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error to dismiss. *State v. Burrell*, 237 K. 303, 306, 699 P.2d 499 (1985).

14. Audio/visual recording of proceedings, MADD and SADD buttons worn by spectators, polygraph test, intoxylizer test, restitution sentence discussed. *State v. McNaught*, 238 K. 567, 713 P.2d 457 (1986).

15. Aggravated vehicular homicide patterned directly hereon; causal connection between defendant's driving and victim's death essential element. *State v. Woodman*, 12 K.A.2d 110, 113, 114, 735 P.2d 1102 (1987).

16. Cited; under 21-3610, seller need not have knowledge of minor's age; 21-3610 meets constitutional tests. *State v. Robinson*, 239 K. 269, 271, 272, 718 P.2d 1313 (1986).

17. Where crime does not involve dishonesty or false statement, failure to give credibility instruction thereon correct. *Fudge v. City of Kansas City*, 239 K. 369, 376, 720 P.2d 1093 (1986).

18. Cited; aggravated vehicular homicide (21-3405a) as concurrent and controlling involuntary manslaughter (21-3404) examined. *State v. Goodnow*, 12 K.A.2d 294, 295, 740 P.2d 113 (1987).

19. Cited; viable fetus as not a "human being" within meaning of aggravated vehicular homicide statute (21-3405a) determined. *State v. Trudell*, 243 K. 29, 32, 755 P.2d 511 (1988).

20. Cited; violation as lesser included offense of aggravated vehicular homicide (21-3405a), distinction in manner of driving causing accident examined. *State v. Hickey*, 12 K.A.2d 781, 782, 757 P.2d 735 (1988).

21. History of 8-2117 (juvenile traffic offenders) examined; limitations on length and places of incarceration determined. *State v. D.L.P.*, 13 K.A.2d 647, 652, 778 P.2d 851 (1989).

22. What constitutes a "traffic offense" as defined in 8-2117(d) examined; driving with suspended license (8-262) held not within definition. *State v. Frazier*, 248 K. 963, 970, 811 P.2d 1240 (1991).

23. Refusal of court to instruct on vehicular homicide as lesser included offense of second-degree murder examined. *State v. Stone*, 253 K. 105, 112, 853 P.2d 662 (1993).

24. Cited in holding court lacked jurisdiction to convict father of rape of 15 year-old daughter where father also convicted of aggravated kidnapping. *Carmichael v. State*, 18 K.A.2d 435, 442, 856 P.2d 934 (1993).

25. Whether evidence was sufficient to establish defendant's driving constituted a material deviation from reasonable standard of care examined. *State v. Trcka*, 20 K.A.2d 84, 86, 88, 884 P.2d 434 (1994).

21-3405a.

History: L. 1984, ch. 39, § 48; L. 1985, ch. 48, § 14; L. 1988, ch. 47, § 3; L. 1989, ch. 88, § 1; Repealed, L. 1992, ch. 298, § 97; Repealed, L. 1993, ch. 291, § 283; July 1.

CASE ANNOTATIONS

1. Driving while under the influence of alcohol (8-1567) is lesser included offense. *State v. Woodman*, 12 K.A.2d 110, 118, 119, 735 P.2d 1102 (1987).

2. Convictions affirmed; admissibility of blood alcohol test (8-1001), abuse in sentencing (21-4601 et seq.), underlying crimes examined. *State v. Louis*, 240 K. 175, 727 P.2d 483 (1986).

3. Statute is concurrent with and controls general involuntary manslaughter statute (21-3404). *State v. Goodnow*, 12 K.A.2d 294, 296, 740 P.2d 113 (1987).

4. Cited; DUI (8-1567) as lesser included offense of involuntary manslaughter (21-3404) examined. *State v. Adams*, 242 K. 20, 24, 744 P.2d 833 (1987).

5. Viable fetus not a "human being" within meaning of aggravated vehicular homicide statute. *State v. Trudell*, 243 K. 29, 755 P.2d 511 (1988).

6. "Viable fetus" as not a "human being" within meaning of first degree murder statute (21-3401) determined. *State v. Green*, 245 K. 398, 401, 781 P.2d 678 (1989).

7. Conviction reversed where state failed to inform accused of statutory rights pursuant to 8-1001(f). *State v. Luft*, 248 K. 911, 811 P.2d 873 (1991).

8. Whether house arrest constitutes imprisonment under 21-3405b(b)(2) examined. *State v. Scherzer*, 254 K. 926, 927, 931, 937, 869 P.2d 729 (1994).

9. Whether uncounseled DUI diversion where defendant was not imprisoned may be used to enhance sentence in subsequent DUI conviction examined. *Paletta v. City of Topeka*, 20 K.A.2d 859, 864, 893 P.2d 280 (1995).

21-3405b.

History: L. 1988, ch. 47, § 1; L. 1990, ch. 97, § 2; Repealed, L. 1992, ch. 298, § 97; Repealed, L. 1993, ch. 291, § 283; July 1.

CASE ANNOTATIONS

1. Whether house arrest constitutes imprisonment under section and constitutionality of section examined. *State v. Scherzer*, 254 K. 926, 927, 933, 937, 939, 869 P.2d 729 (1994).

2. Whether blood test results requested by defendant's physician in vehicular homicide case are subject to physician-patient privilege examined. *State v. Mendoza*, 20 K.A.2d 541, 543, 889 P.2d 1147 (1995).

21-3406. Assisting suicide. Assisting suicide is intentionally advising, encouraging or assisting another in the taking of the other's life which results in a suicide or attempted suicide.

Assisting suicide is a severity level 9, person felony.

History: L. 1969, ch. 180, § 21-3406; L. 1992, ch. 298, § 8; L. 1993, ch. 291, § 23; July 1.

Source or prior law: 21-408.

Law Review and Bar Journal References: "Euthanasia: A Medical and Legal Overview," Howard N. Ward, 49 J.B.A.K. 317, 324 (1980).

CASE ANNOTATIONS

1. Where defendant pushed plunger on needle in deceased's arm and pulled gun trigger ultimately resulting in death, defendant properly convicted of first degree murder. *State v. Cobb*, 229 K. 522, 525, 625 P.2d 1133.

21-3407.

History: L. 1969, ch. 180, § 21-3407; Repealed, L. 1992, ch. 183, § 9; Repealed, L. 1993, ch. 291, § 283; July 1.

Source or prior law: 21-409, 21-437.

CASE ANNOTATIONS

1. Requirement that abortion be performed in accredited hospital and that three physicians attest to necessity of termination held unconstitutional; unconstitutional provisions of section held severable. *Poe v. Menghini*, U.S. District Court of Kansas, Civil Action No. KC-3411, filed March 13, 1972.

2. Subsection (2) (a) held to violate equal protection clause of the fourteenth amendment. *Poe v. Menghini*, 339 F.Supp. 986, 995, 996.

3. Trial judge has a duty to instruct on a lesser degree of a crime when accused might be convicted of the lesser offense. *State v. Conley*, 6 K.A. 280, 284, 627 P.2d 1174.

4. Cited; viable fetus as not a "human being" within meaning of aggravated vehicular homicide statute (21-3405a) determined. *State v. Trudell*, 243 K. 29, 32, 755 P.2d 511 (1988).

5. Wrongful birth as recognized tort, type of damages and period of time covered determined. *Arche v. United States of America*, 247 K. 276, 281, 798 P.2d 477 (1990).

21-3408. Assault. Assault is intentionally placing another person in reasonable apprehension of immediate bodily harm.

Assault is a class C person misdemeanor.

History: L. 1969, ch. 180, § 21-3408; L. 1992, ch. 298, § 9; L. 1994, ch. 291, § 22; July 1.

Source or prior law:
21-436.

Cross References to Related Sections:

Use of force in resisting arrest, see 21-3217.

Law Review and Bar Journal References:

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

"Reform in Kansas Domestic Violence Legislation," David J. Gottlieb and L. Eric Johnson, 31 K.L.R. 527, 536 (1983).

Attorney General's Opinions:

Assault; battery; prosecution for intentional exposure to HIV. 92-29.

Restraining orders violations; criminal trespass; probable cause for arrest. 94-74.

CASE ANNOTATIONS

1. Assault in federal penitentiary; Assimilative Crimes Act has no application if act is made penal under federal statutes. *United States v. Patmore*, 475 F.2d 753.

2. Conviction of aggravated assault not upheld; meaning of apprehension of bodily harm determined. *State v. Warbritton*, 215 K. 534, 536, 537, 527 P.2d 1050.

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

4. Applied in upholding conviction under 21-3411; evidence and instructions sufficient. *State v. Clanton*, 219 K. 531, 532, 548 P.2d 768.

5. Instructions hereunder not required in prosecution for aggravated assault and aggravated burglary. *State v. Williams*, 220 K. 610, 611, 556 P.2d 184.

6. Simple assault is lesser offense to aggravated assault; failure to instruct thereon error. *State v. Werkowski*, 220 K. 648, 652, 556 P.2d 420.

7. Mentioned; intent requirements of K.S.A. 1976 Supp. 21-3431 declared unconstitutional; impermissibly vague. *State v. Kirby*, 221 K. 1, 5, 563 P.2d 408.

8. Under evidence instruction on assault not required in prosecution for aggravated battery. *State v. Buckner*, 221 K. 117, 121, 558 P.2d 1102.

9. Applied; conviction of aggravated battery affirmed; instructions upheld. *State v. Bailey*, 223 K. 178, 183, 573 P.2d 590.

10. Cited; conviction for aggravated robbery reversed; improper instruction. *State v. Nelson*, 224 K. 95, 97, 577 P.2d 1178.

11. Review of conviction hereunder and of other crimes; no reversible error. *State v. Sanders*, 225 K. 147, 148, 587 P.2d 893.

12. Use of firearm, loaded or unloaded, in commission of any offense set out in this article requires mandatory sentence (21-4618). *State v. Deutscher*, 225 K. 265, 267, 269, 271, 589 P.2d 620.

13. Cited; firing gun at police officer legally sufficient to satisfy requirements of aggravated assault on a law enforcement officer; convictions affirmed. *State v. Howell & Taylor*, 226 K. 511, 515, 601 P.2d 1141.

14. Cited; impoundment of defendant's vehicle unauthorized and unreasonable; conviction reversed. *State v. Urban*, 3 K.A.2d 367, 595 P.2d 352.

15. Where stipulation contained evidence to establish elements of assault, court properly found respondent guilty beyond reasonable doubt. *In re Geisler*, 4 K.A.2d 684, 685, 686, 687, 688, 689, 690, 610 P.2d 640.

16. Cited in holding instruction on aiding and abetting including other than indicated crime proper under evidence. *State v. Hobson*, 234 K. 133, 157, 671 P.2d 1365 (1983).

17. Cited; where information did not allege every essential element of aggravated assault (21-3410), conviction reversed. *State v. Slansky*, 239 K. 450, 452, 453, 720 P.2d 1054 (1986).

18. Exact statutory words need not be used if meaning is clear. *State v. Bishop*, 240 K. 647, 651, 732 P.2d 765 (1987).

19. Cited; "deadly weapon" construed, duty to instruct on lesser included offense (21-3107) examined. *State v. Adams*, 12 K.A.2d 191, 194, 737 P.2d 876 (1987).

20. Cited; aggravated assault (21-3410) as not a lesser included offense (21-3107) of attempted (21-3301) second degree murder (21-3402) noted. *State v. Daniels*, 12 K.A.2d 479, 483, 753 P.2d 300 (1987).

21. Failure to allege essential elements of offense in information as voiding conviction thereof noted. *Zapata v. State*, 14 K.A.2d 94, 96, 782 P.2d 1251 (1989).

22. Evidence required for instruction on aggravated assault examined; immediate apprehension of bodily harm as necessary element noted. *State v. Dixon*, 248 K. 776, 785, 811 P.2d 1153 (1991).

23. Whether defendant's conviction for attempted aggravated assault must be reversed because no such crime existed at time examined. *State v. Martinez*, 20 K.A.2d 824, 830, 893 P.2d 267 (1995).

21-3409. Assault of a law enforcement officer. Assault of a law enforcement officer is an assault, as defined in K.S.A. 21-3408 and amendments thereto, committed against 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.

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

amendments thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, prostitution, as defined in K.S.A. 21-3512 and amendments thereto, promoting prostitution, as defined in K.S.A. 21-3513 and amendments thereto or sexual exploitation of a child, as defined in K.S.A. 21-3516 and amendments thereto.

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

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

History: L. 1994, ch. 252, § 1; July 1.

21-3440. Injury to a pregnant woman.

(a) Injury to a pregnant woman is injury to a pregnant woman by a person other than the pregnant woman in the commission of a felony or misdemeanor causing the pregnant woman to suffer a miscarriage as a result of that injury.

