it is unloaded
- D. Plan to avoid interruptions (phone, door, etc.)
- E. Aim the firearm at a bullet stopping backstop (block wall, dirt berm, etc.)

### 3. Storing Handguns

- A. Educate all persons that might have access to a firearm
- B. Check all handguns to make sure they are unloaded (look and feel)
- C. Store in a safe/secure location
- D. Store out of sight
- E. Use additional safety devices (cable locks, padlocks, gun safes, etc.)
- F. Never store or carry a cocked revolver

### 4. Shooting Range

- A. Obey all range rules and the range master/instructor
- B. Stay focused and alert
- C. Use eye and ear protection
- D. Report unsafe acts
- E. Anyone may call "cease fire"

## **INTERFACING WITH LAW ENFORCEMENT PERSONNEL**

### 1. Declaring that you are in possession of a handgun and have a CCHL

Kansas law does not require that you **volunteer** to law enforcement officers that you have a CCHL and firearm, but you might consider doing so, depending upon the circumstances (*e.g.*, if the presence of a firearm is likely to become a safety concern) because some states do require immediate disclosure of such status so it may be good practice for some, especially those that travel often. While not legally required, it may certainly be prudent and in the best interest of the licensee, if they happen to be stopped by law enforcement, to honestly answer a law enforcement officer's inquiry about any firearms on the licensee's person or within their immediate access at that time. Licensees should consult with a private attorney for legal advice specific to scenarios as the Attorney General's Office generally cannot extend private legal advice.

### 2. When deadly force has been threatened or used

It is important to have a plan before you choose to use deadly force – be prepared. Remain calm and consider the following:

- (1). Notify law enforcement as soon as possible – call 911 and provide your name, location and other information that will assist authorities responding to the incident. Request emergency medical assistance if there are injuries.
- (2). Remember the firearm safety rules and secure your handgun. Do not display your handgun until asked to do so by the responding officer(s).
- (3). Remain alert to your situation – a threat could still exist. If the threat is still present, clearly communicate this to the 911 operator and the responding officer(s).
- (4). Render aid if necessary, but be careful not to disturb the scene or as little as possible.
- (5). Responding officers will not know the exact situation. When they arrive, show them your open hands and tell them who you are. Follow their instructions.
- (6). Be prepared to be detained while officers sort out the incident.
- (7). Think about what you are going to say to investigators, if anything. Be mindful of your right to have an attorney present before questioning.

### 3. Assisting law enforcement personnel during volatile situations

As a general rule you should only come to the aid of a law enforcement officer when the situation is life threatening. Here are some general guidelines:

- (1). Do not surprise the officer(s), and do not make the situation worse by approaching the officer(s) with your handgun drawn.
- (2). Communicate with the officer(s) and make it clear that you have a concealed carry handgun license and that you are armed.
- (3). Follow the officer's instructions.
- (4). Use only the force necessary to deal with the situation (most situations will be resolved without the use of deadly force).
- (5). Be a good witness – remember details.
- (6). Do not leave the scene until you have provided your name and contact information to the officer(s). You may be asked to provide a statement for their investigation.

#### 4. Conduct during traffic stops

If a police officer stops you while you are driving and armed, follow some common sense rules:

- (1). Keep your hands visible, preferably on the steering wheel.
- (2). When asked about firearms in the vehicle, inform the officer that you are armed and that you have a concealed carry handgun license.
- (3). Follow the officer's instructions (depending upon the officer and the circumstances, you may or may not be asked to surrender your handgun during the traffic stop).
- (4). If you are asked to surrender your handgun, be certain that you communicate with the officer clearly regarding how you are to present the handgun, and always remember the four basic safety rules.
- (5). Do not argue with the officer. If you disagree with the officer's actions, file a complaint with the officer's agency at a later time.

#### 5. Incidents involving business owners or other prohibited locations

- (1). Don't argue or escalate the situation when confronted by a business or property owner – businesses have the right to prohibit firearms on their premises.
- (2). When asked to leave the premises, leave promptly - license holders can be cited for trespassing if they fail to comply with a request to leave.
- (3). If law enforcement is summoned, be cooperative and calmly explain your situation.

