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this state of any aircraft containing a pilot and one or more persons by the use of force or any other means with the intent to exercise control over the aircraft.

Aircraft piracy is a class A felony.

History: L. 1973, ch. 138, § 1; July 1.

Article 35.—SEX OFFENSES

21-3501. Definitions. The following definitions apply in this article unless a different meaning is plainly required:

(1) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ;

(2) "Unlawful sexual act" means any rape, indecent liberties with a child, sodomy, aggravated sodomy, or lewd and lascivious behavior, as defined in this article.

(3) "Woman" means any female human being.

History: L. 1969, ch. 180, § 21-3501; July 1, 1970.

Revisor's Note:

For Judicial Council comment, see 21-3502.

Law Review and Bar Journal References:

This and following sections cited in note concerning mandatory minimum terms for crimes involving firearms, 26 K.L.R. 277 (1978).

CASE ANNOTATIONS

1. Failure to instruct on definition herein not clearly erroneous; conviction hereunder and of other crimes upheld. State v. James, 217 K. 96, 100, 535 P.2d 991.

2. Applied; conviction under 21-3503 (1) (a) upheld. State v. Sisson, 217 K. 475, 476, 536 P.2d 1369.

3. Cited in holding that second prosecution under 21-3511 did not constitute double jeopardy under the provisions of 21-3108. Williams v. Darr, 4 K.A.2d 178, 603 P.2d 1021.

21-3502. Rape. (1) Rape is the act of sexual intercourse committed by a man with a woman not his wife, and without her consent when committed under any of the following circumstances:

(a) When a woman's resistance is overcome by force or fear; or

(b) When the woman is unconscious or physically powerless to resist; or

(c) When the woman is incapable of giving her consent because of mental deficiency or disease, which condition was known by the man or was reasonably apparent to him; or

(d) When the woman's resistance is prevented by the effect of any alcoholic liquor, narcotic, drug or other substance administered to the woman by the man or another for the purpose of preventing the woman's resistance, unless the woman voluntarily consumes or allows the administration of the substance with knowledge of its nature.

(2) Rape is a class B felony.

History: L. 1969, ch. 180, § 21-3502; L. 1978, ch. 120, § 1; July 1.

Source or prior law:

21-424, 21-425.

Judicial Council, 1968: Rape was not defined in the former statutes of Kansas. The crime was described as "carnally and unlawfully knowing" and as "forcibly ravishing" any female. While these terms have accepted common law meanings, it seems desirable that the crime should be more specifically defined. Also, the term "sexual intercourse" is specifically defined for the sake of clarity. The section does not change the former law relating to forcible rape. It simply seeks to clarify.

The section contains elements of New Mexico Criminal Code, 9-1 and 9-2.

Law Review and Bar Journal References:

"Survey of Kansas Law: Criminal Law and Procedures," Keith G. Meyer, 27 K.L.R. 391, 394 (1979).

CASE ANNOTATIONS

1. Conviction upheld; due process not violated by lineup procedure; counsel present during viewing. State v. Kelly, 210 K. 192, 499 P.2d 1040.

2. Conviction hereunder affirmed; search not objectionable; prior rapes admissible; lesser included crimes instruction not required. State v. Masqua, 210 K. 419, 502 P.2d 728.

3. Cited; conviction under prior statute set aside as being duplicitous. Jarrell v. State, 212 K. 171, 510 P.2d 127.

4. Conviction hereunder upheld; statement of accused not inadmissible solely because counsel not present. State v. Nichols, 212 K. 814, 512 P.2d 329.

5. Conviction hereunder not error in failure to instruct on adultery; separate crimes; record reviewed; conviction upheld. State v. Platz, 214 K. 74, 77, 519 P.2d 1097.

6. Conviction hereunder; record examined; conviction upheld. State v. Winston, 214 K. 525, 520 P.2d 1204.

7. Section is not unconstitutional classification discriminating against sex. State v. Price, 215 K. 718, 723, 529 P.2d 85.

8. No abuse of discretion in admission of evidence of similar offenses; instructions proper; conviction upheld. State v. Hampton, 215 K. 907, 909, 529 P.2d 127.

9. Conviction of assault and battery and rape; alleged trial errors reviewed and conviction upheld. State v. James, 216 K. 235, 531 P.2d 70.

10. Rape is not a lesser included offense of aggravated kidnapping. Wisner v. State, 216 K. 523, 532 P.2d 1051.

11. Defendant charged hereunder cannot claim former jeopardy as to a crime convicted of, where conviction reversed and case dismissed; rights not denied. State v. Dolack, 216 K. 622, 623, 533 P.2d 1282.

12. Conviction hereunder and of other crimes reviewed; evidence of similar offenses; instructions; no reversible error. State v. James, 217 K. 96, 100, 535 P.2d 991.

13. Conviction hereunder; no abuse of discretion in admission of evidence of similar offenses or instructions. State v. Gonzales, 217 K. 159, 535 P.2d 988.

14. Use of word "rape" during prosecution under 21-3503 not prejudicial. State v. Wonser, 217 K. 406, 409, 537 P.2d 197.

15. Conviction hereunder and of other crimes affirmed; evidence admissible. State v. Donahue, 218 K. 351, 543 P.2d 962.

16. Alleged trial errors examined on appeal from conviction hereunder; no error. State v. Emery, 218 K. 423, 543 P.2d 897.

17. Alleged errors reviewed and conviction hereunder upheld. State v. Adams, 218 K. 495, 499, 545 P.2d 1134.

18. Conviction hereunder; certain statements made by victim held not to imply consent. State v. Clark, 218 K. 726, 728, 544 P.2d 1372.

19. Conviction hereunder upheld; aggravated assault charge duplicitous and conviction reversed. State v. Lassley, 218 K. 758, 761, 762, 545 P.2d 383.

20. Conviction hereunder upheld; evidence sufficient to sustain verdict. State v. Robinson, 219 K. 218, 547 P.2d 335.

21. Conviction hereunder upheld; testimony and physical evidence properly allowed. State v. Steward, 219 K. 256, 257, 547 P.2d 773.

22. Record reviewed from convictions of murder, aggravated battery and rape; no error found. State v. King, 219 K. 508, 548 P.2d 803.

23. Erroneous admission of prior conviction constituted prejudice; conviction hereunder reversed. State v. Donnelson, 219 K. 772, 773, 549 P.2d 964.

24. Conviction hereunder reviewed; no reversible error. State v. Johnson, 219 K. 847, 848, 549 P.2d 1370.

25. Conviction hereunder and of other crimes; record examined; no reversible error. State v. Lewis, 220 K. 791, 556 P.2d 888.

26. Convictions hereunder and of other crimes affirmed on review. State v. Lee, 221 K. 109, 110, 558 P.2d 1096.

27. Conviction hereunder and of other offenses; no error in refusing new trial or in refusing proposed instruction. State v. Robertson, 221 K. 409, 559 P.2d 810.

