

## **FIREARM POSSESSION PROHIBITORS**

### **Kansas Concealed Carry Law**

As amended in SB45 effective July 1, 2015:

Source: [http://www.kslegislature.org/li/b2015\\_16/measures/documents/sb45\\_enrolled.pdf](http://www.kslegislature.org/li/b2015_16/measures/documents/sb45_enrolled.pdf)

KSA 21-6302 Criminal Carrying of a Weapon

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

[Subsections (a)(1)-(3) omitted in this document]

- (4) any pistol, revolver or other firearm concealed on one's person if such person is under 21 years of age, except when on the such person's land or in the such person's abode or fixed place of business

[Subsection (a)(5) omitted in this document]

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

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

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

- (1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
- (2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;
- (3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or
- (4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

### **Kansas Firearms Possession Prohibitors**

The following is quoted directly from KSA 21-6301 as amended by SB45 and effective 7/1/15.

Source: [http://www.kslegislature.org/li/b2015\\_16/measures/documents/sb45\\_enrolled.pdf](http://www.kslegislature.org/li/b2015_16/measures/documents/sb45_enrolled.pdf)

#### **KSA 21-6301. Criminal Use of Weapons**

(a) Criminal use of weapons is knowingly:

[Subsections (a)(1)-(9) omitted from this document]

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

[Subsections (a)(14) omitted from this document]

[Subsections (b)-(h) omitted from this document]

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

- (1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;
- (2) possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;
- (3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student; or
- (4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or
- (5) possession of a concealed handgun by an individual who is not prohibited from possessing a firearm under either federal or state law.

(j) Subsections (a)(9) and (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 2014 Supp. 75-7c26, and amendments thereto.

[Subsections (k)-(l) omitted from this document]

The following is quoted directly from KSA 21-6304 as in effect on June 3, 2015.

It was not amended in SB45.

Source: <http://www.ksrevisor.org/ksa.html>

#### **21-6304. Criminal possession of a firearm by a convicted felon.**

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

- (1) Has been convicted of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. [21-36a01](#) through [21-36a17](#), prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, or a crime under a law of another jurisdiction which is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. [21-36a01](#) through [21-36a17](#), prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, and was found to have been in possession of a firearm at the time of the commission of the crime;
- (2) within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(3)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was not found to have been in possession of a firearm at the time of the commission of the crime; or
- (3) within the preceding 10 years, has been convicted of a:
  - (A) Felony under K.S.A. 2014 Supp. [21-5402](#), [21-5403](#), [21-5404](#), [21-5405](#), [21-5408](#), subsection (b) or (d) of [21-5412](#), subsection (b) or (d) of [21-5413](#), subsection (a) of [21-5415](#), subsection (b) of [21-5420](#), [21-5503](#), subsection (b) of [21-5504](#), subsection (b) of

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

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

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

(c) As used in this section:

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

### **Kansas Statute Definitions**

The following general definitions are applicable unless the term is specifically defined differently within the statute above in which the term is used.

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

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

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

(p) "Law enforcement officer" means:

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

(2) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 2014 Supp. [21-5412](#) and subsection (d) of K.S.A. 2014 Supp. [21-5413](#), and amendments thereto, any employee of the Kansas department of corrections; or

- (3) any university police officer or campus police officer, as defined in K.S.A. [22-2401a](#), and amendments thereto.
- (t) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.
- (v) "Possession" means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

### **Federal Firearms Possession Prohibitors**

Quoted directly from 18 USC Section 922 Subsection (g) as in effect June 2, 2015

Source: <http://uscode.house.gov>

- (g) It shall be unlawful for any person-
- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
  - (2) who is a fugitive from justice;
  - (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
  - (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
  - (5) who, being an alien-
    - (A) is illegally or unlawfully in the United States; or
    - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
  - (6) who has been discharged from the Armed Forces under dishonorable conditions;
  - (7) who, having been a citizen of the United States, has renounced his citizenship;
  - (8) who is subject to a court order that-
    - (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
    - (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
    - (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
      - (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
  - (9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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

## Federal Definitions Applicable to Federal Firearms Possession Prohibitors

Quoted directly from 18 USC Section 921 as in effect June 2, 2015

Source: <http://uscode.house.gov>

Only includes definitions of terms used in 18 USC Section 922, other terms excluded.

