

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2458

By Committee on Judiciary

1-11

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to mistreatment of a dependent adult and mistreatment of an elder
3 person; inherently dangerous felonies; amending K.S.A. 2017 Supp.
4 21-5402 and 21-5417 and repealing the existing sections.

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

7 Section 1. K.S.A. 2017 Supp. 21-5402 is hereby amended to read as
8 follows: 21-5402. (a) Murder in the first degree is the killing of a human
9 being committed:

10 (1) Intentionally, and with premeditation; or

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

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

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

15 (1) Any of the following felonies, whether such felony is so distinct
16 from the homicide alleged to be a violation of subsection (a)(2) as not to
17 be an ingredient of the homicide alleged to be a violation of subsection (a)
18 (2):

19 (A) Kidnapping, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp.
20 21-5408(a), and amendments thereto;

21 (B) aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A.
22 2017 Supp. 21-5408(b), and amendments thereto;

23 (C) robbery, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
24 5420(a), and amendments thereto;

25 (D) aggravated robbery, as defined in ~~subsection (b) of~~ K.S.A. 2017
26 Supp. 21-5420(b), and amendments thereto;

27 (E) rape, as defined in K.S.A. 2017 Supp. 21-5503, and amendments
28 thereto;

29 (F) aggravated criminal sodomy, as defined in ~~subsection (b) of~~
30 K.S.A. 2017 Supp. 21-5504(b), and amendments thereto;

31 (G) abuse of a child, as defined in K.S.A. 2017 Supp. 21-5602, and
32 amendments thereto;

33 (H) felony theft of property, as defined in ~~subsection (a)(1) or (a)(3)~~
34 ~~of~~ K.S.A. 2017 Supp. 21-5801(a)(1) or (a)(3), and amendments thereto;

35 (I) burglary, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
36 5807(a), and amendments thereto;

- 1 (J) aggravated burglary, as defined in ~~subsection (b) of~~ K.S.A. 2017
2 Supp. 21-5807(b), and amendments thereto;
- 3 (K) arson, as defined in ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-
4 5812(a), and amendments thereto;
- 5 (L) aggravated arson, as defined in ~~subsection (b) of~~ K.S.A. 2017
6 Supp. 21-5812(b), and amendments thereto;
- 7 (M) treason, as defined in K.S.A. 2017 Supp. 21-5901, and
8 amendments thereto;
- 9 (N) any felony offense as provided in K.S.A. 2017 Supp. 21-5703,
10 21-5705 or 21-5706, and amendments thereto;
- 11 (O) any felony offense as provided in ~~subsection (a) or (b) of~~ K.S.A.
12 2017 Supp. 21-6308(a) *or* (b), and amendments thereto;
- 13 (P) endangering the food supply, as defined in ~~subsection (a) of~~
14 K.S.A. 2017 Supp. 21-6317(a), and amendments thereto;
- 15 (Q) aggravated endangering the food supply, as defined in ~~subsection~~
16 ~~(b) of~~ K.S.A. 2017 Supp. 21-6317(b), and amendments thereto;
- 17 (R) fleeing or attempting to elude a police officer, as defined in
18 ~~subsection (b) of~~ K.S.A. 8-1568(b), and amendments thereto;
- 19 (S) aggravated endangering a child, as defined in ~~subsection (b)(1) of~~
20 K.S.A. 2017 Supp. 21-5601(b)(1), and amendments thereto;
- 21 (T) abandonment of a child, as defined in ~~subsection (a) of~~ K.S.A.
22 2017 Supp. 21-5605(a), and amendments thereto; ~~or~~
- 23 (U) aggravated abandonment of a child, as defined in ~~subsection (b)~~
24 ~~of~~ K.S.A. 2017 Supp. 21-5605(b), and amendments thereto; ~~and or~~
- 25 (V) *mistreatment of a dependent adult or mistreatment of an elder*
26 *person, as defined in K.S.A. 2017 Supp. 21-5417, and amendments*
27 *thereto; and*
- 28 (2) any of the following felonies, only when such felony is so distinct
29 from the homicide alleged to be a violation of subsection (a)(2) as to not
30 be an ingredient of the homicide alleged to be a violation of subsection (a)
31 (2):
- 32 (A) Murder in the first degree, as defined in subsection (a)(1);
- 33 (B) murder in the second degree, as defined in ~~subsection (a)(1) of~~
34 K.S.A. 2017 Supp. 21-5403(a)(1), and amendments thereto;
- 35 (C) voluntary manslaughter, as defined in ~~subsection (a)(1) of~~ K.S.A.
36 2017 Supp. 21-5404(a)(1), and amendments thereto;
- 37 (D) aggravated assault, as defined in ~~subsection (b) of~~ K.S.A. 2017
38 Supp. 21-5412(b), and amendments thereto;
- 39 (E) aggravated assault of a law enforcement officer, as defined in
40 ~~subsection (d) of~~ K.S.A. 2017 Supp. 21-5412(d), and amendments thereto;
- 41 (F) aggravated battery, as defined in ~~subsection (b)(1) of~~ K.S.A. 2017
42 Supp. 21-5413(b)(1), and amendments thereto; or
- 43 (G) aggravated battery against a law enforcement officer, as defined

1 in ~~subsection (d)~~ of K.S.A. 2017 Supp. 21-5413(d), and amendments
2 thereto.