#### 6. Surrendering your firearm upon request of law enforcement

If a law enforcement officer asks for your firearm, you should ask the officer how it should be presented and then follow those instructions in a safe manner. While the circumstances will determine whether a law enforcement officer can legally seize your firearm, **LAW ENFORCEMENT PERSONNEL ARE ALWAYS AUTHORIZED TO REQUEST THAT YOU SURRENDER YOUR FIREARM TEMPORARILY TO ENSURE THEIR OWN SAFETY.** If placed under arrest, your handgun will likely be seized and retained by the arresting officer.

8 - HOUR  
Handgun Safety and Training  
CLASS  
(Lesson Plan)

**OFFICE OF ATTORNEY GENERAL  
Derek Schmidt**

**CONCEALED CARRY HANDGUN LICENSE  
PROGRAM LESSON PLAN  
8-Hour Initial Application Class**

**Program Number 001: July 1, 2006, as amended on October 19, 2006**

This lesson plan was developed by the Kansas Attorney General with the assistance of the CCH Advisory Committee. Use of this lesson plan is mandatory by all instructors, effective July 1, 2006, unless you are teaching an approved alternative lesson plan. The 8-hour CCH course is a firearms safety course, designed to teach the students the basics of gun safety, marksmanship, maintenance and familiarization, as well as legal issues related to the use of deadly physical force. The 8-hour CCH course is not designed for or intended to teach advanced tactics or shooting techniques. Note: Each section of the lesson plan has a minimum required training time.

Each instructor shall use a Kansas Attorney General's approved lesson plan, approved written test and live-fire shooting qualification test.

Instructors who are not licensed to practice law in Kansas shall not give legal advice or answer questions that require legal advice.

Any information taught which is not listed in this lesson plan will require additional hours of training time beyond the mandatory 8 hours. Under no circumstances will audio/visual aids dominate the training. The only exception is the use of brief videos or other audio/visual aids directly related to required topics. Deviation from this or any other approved lesson plan is unacceptable and may result in the withdrawal of an instructor's certification or approval. Deviations from the approved training lesson can result in students having their applications rejected or license revoked for a lack of approved training. A 10 minute break taken after every 50 minutes of instruction is acceptable (counts as one hour of instruction) and does not require special scheduling or permission. Lunch breaks do not count as training time. Completing applications will not be performed during the 8-hour training period.

Please ensure students receive the proper instructor identification information for their applications.

Instructors shall have the right to inspect handguns and ammunition prior to live fire exercises and reject the handgun and/or ammunition should either be obviously unsafe or non-functioning. The use of other than factory ammunition is prohibited in the training course. Any safety devices which have been removed from the firearm are evidence of an unsafe firearm and may be used by the instructor to reject that firearm. Other evidence of unsafe modifications includes trigger shoes, or cutaway trigger guards. If the firearm or ammunition is rejected, the student shall have the option to obtain another firearm and/or ammunition for use in the live fire exercise.

Firearms shall be inspected by the instructor before qualification and remain unloaded until told otherwise. No live ammunition will be allowed in the classroom during the classroom portion of the course.

**IMPORTANT - This lesson plan consists of nine sections. Section 1 will be covered first. Section 2 will be taught before students handle firearms or qualify on the range. The remaining sections may be taught in any order, based upon the needs of the instructor.**

Any or all sections may be taught on a range and the firing of handguns by students may be incorporated at the instructor's discretion.

**Range and Actual Range Firing:** NRA guidelines for an instructor/student ratio of 1 instructor or instructor's assistant per 4 students will be required for live fire exercises. There must be one State of Kansas approved instructor present at all times.

### **APPROVED COURSE CURRICULUM:**

#### I. INTRODUCTION (as appropriate) (15 minutes)

##### A. Welcome

1. Introductions (Instructors/Students)
2. Distribution of CCH course materials (general information, i.e., basic firearms safety course, taught to the lowest level of experience, includes legal issues, etc.)
3. Class Schedule
4. Facilities
5. Breaks
6. Cell phones, pagers, etc.
7. Other (as determined by the instructor)

##### B. Class Safety Briefing (mandatory at the beginning of the class and to be repeated as necessary throughout the class)

The safety briefing below is a guide to assist the instructor with pertinent instructions and should be used as needed.

Other instructions may be added at the instructor's discretion.

1. No loaded firearms are permitted in any training area unless specifically required by the instructor.
2. No live ammunition shall be permitted in the classroom. No exceptions. This includes instructors and law enforcement. This is a safety issue.
3. Firearms shall be inspected by the instructor before qualification and remain unloaded until the instructor informs students otherwise.
4. Eye and ear protection shall be worn while on the firing range.
5. Firearms used for training purposes other than qualification on a range shall be unloaded and inspected by the instructor teaching the class. (If available, a second instructor or a student knowledgeable about firearms shall also inspect the firearm.)