(b) As used in this section, "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception.

(c) Injury to a pregnant woman in the commission of a felony is a severity level 4, person felony. Injury to a pregnant woman in the commission of a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413 or K.S.A. 21-3517 and amendments thereto is a severity level 5, person felony. Injury to a pregnant woman in the commission of a misdemeanor other than a violation of K.S.A. 21-3412, subsection (a)(1) of K.S.A. 21-3413 or K.S.A. 21-3517 and amendments thereto is a class A person misdemeanor.

(d) The provisions of this section shall be part of and supplemental to the Kansas criminal code.

History: L. 1995, ch. 195, § 1; May 4.

21-3441. Injury to a pregnant woman by vehicle. (a) Injury to a pregnant woman by vehicle is injury to a pregnant woman by a person other than the pregnant woman in the unlawful operation of a motor vehicle causing the pregnant woman to suffer a miscarriage as a result of that injury.

(b) As used in this section, "miscarriage" means the interruption of the normal development of the fetus, other than by a live birth, resulting in the complete expulsion or extraction from a pregnant woman of a product of human conception.

(c) (1) Injury to a pregnant woman by vehicle while committing a violation of K.S.A. 8-1567 and amendments thereto is a severity level 5, person felony.

(2) Injury to a pregnant woman by vehicle while committing a violation of law related to the operation of a motor vehicle other than K.S.A. 8-1567 and amendments thereto is a class A person misdemeanor.

(d) The provisions of this section shall be part of and supplemental to the Kansas criminal code.

History: L. 1995, ch. 195, § 2; May 4.

Article 35.—SEX OFFENSES

Cross References to Related Sections:

Termination of parental rights as a result of a felony in which sexual intercourse occurred, see 38-1586.

Law Review and Bar Journal References:

"Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395 (1984).

"A Quantitative and Descriptive Survey of Evidence Law in the Kansas Appellate Courts," Stanley D. Davis, 37 K.L.R. 715, 718 (1989).

"The Kansas Criminal Code: 1992 Amendments," Emil A. Tonkovich, 41 K.L.R. Criminal Procedure Edition 73, 84 (1993).

"The Civil Commitment of Sexually Violent Predators in Kansas: A Modern Law for Modern Times," Kelly A. McCaffrey, 42 K.L.R. 887, 890 (1994).

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 a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. "Sexual intercourse" does not include penetration of the female sex organ by a finger or object in the course of the performance of:

(a) Generally recognized health care practices; or

(b) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(2) "Sodomy" means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal. "Sodomy" does not include penetration of the anal opening by a finger or object in the course of the performance of:

(a) Generally recognized health care practices; or

(b) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.

(3) "Spouse" means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.

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

History: L. 1969, ch. 180, § 21-3501; L. 1983, ch. 109, § 1; L. 1990, ch. 149, § 14; L. 1991, ch. 86, § 1; July 1.

Cross References to Related Sections:

Civil commitment of sexually violent predators, see 59-29a01 et seq.

Law Review and Bar Journal References:

"Reform in Kansas Domestic Violence Legislation," David J. Gottlieb and L. Eric Johnson, 31 K.L.R. 527, 554 (1983).

Attorney General's Opinions:

Code for care of children; definition of sexual abuse and exploitation in code; conformity with federal regulations. 83-186.

Rape; aggravated sodomy; rape shield statute; gender. 88-162.

Juveniles; collection of blood and saliva specimens; fingerprinting by KBI. 95-63.

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.

4. Cited; effect of changes in statutes involving indecent liberties with child discussed. *State v. Armstrong*, 238 K. 559, 564, 712 P.2d 1258 (1986).

5. It is clear from reading 21-3506 and 21-3401 that all elements of aggravated criminal sodomy not present in homicide. *State v. Strauch*, 239 K. 203, 217, 718 P.2d 613 (1986).

6. Cited; 60-1507 question on jurisdiction to convict of aggravated sexual battery (21-3518) on information charging rape (21-3502) examined. *Patterson v. State*, 12 K.A.2d 731, 754 P.2d 1207 (1988).

7. Cited; two-pronged test to determine whether lesser crime is lesser included offense (21-3107(2)(d)) examined. *State v. Fike*, 243 K. 365, 372, 757 P.2d 724 (1988).

8. Alternative provisions of paragraph (2) construed; prosecution's duty to memorialize amendment where leave to

amend complaint granted examined. *State v. Switzer*, 244 K. 449, 769 P.2d 645 (1989).

9. Evidence sufficient to instruct on lesser included count (21-3107) of attempted rape (21-3301, 21-3502) examined. *State v. Hammon*, 245 K. 450, 453, 781 P.2d 1063 (1989).

10. Oral-genital stimulation known as cunnilingus is not included within meaning of sodomy; conviction based thereon cannot stand. *State v. Moppin*, 245 K. 639, 644, 783 P.2d 878 (1989).

11. Aggravated sexual battery (21-3518) as not lesser included crime of rape, (21-3502) examined; holdings to the contrary disapproved. *State v. Gibson*, 246 K. 298, 301, 787 P.2d 1176 (1990).

12. Information charging anal sex as sufficient to allege anal copulation determined. *State v. Wilson*, 247 K. 87, 92, 795 P.2d 336 (1990).

13. Cunnilingus as not constituting sodomy noted; ruling not applied retroactively. *State v. Neer*, 247 K. 137, 138, 795 P.2d 362 (1990).

14. Cunnilingus as not constituting sodomy noted; conviction for aggravated criminal sodomy based upon such act cannot stand. *State v. Crawford*, 247 K. 223, 225, 795 P.2d 401 (1990).

15. Cunnilingus as not constituting sodomy noted; conviction for aggravated sodomy (21-3506) and aggravated incest (21-3603) reversed. *State v. Schad*, 247 K. 242, 244, 795 P.2d 406 (1990).

16. Conduct amounting to multiple acts of rape examined; minority opinions view regarding multiplicity noted. *State v. Zamora*, 247 K. 684, 693, 696, 803 P.2d 568 (1990).

17. Attempted aggravated criminal sodomy as underlying felony in felony murder question examined. *State v. William*, 248 K. 389, 400, 807 P.2d 1292 (1991).

18. Cited where conviction of aggravated incest, under facts alleged and proved barred prosecution for indecent liberties and aggravated criminal sodomy. *State v. Chandler*, 17 K.A.2d 512, 513, 839 P.2d 551 (1992).

19. Cited in holding court lacked jurisdiction to convict father of rape of 15 year-old daughter where father also convicted of aggravated kidnapping. *Carmichael v. State*, 18 K.A.2d 435, 444, 856 P.2d 934 (1993).

20. Whether evidence was sufficient to prove victim was overcome by force or fear in rape case examined. *State v. Borthwick*, 255 K. 899, 903, 880 P.2d 1261 (1994).

21-3502. Rape. (a) Rape is: (1) Sexual intercourse with a person who does not consent to the sexual intercourse, under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender; or

(2) sexual intercourse with a child who is under 14 years of age.

(b) It shall be a defense to a prosecution of rape under subsection (a)(2) that the child was married to the accused at the time of the offense.

(c) Rape is a severity level 2, person felony.

History: L. 1969, ch. 180, § 21-3502; L. 1978, ch. 120, § 1; L. 1983, ch. 109, § 2; L. 1993, ch. 253, § 1; L. 1993, ch. 253, § 2; July 1.

Source or prior law:

21-424, 21-425.

Law Review and Bar Journal References:

"Reform in Kansas Domestic Violence Legislation," David J. Gottlieb and L. Eric Johnson, 31 K.L.R. 527, 529 (1983).

"Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395, 396 (1984).

"The Battered Woman's Syndrome Defense," Colleen Cacy, 34 K.L.R. 337, 364 (1985).

"Kansas Recognizes Rape Trauma Syndrome," Charles H. Herd, 24 W.L.J. 653, 661 (1985).

"Criminal Law: Multiplicity and the Independence of Aggravated Sexual Battery Under KAN. STAT. ANN. §21-3107(2) [State v. Mason, 827 P.2d 748 (Kan. 1992)]," Lance Thaxton, 32 W.L.J. 290, 291 (1993).

Attorney General's Opinions:

Rape; aggravated sodomy; rape shield statute; gender. 88-162.

Family planning centers; state funding of contraceptives for minors. 92-71.

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. Gam-mill*, 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.
50. Defense not surprised by appearance of state's missing witness; two days before trial witness available for interview. *State v. Jordan*, 229 K. 558, 559, 629 P.2d 1172 (1981).
51. Mistrial declared after 2* days of trial because of ineligible juror; double jeopardy did not attach. *State v. Folkerts*, 229 K. 608, 629 P.2d 173 (1981).
52. Conviction reversed; insufficient evidence of specific intent to commit rape. *State v. Carr*, 230 K. 322, 634 P.2d 1104 (1981).
53. No error in admitting evidence of flight, excluding evidence of victim's prior sexual activity or denying dismissal of action for violation of speedy trial statute. *State v. Anderson*, 230 K. 681, 682, 640 P.2d 1232 (1982).
54. Failure to object to bailiff not being sworn held waiver; trial court prohibited from ordering polygraph examination of victim. *State v. Dedman*, 230 K. 793, 640 P.2d 1266 (1982).
55. Psychiatrist's testimony that person suffers rape trauma syndrome held admissible. *State v. Marks*, 231 K. 645, 646, 647 P.2d 1292 (1982).
56. No instruction on attempted rape required where both defendant and victim testified as to penetration. *State v. Kor-bel*, 231 K. 657, 658, 659, 647 P.2d 1301 (1982).
57. No error in refusal to instruct on indecent liberties where rape victim's age prevented consent. *State v. Lilley*, 231 K. 694, 695, 696, 647 P.2d 1323 (1982).
58. Various alleged evidentiary and procedural errors considered. *State v. Thompson*, 232 K. 364, 654 P.2d 453 (1982).
59. No error in excluding prior sexual experience between defendant and victim; irrelevant to issue of consent because of remoteness. *State v. Stellwagen*, 232 K. 744, 659 P.2d 167 (1983).
60. Uncorroborated testimony of prosecutrix was so unbelievable it was not sufficient to sustain conviction. *State v. Matlock*, 233 K. 1, 660 P.2d 945 (1983).
61. Defendant found guilty of rape; conviction of lesser included offense of indecent liberties with child set aside. *State v. Coberly*, 233 K. 100, 106, 107, 661 P.2d 383 (1983).
62. Admission of evidence and jury instruction considered. *State v. Jones*, 233 K. 112, 660 P.2d 948 (1983).
63. Court properly combined post-arraignment time of first prosecution and post-arraignment time of second prosecution. *State v. Ransom*, 233 K. 185, 661 P.2d 392 (1983).
64. Threats made incidental to commission of rape will not support conviction for terroristic threats. *State v. Reeves*, 234 K. 250, 256, 671 P.2d 553 (1983).
65. Court may not issue ex parte order of resentencing; defendant must be present at time of sentencing. *State v. Coy*, 234 K. 414, 420, 672 P.2d 599 (1983).
66. Evidence sufficient to show victim's resistance overcome by both force and fear. *State v. Cantrell*, 234 K. 426, 429, 673 P.2d 1147 (1983).
67. Rights and responsibilities of prosecution and court regarding juveniles waiver hearings (38-636) and preliminary hearings (22-2902) outlined. *In re Davis*, 234 K. 766, 771, 674 P.2d 1045 (1984).
68. Identi-Kit composite goes to weight and sufficiency; pretrial photographic lineup identification not impermissibly suggestive; spouse's observation of keys not privileged. *State v. Galloway*, 235 K. 70, 680 P.2d 268 (1984).
69. Foundation for admission of tape recordings in most jurisdictions outlined and applied ("911" recording of crime in progress). *State v. Williams*, 235 K. 485, 486, 491, 681 P.2d 660 (1984).
70. Conviction hereunder; evidence admissible under 60-455 may be admissible to show commission of crime itself. *State v. Gray*, 235 K. 632, 634, 681 P.2d 669 (1984).
71. Statute not discriminatory against men. *State v. Wood*, 235 K. 915, 919, 686 P.2d 128 (1984).
72. Conviction hereunder; fingerprint identification and use of photographic evidence discussed at length. *State v. Murdock*, 236 K. 146, 689 P.2d 814 (1984).
73. Rape trauma syndrome testimony not violation of rape shield provisions; absence of syndrome inadmissible where consent is defense. *State v. McCullen*, 236 K. 161, 172, 689 P.2d 822 (1984).
74. Sufficiency of evidence; medical expert not authorized to testify complainant was raped. *State v. Bressman*, 236 K. 296, 297, 304, 689 P.2d 901 (1984).
75. Sufficiency of evidence. *State v. Hanks*, 236 K. 524, 525, 536, 694 P.2d 407 (1985).
76. Behavior and comments of defendant during arrest admitted as part of res gestae. *State v. Davis*, 236 K. 538, 539, 694 P.2d 418 (1985).