28. Conviction of attempted rape reversed; failure to instruct on lesser offense of battery. State v. Arnold, 1 K.A.2d 642, 645, 573 P.2d 1087. Reversed: 223 K. 715, 716, 717, 576 P.2d 651.

29. Alleged trial errors reviewed in affirming conviction hereunder. State v. Gilder, 223 K. 220, 221, 574 P.2d 196.

30. No abuse of discretion in refusing to grant separate trials nor in refusal to sever counts; conviction affirmed. State v. Howell, 223 K. 282, 573 P.2d 1003.

31. Bill of particulars in prosecution hereunder alleged force only; evidence of force and fear properly admitted; conviction affirmed. State v. Corn, 223 K. 583, 589, 575 P.2d 1308.

32. Prejudicial error in prosecution hereunder; case remanded for new trial. State v. Nixon, 223 K. 788, 789, 576 P.2d 691.

33. Alleged errors in conviction hereunder reviewed; conviction affirmed. State v. Cook, 224 K. 132, 578 P.2d 257.

34. Conviction hereunder affirmed; limitations on evidence of previous sexual conduct constitutional; statutory definition of sodomy construed. State v. Williams, 224 K. 468, 471, 580 P.2d 1341.

35. Alleged errors reviewed on appeal from conviction hereunder; judgment affirmed. State v. Higdon, 224 K. 720, 585 P.2d 1048.

36. Conviction under section affirmed and sentence approved. State v. Pencek, 224 K. 725, 585 P.2d 1052.

37. Conviction hereunder upheld; alleged errors reviewed. State v. Stewart, 225 K. 410, 591 P.2d 166.

38. No error in failure to instruct jury on sodomy or patronizing a prostitute; conviction affirmed. State v. Blue, 225 K. 576, 580, 592 P.2d 897.

39. Conviction affirmed; 60-447a construed and applied. *In re* Nichols, 2 K.A.2d 431, 436, 580 P.2d 1370.

40. Minor convicted as adult hereunder; failure to receive fair treatment and fair trial; conviction reversed. State v. Gammill, 2 K.A.2d 627, 628, 585 P.2d 1074.

41. Admissibility of testimony of expert witness is subject to the trial court's discretion; convictions of rape and aggravated kidnapping affirmed. State v. Reed, 226 K. 519, 601 P.2d 1125.

42. Appeal from conviction hereunder. State v. Washington, 226 K. 768, 602 P.2d 1377.

43. Conviction hereunder upheld; no error in admission into evidence of expert testimony on bite-mark identification. State v. Peoples, 227 K. 127, 605 P.2d 135.

44. Conviction affirmed; defendant received effective assistance of counsel; sentencing of defendant proper. State v. Rice, 227 K. 416, 417, 607 P.2d 489.

45. Conviction upheld; trial court did not abuse discretion by failing to find jury deadlocked. State v. Sanders, 227 K. 892, 610 P.2d 633.

46. Fact that accused previously retained counsel does not make inadmissible voluntary statement made by defendant in counsel's absence. State v. Costa, 228 K. 308, 309, 613 P.2d 1359.

47. Confinement in automobile was merely incidental to the commission of the rape; conviction of aggravated kidnapping reversed. State v. Cabral, 228 K. 741, 745, 619 P.2d 1160.

48. Expert scientific opinion must be generally accepted as reliable before received in evidence; court did not err in allowing assistant district attorney to testify. State v. Washington, 229 K. 47, 622 P.2d 986.

49. Duty to instruct on lesser included offenses arises only when there is evidence under which defendant might reasonably have been convicted thereof. State v. Everson, 229 K. 540, 626 P.2d 1189.

21-3503. Indecent liberties with a child. (1) Indecent liberties with a child is engaging in either of the following acts with a child under the age of sixteen (16) years who is not the spouse of the offender:

(a) The act of sexual intercourse;

(b) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender or both.

(2) Indecent liberties with a child is a class C felony.

History: L. 1969, ch. 180, § 21-3503; L. 1975, ch. 193, § 1; July 1.

Source or prior law:

21-424.

Judicial Council, 1968: This section is in lieu of the former provision relating to statutory rape. The name of the crime has been changed. The prohibited conduct includes not only sexual intercourse, but other indecent sexual conduct. Moreover, the section applies to the one who submits to as well as performs indecent acts with a child. Thus, the female participant in a sexual relationship with a child might be prosecuted under this section.

The section adopts part of the Illinois Criminal Code, 11-4.

Law Review and Bar Journal References:

"Walton's Castle: The Spectrum of 'I Am Curious—Yellow'," Edwin P. Carpenter, 10 W.L.J. 163, 174 (1970).

Survey of criminal law, Dan Walter and Dick Ring, 15 W.L.J. 341, 344 (1976).

CASE ANNOTATIONS

1. Failure to give aiding and abetting instruction not error in prosecution hereunder. State v. Ingram, 211 K. 587, 506 P.2d 1148.

2. Cited in dismissal of state reserved question appeal arising from prosecution hereunder. State v. Chittenden, 212 K. 178, 510 P.2d 152.

3. Conviction hereunder upheld; statement of accused not inadmissible solely because counsel not present. State v. Nichols, 212 K. 814, 512 P.2d 329.

4. Conviction hereunder; motion to vacate sentence and conviction denied. Underwood v. State, 214 K. 633, 522 P.2d 457.

5. Subsection (1) (*b*) not sufficiently definite to satisfy constitutional requirements as to due process. State v. Conley, 216 K. 66, 67, 68, 69, 71, 531 P.2d 36.

6. Record examined from conviction hereunder; precise time of offense not stated in indictment; use of word "rape" not prejudicial; conviction upheld. State v. Wonser, 217 K. 406, 408, 537 P.2d 197.

7. Conviction under (1) (*a*) upheld; instructions and admission of evidence proper. State v. Sisson, 217 K. 475, 476, 536 P.2d 1369.

8. Conviction under subsection (1) (*b*) vacated provisions unconstitutionally vague. State v. Sisson, 217 K. 475, 476, 536 P.2d 1369.

9. Record examined in appeal from conviction hereunder; no reversible error. State v. Morton, 217 K. 642, 538 P.2d 675.

10. Conviction hereunder reversed; defendant's sixth amendment right to effective cross-examination denied by admission of out of court statement. State v. Fisher, 222 K. 76, 563 P.2d 1012.

11. Findings on admissibility of voluntary extrajudicial statement supported by substantial competent evidence; conviction affirmed. State v. Holt, 2 K.A.2d 1, 574 P.2d 152.

12. Alleged errors in conviction hereunder reviewed; conviction affirmed. State v. Cook, 224 K. 132, 578 P.2d 257.

13. Mentioned in holding 21-3608 unconstitutionally vague and indefinite for failure to establish reasonably definite standards of guilt required by due process of law. State v. Meinert, 225 K. 816, 819, 594 P.2d 232.