6. Students and instructors are expressly prohibited from being under the influence to any extent of alcoholic beverages or drugs.
7. No "horseplay" while in class or on the range.
8. Students will follow all commands given by the instructor.
9. When on the range, all firearms will be benched or holstered, unless told otherwise by the instructor.
10. The four safety rules shall be strictly adhered to at all times.
11. At the command of "cease-fire" or similar command, all shooters will immediately stop firing, keep their firearms pointed downrange and listen for further instructions from the instructor. Anyone may yell "cease-fire" if they observe an unsafe act.
12. Violations of these rules may result in your dismissal from the class.
13. Other (Local range rules, appropriate clothing, drinks, snacks, first aid, etc.)

#### C. Class Objectives:

1. To qualify students to carry concealed handguns after successfully completing an 8-hour course of instruction.
2. To educate students on the responsibility of firearms safety, use of deadly force, maintenance of firearms, proper mental preparedness, marksmanship and judgmental shooting situations, as required by law.
3. To have students display knowledge and proficiency of deadly force issues by passing an approved written test. All incorrect answers will be reviewed with the instructor before the conclusion of the class.
4. To have students display proficiency with a handgun by qualifying during the course with a minimum of 18 of the 25 required rounds striking the scoring portion on an approved target.

## II. BASIC INTRODUCTION TO HANDGUNS, SAFE HANDLING AND STORAGE OF FIREARMS (minimum 1 hour)

[Recommendation: Give a brief informational statement about the use of handguns for self-defense, leading into the importance of firearms safety in general.]

### A. Four Firearms Safety Rules (Stress the importance of knowing and following the safety rules)

1. Assume all firearms are loaded.
2. Never let the muzzle cover anything that you are not willing to destroy.
3. Keep your finger off the trigger until your sights are on the target.
4. Always be sure of your target and what is beyond.

Remember - There is no such thing as an "accidental discharge" of a firearm, unless it is defective. Firearms fire due to intent or carelessness.

## B. Basic Introduction to Handguns

1. Pistol Parts and Operations
  - a. Revolver
    - Basic operation
    - Parts of a revolver
  - b. Semi-automatic pistol
    - Basic operation
    - Parts of a semi-automatic pistol
2. Ammunition
  - a. Components of ammunition
  - b. Types of ammunition
  - c. Cartridge firing sequence
  - d. Using proper cartridge
  - e. Care and storage of ammunition

## C. Firearm Storage Devices (use of training aids is recommended)

1. Safety vs. Accessibility
2. Lockable boxes, cases and safes

## D. Locking Devices (use of training aids is recommended) (Note: None of these devices are designed to be used on loaded firearms.)

1. Safety vs. Accessibility
2. Racks
3. Barrel locks
4. Cable locks
5. Trigger locks

## E. Training Household Members

1. All family members should be familiar with firearms stored in the home and taught basic firearms safety.
2. Children should be taught not to handle a “found” firearm and to report it to a responsible adult (i.e., Stop, Don’t Touch, Leave the Area, Tell an Adult).
3. If appropriate, visitors should be told of the presence of loaded firearms in the home and cautioned against handling an unfamiliar firearm.

## F. Loaded Firearms in the Home

Discuss: Safety issues with family members and visitors who are not familiar with firearms when they are visiting in the home.

### III. FIREARM CARE AND MAINTENANCE (minimum 15 minutes)

Discuss the importance of clean and functional firearms that will be used for self-defense. Also stress the importance of ensuring the firearm is unloaded before cleaning. Emphasize how many people have been shot while cleaning firearms or with supposedly “unloaded” firearms. Briefly cover the following maintenance topics:

- A. Read the Owner’s Manual (many are available on the internet or by corresponding with the manufacturer)
- B. Safety (unload in one room, clean in another, no ammunition present)
- C. Field Stripping (as applicable, read owner’s manual)
- D. Magazines (cleaning, check for defects, no lubricants)
- E. Cleaning and Lubrication (proper equipment, solvents & lubricants, how often)
- F. Function Check (always check the functional operation of the firearm before loading the firearm to insure it was properly reassembled and operating correctly)

### IV. LEGAL ISSUES RELATING TO THE USE OF DEADLY FORCE

(Mandatory 2 hours minimum but should take longer). All CCH instructors must be familiar with and adhere to the approved legal instruction format. Merely reading the statutes to the students is insufficient for this section.