### **18 USC §921. Definitions**

(a) As used in this chapter-

- (1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.
- (2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).
- (3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.
- (15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.
- (17)(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.
- (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include-
  - (A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or
  - (B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.
- (32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.
- (33)(A) Except as provided in subparagraph (C),<sup>2</sup> the term "misdemeanor crime of domestic violence" means an offense that-
  - (i) is a misdemeanor under Federal, State, or Tribal<sup>3</sup> law; and
  - (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is

cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

- (B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless-
- (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
  - (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
    - (aa) the case was tried by a jury, or
    - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.
- (ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

## **FEDERAL REGULATIONS**

In addition to the above USC, there are also Federal Regulations proscribing firearms possession. These are in addition, and in some cases duplicate, to the prohibitors in 18 USC 922.

27 CFR § 478.32 as in effect on June 3, 2015

Source: [www.law.cornell.edu](http://www.law.cornell.edu)

27 CFR § 478.32 Prohibited shipment, transportation, possession, or receipt of firearms and [ammunition](#) by certain persons.

- (a) No [person](#) may ship or transport any [firearm](#) or [ammunition](#) in [interstate or foreign commerce](#), or receive any [firearm](#) or [ammunition](#) which has been shipped or transported in [interstate or foreign commerce](#), or possess any [firearm](#) or [ammunition](#) in or affecting [commerce](#), who:
- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year,
  - (2) Is a [fugitive from justice](#),
  - (3) Is an unlawful user of or addicted to any [controlled substance](#) (as defined in section 102 of the Controlled Substances Act, [21 U.S.C. 802](#)),
  - (4) Has been [adjudicated as a mental defective](#) or has been [committed to a mental institution](#),
  - (5) Being an alien—
    - (i) Is illegally or unlawfully in the United States; or
    - (ii) Except as provided in paragraph (f) of this section, has been admitted to the United States under a nonimmigrant visa: *Provided*, That the provisions of this paragraph (a)(5)(ii) do not apply to any [alien](#) who has been lawfully admitted to the United States under a [nonimmigrant visa](#), if that [alien](#) is—

- (A) Admitted to the United States for lawful hunting or sporting purposes or is in possession of a hunting license or permit lawfully issued in the United States;
  - (B) An official representative of a foreign government who is either accredited to the United States Government or the Government's mission to an international organization having its headquarters in the United States or is en route to or from another country to which that [alien](#) is accredited. This exception only applies if the [firearm](#) or [ammunition](#) is shipped, transported, possessed, or received in the representative's official capacity;
  - (C) An official of a foreign government or a distinguished foreign visitor who has been so designated by the Department of State. This exception only applies if the [firearm](#) or [ammunition](#) is shipped, transported, possessed, or received in the official's or visitor's official capacity, except if the visitor is a private individual who does not have an official capacity; or
  - (D) A foreign law enforcement officer of a [friendly foreign government](#) entering the United States on official law enforcement business,
- (6) Has been discharged from the Armed Forces under dishonorable conditions,
- (7) Having been a citizen of the United States, has renounced citizenship,
- (8) Is subject to a court order that—
- (i) Was issued after a hearing of which such [person](#) received actual notice, and at which such [person](#) had an opportunity to participate;
  - (ii) Restrains such [person](#) from harassing, stalking, or threatening an [intimate partner](#) of such [person](#) or child of such [intimate partner](#) or [person](#), or engaging in other conduct that would place an [intimate partner](#) in reasonable fear of bodily injury to the partner or child; and
  - (iii)
    - (A) Includes a finding that such [person](#) represents a credible threat to the physical safety of such [intimate partner](#) or child; or
    - (B) By its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such [intimate partner](#) or child that would reasonably be expected to cause bodily injury, or
- (9) Has been convicted of a misdemeanor crime of domestic violence.
- (b) No [person](#) who is under [indictment](#) for a crime punishable by imprisonment for a term exceeding one year may ship or transport any [firearm](#) or [ammunition](#) in [interstate or foreign commerce](#) or receive any [firearm](#) or [ammunition](#) which has been shipped or transported in [interstate or foreign commerce](#).
- (c) Any individual, who to that individual's knowledge and while being employed by any [person](#) described in paragraph (a) of this section, may not in the course of such employment receive, possess, or transport any [firearm](#) or [ammunition](#) in [commerce](#) or affecting [commerce](#) or receive any [firearm](#) or [ammunition](#) which has been shipped or transported in [interstate or foreign commerce](#).
- Subsection (d) omitted from this document
- (e) The actual notice required by paragraphs (a)(8)(i) and (d)(8)(i) of this section is notice expressly and actually given, and brought home to the party directly, including service of process personally served on the party and service by mail. Actual notice also includes proof of facts and circumstances that raise the inference that the party received notice including, but not limited to, proof that notice was left at the party's dwelling house or usual place of abode with some [person](#)