77. Sufficiency of uncorroborated prosecutrix testimony evidence sustained; constitutional, ex post facto challenges reinvented meritless. *State v. Lile*, 237 K. 210, 211, 213, 699 P.2d 456 (1985).
78. Time limitations of appeal of conviction (22-3608); revocation of probation following imposition of sentence (21-4603). *State v. Tripp*, 237 K. 244, 699 P.2d 33 (1985).
79. Refusal to order psychiatric examination for, and use of videotaped deposition of, victim discussed. *State v. Wooldridge*, 237 K. 737, 703 P.2d 1375 (1985).
80. Cited; right to counsel infringed where law partner represents another charged with same crime and conflict arises. *State v. Lem'Mons*, 238 K. 1, 2, 705 P.2d 552 (1985).
81. Effect of delays from interlocutory appeals (22-3603) on constitutional right to speedy trial discussed. *State v. Galloway*, 238 K. 100, 708 P.2d 508 (1985).
82. In-custody statement without counsel, witness' comment on defendant's silence, impeachment of prosecution witnesses discussed. *State v. O'Neal*, 238 K. 183, 708 P.2d 206 (1985).
83. Attempted rape instruction, sexual battery (21-3517) and aggravated sexual battery (21-3518) as lesser offenses discussed. *State v. Galloway*, 238 K. 415, 710 P.2d 1320 (1985).
84. Evidence of prior crimes (60-455), sufficiency of complaint affidavit, photographic evidence, trial consolidation discussed. *State v. Breazeale*, 238 K. 714, 714 P.2d 1356 (1986).
85. Specific intent is not element of crime of rape. *Wiley v. Rayl*, 767 F.2d 679, 680 (1985).
86. Admission of state rebuttal testimony by former prosecuting attorney and rape counselor examined. *State v. Hayes*, 239 K. 443, 720 P.2d 1049 (1986).
87. Severity of sentence, in-court identifications, photographic evidence of lineup examined. *State v. Slansky*, 239 K. 450, 720 P.2d 1054 (1986).
88. Expert testimony on rape trauma syndrome relevant and admissible where consent is defense. *State v. McQuillen*, 239 K. 590, 721 P.2d 740 (1986).
89. Speedy trial, justices qualified on rehearing, hearsay statements, incriminating statements, witness sequestration, new evidence examined. *State v. Ransom*, 239 K. 594, 722 P.2d 540 (1986).
90. Testimony on incarceration, rebuttal regarding sanity, venue change, hair samples and confession in evidence, jury instructions examined. *State v. Alexander*, 240 K. 273, 729 P.2d 1126 (1986).
91. Cited by concurring judge in majority holding that aggravated sexual battery (21-3518) not lesser included offense of indecent liberties (21-3503). *State v. Fulcher*, 12 K.A.2d 169, 173, 737 P.2d 61 (1987).
92. Aggravated incest (21-3603) not lesser included offense (21-3107); prior sexual relations, limiting instructions, prosecutorial remarks examined. *State v. Moore*, 242 K. 1, 7, 9, 748 P.2d 833 (1987).
93. Insanity defense (22-3219) as speedy trial delay (22-3402), diminished capacity instruction, ex parte order for psychiatric evaluation examined. *State v. Maas*, 242 K. 44, 744 P.2d 1222 (1987).
94. Non-identical offense to aggravated incest (21-3603), 60-460 hearing examined. *State v. Hutchcraft*, 242 K. 55, 744 P.2d 849 (1987).
95. Peremptory challenges of members of defendant's minority race or group examined. *State v. Hood*, 242 K. 115, 116, 744 P.2d 816 (1987).
96. Admission of expert testimony (60-456) by forensic examiner from KBI upheld. *State v. Stukey*, 242 K. 204, 747 P.2d 137 (1987).
97. Photo lineups, victim's eyewitness description, uncorroborated defense testimony, use of rape kit examined. *State v. Grubbs*, 242 K. 224, 747 P.2d 140 (1987).
98. Indecent liberties (21-3503) as not identical nor more specific crime, discharge of juror after empaneling examined. *State v. Helms*, 242 K. 511, 748 P.2d 425 (1988).
99. Prior crimes and rape instructions, jury requests for information, venue, victim's prior sexual conduct examined. *State v. Redford*, 242 K. 658, 659, 750 P.2d 1013 (1988).
100. Evidence available at trial of "newly discovered" evidence tending to impeach or discredit, materiality of evidence examined. *Baker v. State*, 243 K. 1, 3, 12, 755 P.2d 493 (1988).
101. Cited; 60-1507 question on jurisdiction to convict of aggravated sexual battery (21-3518) on information charging rape examined. *Patterson v. State*, 12 K.A.2d 731, 754 P.2d 1207 (1988).
102. Conviction affirmed; discretion in sentencing examined where court misunderstood parole eligibility at time sentence imposed. *State v. Glover*, 243 K. 689, 763 P.2d 605 (1988).
103. Conviction affirmed; incidental charges, multiplicitous charges, sufficiency of evidence examined. *State v. Howard*, 243 K. 699, 763 P.2d 607 (1988).
104. Distinctions between aggravated sexual battery (21-3518) and rape noted. *State v. Blount*, 13 K.A.2d 347, 350, 770 P.2d 852 (1989).
105. Expert testimony on characteristics of rape victims and expert witnesses, victim's behavior subsequent to alleged assaults examined. *State v. Reser*, 244 K. 306, 767 P.2d 1277 (1989).
106. Time limits on district court's jurisdiction to modify sentences (21-4603(3)), procedures to attack conditions of imprisonment (60-1501 et seq.) examined. *State v. Saft*, 244 K. 517, 521, 769 P.2d 675 (1989).
107. Alibi (22-3218) and insanity (22-3219) as only circumstances requiring notice of intended defense examined; voluntary intoxication (21-3208) distinguished. In re Habeas Corpus Petition of Mason, 245 K. 111, 112, 775 P.2d 179 (1989).
108. Subsection (1)(c) prohibiting intercourse with victim incapable of giving consent because of mental deficiency or disease not unconstitutionally vague. *Keim v. State*, 13 K.A.2d 604, 608, 777 P.2d 278 (1989).
109. Lesser included crime instruction, mention of polygraph test during cross-examination examined. *State v. Hammon*, 245 K. 450, 781 P.2d 1063 (1989).
110. Attempted penetration in attempted rape, victim's propensity to form male social acquaintances, testimony of recalcitrant witness, underlying felony examined. *State v. Gonzales*, 245 K. 691, 783 P.2d 1239 (1989).
111. Delays in holding trial caused by defendant's motion for competency hearing, basis of search warrant examined. *State v. Prewett*, 246 K. 39, 40, 785 P.2d 956 (1990).
112. Defendant's right to counsel at hearing on motion to modify sentence (21-4603(3)) determined. *State v. Pierce*, 246 K. 183, 184, 787 P.2d 1189 (1990).
113. Aggravated sexual battery (21-3518) not lesser included crime of rape; holdings to the contrary disapproved. *State v. Gibson*, 246 K. 298, 787 P.2d 1176 (1990).
114. Postarrest/Miranda silence, other crimes evidence, inquiry why prior complaining witnesses failed to pursue retrials examined. *State v. Searles*, 246 K. 567, 793 P.2d 724 (1990).

115. Suggestive pretrial procedures, evidence from automobile and home, sufficiency of evidence, peremptory challenges examined. *State v. Skelton*, 247 K. 34, 795 P.2d 349 (1990).
116. When duty arises to instruct on lesser included offense stated. *State v. Crawford*, 247 K. 223, 226, 795 P.2d 401 (1990).
117. Defendant's offer of rebuttal evidence where state introduces evidence of previous sexual conduct (21-3525) examined. *State v. Beans*, 247 K. 343, 800 P.2d 145 (1990).
118. Determination whether interrogation is custodial, ambiguous statement as to assertion of Miranda rights, voluntariness of confession examined. *State v. Fritschen*, 247 K. 592, 802 P.2d 558 (1990).
119. Lack of requirement to change life sentence so good time credits apply, when counsel required for postconviction motions examined. *State v. Carmichael*, 247 K. 619, 620, 801 P.2d 1315 (1990).
120. Closing argument constituting prosecutorial misconduct, rape as sufficient to support aggravated kidnapping examined. *State v. Zamora*, 247 K. 684, 803 P.2d 568 (1990).
121. Employee as not assuming risk of rape at place of employment noted, notwithstanding knowledge of risk. *Perkins v. Spivey*, 911 F.2d 22 (1990).
122. Rules governing motions for new trial based upon newly discovered evidence reiterated. *State v. Redford*, 248 K. 130, 804 P.2d 983 (1991).
123. Right to speedy trial, peremptory challenges to strike blacks from panel, DNA profiling evidence examined. *Smith v. Deppish*, 248 K. 217, 218, 807 P.2d 144 (1991).
124. Rape requires living victim when act takes place; lack of instruction on law examined. *State v. Perkins*, 248 K. 760, 771, 811 P.2d 1142 (1991).
125. State's need for evidence and accused's privacy rights, propriety of testimony on accused's refusal to submit semen sample examined. *State v. Williams*, 15 K.A.2d 656, 657, 815 P.2d 569 (1991).
126. Two counts of rape of same victim in same location within one hour not multiplicitous under facts. *State v. Richmond*, 250 K. 375, 376, 827 P.2d 743 (1992).
127. Aggravated sexual battery not lesser included crime of attempted aggravated sodomy or attempted rape; test for determining multiplicitous charges. *State v. Mason*, 250 K. 393, 394, 827 P.2d 748 (1992).
128. Jury selection by voter registration lists examined; evidence that crime of rape occurred held insufficient. *State v. Bailey*, 251 K. 156, 158, 164, 834 P.2d 342 (1992).
129. Evidence supporting determination to try juvenile as adult (38-1636) upheld; admission of confession, evidence of gang membership examined. *State v. Hooks*, 251 K. 755, 756, 840 P.2d 483 (1992).
130. Propriety of admission of prior convictions on cross-examination, multiplicity of aggravated kidnapping and rape examined. *State v. Blackburn*, 251 K. 787, 840 P.2d 497 (1992).
131. Voluntariness of confession, extrajudicial statement of accused, investigative services for indigent defendant examined. *State v. Snodgrass*, 252 K. 253, 254, 843 P.2d 720 (1992).
132. Cited where conviction of aggravated incest, under facts alleged and proved barred prosecution for indecent liberties and aggravated criminal sodomy. *State v. Chandler*, 17 K.A.2d 512, 515, 839 P.2d 551 (1992).
133. Cited; defendant allowed one request for modification of sentence under 21-4603. *State v. Smith*, 17 K.A.2d 746, 843 P.2d 297 (1992).
134. Jury selection, confession, gang membership, rape shield statute, photographic exhibits, trial misconduct, instructions, peremptory challenge, "Hard 40" statute, examined. *State v. Walker*, 252 K. 279, 281, 845 P.2d 1 (1993).
135. Failure to instruct on attempted indecent liberties as lesser offense of attempted rape not error under facts herein. *State v. Cahill*, 252 K. 309, 845 P.2d 624 (1993).
136. Testimony of prosecutrix alone held sufficient to convict; preservation of issues for appeal, failure to instruct on involuntary intoxication examined. *State v. Cooper*, 252 K. 340, 341, 845 P.2d 631 (1993).
137. Conviction hereunder reversed; trial court erred in excluding evidence of lack of veracity by complaining witness. *State v. Lewis*, 252 K. 535, 847 P.2d 690 (1993).
138. Evidence sufficient for rational fact finder to find essential elements of crime of rape. *Griggs v. State of Kan.*, 814 F.Supp. 60, 61, 63 (1993).
139. Consecutive maximum sentences following nolo contendere pleas not abuse of trial court's discretion under facts stated. *State v. Gibbens*, 253 K. 384, 855 P.2d 937 (1993).
140. Application of 21-4601 and 21-4606 to sentencing rather than modification noted; when provisions of 21-4603(4) applicable examined. *State v. Mareska*, 253 K. 431, 855 P.2d 954 (1993).
141. Indigent criminal defendant's right to counsel, charging two or more crimes in same complaint examined. *State v. Cromwell*, 253 K. 495, 497, 856 P.2d 1299 (1993).
142. Trial court lacked jurisdiction to convict father of rape of 15 year-old daughter where father also convicted of aggravated kidnapping. *Carmichael v. State*, 18 K.A.2d 435, 437, 856 P.2d 934 (1993).
143. Racially motivated peremptory jury challenge noted as extended to criminal defendants; cross-examination about defendant's post-arrest and post-Miranda silence noted as error. *State v. Foust*, 18 K.A.2d 617, 857 P.2d 1368 (1993).
144. Whether court had jurisdiction to arrest judgment where defendant's motion filed later than section authorizes examined. *Carmichael v. State*, 255 K. 10, 13, 872 P.2d 240 (1994).
145. Whether evidence was sufficient to prove victim was overcome by force or fear in rape case examined. *State v. Borthwick*, 255 K. 899, 901, 903, 910, 880 P.2d 1261 (1994).