#### A. Inform your students that:

1. Kansas law requires persons who wish to carry concealed handguns for self-defense to receive training before doing so.
2. The legal issues are the most important because violations of the laws pertaining to the use of firearms can lead to imprisonment, fines and civil lawsuits.
3. A license is valid for four years and then must be renewed.
4. It is the responsibility of the license holder to renew the license by submitting a renewal application.
5. Must provide all students a copy of the Kansas Personal and Family Protection Act (K.S.A. 75-7c01 et seq.), and discuss eligibility requirements. (Handout B)
6. Discuss places where firearms are prohibited or restricted (Handout A) (list of state and federal places)
7. Briefly discuss criminal and civil legal consequences for violations of 1 - 6.

#### B. Laws pertaining to firearms and deadly physical force.

All criminal laws covered start from the perspective that in an armed conflict, anything one person does with a firearm involving another person is presumed to be illegal and must be justified. Justification in Kansas is covered in paragraph 7, below. For each crime mentioned, the elements and how a licensee might violate that law will be discussed.

1. Briefly discuss: Murder in the First & Second degrees along with Voluntary & Involuntary Manslaughter.
2. Briefly discuss: Assault and Battery (especially Domestic Battery).
3. Briefly discuss: Criminal Threat, Kidnapping & Criminal Restraint. Cover aspects that pertain to CCH holders.
4. Briefly discuss: Criminal Trespass and Disorderly Conduct. Discuss how could affect persons with firearms in prohibited places.
5. Briefly discuss: Criminal Use of Weapons, Criminal Carrying of Weapons, Criminal Possession of a Firearm; Criminal Discharge of a Firearm, Destruction of Property, Unauthorized possession of a Firearm. Information that does not pertain to carrying concealed handguns may be omitted.
6. Briefly discuss brandishing a firearm under various municipal codes (not a state law violation) and how a licensee might violate these laws.
7. Briefly discuss civil laws impacting the use of firearms. Overview of intentional acts and negligence, including *Wood v. Groh*, (KS 2001), and insurance availability or desirability.
8. Thoroughly discuss Use of force (general or deadly) in defense of person, dwelling, property, by aggressor, in making arrest – especially in light of changes made since 2010. ***This chapter is the most crucial section of the law and legal training requirement and all instructors must be thoroughly knowledgeable of this section of the legal text.*** The Pattern Jury Instructions for Kansas (PIK 3<sup>rd</sup>) may be utilized for aids, but need to be “fleshed out” with examples. Facts of particular cases can be used as examples.
9. Thoroughly discuss K.S.A. 75-7c10 & 75-7c20, prohibited places. Crime of carrying while intoxicated (CWI) at K.S.A. 21-6332. Include discussion of prohibited premises which are posted. All other prohibited places need to be discussed.
10. Briefly discuss other applicable laws 18 USC 922 – Federal Gun Free School Zone overview, prohibited federal facilities such as courthouses, offices, and post office). Also need to discuss military bases, National Parks, National Forests, federal wildlife refuges, Army Corps of Engineers lakes, American Indian reservations.
11. Recognition of licenses from another jurisdiction. (see Handout C. Briefly discuss this subsection. Key point: Be familiar with the laws of other states you visit.)
  - a. License holder is responsible for following laws of other states.
  - b. Recognition of Kansas license in other jurisdictions
12. Other laws:
  - a. Laws regarding treatment of DLs and Kansas non-driver ID licenses (unlawful to deface, alter, destroy, copy, etc). Must inform of change of address or loss or destruction within 30 days. **Note** requirement for DL address change is 10 days.
  - b. Criminal act to lie on application or any supporting documentation such as course completion certificate
13. Request students visit the Kansas Attorney General’s CCH website at: [www.ag.ks.gov](http://www.ag.ks.gov)

C. Contact with law enforcement (thoroughly discuss)

1. License holders are not required to inform officers they are in possession of a license and a concealed handgun. However, it is strongly recommended the license holder volunteer this information to avoid “surprises.”