14. Conviction hereunder reversed; reference to polygraph tests constituted prejudicial misconduct; new trial ordered. State v. Kilpatrick, 2 K.A.2d 349, 352, 578 P.2d 1147.

15. No merit in contention that this section violates due process. State v. Kilpatrick, 2 K.A.2d 349, 352, 578 P.2d 1147.

16. Conviction of taking indecent liberties with a child upheld; statute not unconstitutionally vague or indefinite. State v. Voiles, 226 K. 469, 470, 472, 601 P.2d 1121.

17. No error in failure to instruct jury on lewd and lascivious behavior or indecent solicitation of a child; conviction affirmed. State v. Gregg, 226 K. 481, 483, 602 P.2d 85.

18. Conviction upheld; evidence sufficient to support uncorroborated extrajudicial confession. State v. Tillery, 227 K. 342, 607 P.2d 1031.

19. Conviction hereunder upheld; crime committed in transit; venue allegation and instruction proper. State v. Lovelace, 227 K. 348, 349, 607 P.2d 49.

20. Cited in holding that second prosecution under 21-3511 did not constitute double jeopardy under the provisions of 21-3108. Williams v. Darr, 4 K.A.2d 178, 179, 180, 181, 603 P.2d 1021.

21. Where defendant testified to his presence at both alleged incidents of indecent liberties, such testimony negates contention of prejudicial deprivation of alibi defense. State v. Gilley, 5 K.A.2d 321, 322, 323, 615 P.2d 827.

22. Trial court order excluding "other crimes" evidence not an order suppressing evidence; appellate court has no jurisdiction to hear appeal by state. State v. Boling, 5 K.A.2d 371, 372, 617 P.2d 102.

23. In cases involving illicit sexual relations between adult and child, evidence of prior acts of similar nature between same parties is admissible. State v. Crossman, 229 K. 384, 624 P.2d 461.

24. Arrest of judgment and dismissal is not an acquittal; second trial on same charge not double jeopardy. State v. Love, 5 K.A.2d 768, 769, 625 P.2d 7.

21-3504. Indecent liberties with a ward. Indecent liberties with a ward is either of the following acts when committed with a child under the age of sixteen (16) years by any guardian, proprietor or employee of any foster home, orphanage, or other public or private institution for the care and custody of minor children, to whose charge such child has been committed or entrusted by any court, probation officer, department of social and rehabilitation services or other agency acting under color of law:

(a) The act of sexual intercourse;

(b) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender or both.

Indecent liberties with a ward is a class B felony.

History: L. 1969, ch. 180, § 21-3504; L. 1975, ch. 193, § 2; July 1.

Source or prior law:

21-909.

Judicial Council, 1968: The advisory committee was of the view that the crime of indecent liberties with a child is more reprehensible when committed by a person in whose charge the child has been placed by a court or other agency acting pursuant to law. Hence, the crime of indecent liberties with a ward is defined and a more severe penalty is provided.

CASE ANNOTATIONS

1. Conviction hereunder upheld; victim was defendant's ward although not placed in his custody by department of social welfare. State v. Dunham, 213 K. 469, 470, 472, 475, 476, 517 P.2d 150.

21-3505. Sodomy. Sodomy is oral or anal copulation between persons who are not husband and wife or consenting adult members of the opposite sex, or between a person and an animal, or coitus with an animal. Any penetration, however slight, is sufficient to complete the crime of sodomy.

Sodomy is a class B misdemeanor.

History: L. 1969, ch. 180, § 21-3505; July 1, 1970.

Revisor's Note:

For Source or Prior Law and Judicial Council comment, see 21-3506.

Law Review and Bar Journal References:

"Constitutional Law—Regulation of Massage Parlors," 24 K.L.R. 462 (1976).

Survey of criminal law, Dan Walter and Dick Ring, 15 W.L.J. 341, 344 (1976).

CASE ANNOTATIONS

1. Sufficient evidence of penetration for reasonable inference that defendant committed aggravated sodomy. State v. Kelly, 210 K. 192, 499 P.2d 1040.

2. Evidence supported conviction hereunder. State v. Rhone, 219 K. 542, 546, 548 P.2d 752.

3. Statute is not unconstitutional on grounds raised. State v. Thompson, 221 K. 165, 171, 172, 558 P.2d 93.

4. Defendant's rights not prejudiced by one day continuance during trial proceedings; conviction affirmed. State v. Nelson, 223 K. 251, 573 P.2d 602.

5. Cited; conviction of aggravated sodomy affirmed; statutory definition of sodomy construed. State v. Williams, 224 K. 468, 471, 580 P.2d 1341.

6. Aggravated sodomy and rape prosecution; no error in failure to instruct jury on sodomy. State v. Blue, 225 K. 576, 580, 592 P.2d 897.

7. Cited; evidence sufficient to establish sufficient penetration for oral copulation; conviction affirmed. State v. Lovelace, 227 K. 348, 351, 607 P.2d 49.

8. Duty to instruct on lesser included offenses arises only when there is evidence under which defendant might reasonably have been convicted thereof. State v. Everson, 229 K. 542, 626 P.2d 1189.

21-3506. Aggravated sodomy. Aggravated sodomy is sodomy committed:

(a) With force or threat of force, or where bodily harm is inflicted on the victim during the commission of the crime; or

(b) With a child under the age of sixteen (16) years.

Aggravated sodomy is a class B felony.

History: L. 1969, ch. 180, § 21-3506; July 1, 1970.

Source or prior law:

21-907.

Judicial Council, 1968: Former K.S.A. 21-907 prohibited the "detestable and abominable crime against nature, committed with mankind and with beast." The elements of the crime were not specified. Section 21-3505 identifies the conduct ordinarily included in the crime of sodomy or crime against nature. It probably does not materially change the former law. It only seeks to clarify. Some of the new codes have abandoned the term "sodomy" and instead employ the terms "deviate sexual conduct" or "sexual perversion." See Illinois Criminal Code, 11-2 and Wisconsin Criminal Code, 944.17.

Sexual crimes involving violence and those against children are usually regarded as more serious. Hence, section 21-3506 defines a distinct crime of aggravated sodomy and permits a more severe penalty.

The language is similar to New Mexico Criminal Code, 9-6.

CASE ANNOTATIONS

1. Conviction hereunder and of other crimes reviewed; evidence of similar offenses; instructions; no reversible error. State v. James, 217 K. 96, 100, 535 P.2d 991.

2. Conviction hereunder and of other offenses reviewed; failure to move for severance of offenses constitutes waiver of joinder. State v. Townsley, 217 K. 102, 535 P.2d 1.