21-3503. Indecent liberties with a child.

(a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(1) 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; or

(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of indecent liberties with a child as described in subsection (a)(1) that the child was married to the accused at the time of the offense.

(c) Indecent liberties with a child is a severity level 5, person felony.

History: L. 1969, ch. 180, § 21-3503; L. 1975, ch. 193, § 1; L. 1983, ch. 109, § 3; L. 1984, ch. 118, § 1; L. 1985, ch. 109, § 2; L. 1987, ch. 108, § 1; L. 1989, ch. 89, § 1; L. 1993, ch. 253, § 3; L. 1993, ch. 253, § 4; July 1.

Source or prior law:
21-424.

Law Review and Bar Journal References:

"The New Kansas Law Regarding Admissibility of Child-Victim Hearsay Statements," G. Joseph Pierron, 52 J.K.B.A. 88, 94 (1983).

"The Admissibility of Child Victim Hearsay in Kansas: A Defense Perspective," Christopher B. McNeil, 23 W.L.J. 265, 268 (1984).

"Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395, 398 (1984).

"Family Law: Children Having Children—A Father's Age is Irrelevant for Purposes of Determining Parental Responsibility [State ex rel. Hermesmann v. Seyer, 847 P.2d 1273 (Kan. 1993)]," Rebecca Proctor Wempe, 33 W.L.J. 247 (1993).

Attorney General's Opinions:

Code for care of children; definition of sexual abuse and exploitation in code; conformity with federal regulations. 83-186.

Crime victims compensation board; claims; conditions; limitations. 91-19.

Reporting of certain abuse or neglect of a child; pregnancy. 92-48.

Family planning centers; state funding of contraceptives for minors. 92-71.

CASE ANNOTATIONS

1. Failure to give aiding and abetting instruction not error in prosecution hereunder. *State v. Ingram*, 211 K. 537, 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 extra-judicial 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.

25. No error in refusal to instruct on indecent liberties where rape victim's age prevented consent. *State v. Lilley*, 231 K. 694, 696, 647 P.2d 1323 (1982).

26. Hearsay testimony of mother of four-year-old victim admissible under contemporaneous statements exception. *State v. Rodriguez*, 8 K.A.2d 353, 354, 357, 657 P.2d 79 (1983).

27. Crime of indecent liberties with a child was a lesser included offense of rape; conviction of rape bars conviction of lesser offense. *State v. Coberly*, 233 K. 100, 106, 107, 661 P.2d 383 (1983).

28. Time of offense not essential element of indecent liberties with child; admission of extrajudicial statements of child as exception to hearsay rules. *State v. Myatt*, 237 K. 17, 28, 697 P.2d 836 (1985).

29. Dismissal following preliminary hearing; failure of court to conduct hearing pursuant to 60-460(dd) on child's testimony. *State v. Lanter*, 237 K. 309, 699 P.2d 503 (1985).
30. Written instructions only at close of argument, prejudicial effect of failing to deliver orally. *State v. Norris*, 10 K.A.2d 397, 699 P.2d 585 (1985).
31. Cited; provisions of 60-460(dd) (statements by children) inapplicable to proceedings under juvenile offenders code (38-1601 et seq). In re *Mary P.*, 237 K. 456, 701 P.2d 681 (1985).
32. Acceptance and validity of guilty plea (22-3210) discussed; grounds to set aside reviewed and applied. *State v. Snyder*, 10 K.A.2d 450, 451, 701 P.2d 969 (1985).
33. Cited; right to counsel infringed where law partner represents another charged with same crime and conflict arises. *State v. Lem'Mons*, 238 K. 1, 2, 705 P.2d 552 (1985).
34. What actions necessary to toll statute of limitations (21-3106) discussed. *State v. Mills*, 238 K. 189, 708 P.2d 1079 (1985).
35. Cited; effect of changes in statutes involving indecent liberties with child discussed. *State v. Armstrong*, 238 K. 559, 564, 712 P.2d 1258 (1986).
36. Hearsay statements of children, proper instructions on statements (60-460(dd)) examined. *State v. Clark*, 11 K.A.2d 586, 730 P.2d 1104 (1986).
37. Threat to child not to talk does not constitute concealment (21-3106 (3)(c)) to toll statute of limitations. *State v. Bentley*, 239 K. 334, 339, 721 P.2d 227 (1986).
38. Failure of information to allege essential elements of crime examined. *State v. Jackson*, 239 K. 463, 464, 721 P.2d 232 (1986).
39. Statutory guidelines for acceptance of guilty plea (22-3210) examined in 60-1507 proceeding. *Noble v. State*, 240 K. 162, 727 P.2d 473 (1986).
40. Cited; prior law under 21-3504 and related statutes examined. *State v. Ramos*, 240 K. 485, 488, 731 P.2d 837 (1987).
41. Technical irregularities in execution of search warrant, voluntariness of confession examined. *State v. Holloman*, 240 K. 589, 731 P.2d 294 (1987).
42. Admission of suppression hearing transcript harmless error and late endorsement of witnesses not abuse of discretion. *State v. Phifer*, 241 K. 233, 737 P.2d 1 (1987).
43. Aggravated sexual battery (21-3518) not lesser included offense, no instruction thereon necessary. *State v. Fulcher*, 12 K.A.2d 169, 170, 737 P.2d 61 (1987).
44. Noted as lesser included offense (21-3107) of rape (21-3502); other lesser included offenses noted. *State v. Moore*, 242 K. 1, 3, 748 P.2d 833 (1987).
45. Non-identical offense to aggravated incest (21-3603), instruction on aggravated sexual battery (21-3518); 60-460 hearing examined. *State v. Hutchcraft*, 242 K. 55, 744 P.2d 849 (1987).
46. Indecent liberties neither identical to nor more specific than rape (21-3502). *State v. Helms*, 242 K. 511, 513, 748 P.2d 425 (1988).
47. Sentence modification denied; indigent defendant's right to transcript of sentencing hearing examined. *State v. Duckett*, 13 K.A.2d 122, 764 P.2d 134 (1988).
48. Conviction affirmed; alleged child victim's out-of-court statements (60-460(dd)), evidence of defendant's character, alleged victim's preliminary hearing testimony, closing argument examined. *State v. Koune*, 243 K. 218, 757 P.2d 289 (1988).
49. Conviction affirmed; test to determine whether lesser crime is lesser included offense (21-3107(2)(d)) examined, aggravated sexual battery (21-3518(b)) distinguished. *State v. Fike*, 243 K. 365, 373, 757 P.2d 724 (1988).
50. Hearing, evidence and findings necessary to support admissibility of hearsay statements under 60-460(dd) examined. In re *M.O.*, 13 K.A.2d 381, 770 P.2d 856 (1989).
51. Evidence of prior crimes, preservation of in limine issue, time limitations on closing arguments; retroactivity of statutes of limitations examined. *State v. Nunn*, 244 K. 207, 209, 768 P.2d 268 (1989).
52. Absence of instruction on aggravated sexual battery, permitting child victim's testimony by closed-circuit television (22-3434) examined. *State v. Eaton*, 244 K. 370, 371, 769 P.2d 1157 (1989).
53. Aggravated sexual battery (21-3518) not lesser included offense of indecent liberties with a child. *State v. Moppin*, 245 K. 639, 644, 783 P.2d 878 (1989).
54. Aggravated sexual battery (21-3518) not an included crime hereunder. *State v. Damewood*, 245 K. 676, 686, 783 P.2d 1249 (1989).
55. Sight barrier to prevent child-victim from seeing defendant, charges of indecent liberties and aggravated incest as multiplicitous examined. *State v. Siard*, 245 K. 716, 783 P.2d 895 (1989).
56. Testimony concerning prior child molestation prosecution barred by constitutional collateral estoppel doctrine; habeas relief warranted. *Buck v. Maschner*, 878 F.2d 344 (1989).
57. Criminal statutes of limitations as procedural, with amendments applicable to prior acts if crimes not yet time-barred determined. *State v. Noah*, 246 K. 291, 788 P.2d 257 (1990).
58. Charge properly dismissed where court held that a common-law marriage existed at time of alleged offense. *State v. Sedlack*, 246 K. 305, 308, 787 P.2d 709 (1990).
59. Finding that child-victim was unavailable as a witness (60-460) one year before trial determined as error. *State v. McClanahan*, 14 K.A.2d 410, 792 P.2d 355 (1990).
60. Distinctions among 22-3433, 22-3434 and 60-460(dd) regarding child-victim testimony examined; application of statutes under facts presented determined. *State v. Lamb*, 14 K.A.2d 664, 798 P.2d 506 (1990).
61. Cunnilingus as not constituting sodomy (21-3505) noted; ruling not applied retroactively. *State v. Neer*, 247 K. 137, 138, 795 P.2d 362 (1990).
62. Sentence exceeding life expectancy, timeliness and merits of motion for new trial, when counsel required for postconviction proceedings examined. *State v. Nunn*, 247 K. 576, 577, 802 P.2d 547 (1990).
63. Lack of requirement to change life sentence so good time credits apply, when counsel required for postconviction motions examined. *State v. Carmichael*, 247 K. 619, 620, 801 P.2d 1315 (1990).
64. Error to instruct jury that, as a matter of law, indecent liberties constitutes bodily injury necessary for aggravated kidnapping. *State v. Peltier*, 249 K. 415, 426, 819 P.2d 628 (1991).
65. Time during which probation may be revoked examined; probation period held limited to maximum sentence time. *State v. Grimsley*, 15 K.A.2d 441, 808 P.2d 1387 (1991).
66. Requirements for psychiatric examination of a complaining witness, admitting evidence of prior conviction, sentence imposed by board of judges examined. *State v. Blackmore*, 15 K.A.2d 539, 540, 811 P.2d 54 (1991).
67. When defendant is related to victim as set forth in 21-3603, state may charge aggravated incest but not indecent lib-

erties with a child. *State v. Williams*, 250 K. 730, 829 P.2d 892 (1992).

68. Admissibility of minor victim's entire statement, testimony of mental health therapist as to truth of minor victim's story, sentence imposed examined. *State v. Arrington*, 251 K. 747, 840 P.2d 477 (1992).

69. Trial court's error noted in either not granting probation as recommended by TCF or making findings required by 21-4603. *State v. Dugan*, 17 K.A.2d 340, 836 P.2d 584 (1992).

70. Under facts alleged and proved, conviction of aggravated incest (21-3603) bars prosecution hereunder. *State v. Chandler*, 17 K.A.2d 512, 839 P.2d 551 (1992).

71. Failure to instruct on attempted indecent liberties as lesser offense of attempted rape not error under facts herein. *State v. Cahill*, 252 K. 309, 845 P.2d 624 (1993).

72. Fact that conception results from violation. This section does not relieve victim of duty to support child. *State ex rel. Hermesmann v. Seyer*, 252 K. 646, 647, 650, 652, 847 P.2d 1273 (1993).

73. Cited in holding court lacked jurisdiction to convict father of rape of 15 year-old daughter where father also convicted of aggravated kidnapping. *Carmichael v. State*, 18 K.A.2d 435, 438, 856 P.2d 934 (1993).

74. Trial judge's ex parte communication with Topeka correctional facility's warden requesting reevaluation of defendant and sending required documents examined. *State v. Fryar*, 18 K.A.2d 576, 856 P.2d 512 (1993).

75. Conditions under which a minor child-victim may be accompanied by a parent or supportive adult while testifying examined. *State v. Rowray*, 18 K.A.2d 772, 779, 860 P.2d 40 (1993).

76. Whether aggravated incest statute applies to sexual relationships between half-blood uncle and minor daughter of half-brother examined. *State v. Craig*, 254 K. 575, 579, 867 P.2d 1013 (1994).

77. Whether defendant's guilty plea waived challenge to failure of state to charge specific over general offense examined. *Labona v. State*, 255 K. 66, 872 P.2d 271 (1994).

78. Whether court erred by converting attempt to engage in indecent liberties with a child to severity level 5 examined. *State v. Ward*, 20 K.A.2d 238, 240, 886 P.2d 890 (1994).