2. Approaching law enforcement during volatile situations can further aggravate the situation. Do not approach officers without first getting their attention and requesting permission.
3. Do not approach an officer with firearm in hand, even after what may be determined to be a justified shooting. Do not even have a firearm in your hand when the police arrive if at all possible.
4. Officers are authorized to require license holders in possession of a concealed handgun and a license to temporarily surrender the handgun for the officer's safety.
5. If you ever show your firearm or draw it to ward off a threat - and definitely if you fire a shot from any firearm in a self-defense situation - you should contact law enforcement authorities immediately to report what happened. If you fail or forget to do so, plan on the other party reporting the event, and plan on being charged with a crime. Most law enforcement officers have a policy requiring filing of a report if they remove a firearm from its holster. You should too.

## V. USE OF DEADLY FORCE – PREPAREDNESS FOR CONFRONTATIONS

(minimum 1.5 hours)

### A. Modes of Awareness

1. White - No perceived threat, completely unaware (watching TV, daydreaming, sleeping)
2. Yellow - Functioning in public, aware of surroundings (driving to work, shopping, conversation)
3. Orange - Alert, perceived specific threat or situation (someone or something grabs your attention, possible danger)
4. Red - Focused, reacting to actual threat (someone is actually threatening or attacking you and you are responding or are ready to respond if necessary)

### B. Visualization Techniques (Emphasize the importance of these points)

1. Use “what if” scenarios to prepare an appropriate reaction.
2. The way you prepare and train will be the way you respond in a high stress situation.
3. You should have a plan of action NOW. You will not likely have time to create a plan once the attacker engages you.
4. Explain the importance of developing the proper mindset for using a firearm for personal protection and facing a life-threatening encounter.
5. Explain and evaluate students' state of mental awareness using the four levels of awareness.
6. Explain the importance of mental preparation and physical training for a potentially life-threatening confrontation.
7. Explain strategies and methods to enhance students' personal safety while in public.
8. Describe strategies for responding to a potentially life-threatening encounter.
9. Explain the importance of mentally preparing for the aftermath of a violent confrontation.

### C. The Confrontation (active defensive measures)

1. Appropriate level of defensive force. Remember: Not every attack or threat is the same. In each case, there may be circumstances present that require an immediate and violent reaction by a person defending them self (or someone else) from the threat of serious bodily injury or death. If possible, try to consider:
  - a. What is the aggressor doing? (Demeanor and actions - watch the hands, body language)
  - b. Can I escape safely without using deadly force? May not be required, but it is probably a good idea if possible.
  - c. What weapons, if any, does the aggressor possess? (Pipe, knife, gun, rock, stick?)
  - d. Is threatening deadly physical force justified and the best option?
  - e. Less lethal options (If an option – mace, stun guns, etc.)
  - f. Is using deadly physical force justified and the best option?
  - g. Do you have the opportunity to draw your handgun?
  - h. How close is the aggressor? (In your face vs. 5-20 feet away)
  - i. Can they reach your handgun?
  - j. After drawing, should I keep my handgun in close or extend my arms into a shooting position?
2. Never give up or surrender your handgun once the fight is on – it could cost you your life.
3. Use only the force necessary to stop the attack and be prepared to resume the use of force, if needed. Purposefully “shooting to wound” or warning shots cannot be justified because of the use of potentially deadly force without the apparent threat level to sustain that usage.
4. Be mentally prepared if injured – many people have died from non-lethal wounds because of shock, but others have survived apparently lethal wounds due largely to a determination to survive.
5. Firing (Expectations, wounding the attacker, blood, injury, death) – most people shot do not even show the effect for a period of time, not like the violent reaction shown in movies.

#### D. If Deadly Physical Force has been Used

1. Misconceptions (Real life vs. movies, immediate death, endless supply of bullets, etc.)
2. Did you make a plan? (What are you going to do now?)
3. Injuries to attacker, bystander and/or self (first aid?)
4. 911 – Call immediately; do not hang up. Request an ambulance if anyone is injured.
5. Always Remember the Four Firearm Safety Rules.
6. Don't disturb the scene.
7. Note any evidence.
8. Arrival of the police (Secure the handgun, empty hands.)
9. If you are involved in any self-defense situation, always do exactly what the law enforcement officer commands you to do. If you are in possession of, or actually have a firearm in your hands and the officer(s) tell you to “drop it” or “lay it down” etc., do so IMMEDIATELY AND DO NOT ARGUE.
10. Investigation (Crime scene, confiscation of the handgun as evidence, attorney, police interviews, statements)
11. Be prepared to be detained after a deadly force incident.

