

Chapter 11.04
GENERAL PROVISIONS

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11.04.010 Public Offense Code.

This title shall be known as the public offense code of the City. It is supplemental to other ordinances of the City which define offenses and prescribe penalties.

(History: Ord. POC-625 §1, 72)

11.04.020 Civil Remedies Preserved.

This title does not bar, suspend or otherwise affect any civil right or remedy, authorized by law to be enforced in a civil action, based on conduct which it makes punishable.

(History: Ord. POC-625 §2, 72)

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11.04.030 State Statutes Incorporated.

Repealed.

(History: Ord. POC-1381 §10, 86; POC-625 §3, 72; POC-598 § 4, 70)

11.04.040 Public offenses-Penalties.

Repealed. See 11.04.260.

(History: Ord. POC-1381 §10, 86; POC-625 §4, 72; POC-598 §83; PO-84C, 67; PO-84 §64,61)

11.04.050 General definitions.

The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

- A. "Act" includes a failure or omission to take action.
- B. "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.
- C. "City" means City of Overland Park, Kansas.
- D. "Code" shall refer to the Public Offense Code.
- E. "Conduct" means an act or a series of acts, and the accompanying mental state.
- F. "Conviction" includes a judgment of guilt entered upon a plea of guilty.
- G. "Court" means the Municipal Court of Overland Park, Kansas.
- H. "Crime" means a public offense prohibited by this title.
- I. "Deception" means knowingly and willfully making a false statement or representation, express or implied, pertaining to a present or past existing fact.
- J. To "deprive permanently" means to:
 - 1. Take from the owner the possession, use or benefit of his or her property, without an intent to restore the same; or
 - 2. Retain property without intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
 - 3. Sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.
- K. "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.
- L. "He" means "he" or "she."
- M. "His" means "his" or "her."
- N. "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

- O. "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.
- P. "Obtains or exerts control" over property includes but is not limited to, the taking, carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.
- Q. "Owner" means a person who has any interest in property.
- R. "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.
- S. "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.
- T. "Property" means anything of value, tangible or intangible, real or personal.
- U. "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.
- V. "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."
- W. "Public officer" includes the following, whether elected or appointed:
 - 1. An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state.
 - 2. A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state.
 - 3. A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy.
 - 4. A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer.
 - 5. A law enforcement officer.
 - 6. Any other person exercising the functions of a public officer under color of right.
- X. "Real property" or "real estate" means every estate, interest, and right in lands tenements and hereditaments.
- Y. "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit a crime.

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- Z. "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.
- AA. "Statute" means a state law, a section of the ordinances codified in this title or the entire title whichever is applicable.
- BB. "Telecommunication service" means any telephone or telegraph service or the transmission of a message, signal or other communication by telephone or telegraph or over telephone or telegraph facilities.
- CC. "Stolen property" means property over which control has been obtained by theft.
- DD. "This code" means the ordinances codified in this title.
- EE. "Threat" means a communicated intent to inflict physical or other harm on any person or on property.
- FF. "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(History: KSA 21-3110; Ord. POC-1381 §1, 86; POC-598 §3, 70)

11.04.060 Attempt.

An "attempt" is any overt act toward the perpetration of a public offense done by a person who intends to commit such offense but fails in the perpetration thereof or is prevented or intercepted in executing such offense. It is not a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of such offense was not possible.

(History: KSA 21-3301; Ord. POC-1381 §1, 86; POC-625 §5, 72; POC-598 §11 & 12, 70; PO-84 §5, 61)

11.04.070 Conspiracy.

A "conspiracy" is an agreement with another person to commit a public offense or to assist to commit a public offense. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by him or by a co-conspirator. It is a defense to a charge of conspiracy that the accused voluntarily and in good faith withdrew from the conspiracy, and communicated the fact of such withdrawal to one or more of his co-conspirators, before any overt act and furtherance of the conspiracy has been committed by him or by a co-conspirator.