3. Conviction hereunder and of other crimes affirmed; evidence admissible. State v. Donahue, 218 K. 351, 543 P.2d 962.

4. Defendant charged hereunder; conviction under 21-3505; evidence supported conviction. State v. Rhone, 219 K. 542, 546, 548 P.2d 752.

5. No error in admission of evidence or in failing to instruct on lesser offense. State v. Yates, 220 K. 635, 556 P.2d 176.

6. Conviction hereunder and of other crimes; record examined; no reversible error. State v. Lewis, 220 K. 791, 556 P.2d 888.

7. Conviction of aggravated robbery and aggravated sodomy reviewed and judgment affirmed. State v. Thompson, 221 K. 165, 173, 174, 558 P. 2d 93.

8. Section does not contain elements of bill of attainder. State v. Thompson, 221 K. 165, 171, 173, 558 P.2d 93.

9. Statute is not unconstitutional on grounds raised. State v. Thompson, 221 K. 165, 171, 172, 173, 558 P.2d 93.

10. Conviction hereunder reversed; defendant's sixth amendment right to effective cross-examination denied by admission of out-of-court statement. State v. Fisher, 222 K. 76, 563 P.2d 1012.

11. Defendant charged hereunder acquitted. State v. Holt, 2 K.A.2d 1, 574 P.2d 152.

12. Lewd and lascivious behavior not lesser degree of aggravated sodomy. State v. Crawford, 223 K. 127, 128, 573 P.2d 982.

13. Alleged trial errors reviewed in affirming conviction hereunder. State v. Gilder, 223 K. 220, 221, 574 P.2d 196.

14. Defendant's rights not prejudiced by one day continuance during trial proceedings; conviction affirmed. State v. Nelson, 223 K. 251, 573 P.2d 602.

15. No abuse of discretion in refusing to grant separate trials nor in refusal to sever counts; conviction affirmed. State v. Howell, 223 K. 282, 573 P.2d 1003.

16. Prejudicial error in prosecution hereunder; case remanded for new trial. State v. Nixon, 223 K. 788, 789, 576 P.2d 691.

17. Conviction hereunder affirmed; limitations on evidence of previous sexual conduct constitutional; statutory definition of sodomy construed. State v. Williams, 224 K. 468, 471, 580 P.2d 1341.

18. No error in failure to instruct jury on sodomy or patronizing a prostitute; conviction affirmed. State v. Blue, 225 K. 576, 580, 592 P.2d 897.

19. No error in failure to instruct jury on lewd and lascivious behavior or indecent solicitation of a child; conviction affirmed. State v. Gregg, 226 K. 481, 482, 602 P.2d 85.

20. Evidence sufficient to establish sufficient penetration for oral copulation with child; conviction affirmed. State v. Lovelace, 227 K. 348, 349, 351, 607 P.2d 49.

21. No error in trying defendants jointly; offenses were part of a common scheme; conviction of aggravated anal sodomy affirmed. State v. Tate, 228 K. 752, 620 P.2d 326.

22. Where allegations in information fail to constitute offense in language of statute, information fatally defective; convictions of aiding and abetting aggravated sodomy void. State v. Robinson, Lloyd & Clark, 229 K. 301, 302, 305, 624 P.2d 964.

23. In cases involving illicit sexual relations between adult and child, evidence of prior acts of similar nature between same parties is admissible. State v. Crossman, 229 K. 384, 624 P.2d 461.

24. Duty to instruct on lesser included offenses arises only when there is evidence under which defendant might reasonably have been convicted thereof. State v. Everson, 229 K. 542, 626 P.2d 1189.

21-3507. Adultery. (1) Adultery is sexual intercourse by a person with another who is not his spouse if

(a) Such person is married; or

(b) Such person is not married and knows that the other person involved in such intercourse is married.

(2) Adultery is a class C misdemeanor.

History: L. 1969, ch. 180, § 21-3507; July 1, 1970.

Source or prior law:

21-908.

Judicial Council, 1968: Adultery was not defined in the laws of Kansas, although it was made criminal (former K.S.A. 21-908). Hence, the courts adhered to the common law concept and held that adultery cannot be committed by an unmarried person (*State v. Chafin*, 80 Kan. 653). The section is applicable to extramarital sexual intercourse committed both by a married person and by a single person who has knowledge that his partner in the amorous frolic is married.

Law Review and Bar Journal References:

Former K.S.A. 21-908 mentioned in discussing heterologous insemination, M. Martin Halley, 69 J.K.M.S. 487, 488 (1968).

Example of certain crimes being a felony in some jurisdictions and a misdemeanor in others, Lawrence J. Beilman, 9 W.L.J. 469 (1970).

CASE ANNOTATIONS

1. Conviction of forcible rape; not error to fail to instruct on adultery. State v. Platz, 214 K. 74, 77, 519 P.2d 1097.

21-3508. Lewd and lascivious behavior. (1) Lewd and lascivious behavior is:

(a) The commission of an act of sexual intercourse or sodomy with any person or animal with knowledge or reasonable anticipation that the participants are being viewed by others; or

(b) The exposure of a sex organ in the presence of a person who is not the spouse of the offender or who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(2) Lewd and lascivious behavior is a class B misdemeanor.

History: L. 1969, ch. 180, § 21-3508; July 1, 1970.

Source or prior law:

21-908.

Judicial Council, 1968: This section and the preceding one restate the substance of former K.S.A. 21-908. The former statute uses such epithets as "lewdness," "lascivious behavior," "indecency," "grossly scandalous," etc., without defining the terms. This section attempts to identify the conduct to which the epithets apply.

The section is adapted from the Wisconsin Criminal Code, 944.20.

Law Review and Bar Journal References:

Former K.S.A. 21-908 mentioned in discussing heterologous insemination, M. Martin Halley, 69 J.K.M.S. 487, 488 (1968).

CASE ANNOTATIONS

1. Lewd and lascivious behavior not lesser degree of aggravated sodomy. State v. Crawford, 223 K. 127, 128, 573 P.2d 982.

2. Lewd and lascivious behavior not lesser degree of aggravated sodomy or indecent liberties with a child; conviction affirmed. State v. Gregg, 226 K. 481, 482, 483, 484, 602 P.2d 85.

3. Cited in holding that second prosecution under 21-3511 did not constitute double jeopardy under the provisions of 21-3108. Williams v. Darr, 4.K.A.2d 178, 179, 180, 181, 603 P.2d 1021.

4. Lewd and lascivious behavior not a lesser included offense of aggravated sodomy. State v. Robinson, Lloyd & Clark, 229 K. 301, 307, 624 P.2d 964.

21-3509. Enticement of a child. Enticement of a child is inviting, persuading or attempting to persuade a child under the age of sixteen (16) years to enter any vehicle, building, room or secluded place with intent

to commit an unlawful sexual act upon or with the person of said child.

Enticement of a child is a class D felony.