of suitable age and discretion residing therein; or proof that the party signed a return receipt for a hearing notice which had been mailed to the party. It does not include notice published in a newspaper.

- (f) Pursuant to [18 U.S.C. 922\(y\)\(3\)](#), any individual who has been admitted to the United States under a [nonimmigrant visa](#) may receive a waiver from the prohibition contained in paragraph (a)(5)(ii) of this section if the Attorney General approves a petition for the waiver.

### **Definitions from Federal Regulations:**

Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: **Source** [27 CFR § 478.11](#)

Alien. Any person not a citizen or national of the United States. **Source** [27 CFR § 478.11](#)

Ammunition. Ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm other than an antique firearm. The term shall not include (a) any shotgun shot or pellet not designed for use as the single, complete projectile load for one shotgun hull or casing, nor (b) any unloaded, non-metallic shotgun hull or casing not having a primer. **Source** [27 CFR § 478.11](#)

Commerce. Travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country. **Source** [27 CFR § 478.11](#)

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution. **Source** [27 CFR § 478.11](#)

Controlled substance. A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended. **Source** [27 CFR § 478.11](#)

Firearm. Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device; but the term shall not include an antique firearm. In the case of a licensed collector, the term shall mean only curios and relics. **Source** [27 CFR § 478.11](#)

Friendly foreign government. Any government with whom the United States has diplomatic relations and whom the United States has not identified as a State sponsor of terrorism. **Source** [27 CFR § 478.11](#)

Fugitive from justice. Any person who has fled from any State to avoid prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges



are pending against such person and who leaves the State of prosecution. **Source** [27 CFR § 478.11](#)

Indictment. Includes an indictment or information in any court, under which a crime punishable by imprisonment for a term exceeding 1 year (as defined in this section) may be prosecuted, or in military cases to any offense punishable by imprisonment for a term exceeding 1 year which has been referred to a general court-martial. An information is a formal accusation of a crime, differing from an indictment in that it is made by a prosecuting attorney and not a grand jury. **Source** [27 CFR § 478.11](#)

Interstate or foreign commerce. Includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia. The term shall not include commerce between places within the same State but through any place outside of that State. **Source** [27 CFR § 478.11](#)

Intimate partner. With respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabitated with the person. **Source** [27 CFR § 478.11](#)

Nonimmigrant visa. A visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in the Immigration and Nationality Act, 8 U.S.C. 1101 et seq. **Source** [27 CFR § 478.11](#)

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company. **Source** [27 CFR § 478.11](#)

**NOTICE:** The author is not an attorney and nothing in this document should be construed to be legal advice. The intent is to provide a reference document to published law to assist officers in determining if a person carrying a firearm is prohibited or not. Such a determination is critical in enforcing the new concealed carry laws passed in SB45 by the 2015 Kansas Legislature. Many of the provisions in both Federal Law and State Law require interpretation and may have court rulings rendering application. Seek guidance from your agency legal provider or your local prosecutor regarding how these prohibitors are applied. Always follow your agencies policy and procedures in applying the law.

**CAUTION: DO NOT USE INDEX TO DETERMINE IF PROHIBITOR EXISTS WITHOUT CAREFULLY READING THE INDEXED LANGUAGE IN THE ACTUAL STATUTE, US CODE, OR CODE OF FEDERAL REGULATION. MANY OF THE PROHIBITORS WILL REQUIRE RESEARCH INTO THE DETAILS OF THE CRIME AND CONVICTION IN QUESTION.**

Send comments, suggestions, corrections, or additions to [ed.klumpp@kslawenforcementinfo.com](mailto:ed.klumpp@kslawenforcementinfo.com).

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