3 (d) Murder in the first degree as defined in subsection (a)(2) is an
4 alternative method of proving murder in the first degree and is not a
5 separate crime from murder in the first degree as defined in subsection (a)
6 (1). The provisions of K.S.A. 2017 Supp. 21-5109, and amendments
7 thereto, are not applicable to murder in the first degree as defined in
8 subsection (a)(2). Murder in the first degree as defined in subsection (a)(2)
9 is not a lesser included offense of murder in the first degree as defined in
10 subsection (a)(1), and is not a lesser included offense of capital murder as
11 defined in K.S.A. 2017 Supp. 21-5401, and amendments thereto. As set
12 forth in subsection (b) of K.S.A. 2017 Supp. 21-5109, and amendments
13 thereto, there are no lesser included offenses of murder in the first degree
14 under subsection (a)(2).

15 (e) The amendments to this section by ~~this act~~ *chapter 96 of the 2013*
16 *Session Laws of Kansas* establish a procedural rule for the conduct of
17 criminal prosecutions and shall be construed and applied retroactively to
18 all cases currently pending.

19 Sec. 2. K.S.A. 2017 Supp. 21-5417 is hereby amended to read as
20 follows: 21-5417. (a) Mistreatment of a dependent adult **or an elder**
21 **person** is knowingly committing one or more of the following acts:

22 (1) Infliction of physical injury, unreasonable confinement or
23 unreasonable punishment upon a dependent adult **or an elder person**;

24 (2) taking the personal property or financial resources of a dependent
25 adult **or an elder person** for the benefit of the defendant or another person
26 by taking control, title, use or management of the personal property or
27 financial resources of a dependent adult **or an elder person** through:

28 (A) Undue influence, coercion, harassment, duress, deception, false
29 representation, false pretense or without adequate consideration to such
30 dependent adult **or elder person**;

31 (B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et
32 seq., and amendments thereto; ~~or~~

33 (C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et
34 seq., and amendments thereto; or

35 (D) *a violation of the act for obtaining a guardian or a conservator,*
36 *or both, K.S.A. 59-3050 et seq., and amendments thereto; or*

37 (3) omission or deprivation of treatment, goods or services that are
38 necessary to maintain physical or mental health of such dependent adult **or**
39 **elder person**.

40 (b) ~~Mistreatment of an elder person is knowingly committing one or~~
41 ~~more of the following acts:~~

42 ~~(1) *Infliction of physical injury, unreasonable confinement or*~~
43 ~~*unreasonable punishment upon an elder person; or*~~

1 ~~(2) taking the personal property or financial resources of an elder~~
2 ~~person for the benefit of the defendant or another person by taking control,~~
3 ~~title, use or management of the personal property or financial resources of~~
4 ~~an elder person through:~~

5 ~~(A) Undue influence, coercion, harassment, duress, deception, false~~
6 ~~representation, false pretense or without adequate consideration to such~~
7 ~~elder person;~~

8 ~~(B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et~~
9 ~~seq., and amendments thereto; or~~

10 ~~(C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et~~
11 ~~seq., and amendments thereto; or~~

12 ~~(D) a violation of the act for obtaining a guardian or conservator, or~~
13 ~~both, K.S.A. 59-3050 et seq., and amendments thereto; or~~

14 ~~(2)(3) omission or deprivation of treatment, goods or services that are~~
15 ~~necessary to maintain physical or mental health of such elder person.~~

16 ~~(e) Mistreatment of a dependent adult or an elder person as defined~~
17 ~~in:~~

18 (1) Subsection (a)(1) is a severity level 5, person felony;

19 (2) subsection (a)(2) if the aggregate amount of the value of the
20 personal property or financial resources is:

21 (A) \$1,000,000 or more is a severity level 2, person felony;

22 (B) at least \$250,000 but less than \$1,000,000 is a severity level 3,
23 person felony;

24 (C) at least \$100,000 but less than \$250,000 is a severity level 4,
25 person felony;

26 (D) at least \$25,000 but less than \$100,000 is a severity level 5,
27 person felony;

28 (E) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 7,
29 person felony;

30 (F) less than ~~\$1,000~~ \$1,500 is a class A person misdemeanor, except
31 as provided in subsection ~~(e)~~ **(b)(2)(G)**; and

32 (G) less than ~~\$1,000~~ \$1,500 and committed by a person who has,
33 within five years immediately preceding commission of the crime, been
34 convicted of ~~mistreatment of a dependent adult~~ *a violation of this section*
35 two or more times is a severity level 7, person felony; and

36 (3) subsection (a)(3) is a severity level 8, person felony.