History: L. 1969, ch. 180, § 21-3509; July 1, 1970.

Revisor's Note:

For Judicial Council comment, see 21-3511.

CASE ANNOTATIONS

1. No error in failure to instruct jury on lewd and lascivious behavior or indecent solicitation of a child; conviction affirmed. State v. Gregg, 226 K. 481, 482, 483, 602 P.2d 85.

21-3510. Indecent solicitation of a child. Indecent solicitation of a child is the accosting, enticing or soliciting of a child under the age of sixteen (16) years to commit or to submit to an unlawful sexual act.

Indecent solicitation of a child is a class A misdemeanor.

History: L. 1969, ch. 180, § 21-3510; July 1, 1970.

Revisor's Note:

For Judicial Council comment, see 21-3511.

CASE ANNOTATIONS

1. No error in failure to instruct jury on lewd and lascivious behavior or indecent solicitation of a child; conviction affirmed. State v. Gregg, 226 K. 481, 482, 483, 602 P.2d 85.

2. Cited in holding that second prosecution under 21-3511 did not constitute double jeopardy under the provisions of 21-3108. Williams v. Darr, 4 K.A.2d 178, 190, 603 P.2d 1021.

21-3511. Aggravated indecent solicitation of a child. Aggravated indecent solicitation of a child is the accosting, enticing or soliciting of a child under the age of twelve (12) years to commit or to submit to an unlawful sexual act.

Aggravated indecent solicitation of a child is a class E felony.

History: L. 1969, ch. 180, § 21-3511; July 1, 1970.

Judicial Council, 1968: Sexual crimes against children are often committed in vehicles, buildings or secluded places. Section 21-3509 is intended to protect the child from exposure to the danger of being induced to enter such a place by a person who intends to abuse the child sexually. Under this section, the gist of the crime is the invitation to enter, coupled with the unlawful intent.

Sections 21-3510 and 21-3511 prohibit the solicitation or invitation to the child to participate in the unlawful act. The solicitation may be in a public as well as in a private place. It involves no effort to obtain control over the child's person in a secluded location.

New Mexico Criminal Code, 9-10, and Wisconsin Criminal Code, 944.12, have been used as guides in drafting. Also, note that 21-3510 and 21-3511 cover substantially the same conduct as former K.S.A. 38-711.

CASE ANNOTATIONS

1. Conviction hereunder affirmed; psychiatric examination of complaining witness is discretionary with trial judge. State v. Gregg, 226 K. 481, 482, 483, 602 P.2d 85.

2. Cited in holding that second prosecution under this section did not constitute double jeopardy under the provisions of 21-3108. Williams v. Darr, 4 K.A.2d 178, 179, 180, 181, 603 P.2d 1021.

21-3512. Prostitution. (1) Prostitution is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

(a) Sexual intercourse; or

(b) oral or anal copulation; or

(c) manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another.

(2) Prostitution is a class B misdemeanor.

History: L. 1969, ch. 180, § 21-3512; L. 1980, ch. 98, § 1; July 1.

Revisor's Note:

For Source or Prior Law and Judicial Council comment, see 21-3515.

CASE ANNOTATIONS

1. Indictment hereunder sufficient for federal offense where alleged acts included travel and use of facilities in interstate commerce; two locales insufficient for instructions on two conspiracies. United States v. Russo, 527 F.2d 1051.

21-3513. Promoting prostitution. (1) Promoting prostitution is:

(a) Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance, or management thereof; or

(b) Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution; or

(c) Procuring a prostitute for a house of prostitution; or

(d) Inducing another to become a prostitute; or

(e) Soliciting a patron for a prostitute or for a house of prostitution; or

(f) Procuring a prostitute for a patron; or

(g) Procuring transportation for, paying for the transportation of, or transporting a person within this state with the intention of assisting or promoting that person's engaging in prostitution; or

(h) Being employed to perform any act which is prohibited by this section.

(2) Promoting prostitution is a class A misdemeanor.

History: L. 1969, ch. 180, § 21-3513; July 1, 1970.

Revisor's Note:

For Source or Prior Law and Judicial Council comment, see 21-3515.

Law Review and Bar Journal References:

"The Obscenity Law's Application in Kansas: Issues and Procedures," Stan N. Wilkins, 12 W.L.J. 185, 196 (1973).

Mentioned in note, "Constitutional Law—Regulation of Massage Parlors," 24 K.L.R. 462 (1976).

CASE ANNOTATIONS

1. Conviction hereunder reversed; failure to advise of jury trial right; no waiver. State v. Irving, 216 K. 588, 533 P.2d 1225.

2. Indictment hereunder sufficient for federal offense where alleged acts included travel and use of facilities in interstate commerce; two locales insufficient for instructions on two conspiracies. United States v. Russo, 527 F.2d 1051.

3. Section properly applied; conviction upheld. State v. Dodson, 222 K. 519, 521, 524, 525, 565 P.2d 291.

4. Stop of defendant's car under 22-2402 held justified by reasonable suspicion. State v. Hayes, 3 K.A.2d 517, 519, 597 P.2d 268.

21-3514. Habitually promoting prostitution. Habitually promoting prostitution is the commission of any act constituting promoting prostitution, as defined in section 21-3513, by a person who has, prior to the commission of such act, been convicted of a prior violation of said section 21-3513.

Habitually promoting prostitution is a class E felony.

History: L. 1969, ch. 180, § 21-3514; July 1, 1970.

Revisor's Note:

For Source or Prior Law and Judicial Council comment, see 21-3515.

Law Review and Bar Journal References:

"The Kansas Habitual Criminal Act," Bruce E. Miller, 9 W.L.J. 244, 258 (1970).

"The Obscenity Law's Application in Kansas: Issues and Procedures," Stan N. Wilkins, 12 W.L.J. 185, 196 (1973).

CASE ANNOTATIONS

1. Crimes in which prior conviction is a necessary element distinguished from crimes considered in establishing penalties. State v. Loudermilk, 221 K. 157, 159, 557 P.2d 1229.

21-3515. Patronizing a prostitute. (1) Patronizing a prostitute is either:

(a) Knowingly entering or remaining in a house of prostitution with intent to engage in sexual intercourse or any unlawful sexual act with a prostitute; or

(b) Knowingly hiring a prostitute to engage in sexual intercourse or any unlawful sexual act.

(2) Patronizing a prostitute is a class C misdemeanor.

History: L. 1969, ch. 180, § 21-3515; July 1, 1970.

Source or prior law:

21-426, 21-427, 21-428, 21-937, 21-938, 21-939, 21-940, 21-942, 38-705.

Judicial Council, 1968: Prostitution, *per se*, was not prohibited by the laws of Kansas. Penalties were provided for keeping a place of prostitution, soliciting, taking a woman for purposes of prostitution, etc. However, there were both gaps and overlaps to be encountered. The sections attempt to cover the ground more completely and, at the same time, to collect and systematize material formerly scattered through several sections and articles.