79. Whether guilty plea based on ineffective assistance of counsel may be challenged under section examined. *Garret v. State*, 20 K.A.2d 513, 514, 889 P.2d 795 (1995).

80. Whether judge erred by converting indecent liberties with a child to a severity level 3 crime for sentencing guidelines purpose examined. *Baker v. State*, 20 K.A.2d 807, 811, 894 P.2d 221 (1995).

81. Whether defendant sentenced after KSCA (21-4701 et seq.) enactment for crimes committed before enactment is denied equal protection by preclusion of sentencing guideline retroactivity examined. *State v. Fierro*, 257 K. 639, 653, 895 P.2d 186 (1995).

21-3504. Aggravated indecent liberties with a child. (a) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) 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; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) 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; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) It shall be a defense to a prosecution of aggravated indecent liberties with a child as provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A) that the child was married to the accused at the time of the offense.

(c) Aggravated indecent liberties with a child as described in subsections (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated indecent liberties with a child as described in subsection (a)(2) is a severity level 4, person felony.

History: L. 1969, ch. 180, § 21-3504; L. 1975, ch. 193, § 2; L. 1983, ch. 109, § 4; L. 1984, ch. 112, § 3; L. 1984, ch. 118, § 2; L. 1992, ch. 298, § 22; L. 1993, ch. 253, § 5; L. 1993, ch. 291, § 271; July 1.

Source or prior law: 21-909.

Attorney General's Opinions: Code for care of children; definition of sexual abuse and exploitation in code; conformity with federal regulations. 83-186.

Family planning centers; state funding of contraceptives for minors. 92-71.

Reporting abuse or neglect of children; persons reporting; duty to report; confidentiality. 94-67.

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.

2. Expert witness (60-456); may not testify as to whether defendant molested alleged victim. *State v. Lash*, 237 K. 384, 699 P.2d 49 (1985).

3. Amendment of information, denial of bill of particulars, jury instructions, changes in statutes discussed. *State v. Armstrong*, 238 K. 559, 712 P.2d 1258 (1986).

4. Ineffective assistance of counsel-remand procedure amended complaint, reclassification of crime, sentencing discussed. *State v. Van Cleave*, 239 K. 117, 118, 716 P.2d 580 (1986).

5. Preexisting psychologist-client privilege in 38-1514(c)(2), question of new trial based on newly discovered evidence examined. *State v. Munyon*, 240 K. 53, 726 P.2d 1333 (1986).

6. Prior law and related statutes examined. *State v. Ramos*, 240 K. 485, 731 P.2d 837 (1987).

7. Cited; aggravated sexual battery (21-3518) as lesser included offense of indecent liberties with child (21-3503) examined. *State v. Hutchcraft*, 242 K. 55, 59, 744 P.2d 849 (1987).

8. Whether court erred by converting attempt to engage in indecent liberties with a child to severity level 5, examined. *State v. Ward*, 20 K.A.2d 238, 240, 886 P.2d 890 (1994).

9. Whether defendant sentenced after KSCA (21-4701 et seq.) enactment for crimes committed before enactment is denied equal protection by preclusion of sentencing guideline retroactivity examined. *State v. Fierro*, 257 K. 639, 641, 653, 895 P.2d 186 (1995).

10. Whether judge erred by converting indecent liberties with a child to a severity level 3 crime for sentencing guidelines purpose examined. *Baker v. State*, 20 K.A.2d 807, 812, 894 P.2d 221 (1995).

21-3505. Criminal sodomy. (a) Criminal sodomy is:

(1) Sodomy between persons who are 16 or more years of age and members of the same sex or between a person and an animal;

(2) sodomy with a child who is 14 or more years of age but less than 16 years of age; or

(3) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.

(b) It shall be a defense to a prosecution of criminal sodomy as provided in subsection (a)(2) that the child was married to the accused at the time of the offense.

(c) Criminal sodomy as provided in subsection (a)(1) is a class B nonperson misdemeanor. Criminal sodomy as provided in subsections (a)(2) and (a)(3) is a severity level 3, person felony.

History: L. 1969, ch. 180, § 21-3505; L. 1983, ch. 109, § 5; L. 1992, ch. 298, § 23; L. 1993, ch. 253, § 6; July 1.

Revisor's Note:

For Source or Prior Law, see 21-3506.

Law Review and Bar Journal References:

"Reform in Kansas Domestic Violence Legislation," David J. Gottlieb and L. Eric Johnson, 31 K.L.R. 527, 554 (1983).

"Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395, 400, 401 (1984).

"Recent Developments: Public Health and Employment Issues Generated by the AIDS Crisis," Mark J. Lazzo and Christopher A. McElgunn, 25 W.L.J. 505, 516 (1986).

"Guess Who's Coming to America: An Analysis of United States HIV-Related Immigration Policies," Chad Baruch and Franc Hangarter, 32 W.L.J. 301, 304 (1993).

Attorney General's Opinions:

Reporting abuse or neglect of children; persons reporting; duty to report; confidentiality. 94-67.

Juveniles; collection of blood and saliva specimens; fingerprinting by KBI. 95-63.

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.

9. Prior to amendment of act (July 1, 1983); husband not guilty of aggravated sodomy with wife. *State v. Dubish*, 234 K. 708, 712, 675 P.2d 877 (1984).

10. Cited; evidence of previous sexual relationship at aggravated incest (21-3603) trial discussed. *State v. Perrigo*, 10 K.A.2d 651, 652, 708 P.2d 987 (1985).

11. Cited by dissent on question that cunnilingus does not constitute sodomy. *State v. Crawford*, 247 K. 223, 228, 795 P.2d 401 (1990).

12. Cited by dissent where conviction of aggravated sodomy, (21-3506) and aggravated incest (21-3603) based on cunnilingus reversed. *State v. Schad*, 247 K. 242, 247, 795 P.2d 406 (1990).

13. Attempted aggravated criminal sodomy as underlying felony in felony murder question examined. *State v. William*, 248 K. 389, 400, 807 P.2d 1292 (1991).

21-3506. Aggravated criminal sodomy.

(a) Aggravated criminal sodomy is:

(1) Sodomy with a child who is under 14 years of age;

(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or

(3) sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with

any person or an animal, under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender.

(b) It shall be a defense to a prosecution of aggravated criminal sodomy under subsection (a)(1) that the child was married to the accused at the time of the offense.

(c) Aggravated criminal sodomy is a severity level 2, person felony.

History: L. 1969, ch. 180, § 21-3506; L. 1983, ch. 109, § 6; L. 1993, ch. 253, § 7; L. 1993, ch. 253, § 8; July 1.

Source or prior law:
21-907.

Law Review and Bar Journal References:

"Reform in Kansas Domestic Violence Legislation," David J. Gottlieb and L. Eric Johnson, 31 K.L.R. 527, 554 (1983).

"Survey of Kansas Law: Criminal Law," Robert A. Wason, 32 K.L.R. 395, 396, 400 (1984).

"Criminal Law: Multiplicity and the Independence of Aggravated Sexual Battery Under KAN. STAT. ANN. §21-3107(2) [State v. Mason, 827 P.2d 748 (Kan. 1992)]," Lance Thaxton, 32 W.L.J. 290, 291 (1993).

Attorney General's Opinions:

Rape; aggravated sodomy; rape shield statute; gender, 88-162.

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.

25. Mistrial declared after two and one-half days of trial, because of ineligible juror; double jeopardy did not attach. State v. Folkerts, 229 K. 608, 629 P.2d 173 (1981).

26. Forcing victim to commit sodomy constitutes bodily harm as used in 21-3421; charges not multiplicitous. State v. Cheers, 231 K. 161, 643 P.2d 154 (1982).

27. Multiple charges involving three victims consolidated for trial. State v. Bagby, 231 K. 176, 642 P.2d 993 (1982).

28. Psychiatrist's testimony that person suffers rape trauma syndrome held admissible. State v. Marks, 231 K. 645, 646, 647 P.2d 1292 (1982).

29. Substantial prejudice to defendant avoided; court sustained objection to prosecution questions regarding pending

aggravated battery charge. *State v. Stellwagen*, 232 K. 744, 659 P.2d 167 (1983).

30. No error in limiting cross-examination of witness, admitting hearsay evidence, excluding irrelevant evidence; erroneous jury instruction not prejudicial. *State v. Aldrich*, 232 K. 783, 658 P.2d 1027 (1983).

31. Crime committed on child complete in and of itself; kidnapping occurring in another county held to be independent. *State v. Calderon*, 233 K. 87, 88, 90, 91, 92, 661 P.2d 781 (1983).

32. Prior to amendment of act (July 1, 1983); husband not guilty of aggravated sodomy with wife. *State v. Dubish*, 234 K. 708, 712, 675 P.2d 877 (1984).

33. Identikit composite goes to weight and sufficiency; pretrial photographic lineup identification not impermissibly suggestive; spouse's observation of keys not privileged. *State v. Galloway*, 235 K. 70, 680 P.2d 268 (1984).

34. Foundation for admission of tape recordings in most jurisdictions outlined and applied ("911" recording of crime in progress). *State v. Williams*, 235 K. 485, 486, 491, 681 P.2d 660 (1984).

35. Refusal to commit pursuant to 22-3430; sentence imposed under 21-4608. *State v. Adkins*, 236 K. 259, 689 P.2d 880 (1984).

36. Behavior and comments of defendant during arrest admitted as part of *res gestae*. *State v. Davis*, 236 K. 538, 539, 694 P.2d 418 (1985).

37. Sufficiency of uncorroborated prosecutrix testimony evidence sustained. *State v. Lile*, 237 K. 210, 211, 699 P.2d 456 (1985).

38. Right to counsel infringed where law partner represents another charged with same crime and conflict arises. *State v. Lem'Mons*, 238 K. 1, 2, 705 P.2d 552 (1985).

39. Effect of delays from interlocutory appeals (22-3603) on constitutional right to speedy trial discussed. *State v. Galloway*, 238 K. 100, 708 P.2d 508 (1985).

40. In-custody statement without counsel, witness' comment on defendant's silence, impeachment of prosecution witnesses discussed. *State v. O'Neal*, 238 K. 183, 708 P.2d 206 (1985).

41. Evidence of prior crimes (60-455), sufficiency of complaint affidavit, photographic evidence, trial consolidation discussed. *State v. Breazeale*, 238 K. 714, 714 P.2d 1356 (1986).

42. Conviction for acts committed on Indian reservation; Allen instruction, Brady evidence rule, sufficiency of evidence examined. *United States v. Blandin*, 784 F.2d 1048 (1986).

43. Warrantless arrest, confession, prosecutorial misconduct, expert testimony, lesser included offenses, excessive sentencing examined. *State v. Strauch*, 239 K. 203, 718 P.2d 613 (1986).

44. Admission of state rebuttal testimony by former prosecuting attorney and rape counselor examined. *State v. Hayes*, 239 K. 443, 720 P.2d 1049 (1986).

45. Statute compared with 21-3503 and applicability of each regarding date of crime examined. *State v. Jackson*, 239 K. 463, 471, 721 P.2d 232 (1986).

46. Expert testimony on rape trauma syndrome where consent is defense (21-3502) examined. *State v. McQuillen*, 239 K. 590, 721 P.2d 740 (1986).

47. Direct appeal from sentence imposed after plea of guilty or *nolo contendere* (22-3602) examined. *State v. Harrold*, 239 K. 645, 722 P.2d 563 (1986).

48. Videotaped testimony of child victim does not per se violate right to confront witness; newly discovered evidence;

constitutional issue first raised on appeal. *State v. Johnson*, 240 K. 326, 729 P.2d 1163 (1986).

49. Recommendation regarding training during incarceration, consideration of sentencing criteria examined. *State v. Bennett*, 240 K. 575, 731 P.2d 284 (1987).

50. Use of state rebuttal testimony on alibi defense, eyewitness identification instruction examined. *State v. Willis*, 240 K. 580, 731 P.2d 287 (1987).

51. Technical irregularities in execution of search warrant, voluntariness of confession examined. *State v. Holloman*, 240 K. 589, 731 P.2d 294 (1987).

52. Cited by concurring judge in majority holding that aggravated sexual battery (21-3518) not lesser included offense of indecent liberties (21-3503). *State v. Fulcher*, 12 K.A.2d 169, 173, 737 P.2d 61 (1987).

53. Non-identical offense to aggravated incest (21-3603), 60-460 hearing examined. *State v. Hutchcraft*, 242 K. 55, 744 P.2d 849 (1987).

54. Prior crimes instruction, jury requests for information, venue, victim's prior sexual conduct examined. *State v. Redford*, 242 K. 658, 659, 750 P.2d 1013 (1988).