## E. After effects

1. Common psychological reaction pattern
  - a. Elation
  - b. Revulsion
  - c. Remorse
  - d. Self-Doubt
  - e. Acceptance
2. Common physical & psychological reactions
  - a. Adrenaline rush, excitability, sleeplessness (may last for days)
  - b. Depression, fatigue (may last for days)
  - c. Upsetting memories such as images or thoughts about the trauma
  - d. Feeling as if the trauma is happening again (flashbacks)
  - e. Bad dreams and nightmares
  - f. Anxiety or fear, feeling in danger again
  - g. The cumulative effect of these is sometimes referred to as Post-Traumatic Stress Disorder (PTSD)

## VI. FIREARM MANIPULATION, MARKSMANSHIP AND PRACTICE (minimum 1 hour)

Recommend this section be taught partly in the classroom and partly on the range. The students may be allowed to fire practice rounds, at the instructor's discretion.

Instructor tip: For the purposes of shooting instruction, a person is vertically divided in half, with one side known as the "firing side" (sometimes known as the "shooting or strong side") and the other the "support side." This allows instructors to give one command to multiple students on the firing line without differentiating between right handed shooters and left handed shooters. The firing side is determined by which hand the shooter prefers to hold the handgun. If it were the right hand, then the right side of that person would be known as the firing side and the left side of the person would be the support side. The instructor can now call out commands to direct movement using terms such as "adjust your support hand," or "move your firing side foot forward." Remember: The firing hand primarily maintains a firing grip on a handgun and the support hand is used to fulfill several needs to include supporting the firing hand, reloading, cocking, etc.

### A. Handgun Recognition and Manipulation

Stress the importance of being able to 1) recognize the different types of handguns and their condition, 2) operate the various functions of that firearm through familiarization and 3) safely handle the firearm and basic etiquette. Ensure students know how to operate their handguns safely to include loading, unloading, correct ammunition and firing.

1. Stance
2. Grip (Discuss two hands vs. one hand)
  - a. Using both hands
  - b. Using the firing hand or support hand only
3. Sight Alignment

- a. Sight picture
  - b. Dominant eye
  - c. Sight alignment (front and rear sights, eye focused on front sight)
4. Trigger
- a. Trigger finger straight along the frame until on target and ready to fire
  - b. Steady pressure vs. anticipation
  - c. Breathing

## B. Loading and unloading

(Note on Subsection B: Discuss as needed, depending on the types of handguns your students possess and their basic knowledge of firearms. If this section is taught on the range, it is recommended a sequence of loading, firing a few rounds and then unloading be followed until students appear relatively comfortable with the process. Remind students with semi-autos that simply removing the magazine does not mean the gun is unloaded – the slide must be cycled and the chamber checked.)

1. Double Action Revolvers (single action revolvers are not recommended)
  - a. Loading
    - Activate the cylinder release (single action: open loading port)
    - Handgun may be placed in the shooter's support hand and loaded with the firing hand
    - Swing open cylinder
    - Place rounds into cylinder
    - Close cylinder (single action: close loading port)
  - b. Unloading
    - Activate the cylinder release (single action: open loading port)
    - Swing open cylinder
    - Handgun may be placed in the shooter's support hand and unloaded with the firing hand
    - Push extractor rod to the rear (single action: align chamber first)
    - Remove rounds/cases
    - Inspect each chamber to insure they are empty
    - Close cylinder (single action: close loading port)
2. Semiautomatics
  - a. Loading
    - Methods for inserting rounds into magazine
    - Insert magazine into magazine well and lock in place
    - Using the support hand, rack slide to the rear and release (do not ride forward)
    - De-cock (single action: engage safety)
  - b. Unloading
    - Press magazine release and remove magazine (place in your pocket or pouch).
    - Rack slide to the rear and clear chamber and allow round to fall to the ground.
    - Lock slide to the rear, if possible.