Section 21-3515 creates a new crime. The view of the committee is simply that both parties to a prohibited transaction share in the culpability and both should be dealt with accordingly.

Note that the persistent violation of section 21-3513 is to be treated as a felony under 21-3514. Proof of a crime under 21-3514 would include proof of a prior conviction under 21-3513.

The section draws upon Illinois Criminal Code, 11-14, and New Mexico Criminal Code, 9-12 and 9-13.

CASE ANNOTATIONS

1. Aggravated sodomy and rape prosecution; no error in failure to instruct jury on patronizing a prostitute. State v. Blue, 225 K. 576, 580, 592 P.2d 897.

21-3516. Sexual exploitation of a child. (1) Sexual exploitation of a child is:

(a) Employing, using, persuading, inducing, enticing or coercing a child to engage in sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine or other printed or visual medium; or

(b) being a parent, guardian or other person having custody or control of a child and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for the purpose of promoting any film, photograph, negative, slide, book, magazine or other printed or visual medium.

(2) As used in this section:

(a) "Child" means any person who is less than sixteen (16) years of age;

(b) "Sexually explicit conduct" means actual or simulated: sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or opposite sex; bestiality; masturbation; sado-masochistic abuse for the purpose of sexual stimulation;

or lewd exhibition of the genitals or pubic area of any person.

(c) "Promoting" means producing, directing, manufacturing, issuing, publishing, or advertising for pecuniary profit.

(3) Sexual exploitation of a child is a class E felony.

(4) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1978, ch. 122, § 1; July 1.

Law Review and Bar Journal References:

"Survey of Kansas Law: Family Law," Camilla Klein Haviland, 27 K.L.R. 241, 252 (1979).

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 392 (1979).

Article 36.—CRIMES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN

21-3601. Bigamy. (1) Bigamy is any of the following:

(a) Marriage within this state by any person who shall have another spouse living at the time of such marriage;

(b) Marriage within this state by an unmarried person to a person known to such unmarried person to be the spouse of some other person;

(c) Cohabitation within this state after marriage in another state or country under circumstances described in subsection (1) (a) or subsection (1) (b) of this section.

(2) It shall be a defense to a charge of bigamy that the accused reasonably believed the prior marriage had been dissolved by death, divorce or annulment.

(3) Bigamy is a class E felony.

History: L. 1969, ch. 180, § 21-3601; July 1, 1970.

Source or prior law:

21-901, 21-902, 21-903, 21-905.

Judicial Council, 1968: The section substantially restates the law of Kansas. Note, however, that fewer defenses are stated in the new statute. Also, the definition of bigamy includes the crime of cohabiting within the state after a bigamous marriage without, now prohibited by a separate section.

The section follows former K.S.A. 21-901 and 21-905 and Illinois Criminal Code, 11-12.

Revisor's Note:

Procedural aspects, see K.S.A. 22-2613.

21-3602. Incest. Incest is marriage to or engaging in sexual intercourse with a person known to the defendant to be related to him as brother or sister of the one-half as well as the whole blood, uncle, aunt, nephew or niece.

Incest is a class E felony.

History: L. 1969, ch. 180, § 21-3602; July 1, 1970.

Revisor's Note:

For Source or Prior Law and Judicial Council comment, see 21-3603.

Law Review and Bar Journal References:

"Child Abuse and Neglect: The Legal Challenge," G. Joseph Pierron, 46 J.B.A.K. 167, 172, 173 (1977).

21-3603. Aggravated incest. (1) Aggravated incest is sexual intercourse or any unlawful sexual act by a parent with a person he knows is his child.

(2) Parent for the purposes of this section means a natural father or mother, an adoptive father or mother, a stepfather or stepmother or a grandfather or grandmother of any degree.

(3) Child for the purposes of this section means a son, daughter, grandson or granddaughter, regardless of legitimacy or age; and also means a stepson or stepdaughter or adopted son or adopted daughter under the age of eighteen (18).

(4) Aggravated incest is a class D felony.

History: L. 1969, ch. 180, § 21-3603; July 1, 1970.

Source or prior law:

21-906.

Judicial Council, 1968: Two grades of incest are included in the new sections. It is the view of the committee that sexual intercourse between parent and child is more reprehensible than similar acts between others within the prohibited degrees of relationship. The definition of the term "child" does not include an adopted child or stepchild who is 18 years of age or older. It was the drafting committee's thought when the child has reached the age of consent and discretion and is not related by blood to the other partner in the enterprise, the matter should be treated as any other sexual conduct between consenting, non-related adults.

In drafting, the committee relied upon former K.S.A. 21-906 and K.S.A. 23-102 and Illinois Criminal Code, 11-11.

21-3604. Abandonment of a child. Abandonment of a child is the leaving of a child under the age of sixteen (16) years, in a place where such child may suffer because of neglect, by the parent, guardian or other person to whom the care and custody of such child shall have been entrusted, when done with intent to abandon such child.

Abandonment of a child is a class E felony.

History: L. 1969, ch. 180, § 21-3604; July 1, 1970.

Source or prior law:
21-441.

Judicial Council, 1968: The section is similar in content to former K.S.A. 21-441, but it has been broadened. Also, the maximum age of protected children is stated in the statute.

The idea is found in many statutes. The language "in a place where he may suffer because of neglect," comes from Wisconsin Criminal Code, 940.28.

21-3605. Nonsupport of a child or spouse. (1) (a) Nonsupport of a child is a parent's failure, neglect or refusal without lawful excuse to provide for the support and maintenance of his or her child in necessitous circumstances.

(b) As used in this section, "child" means a child under the age of eighteen (18) years, and includes an adopted child or a child born out of wedlock whose parentage has been judicially determined or has been acknowledged in writing by the person to be charged with the support of such child.

(c) At any time before the trial, upon petition and notice, the court, or a judge thereof, may enter such temporary order as may seem just providing for support of such child, and may punish for violation of such order as for contempt.

(d) At any stage of the proceeding, instead of imposing the penalty hereinafter provided, or in addition to such penalty, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order which shall be subject to change by the court, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding the period during which the obligation to support shall continue, to the guardian, conservator or custodian of said child or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into a recognizance, with or without surety, in such sum as the court or a judge thereof may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise the recognizance shall be of full force and effect.

(e) If the court is satisfied by due proof that at any time during the period while the obligation to support continues the defendant has violated the terms of such order, the court may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence as the case may be.

(f) A preponderance of the evidence shall be sufficient to prove that the defendant is the father or mother of such child. In no prosecution under this act shall any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife shall be competent witnesses to testify against each other to any and all relevant matters, including the parentage of such child. Proof of the nonsupport of such child in necessitous circumstances or neglect or refusal to provide for the support and maintenance of such child shall be prima facie evidence that such neglect or refusal is willful.