55. Conviction affirmed; alleged child victim's out-of-court statements (60-460(dd)), evidence of defendant's character, alleged victim's preliminary hearing testimony, closing argument examined. *State v. Koune*, 243 K. 218, 757 P.2d 289 (1988).

56. Conviction affirmed; incidental charges, multiplicitous charges, sufficiency of evidence examined. *State v. Howard*, 243 K. 699, 763 P.2d 607 (1988).

57. Cited; age of victim in information as common-sense construction of nonmarriage, testimony of child protection case worker examined. *State v. Wade*, 244 K. 136, 766 P.2d 811 (1989).

58. Evidence of prior crimes, preservation of in limine issue, time limitations on closing arguments; retroactivity of statutes of limitations examined. *State v. Nunn*, 244 K. 207, 209, 768 P.2d 268 (1989).

59. Consideration of separate indictments, prosecutorial misconduct in closing arguments examined. *State v. Walker*, 244 K. 275, 276, 768 P.2d 290 (1989).

60. Expert testimony on characteristics of rape victims and expert witnesses, victim's behavior subsequent to alleged assaults examined. *State v. Reser*, 244 K. 306, 767 P.2d 1277 (1989).

61. Absence of instruction on attempted (21-3107) aggravated criminal sodomy permitting child-victim's testimony by closed-circuit television (22-3434) examined. *State v. Eaton*, 244 K. 370, 371, 769 P.2d 1157 (1989).

62. Right to speedy trial, expert witness testimony regarding psychology and treatability of sexual offenders examined. *State v. Clements*, 244 K. 411, 770 P.2d 447 (1989).

63. Time limits on district court's jurisdiction to modify sentences (21-4603(3)), procedures to attack conditions of imprisonment (60-1501 et seq) examined. *State v. Saft*, 244 K. 517, 521, 769 P.2d 675 (1989).

64. Exculpatory evidence, prior crime evidence, sufficiency of evidence, eyewitness identification instruction examined. *State v. Smith*, 245 K. 381, 383, 781 P.2d 666 (1989).

65. Sentencing and resentencing after remand; vindictiveness and discretion examined. *State v. Heywood*, 245 K. 615, 783 P.2d 890 (1989).

66. Oral-genital stimulation known as *cunnilingus* is not included within meaning of sodomy; conviction based thereon cannot stand. *State v. Moppin*, 245 K. 639, 644, 783 P.2d 878 (1989).

67. Aggravated sexual battery (21-3518) not an included crime hereunder. *State v. Damewood*, 245 K. 676, 686, 783 P.2d 1249 (1989).

68. Delays in holding trial caused by defendant's motion for competency hearing, basis of search warrant examined. *State v. Prewett*, 246 K. 39, 40, 785 P.2d 956 (1990).

69. Warrantless arrest for felony upon probable cause on person's home front porch as no intrusion on privacy examined. *State v. Riddle*, 246 K. 277, 788 P.2d 266 (1990).

70. Distinctions among 22-3433, 22-3434 and 60-460(dd) regarding child-victim testimony examined; application of statutes under facts presented determined. *State v. Lamb*, 14 K.A.2d 664, 798 P.2d 506 (1990).

71. Suggestive pretrial procedures, evidence from automobile and home, sufficiency of evidence, peremptory challenges examined. *State v. Skelton*, 247 K. 34, 795 P.2d 349 (1990).

72. Charge of anal sex as sufficient, jury instructions on crime and other crimes evidence, social worker's testimony examined. *State v. Wilson*, 247 K. 87, 795 P.2d 336 (1990).

73. Cunnilingus as not constituting sodomy (21-3505) noted; ruling not applied retroactively. *State v. Neer*, 247 K. 137, 138, 795 P.2d 362 (1990).

74. Cunnilingus as not constituting sodomy noted; conviction for aggravated criminal sodomy based upon such act cannot stand. *State v. Crawford*, 247 K. 223, 225, 795 P.2d 401 (1990).

75. Cunnilingus as not constituting sodomy noted; conviction for aggravated incest (21-3603) based upon such act cannot stand. *State v. Schad*, 247 K. 242, 244, 795 P.2d 406 (1990).

76. Sentence exceeding life expectancy, timeliness and merits of motion for new trial, when counsel required for postconviction proceedings examined. *State v. Nunn*, 247 K. 576, 577, 802 P.2d 547 (1990).

77. Lack of requirement to change life sentence so good time credits apply, when counsel required for postconviction motions examined. *State v. Carmichael*, 247 K. 619, 620, 801 P.2d 1315 (1990).

78. Rules governing motions for new trial based upon newly discovered evidence reiterated. *State v. Redford*, 248 K. 130, 804 P.2d 983 (1991).

79. Late challenge to sufficiency of information, circumstances surrounding sentencing hearings examined. *State v. Waterberry*, 248 K. 169, 804 P.2d 1000 (1991).

80. Attempted aggravated criminal sodomy as underlying felony in felony murder question examined. *State v. William*, 248 K. 389, 400, 807 P.2d 1292 (1991).

81. Aggravated sexual battery not lesser included crime of attempted aggravated sodomy or attempted rape; test for determining multiplicitous charges. *State v. Mason*, 250 K. 393, 394, 827 P.2d 748 (1992).

82. Jury selection by voter registration lists, sufficiency of evidence as participant in crime, evidence of gang membership examined. *State v. Bailey*, 251 K. 156, 158, 834 P.2d 342 (1992).

83. Admissibility of minor victim's entire statement, testimony of mental health therapist as to truth of minor victim's story, sentence imposed examined. *State v. Arrington*, 251 K. 747, 840 P.2d 477 (1992).

84. Evidence supporting determination to try juvenile as adult (38-1636) upheld; admission of confession, evidence of gang membership examined. *State v. Hooks*, 251 K. 755, 756, 840 P.2d 483 (1992).

85. Admissibility of prior crimes evidence and preservation of issue on appeal examined. *State v. Clements*, 252 K. 86, 843 P.2d 679 (1992).

86. Trial of juvenile as adult, selection of jury, application of rape shield statute. *State v. Walker*, 252 K. 117, 118, 843 P.2d 203 (1992).

87. Voluntariness of confession, extrajudicial statement of accused, investigative services for indigent defendant examined. *State v. Snodgrass*, 252 K. 253, 254, 843 P.2d 720 (1992).

88. Under facts alleged and proved, conviction of aggravated incest (21-3603) bars prosecution hereunder. *State v. Chandler*, 17 K.A.2d 512, 839 P.2d 551 (1992).

89. Cited; defendant allowed one request for modification of sentence under 21-4603. *State v. Smith*, 17 K.A.2d 746, 843 P.2d 297 (1992).

90. Jury selection, confession, gang membership, rape shield statute, photographic exhibits, trial misconduct, instructions, peremptory challenge, "Hard 40" statute, examined. *State v. Walker*, 252 K. 279, 281, 845 P.2d 1 (1993).

91. Application of 21-4601 and 21-4606 to sentencing rather than modification noted; when provisions of 21-4603(4) applicable examined. *State v. Mareska*, 253 K. 431, 855 P.2d 954 (1993).

92. Indigent criminal defendant's right to counsel, charging two or more crimes in same complaint examined. *State v. Cromwell*, 253 K. 495, 497, 856 P.2d 1299 (1993).

93. Victim's mental capacity to consent to intercourse was issue for trier of fact. *State v. Juarez*, 19 K.A.2d 37, 39, 861 P.2d 1382 (1993).

94. Whether cumulative erroneous jury instructions regarding essential elements of the crime charged is reversible error and whether codefendant who received harsher sentence than other codefendant furnished record showing prejudicial error examined. *State v. Castoreno*, 255 K. 401, 408, 412, 874 P.2d 1173 (1994).

95. Whether defendant sentenced after KSGA (21-4701 et seq.) enactment for crimes committed before enactment is denied equal protection by preclusion of sentencing guideline retroactivity examined. *State v. Fierro*, 257 K. 639, 657, 895 P.2d 186 (1995).

96. Whether aggravated sexual battery is a lesser included offense of aggravated criminal sodomy examined. *State v. Horn*, 20 K.A.2d 689, 690, 892 P.2d 513 (1995).

21-3507. Adultery. (1) Adultery is engaging in sexual intercourse or sodomy with a person who is not married to the offender if:

(a) The offender is married; or

(b) The offender is not married and knows that the other person involved in the act is married.

(2) Adultery is a class C misdemeanor.

History: L. 1969, ch. 180, § 21-3507; L. 1983, ch. 109, § 7; July 1.

Source or prior law:
21-908.

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.

2. Not considered lesser included offense (21-3107) of rape (21-3502); other non-included offenses noted. *State v. Moore*, 242 K. 1, 3, 748 P.2d 833 (1987).

21-3508. Lewd and lascivious behavior.

(a) Lewd and lascivious behavior is:

(1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or

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

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

History: L. 1969, ch. 180, § 21-3508; L. 1983, ch. 109, § 8; L. 1992, ch. 298, § 25; L. 1993, ch. 291, § 46; July 1.

Source or prior law:
21-908.

Law Review and Bar Journal References:

"Constitutional Law: Stripping Nude Dancing of First Amendment Protection [Barnes v. Glen Theatre, Inc., 111 S.Ct. 2456 (1991)]." Sheldon Moss, 31 W.L.J. 618, 619 (1992).

Attorney General's Opinions:

Persons prohibited from employment in boarding homes for children or family day care homes; effect of certain misdemeanor convictions. 85-154.

Juveniles; collection of blood and saliva specimens; fingerprinting by KBI. 95-63.

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.

5. Offense hereunder not lesser degree of aggravated sodomy nor rape. State v. Davis, 236 K. 538, 542, 694 P.2d 418 (1985).

6. Resolution using statutory language aimed at sex for hire in adult entertainment centers not a ban on nude dancing. Moody v. Board of Shawnee County Comm'rs, 237 K. 67, 75, 697 P.2d 1310 (1985).

7. Cited; intent to arouse or gratify sexual desire makes offense narrow and specific; not unconstitutionally overbroad or vague. State v. Perrigo, 10 K.A.2d 651, 655, 708 P.2d 987 (1985).

8. Not considered lesser included offense (21-3107) of rape (21-3502); other non-included offenses noted. State v. Moore, 242 K. 1, 3, 748 P.2d 833 (1987).

9. Evidence of prior false accusations as not evidence contemplated by rape-shield law (21-3525); right to cross-exami-

nation examined. State v. Barber, 13 K.A.2d 224, 766 P.2d 1288 (1989).

10. Public exposure not per se violative of statute; intent may be inferred by conduct. U.S. v. Cox, 929 F.2d 1511 (1991).

21-3509.

History: L. 1969, ch. 180, § 21-3509; Repealed, L. 1992, ch. 298, § 97; Repealed, L. 1993, ch. 291, § 283; July 1.

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; right to counsel infringed where law partner represents another charged with same crime and conflict arises. State v. Lemmons, 238 K. 1, 2, 705 P.2d 552 (1985).

3. What actions necessary to toll statute of limitations (21-3106) discussed. State v. Mills, 238 K. 189, 708 P.2d 1079 (1985).

4. Delays in holding trial caused by defendant's motion for competency hearing, basis of search warrant examined. State v. Prewett, 246 K. 39, 40, 785 P.2d 956 (1990).

5. Aggravated sexual battery (21-3518) as not lesser included crime of rape, (21-3502) examined; holdings to the contrary disapproved. State v. Gibson, 246 K. 298, 302, 787 P.2d 1176 (1990).

21-3510. Indecent solicitation of a child. (a) Indecent solicitation of a child is:

(1) Enticing or soliciting a child 14 or more years of age but less than 16 years of age to commit or to submit to an unlawful sexual act; or

(2) inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Indecent solicitation of a child is a severity level 7, person felony.

History: L. 1969, ch. 180, § 21-3510; L. 1992, ch. 298, § 26; L. 1993, ch. 291, § 47; July 1.

Attorney General's Opinions:

Code for care of children; definition of sexual abuse and exploitation in code; conformity with federal regulations. 83-186.

Persons prohibited from employment in boarding homes for children or family day care homes; effect of certain misdemeanor convictions. 85-154.

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.

3. Aggravated sexual battery (21-3518) as not lesser included crime of rape, (21-3502) examined; holdings to the contrary disapproved. State v. Gibson, 246 K. 298, 302, 787 P.2d 1176 (1990).

21-3511. Aggravated indecent solicitation of a child. Aggravated indecent solicitation of a child is:

(a) Enticing or soliciting a child under the age of 14 years to commit or to submit to an unlawful sexual act; or

(b) inviting, persuading or attempting to persuade a child under the age of 14 years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

Aggravated indecent solicitation of a child is a severity level 6, person felony.