(History: KSA 21-3302; Ord. POC-1381 §1, 86; POC-625 §6, 72)

11.04.075 Aiding and Abetting.

It shall be unlawful to knowingly conceal or aide a person who has been convicted of or who has been charged with committing a violation of this code with the intent that such person shall avoid or escape from arrest, trial, conviction or punishment for such violation.

(History: KSA 21-3205; Ord. POC-1381 §1, 86; POC-598 §10, 70; PO-84 §4, 61)

11.04.080 Defendant Presumed Innocent; Reasonable Doubt as to Guilt.

A defendant is presumed to be innocent until the contrary is proved. When there is a reasonable doubt as to his guilt, he must be acquitted. When there is a reasonable doubt as to which of two or more degrees of an offense he is guilty, he may be convicted of the lowest degree only.

(History: KSA 21-3109; Ord. POC-1381 §1, 86)

11.04.090 Criminal Intent.

1. Except as otherwise provided, criminal intent is an essential element of every crime defined by this code. Criminal intent may be established by proof that the conduct of the accused person was intentional or reckless. Proof of intentional conduct shall be required to establish criminal intent, unless the statute defining the crime expressly provides that the prohibited act is criminal if done in a reckless manner.
2. Intentional conduct is conduct that is purposeful and willful and not accidental. As used in this code, the terms "knowing," "willful," "purposeful," and "on purpose" are included within the term "intentional."
3. Reckless conduct is conduct done under circumstances that show a realization of the imminence of danger to the person of another and a wanton disregard or complete indifference and unconcern for the probable consequences of such conduct. The terms "gross negligence," "culpable negligence," "wanton negligence," and "wantonness" are included within the term "recklessness" as used in this code.

(History: KSA 21-3201; Ord. POC-1801 §1, 93; POC-1381 §1, 86)

11.04.100 Criminal Intent; Exclusions.

1. Proof of criminal intent does not require proof of knowledge of the existence or constitutionality of the ordinance under which the accused is prosecuted, or the scope or meaning of the terms used in that ordinance.
2. Proof of criminal intent does not require proof that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which he is charged.

(History: KSA 21-3202; Ord. POC-1381 §1, 86)

11.04.110 Ignorance or Mistake.

1. A person's ignorance or mistake as to a matter of either fact or law, except as provided in 11.04.100, is a defense if it negatives the existence of the mental state which the ordinance prescribes with respect to an element of the crime.

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2. A person's reasonable belief that his conduct does not constitute a crime is a defense if:
 - a. The crime is defined by an administrative regulation or order which is not known to him and has not been published in the Kansas administrative regulations or an annual supplement thereto, as provided by law; and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him; or
 - b. He acts in reliance upon an ordinance which later is determined to be invalid; or
 - c. He acts in reliance upon an order or opinion of the Supreme Court of Kansas or a United States appellate court later overruled or reversed;
 - d. He acts in reliance upon an official interpretation of the ordinance, regulation or order defining the crime made by a public officer or agency legally authorized to interpret such ordinance.
3. Although a person's ignorance or mistake of fact or law, or reasonable belief, as described in subsection (2) of this section, is a defense to the crime charged, he may be convicted of an included crime of which he would be guilty if the fact or law were as he believed it to be.

(History: KSA 21-3203; Ord. POC-1381 §1, 86)

11.04.120 Guilt Without Criminal Intent, When.

A person may be guilty of an offense without having criminal intent if the crime is an ordinance or traffic infraction and the ordinance defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

(History: KSA 21-3204; Ord. POC-1381 §1, 86)

11.04.130 Liability for Crimes of Another.

1. A person is criminally responsible for a crime committed by another if he intentionally aids, abets, advises, hires, counsels or procures the other to commit the crime.
2. A person liable under subsection (1) hereof is also liable for any other crime committed in pursuance of the intended crime if reasonably foreseeable by him as a probable consequence or committing or attempting to commit the crime intended.
3. A person liable under this section may be charged with and convicted of the crime although the person alleged to have directly committed the act constituting the crime lacked criminal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(History: KSA 21-3206; Ord. POC-1381 §1, 86)

11.04.140 Corporations; Criminal Responsibility.

1. A corporation is criminally responsible for acts committed by its agents when acting within the scope of their authority.