(g) Nonsupport of a child is a class E felony.

(2) (a) Nonsupport of a spouse is an individual's failure without just cause to provide for the support of his or her spouse in necessitous circumstances.

(b) At any time before the trial in a prosecution for nonsupport of a spouse, upon petition and notice, the court, or a judge thereof, may enter such temporary order as may seem just providing for support of such spouse, and may punish for violation of such order as for contempt.

(c) At any stage of the proceeding, instead of imposing the penalty hereinafter provided, or in addition to such penalty, the court, in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power to make an order which shall be subject to change by the court, as circumstances may require, directing the defendant to pay a certain sum periodically, for a term not exceeding the period during which the obligation to support shall continue, to the spouse or to the guardian or conservator of said spouse or to an organization or individual approved by the court as trustee; and shall also have the power to release the defendant from custody on probation for the period so fixed, upon his or her entering into

a recognizance, with or without surety, in such sum as the court or a judge thereof may order and approve. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so, and shall further comply with the terms of such order of support, or of any subsequent modification thereof, then such recognizance shall be void, otherwise the recognizance shall be of full force and effect.

(d) If the court is satisfied by due proof that at any time during the period while the obligation to support continues the defendant has violated the terms of such order, the court may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her under the original conviction, or enforce the suspended sentence as the case may be.

(e) Nonsupport of a spouse is a class E felony.

History: L. 1969, ch. 180, § 21-3605; L 1970, ch. 124, § 4; L. 1976, ch. 157, § 1; July 1.

Source or prior law:
21-442, 21-443, 21-444, 21-445, 21-446.

Judicial Council, 1968: The former law of Kansas protected both the wife and children. It was based upon the Uniform Desertion and Non-Support Act which was drafted in 1910. The proposal substantially follows the former law.

Subsection (1) (*b*) makes the act specifically applicable to adopted children and illegitimate children whose paternity has been judicially established or acknowledged in writing. Note, under the present statutes of Kansas, paternity is regularly and normally an issue only in a bastardy proceeding. It may be proper to provide for a special proceeding in which a preliminary determination of paternity may be made. Such a section probably should be located in the chapter on procedure.

The section was based largely on former K.S.A. 21-442 through 21-447, as modified.

Law Review and Bar Journal References:

Definition of "nonsupport of a spouse" limited, Robert F. Bennett, 39 J.B.A.K. 107, 185 (1970).

"Child Support and The New Federal Legislation," R.E. Schulman and Peter E. Rinn, 46 J.B.A.K. 105, 112 (1977).

"Procedure and Defenses Under the Kansas Uniform Reciprocal Enforcement of Support Act of 1970," Jack Peggs, 46 J.B.A.K. 233, 238 (1977).

CASE ANNOTATIONS

1. Conviction supported by sufficient evidence; liberal construction of predecessor 21-442 relied on; "destitute" and "necessitous" have virtually same meaning. State v. Knetzer, 3 K.A.2d 673, 600 P.2d 160.

21-3606. **Criminal desertion.** Criminal desertion is a husband's or wife's abandonment or willful failure without just cause to provide for the care, protection or support of a spouse who is in ill health or necessitous circumstances.

Criminal desertion is a class E felony.

History: L. 1969, ch. 180, § 21-3606; July 1, 1970.

Judicial Council, 1968: This section supplements section 21-3605. Penalties are imposed for desertion of either spouse who is ill or in necessitous circumstances.

21-3607.

History: L. 1969, ch. 180, § 21-3607; Repealed, L. 1978, ch. 123, § 3; July 1.

Source or prior law:
38-712.

21-3608. **Endangering a child.** (1) Endangering a child is willfully:

(a) Causing or permitting a child under the age of eighteen (18) years to suffer unjustifiable physical pain or mental distress; or

(b) Unreasonably causing or permitting a child under the age of eighteen (18) years to be placed in a situation in which its life, body or health may be injured or endangered.

(c) Nothing in this section shall be construed to mean a child is endangered for the sole reason his parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

(2) Endangering a child is a class A misdemeanor.

History: L. 1969, ch. 180, § 21-3608; July 1, 1970.

Source or prior law:
38-713.

CASE ANNOTATIONS

1. Referred to in construing Campaign Finance Act. State v. Doyen, 224 K. 482, 489, 580 P.2d 1351.

2. "Unjustifiable physical pain" as used herein held unconstitutional for failure to sufficiently identify prohibited conduct; provision (1)(a) held vague and indefinite for failure to establish reasonably definite standards of guilt required by due process of law. State v. Meinert, 225 K. 816, 817, 818, 820, 594 P.2d 232.

3. Evidence found insufficient to sustain convictions. State v. Brooks, 228 K. 562, 563, 564, 565, 618 P.2d 830.

21-3609. **Abuse of a child.** Abuse of a child is willfully torturing, cruelly beating or inflicting cruel and inhuman corporal

punishment upon any child under the age of eighteen (18) years.

Abuse of a child is a class E felony.

History: L. 1969, ch. 180, § 21-3609; July 1, 1970.

Source or prior law:
38-714.

Law Review and Bar Journal References:
"Parental Power in the Voluntary Commitment of Children to Mental Institutions," Beth A. Riggert, 17 W.L.J. 595, 608 (1978).

CASE ANNOTATIONS

1. Habeas corpus proceeding; prosecution hereunder barred by 21-3108(2)(a). *In re* Berkowitz, 3 K.A.2d 726, 728, 602 P.2d 99.

21-3610. Furnishing intoxicants to a minor. (1) Furnishing intoxicants to a minor is directly or indirectly, selling to, buying for, giving or furnishing any intoxicating liquor to any person under the age of twenty-one (21) years.

(2) Furnishing intoxicants to a minor is a class B misdemeanor.

History: L. 1969, ch. 180, § 21-3610; July 1, 1970.

Source or prior law:
38-715.

Judicial Council, 1968: This section restates former K.S.A. 38-715, passed by the legislature in 1965. Presumably it reflects the current thinking of the legislature.

21-3610a. Furnishing cereal malt beverage to a minor. (a) Furnishing cereal malt beverage to a minor is buying for or selling, giving or furnishing, whether directly or indirectly, any cereal malt beverage to any person under 18 years of age.

(b) Furnishing cereal malt beverage to a minor is a class B misdemeanor.

(c) This section shall not apply to the furnishing of cereal malt beverage by a parent or legal guardian to such parent's child or such guardian's ward.

(d) As used in this section, "cereal malt beverage" has the meaning provided by K.S.A. 41-2701 and amendments thereto.

(e) This section shall be part of and supplemental to the Kansas criminal code.

History: L. 1981, ch. 201, § 6; July 1.