History: L. 1969, ch. 180, § 21-3511; L. 1992, ch. 298, § 27; L. 1993, ch. 291, § 48; July 1.

Attorney General's Opinions:

Code for care of children; definition of sexual abuse and exploitation in code; conformity with federal regulations. 83-186.

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.

3. Mother's testimony at trial as to child's statements permissible hearsay under 60-460(dd); Sixth Amendment not violated. *State v. Pendelton*, 10 K.A.2d 26, 32, 690 P.2d 959 (1984).

4. Cited; provisions of 60-460(dd) (statements by children) inapplicable to proceedings under juvenile offenders code (38-1601 et seq). In re *Mary P.*, 237 K. 456, 701 P.2d 681 (1985).

5. Cited; expungement of 1974 conviction record, ex post facto nature of 21-4619 examined. *State v. Anderson*, 12 K.A.2d 342, 744 P.2d 143 (1987).

6. Aggravated sexual battery (21-3518) as not lesser included crime of rape, (21-3502) examined; holdings to the contrary disapproved. *State v. Gibson*, 246 K. 298, 302, 787 P.2d 1176 (1990).

21-3512. Prostitution. (a) 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:

- (1) Sexual intercourse;
- (2) sodomy; or
- (3) 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.

(b) Prostitution is a class B nonperson misdemeanor.

History: L. 1969, ch. 180, § 21-3512; L. 1980, ch. 98, § 1; L. 1983, ch. 109, § 9; L. 1992, ch. 239, § 80; L. 1993, ch. 291, § 49; July 1.

Revisor's Note:

For Source or Prior Law, 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.

2. Statute not unconstitutionally vague nor overly broad. *State v. Parker*, 236 K. 353, 356, 690 P.2d 1353 (1984).

3. Cited; prior conviction of this statute and related statutes as barring readmission to practice law examined. In re *Russo*, 244 K. 3, 765 P.2d 166 (1988).

21-3513. Promoting prostitution. (a)

Promoting prostitution is:

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

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

(3) procuring a prostitute for a house of prostitution;

(4) inducing another to become a prostitute;

(5) soliciting a patron for a prostitute or for a house of prostitution;

(6) procuring a prostitute for a patron;

(7) 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

(8) being employed to perform any act which is prohibited by this section.

(b) (1) Promoting prostitution is a class A person misdemeanor when the prostitute is 16 or more years of age.

(2) Promoting prostitution when the prostitute is 16 or more years of age is a severity level 7, person felony if committed by a person who has, prior to the commission of the crime, been convicted of promoting prostitution.

(3) Promoting prostitution is a severity level 6, person felony when the prostitute is under 16 years of age.

History: L. 1969, ch. 180, § 21-3513; L. 1986, ch. 120, § 1; L. 1992, ch. 298, § 28; L. 1993, ch. 291, § 50; L. 1994, ch. 291, § 25; July 1.

Revisor's Note:

For Source or Prior Law, 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).

Attorney General's Opinions:

Sex offenses; promoting prostitution; newspaper advertisements. 83-131.

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.

5. Cited; prior conviction of this statute and related statutes as barring readmission to practice law examined. *In re Russo*, 244 K. 3, 765 P.2d 166 (1988).

21-3514.

History: L. 1969, ch. 180, § 21-3514; Repealed, L. 1992, ch. 298, § 97; Repealed, L. 1993, ch. 291, § 283; July 1.

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.

2. Cited; knowledge, intent or absence of mistake as not constituting element of subsequent offense under 21-4619(f)(4) (expungement statute). *State v. Riedel*, 242 K. 834, 835, 752 P.2d 115 (1988).

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, sodomy or any unlawful sexual act with a prostitute; or

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

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

History: L. 1969, ch. 180, § 21-3515; L. 1983, ch. 109, § 10; July 1.

Source or prior law:

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

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.

(a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 16 years of age

to engage in sexually explicit conduct for the purpose of promoting any performance;

(2) possessing any film, photograph, negative, slide, book, magazine or other printed or visual medium or any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk in which a real child under 16 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another;

(3) being a parent, guardian or other person having custody or control of a child under 16 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or

(4) promoting any performance that includes sexually explicit conduct by a child under 16 years of age, knowing the character and content of the performance.

(b) As used in this section:

(1) "Sexually explicit conduct" means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose of sexual stimulation; or lewd exhibition of the genitals or pubic area of any person.

(2) "Promoting" means procuring, selling, providing, lending, mailing, delivering, transferring, transmitting, distributing, circulating, disseminating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender, the child or another.

(3) "Performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photo-

topcopy, video tape or video laser disk or any play or other live presentation.

(4) "Nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(c) Sexual exploitation of a child is a severity level 5, person felony.

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

History: L. 1978, ch. 122, § 1; L. 1985, ch. 109, § 1; L. 1986, ch. 121, § 1; L. 1989, ch. 90, § 1; L. 1992, ch. 298, § 29; L. 1993, ch. 291, § 51; L. 1995, ch. 251, § 11; 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).

Attorney General's Opinions:

Code for care of children; definition of sexual abuse and exploitation in code; conformity with federal regulations. 83-186.

CASE ANNOTATIONS

1. Statutory guidelines for acceptance of guilty plea (22-3210) examined in 60-1507 proceeding. *Noble v. State*, 240 K., 162, 727 P.2d 473 (1986).

2. Undeveloped photographic film comes within meaning of "any film" as set out in (1)(b). *State v. Peltier*, 249 K. 415, 430, 819 P.2d 628 (1991).

3. Failure of trial court to define "sexually explicit conduct" was not clearly erroneous. *State v. Fore*, 17 K.A.2d 703, 706, 843 P.2d 292 (1992).

21-3517. Sexual battery. (a) Sexual battery is the intentional touching of the person of another who is 16 or more years of age, who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(b) Sexual battery is a class A person misdemeanor.

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

History: L. 1983, ch. 109, § 13; L. 1992, ch. 298, § 30; L. 1993, ch. 291, § 52; July 1.

Law Review and Bar Journal References:

"Family Law: Children Having Children—A Father's Age is Irrelevant for Purposes of Determining Parental Responsibility [State ex rel. *Hermesmann v. Seyer*, 847 P.2d 1273 (Kan. 1993)]," Rebecca Proctor Wempe, 33 W.L.J. 247, 255 (1993).

CASE ANNOTATIONS

1. Plea and conviction void where defendant erroneously bound over (22-2902) on misdemeanor. *State v. Leslie*, 237 K. 318, 319, 699 P.2d 510 (1985).

2. Sexual battery and aggravated sexual battery (21-3518) are not lesser included offenses of rape (21-3502). *State v. Galloway*, 238 K. 415, 418, 710 P.2d 1320 (1985).

3. Cited; 21-3518 as lesser included offense of prior 21-3504 examined. *State v. Ramos*, 240 K. 485, 488, 731 P.2d 837 (1987).

4. Cited by concurring judge in majority holding that aggravated sexual battery (21-3518) not lesser included offense of indecent liberties (21-3503). *State v. Fulcher*, 12 K.A.2d 169, 173, 737 P.2d 61 (1987).

5. Cited; aggravated sexual battery (21-3518) as lesser included offense of indecent liberties with child (21-3503) examined. *State v. Hutchcraft*, 242 K. 55, 59, 744 P.2d 849 (1987).

6. Cited; 60-1507 question on jurisdiction to convict of aggravated sexual battery (21-3518) on information charging rape (21-3502) examined. *Patterson v. State*, 12 K.A.2d 731, 733, 754 P.2d 1207 (1988).

7. Cited; two-pronged test to determine whether lesser crime is lesser included offense (21-3107(2)(d)) examined. *State v. Fike*, 243 K. 365, 369, 757 P.2d 724 (1988).

8. Circumstances indicating lack of consent examined. *State v. Blount*, 13 K.A.2d 347, 348, 770 P.2d 852 (1989).

9. Admissibility of prior crimes evidence and preservation of issue on appeal examined. *State v. Clements*, 252 K. 86, 843 P.2d 679 (1992).

10. Whether evidence supported conviction where defendant alleges battery occurred after victim died examined. *State v. Waddell*, 255 K. 424, 435, 874 P.2d 651 (1994).

21-3518. Aggravated sexual battery. (a) Aggravated sexual battery is the intentional touching of the person of another who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another under any of the following circumstances:

(1) When the victim is overcome by force or fear;

(2) when the victim is unconscious or physically powerless;

(3) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(b) Aggravated sexual battery is a severity level 5, person felony.

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

History: L. 1983, ch. 109, § 14; L. 1993, ch. 253, § 9; L. 1993, ch. 253, § 10; July 1.

Law Review and Bar Journal References:

"Criminal Law: Multiplicity and the Independence of Aggravated Sexual Battery Under KAN. STAT. ANN. §21-3107(2) [State v. *Mason*, 827 P.2d 748 (Kan. 1992)]," Lance Thaxton, 32 W.L.J. 290, 292 (1993).

"Family Law: Children Having Children—A Father's Age is Irrelevant for Purposes of Determining Parental Responsibility [State ex rel. Hermesmann v. Seyer, 847 P.2d 1273 (Kan. 1993)]," Rebecca Proctor Wempe, 33 W.L.J. 247, 255 (1993).

CASE ANNOTATIONS

1. No jeopardy where defendant erroneously bound over (22-2902) on misdemeanor; refiled within 21-3106 permitted on remand. State v. Leslie, 237 K. 318, 319, 699 P.2d 510 (1985).

2. Sexual battery (21-3517) and aggravated sexual battery hereunder are not lesser included offenses of rape (21-3502). State v. Galloway, 238 K. 415, 418, 710 P.2d 1320 (1985).

3. Cited; 21-3518 as lesser included offense of prior 21-3504 examined. State v. Ramos, 240 K. 485, 731 P.2d 837 (1987).

4. Cited; not lesser included offense of indecent liberties (21-3503), no instruction necessary. State v. Fulcher, 12 K.A.2d 169, 170, 737 P.2d 61 (1987).

5. Not considered lesser included offense (21-3107) of rape (21-3502); other non-included offenses noted. State v. Moore, 242 K. 1, 3, 748 P.2d 833 (1987).

6. Crime hereunder, lesser included offense of indecent liberties with child (21-3503). State v. Hutchcraft, 242 K. 55, 744 P.2d 849 (1987).

7. Cited; 60-1507 question on jurisdiction to convict of aggravated sexual battery on information charging rape (21-3502) examined. Patterson v. State, 12 K.A.2d 731, 754 P.2d 1207 (1988).

8. Aggravated sexual battery not lesser included offense of indecent liberties with a child (21-3503(1)(b)). State v. Fike, 243 K. 365, 373, 757 P.2d 724 (1988).

9. Statute not unconstitutionally vague for failing to define lack of consent; consent or lack thereof examined. State v. Blount, 13 K.A.2d 347, 351, 770 P.2d 852 (1989).

10. Aggravated sexual battery not lesser included offense of indecent liberties with a child (21-3503). State v. Moppin, 245 K. 639, 644, 783 P.2d 878 (1989).

11. Aggravated sexual battery not included crime of aggravated criminal sodomy (21-3506) or indecent liberties with child (21-3503). State v. Damewood, 245 K. 676, 686, 783 P.2d 1249 (1989).

12. Aggravated sexual battery not lesser included crime of rape (21-3502); holdings to the contrary disapproved. State v. Gibson, 246 K. 298, 787 P.2d 1176 (1990).

13. Mandate in 1989 Supp. 21-4603(3)(a) (now 1990 Supp. 21-4603(4)(a)) regarding sentence modification examined in depth; held constitutional. State v. Reed, 248 K. 792, 794, 811 P.2d 1163 (1991).

14. Aggravated sexual battery not lesser included crime of attempted aggravated sodomy or attempted rape; test for determining multiplicitous charges. State v. Mason, 250 K. 393, 394, 399, 400, 827 P.2d 748 (1992).

15. Cited where conviction of aggravated incest, under facts alleged and proved barred prosecution for indecent liberties and aggravated criminal sodomy. State v. Chandler, 17 K.A.2d 512, 515, 839 P.2d 551 (1992).

16. Guilty plea reversed where no showing that court met conditions of 22-3210; no presumption of compliance where record silent. State v. Anziana, 17 K.A.2d 570, 840 P.2d 550 (1992).

17. Whether codefendant who received harsher sentence than other codefendant furnished record showing prejudicial error examined. State v. Castoreno, 255 K. 401, 412, 874 P.2d 1173 (1994).

18. Whether evidence supported conviction where defendant alleges battery occurred after victim died examined. State v. Waddell, 255 K. 424, 435, 874 P.2d 651 (1994).