- Look and feel inside the chamber to insure round ejected (Sight and Touch).
  - For safe storage:
  - Pull slide to the rear to disengage the slide stop and release the slide
  - Pull trigger to drop hammer in full firing stroke with pistol aimed in a safe direction to prove chamber is empty.
3. Firing
    - a. Stance
    - b. Grip
    - c. Breathing
    - d. Aiming/sight alignment
    - e. Trigger press
    - f. Follow through
    - g. Recoil
    - h. Recovery
    - i. Ammunition malfunctions (Squib – underpowered; Misfire – doesn't go off; Hang fire – delayed fire)
  4. Selecting a handgun for self-defense
    - a. Needs to be 100% reliable
    - b. Should fit the shooter's hands
    - c. Should be sized such that it can be carried all day; big and heavy means it will probably be left at home most days
    - d. Should not be of a size or caliber you are not capable of handling safely and shooting accurately
    - e. Should not be new or unfamiliar to you
    - f. Do not carry something that you have not personally shot before
  5. Ammunition selection
    - a. Test your carry ammunition for reliability in your defensive firearm by firing at least 200 rounds of the same ammunition you intend to carry
    - b. Hollow point defensive ammunition highly recommended
      - Reduces over penetration
      - Improves potential to stop threat without repeat shots
      - Tends to fragment on impact with hard objects and not ricochet
      - Carried by law enforcement for similar reasons
      - Some firearms will not reliably feed hollow-point ammunition
    - c. Discuss the characteristics and stopping power of the most common handgun ammunition. Common calibers include .22, .32, .380, 9mm, .45, and .357.
  6. Holsters and Carry Methods (Discuss various types of holsters and other carry methods such as purses, briefcases, fanny packs, etc.)
    - a. Highly recommended you carry in a holster
    - b. Those who choose to carry in a purse, or off body should still try to find a combination of bag and holster that will hold the firearm securely
    - c. Dangerous to carry firearms stuck in waistband without holster, or in pocket or purse with other items; things tend to get wedged against the trigger
  7. Flashlights (for demonstration only - optional)
    - a. Use of flashlight in low-light situations is very useful
    - b. Danger! Do not put hand in front of muzzle

8. RECOMMENDATION: Students should practice with their firearm frequently if plan to carry it for self defense. Minimum practice is 100 rounds per month at a range.

VII. WRITTEN TEST (30 minutes)

The written test shall consist of 25 questions using any current version of the standardized written examination approved by the Kansas Attorney General.

- A. Prior to the conclusion of the class, instructors shall review with the student and retest on all incorrect answers until a final score of 100% is achieved. Retest(s) may be either written or verbal, group or individual. Goal is to make sure all students understand all aspects of the law and material tested.
- B. The instructor has the option to administer a verbal exam to any student who needs this accommodation. If a verbal exam is administered, the instructor shall make a written record of the student's answers to all questions on the standardized test.

VIII. RANGE QUALIFICATION (1.5 hours minimum)

25 rounds on the target approved by the Kansas Commission on Peace Officer Standards and Training. (FBIQ, TQ-15, IALEFIQ)

The qualification course was designed assuming the shooter would load 5 rounds into the firearm and then shoot all 5 rounds. If the firearm used by the shooter does not allow this, the instructor is allowed to vary the loading sequence for the shooter as necessary to complete the 25 round course in a safe manner.

All rounds will be fired from the standing position with no support. Shooters will begin with the gun in the low ready position or with gun benched in front of them.

Shooters with disabilities which render the shooter unable to stand may fire from a seated position with no support. Other types of disabilities will be addressed on a case by case basis by the instructor. The principal assessment to be made by the instructor is: "Can the shooter complete the qualification course safely?"

Course of Fire:

- A. At 3 yards: Total rounds 5  
5 rounds one-handed only  
No Time limit
- B. At 7 yards: Total rounds 10  
5 rounds,  
No Time limit  
Repeat
- C. At 10 yards: Total rounds 10  
5 rounds  
No time limit.  
Repeat

Scoring: 18 hits on scoring portion of target required to pass.

IX. OVERALL EVALUATION (Pass/Fail Student)

Has the student satisfactorily demonstrated sufficient knowledge and proficiency with all required topics? Are you, as a firearms instructor, willing to certify this person?

If so, issue a certificate of completion with the required information.

ADDITIONAL MATERIALS:

Handout A: FIREARMS ARE PROHIBITED OR RESTRICTED IN THE FOLLOWING PLACES, STATE AND FEDERAL (with or without a license)

Handout B: LICENSE HOLDER REQUIREMENTS (copy of the most recent version of the Personal and Family Protection Act, K.S.A. 75-7c01 et seq.)

Handout C: RECIPROCITY AND RECOGNITION OF LICENSES (provided by reference to attorney general's list of approved states' licenses, may also include list of states known to recognize Kansas license)

**NOTE: The instructor and student acknowledge receipt of the handouts by completing the Acknowledgement Form and Verification of Receipt of Training Materials. The completed form is retained by the instructor.**