21-3611. Aggravated juvenile delinquency. (1) Aggravated juvenile delinquency is any of the following acts committed by any delinquent child or miscreant child, as such terms are defined by K.S.A. 38-802, and any amendments thereto, who is sixteen (16) years of age or over and is confined in any training or rehabilitation facility under the jurisdiction and control of the department of social and rehabilitation services:

(a) Willfully burning or attempting to burn any building of any of such institutions or facilities, or setting fire to any combustible material for the purpose of burning such buildings;

(b) Willfully burning, destroying or otherwise damaging property belonging to the state of Kansas, and the damage exceeds the value of one hundred dollars ($100);

(c) Committing an aggravated assault or aggravated battery upon any officer, attendant, employee or person confined to any such institutions or facilities;

(d) Running away or escaping from any of such institutions or facilities after having previously run away or escaped therefrom one or more times.

(2) Aggravated juvenile delinquency is a class E felony.

(3) Persons charged with aggravated juvenile delinquency, as defined by this section, shall not be prosecuted pursuant to the Kansas juvenile code; such persons shall be prosecuted under the general criminal laws of the state.

History: L. 1969, ch. 180, § 21-3611; L. 1972, ch. 115, § 1; L. 1976, ch. 156, § 2; L. 1978, ch. 123, § 2; July 1.

Source or prior law:
21-2001, 21-2002, 21-2003, 21-2004.

Judicial Council, 1968: This is a restatement of the substance of former K.S.A. 21-2001 through 21-2004. It removes from the purview of the juvenile code certain offenses committed by juveniles who are inmates of state institutions. Apparently such a provision is helpful in dealing with exceptional cases not amenable to the processes and controls employed in the juvenile courts.

Former K.S.A. 21-2003 was probably superfluous. Hence, it it omitted from the restatement.

Revisor's Note:
Section referred to in 38-806.

Law Review and Bar Journal References:
Reforming juvenile justice, J. Douglas Irmen, 21 K.L.R. 177, 188, 189 (1973).
"The Amended Kansas Juvenile Code: Can *Parens Patriae* Withstand Due Process?" 18 W.L.J. 244, 251, 252 (1979).

CASE ANNOTATIONS

1. Conviction hereunder considered prior felony conviction within meaning of Habitual Criminal Act. LaVier v. State, 214 K. 287, 520 P.2d 1325.

2. Conviction under subsection (*f*) upheld; prior

escape requisite to commission of offense; venue lay in county of original escape. State v. Doolin, 216 K. 291, 532 P.2d 1080.

3. Section is not unconstitutional as denial of equal protection or due process; does not provide for cruel and unusual punishment. State v. Sherk, 217 K. 726, 727, 728, 729, 730, 731, 732, 733, 734, 538 P.2d 1399.

4. Construction of this section applied in holding 38-808 constitutional; confession admissible. State v. Young, 220 K. 541, 543, 552 P.2d 905.

5. Section applied; defendant while in hospital was in custody of a facility or institution. State v. Pritchett, 222 K. 719, 567 P.2d 886.

6. Appeal from conviction hereunder not moot when juvenile no longer confined. State v. Bolden, 2 K.A.2d 470, 471, 581 P.2d 1195.

7. Conviction under subsection (1)(f) affirmed; court did not abuse discretion in refusing to allow expert witness funds. State v. King, 2 K.A.2d 503, 582 P.2d 309.

8. When probation is revoked, jail time credit may not be given by court for time in halfway house. State v. Babcock, 226 K. 356, 360, 597 P.2d 1117.

21-3612. Contributing to a child's misconduct or deprivation. (1) Contributing to a child's misconduct or deprivation is causing or encouraging a child under eighteen (18) years of age:

(a) To become a delinquent, miscreant, wayward or deprived child or a traffic offender or truant, as defined by K.S.A. 38-802, and any amendments thereto; or

(b) to commit an act which, if committed by an adult, would be a felony or misdemeanor.

Contributing to a child's misconduct or deprivation is a class A misdemeanor, except that if the defendant caused or encouraged the child to be a delinquent child or to commit an act which, if committed by an adult, would be a felony, the offense is a class E felony.

(2) A person may be found guilty of this section even though no prosecution of the child, whose misconduct or deprivation the defendant caused or encouraged, has been commenced pursuant to the juvenile code or code of criminal procedure.

(3) This section shall be a part of and supplemental to the Kansas criminal code.

History: L. 1978, ch. 123, § 1; July 1.

Law Review and Bar Journal References:

"Survey of Kansas Law: Criminal Law and Procedure," Keith G. Meyer, 27 K.L.R. 391, 392 (1979).

CASE ANNOTATIONS

1. Conviction reversed; evidence not sufficient to sustain conviction. State v. Chance, 4 K.A.2d 283, 286, 604 P.2d 756.

Article 37.—CRIMES AGAINST PROPERTY

21-3701. Theft. Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(a) Obtaining or exerting unauthorized control over property; or

(b) Obtaining by deception control over property; or

(c) Obtaining by threat control over property; or

(d) Obtaining control over stolen property knowing the property to have been stolen by another.

Theft of property of the value of one hundred dollars ($100) or more is a class D felony. Theft of property of the value of less than one hundred dollars ($100) is a class A misdemeanor.

Nothing herein shall prohibit the removal in a lawful manner, by towing or otherwise, of personal property unlawfully placed or left upon real property.

History: L. 1969, ch. 180, § 21-3701; L. 1972, ch. 116, § 1; L. 1978, ch. 120, § 29; July 1.

Source or prior law:

21-103, 21-529, 21-532, 21-533, 21-534, 21-535, 21-535a, 21-536, 21-537, 21-539, 21-540, 21-541, 21-542, 21-543, 21-544, 21-545, 21-546, 21-547, 21-548, 21-549, 21-550, 21-551, 21-552, 21-560, 21-561, 21-562, 21-594, 21-2301, 21-2302, 21-2412, 21-2422.

Judicial Council, 1968: The section follows generally the pattern of California, Illinois, the Model Penal Code, and other recent drafts in that it consolidates the present crimes of larceny, embezzlement, false pretense, extortion, receiving stolen property and the like into a single crime of theft. The former distinctions are historical but apparently served no useful purpose. They tended to make the law unduly complex, and created unnecessary problems in pleading and proof. All involved the common elements of an obtaining of property by dishonest means. The distinctions were not sufficiently basic to require treatment in separate sections. The section covers the same acts formerly prescribed by at least 30 sections in the Kansas Statutes Annotated.

The general terms used in the section are defined in section 21-3110.

The section was drafted after examining the Illinois Criminal Code, 16-1 and Model Penal Code, 223.1.

Law Review and Bar Journal References:

"Thou Shalt Not Steal: Ruminations on the New Kansas Theft Law," Paul E. Wilson, 20 K.L.R. 385 (1972).

"State Control of Local Government in Kansas: Spe-