37 ~~(d) Mistreatment of an elder person as defined in:~~

38 ~~(1) Subsection (b)(1) is a severity level 5, person felony;~~

39 ~~(2) subsection (b)(1) (b)(2) if the aggregate amount of the value of~~
40 ~~the personal property or financial resources is:~~

41 ~~(A) \$1,000,000 or more is a severity level 2, person felony;~~

42 ~~(B) at least \$250,000 but less than \$1,000,000 is a severity level 3,~~
43 ~~person felony;~~

1 (C) ~~at least \$100,000 but less than \$250,000 is a severity level 4-~~
2 ~~person felony;~~

3 (D) ~~at least \$25,000 but less than \$100,000 is a severity level 5-~~
4 ~~person felony;~~

5 (E) ~~at least \$5,000 \$1,500 but less than \$25,000 is a severity level 7-~~
6 ~~person felony;~~

7 (F) ~~less than \$5,000 \$1,500 is a class A person misdemeanor, except~~
8 ~~as provided in subsection (d)(1)(G); and~~

9 (G) ~~less than \$5,000 \$1,500 and committed by a person who has,~~
10 ~~within five years immediately preceding commission of the crime, been~~
11 ~~convicted of mistreatment of an elder person a violation of this section two~~
12 ~~or more times is a severity level 7, person felony; and~~

13 ~~(2)(3)~~ ~~subsection (b)(2)(3) is a severity level 8, person felony.~~

14 ~~(e)(c)~~ It shall be an affirmative defense to any prosecution for
15 mistreatment of a dependent adult or ~~mistreatment~~ of an elder person as
16 described in ~~subsections (a)(2) and (b)(1)(2)~~ **subsection (a)(2)** that:

17 (1) The personal property or financial resources were given as a gift
18 consistent with a pattern of gift giving to the person that existed before the
19 dependent adult or elder person became vulnerable;

20 (2) the personal property or financial resources were given as a gift
21 consistent with a pattern of gift giving to a class of individuals that existed
22 before the dependent adult or elder person became vulnerable;

23 (3) the personal property or financial resources were conferred as a
24 gift by the dependent adult or elder person to the benefit of a person or
25 class of persons, and such gift was reasonable under the circumstances; or

26 (4) a court approved the transaction before the transaction occurred.

27 ~~(d)~~ **(d)** No dependent adult or elder person is considered to be
28 mistreated under subsection (a)(1); ~~or (a)(3) or (b)(2) (b)(3)~~ for the sole
29 reason that such dependent adult or elder person relies upon or is being
30 furnished treatment by spiritual means through prayer in lieu of medical
31 treatment in accordance with the tenets and practices of a recognized
32 church or religious denomination of which such dependent adult or elder
33 person is a member or adherent.

34 ~~(g)~~ **(e)** As used in this section:

35 (1) "Adequate consideration" means the personal property or
36 financial resources were given to the person as payment for bona fide
37 goods or services provided by such person and the payment was at a rate
38 customary for similar goods or services in the community that the
39 dependent adult or elder person resided in at the time of the transaction.

40 (2) "Dependent adult" means an individual 18 years of age or older
41 who is unable to protect the individual's own interest. Such term shall
42 include, but is not limited to, any:

43 (A) Resident of an adult care home including, but not limited to,

1 those facilities defined by K.S.A. 39-923, and amendments thereto;

2 (B) adult cared for in a private residence;

3 (C) individual kept, cared for, treated, boarded, confined or otherwise
4 accommodated in a medical care facility;

5 (D) individual with intellectual disability or a developmental
6 disability receiving services through a community facility for people with
7 intellectual disability or residential facility licensed under K.S.A.—75-
8 ~~3307b~~ 2017 Supp. 39-2001 *et seq.*, and amendments thereto;

9 (E) individual with a developmental disability receiving services
10 provided by a community service provider as provided in the
11 developmental disability reform act; or

12 (F) individual kept, cared for, treated, boarded, confined or otherwise
13 accommodated in a state psychiatric hospital or state institution for people
14 with intellectual disability.

15 (3) "Elder person" means a person ~~70~~ 60 years of age or older.

16 ~~(h)~~(f) An offender who violates the provisions of this section may
17 also be prosecuted for, convicted of, and punished for any other offense in
18 article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or
19 K.S.A. 2017 Supp. 21-6418, and amendments thereto.

20 Sec. 3. K.S.A. 2017 Supp. 21-5402 and 21-5417 are hereby repealed.

21 Sec. 4. This act shall take effect and be in force from and after its
22 publication in the statute book.