21-3519.

History: L. 1986, ch. 121, § 2; Repealed, L. 1992, ch. 298, § 97; Repealed, L. 1993, ch. 291, § 283; July 1.

CASE ANNOTATIONS

1. Cited; two-pronged test to determine whether lesser crime is lesser included offense (21-3107(2)(d)) examined. State v. Fike, 243 K. 365, 372, 757 P.2d 724 (1988).

21-3520. Unlawful sexual relations: (a) Unlawful sexual relations is engaging in consensual sexual intercourse or sodomy with a person who is not married to the offender if:

(1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate; or

(2) the offender is a parole officer and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender.

(b) For purposes of this act:

(1) "Correctional institution" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(2) "inmate" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(3) "parole officer" means the same as prescribed by K.S.A. 75-5202, and amendments thereto; and

(4) "postrelease supervision" means the same as prescribed in the Kansas sentencing guidelines act in K.S.A. 21-4703.

(c) Unlawful sexual relations is a severity level 10 person felony.

History: L. 1993, ch. 142, § 1; July 1.

21-3521 to 21-3524. Reserved.

21-3525. Evidence of complaining witness' previous sexual conduct in prosecutions for sex offenses; motions; notice. (a) The provisions of this section shall apply only in a prosecution for: (1) Rape, as defined by K.S.A. 21-3502, and amendments thereto; (2) indecent liberties with a child, as defined in K.S.A. 21-3503, and amendments thereto; (3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504,

and amendments thereto; (4) criminal sodomy, as defined in subsections (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto; (5) aggravated criminal sodomy as defined by K.S.A. 21-3506, and amendments thereto; (6) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, and amendments thereto; (7) sexual exploitation of a child as defined in K.S.A. 21-3516, and amendments thereto; (8) aggravated sexual battery, as defined in K.S.A. 21-3518, and amendments thereto; (9) incest, as defined in K.S.A. 21-3602, and amendments thereto; (10) aggravated incest, as defined in K.S.A. 21-3603, and amendments thereto; (11) indecent solicitation of a child, as defined in K.S.A. 21-3510 and amendments thereto; (12) aggravated assault, as defined in K.S.A. 21-3410, and amendments thereto, with intent to commit any crime specified above; (13) sexual battery, as defined in K.S.A. 21-3517, and amendments thereto; or (14) attempt, as defined in K.S.A. 21-3301, and amendments thereto, or conspiracy, as defined in K.S.A. 21-3302, and amendments thereto, to commit any crime specified above.

(b) Except as provided in subsection (c), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto in the presence of the jury, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion must be made at least seven days before the commencement of the trial unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The motion, affidavits and any supporting or responding documents of the motion shall not be made available for examination without a written order of the court except that such motion, affidavits and supporting and responding documents or testimony when requested shall be made available to the defendant or the defendant's counsel and to the prosecutor. The defendant, defendant's counsel and prosecutor shall be prohibited from disclosing any matters relating to the motion, affidavits and any supporting or responding documents of the motion. The court

shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(c) In any prosecution for a crime designated in subsection (a), the prosecuting attorney may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(d) As used in this section, "complaining witness" means the alleged victim of any crime designated in subsection (a), the prosecution of which is subject to this section.

History: L. 1976, ch. 162, § 1; L. 1983, ch. 109, § 15; L. 1991, ch. 87, § 1; L. 1992, ch. 298, § 32; L. 1993, ch. 291, § 53; July 1.

Law Review and Bar Journal References:

Protected testimony of rape victim, 18 W.L.J. 665, 667, 669, 670, 671, 672 (1979).

"Survey of Kansas Law: Evidence," Spencer A. Gard, 27 K.L.R. 225, 234 (1979).

"The Kansas Rape Shield Law," 2 J.K.T.L.A. No. 4, 11, 12 (1978).

"Kansas Recognizes Rape Trauma Syndrome," Charles H. Herd, 24 W.L.J. 653, 662 (1985).

Attorney General's Opinions:

Rape; aggravated sodomy; rape shield statute; gender. 88-162.

CASE ANNOTATIONS

1. Applied; trial court did not abuse discretion in restricting cross-examination in prosecution for rape. *State v. Corn*, 223 K. 583, 585, 575 P.2d 1308.

2. Cited; court properly refused to allow questions concerning rape victim's prior sexual experience. *State v. Cook*, 224 K. 132, 135, 577 P.2d 257.

3. Section held constitutional; limitations on evidence of previous sexual conduct not violation of due process; conviction affirmed. *State v. Williams*, 224 K. 468, 469, 470, 580 P.2d 1341.

4. Statute constitutional; sixth amendment guarantees not offended; no abuse of discretion by trial court. *State v. Blue*, 225 K. 576, 578, 579, 580, 592 P.2d 897.

5. Construed and applied on appeal from conviction under 21-3502 and 21-3205; section constitutional; judgment affirmed. In re Nichols, 2 K.A.2d 431, 432, 433, 435, 436, 437, 580 P.2d 1370.

6. Mentioned; the trial judge has discretion to order a psychiatric examination of a complaining witness in a sex crime case. State v. Gregg, 226 K. 481, 489, 602 P.2d 85.

7. No abuse of discretion in excluding evidence of questionable relevancy, though possibly not within purview of section. State v. Washington, 226 K. 768, 773, 774, 602 P.2d 1377.

8. Conviction of rape upheld; victim's alleged prior sex acts not admitted because required affidavit not furnished. State v. Sanders, 227 K. 892 893, 610 P.2d 633.

9. Conviction of rape upheld; not error for trial court to exclude evidence of victim's prior sexual activity. State v. Anderson, 230 K. 681, 682, 640 P.2d 1232 (1982).

10. Rape victim's prior sexual activity generally inadmissible; no implication of consent to act complained of. State v. Stellwagen, 232 K. 744, 746, 747, 659 P.2d 167 (1983).

11. Evidence as to prior sexual conduct between defendant and victim, although material, was irrelevant as too remote. State v. Williams, 235 K. 485, 488, 489, 681 P.2d 660 (1984).

12. Admission of rape trauma syndrome testimony not violation of rape shield provisions. State v. McQuillen, 236 K. 161, 172, 689 P.2d 822 (1984).

13. Evidence of prior sexual conduct allowed if proven relevant to any fact at issue. State v. Bressman, 236 K. 296, 299, 300, 689 P.2d 901 (1984).

14. Evidence that victim pregnant would not tend to show intercourse was consensual. State v. Zuniga, 237 K. 788, 793, 703 P.2d 805 (1985).

15. Term "sexual conduct" is not so vague that person of common intelligence must guess at meaning. State v. Carmichael, 240 K. 149, 154, 156, 727 P.2d 918 (1986).

16. Defendant may not ignore requirements herein because of other crimes charged in addition to those covered. State v. Redford, 242 K. 658, 673, 674, 750 P.2d 1013 (1988).

17. Evidence of prior false accusations by complaining witness in indecent liberties (21-3508) case is not evidence contemplated hereunder. State v. Barber, 13 K.A.2d 224, 225, 226, 766 P.2d 1288 (1989).

18. Exclusion of testimony that victim formed social acquaintances with men on spontaneous basis examined. State v. Gonzales, 245 K. 691, 698, 783 P.2d 1239 (1989).

19. Defendant authorized to offer relevant rebuttal evidence where state introduces evidence of previous sexual conduct. State v. Beans, 247 K. 343, 348, 800 P.2d 145 (1990).

20. Two-fold purpose of statute stated; evidence that another may have committed alleged abuses that impeaches credibility of witness admissible. State v. Arrington, 251 K. 747, 749, 750, 840 P.2d 477 (1992).

21. Absent waiver, defendant's failure to comply with notice and hearing provisions precludes admission of evidence at trial. State v. Walker, 252 K. 117, 134, 843 P.2d 203 (1992).

22. Admissibility of rebuttal evidence offered concerning previous sexual conduct of victim examined; review of rape shield cases discussed. State v. Chandler, 17 K.A.2d 512, 516, 839 P.2d 551 (1992).

23. Admissibility of evidence of prior sexual contact of sexually abused victim examined. State v. Walker, 252 K. 279, 285, 845 P.2d 1 (1993).

24. Admission of testimony as to the reputation or lack of veracity of complaining witness not violative hereof. State v. Lewis, 252 K. 535, 538, 847 P.2d 690 (1993).

25. Cited in holding court lacked jurisdiction to convict father of rape of 15 year-old daughter where father also convicted of aggravated kidnapping. Carmichael v. State, 18 K.A.2d 435, 437, 856 P.2d 934 (1993).

26. Whether court abused discretion by suppressing evidence of prior sexual experience of child victim examined. State v. Lavery, 19 K.A.2d 673, 679, 683, 877 P.2d 443 (1994).

Article 36.—CRIMES AFFECTING FAMILY RELATIONSHIPS AND CHILDREN

Law Review and Bar Journal References:

"A Quantitative and Descriptive Survey of Evidence Law in the Kansas Appellate Courts," Stanley D. Davis, 37 K.L.R. 715, 718 (1989).

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

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

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

(3) cohabitation within this state after marriage in another state or country under circumstances described in subsection (a)(1) or (a)(2).

(b) 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.

(c) Bigamy is a severity level 10, nonperson felony.

History: L. 1969, ch. 180, § 21-3601; L. 1992, ch. 239, § 87; L. 1993, ch. 291, § 54; July 1,

Source or prior law: 21-901, 21-902, 21-903, 21-905.

Revisor's Note:

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

Law Review and Bar Journal References:

"Survey of Kansas Law: Family Law," Nancy G. Maxwell, 37 K.L.R. 801, 806 (1989).

CASE ANNOTATIONS

1. Annulment of bigamous marriage no defense to prosecution for crime of bigamy. State v. Fitzgerald, 240 K. 187, 190, 726 P.2d 1344 (1986).

21-3602. Incest. Incest is marriage to or engaging in otherwise lawful sexual intercourse or sodomy, as defined by K.S.A. 21-3501 and amendments thereto, with a person who is 18 or more years of age and who is known to the offender to be related to the offender as any of the following biological relatives: parent, child, grandparent of any degree, grandchild of any degree, brother, sis-

by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building, and within any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse, is possession of a firearm by a person other than a commissioned law enforcement officer, a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state, any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer or a member of the military of this state or the United States engaged in the performance of duties who brings a firearm into, or possesses a firearm within, the state capitol building, any state legislative office, any office of the governor or office of other state government elected official, any hearing room in which any committee of the state legislature or either house thereof is conducting a hearing, the governor's residence, on the grounds of or in any building on the grounds of the governor's residence or the Landon state office building, Docking state office building, Kansas judicial center, county courthouses unless otherwise allowed, or any other state-owned or leased building, so designated.

(b) It is not a violation of this section for the governor, the governor's immediate family, or specifically authorized guests 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.

(c) Violation of subsection (a) is a class B non-person select misdemeanor.

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

History: L. 1991, ch. 89, § 1; L. 1992, ch. 298, § 80; L. 1993, ch. 291, § 157; July 1.

21-4219. Criminal discharge of a firearm at an unoccupied dwelling. (a) Criminal discharge of a firearm at an unoccupied dwelling is the malicious, intentional and unauthorized discharge of any firearm at an unoccupied dwelling.

Criminal discharge of a firearm at an unoccupied dwelling is a severity level 8, person felony.

(b) Except as provided in K.S.A. 21-3411, and amendments thereto, criminal discharge of a firearm at an occupied building or occupied vehicle is the malicious, intentional and unauthorized discharge of a firearm at a dwelling, building, struc-

ture, motor vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property in which there is a human being who is not placed in immediate apprehension of bodily harm.

Criminal discharge of a firearm at an occupied building or occupied vehicle is a severity level 7, person felony.

Criminal discharge of a firearm at an occupied building or occupied vehicle which results in bodily harm to a person during the commission thereof is a severity level 5, person felony.

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

History: L. 1992, ch. 21, § 1; L. 1993, ch. 291, § 158; L. 1994, ch. 348, § 17; July 1.

Article 43.—CRIMES AGAINST THE PUBLIC MORALS

21-4301. Promoting obscenity. (a) Promoting obscenity is knowingly or recklessly:

(1) Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device;

(2) possessing any obscene material or obscene device with intent to issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise such material or device;

(3) offering or agreeing to manufacture, issue, sell, give, provide, lend, mail, deliver, transmit, publish, distribute, circulate, disseminate, present, exhibit or advertise any obscene material or obscene device; or

(4) producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.

(b) Evidence that materials or devices were promoted to emphasize their prurient appeal or sexually provocative aspect shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:

(1) The materials or devices were promoted to emphasize their prurient appeal or sexually provocative aspect; or