2. "Agent" means any director, officer, servant, employee or other person who is authorized to act in behalf of the corporation.
3. A person liable under this section may be charged with and convicted of the crime although the person alleged to have directly committed the act constituting the crime lacked criminal capacity or has not been convicted or has been acquitted or has been convicted of some other degree of the crime or of some other crime based on the same act.

(History: KSA 21-3206; Ord. POC-1381 §1, 86; POC-598 §5, 70)

11.04.150 Individual Liability for Corporate Crime.

1. An individual who performs criminal acts, or causes such acts to be performed, in the name of or on behalf of a corporation is legally responsible to the same extent as if such acts were in his own name or on his own behalf.
2. An individual who has been convicted of a crime based on conduct performed by him for and on behalf of a corporation is subject to punishment as an individual upon conviction of such crime, although a lesser or different punishment is authorized for the corporation.

(History: KSA 21-3207; Ord. POC-1381 §1, 86; POC-598 §6, 70)

11.04.160 Intoxication.

1. The fact that a person charged with a crime was in an intoxicated condition at the time the alleged crime was committed is a defense only if such condition was involuntarily produced and rendered such person substantially incapable of knowing or understanding the wrongfulness of his conduct and of conforming his conduct to the requirements of law.
2. An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

(History: KSA 21-3208; Ord. POC-1381 §1, 86; POC-598 §7 & 54, 70)

11.04.170 Compulsion.

1. A person is not guilty of a crime under this code by reason of conduct which he performs under the compulsion or threat of the imminent infliction of death or great bodily harm, if he reasonably believes that death or great bodily harm will be inflicted upon him or upon his spouse, parent, child, brother or sister if he does not perform such conduct.
2. The defense provided by this section is not available to one who willfully or wantonly places himself in a situation in which it is probable that he will be subjected to compulsion or threat.

(History: KSA 21-3209; Ord. POC-1381 §1, 86; POC-598 §8, 70)

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11.04.180 Entrapment.

A person is not guilty of a crime if his criminal conduct was induced or solicited by a public officer or his agent for the purposes of obtaining evidence to prosecute such person, unless:

- (a) The public officer or his agent merely afforded an opportunity or facility for committing the crime in furtherance of a criminal purpose originated by such person or a co-conspirator; or
- (b) The crime was of a type which is likely to occur and recur in the course of such person's business, and the public officer or his agent in doing the inducing or soliciting did not mislead such person into believing his conduct to be lawful.

(History: KSA 21-3210; Ord. POC-1381 §1, 86; POC-598 §9, 70)

11.04.190 Use of Force in Defense of a Person.

Repealed.

(History: KSA 21-3211; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.200 Use of Force in Defense of Dwelling.

Repealed.

(History: KSA 21-3212; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.210 Use of Force in Defense of Property Other than a Dwelling.

Repealed.

(History: KSA 21-3213; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.220 Use of Force by an Aggressor.

Repealed.

(History: KSA 21-3214; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.230 Law Enforcement Officer's Use of Force in Making Arrest.

Repealed.

(History: Ord. POC-1703 §1, 91; POC-1381 §1, 86)

11.04.240 Private Person's Use of Force in Making Arrest.

Repealed.

(History: KSA 21-3216; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.250 Use of Force in Resisting Arrest.

Repealed.

(History: KSA 21-3217; Ord. POC-1801 §18, 93; POC-1381 §1, 86)

11.04.260 Public Offenses - Penalties.

A It is unlawful for any person to commit any of the offenses hereinafter described in this title, and any person so offending is guilty of a public offense and, upon conviction thereof, shall be punished as set forth herein.

B. Classes of violations and confinement.

For the purpose of sentencing, the following classes of public offense violations and the punishment and the terms of confinement authorized for each class are established:

1. Persons convicted of a class A violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one year.
2. Persons convicted of a class B violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed six months.
3. Persons convicted of a class C violation shall be sentenced to a definite term of confinement in the city or county jail which shall be fixed by the court and shall not exceed one month.
4. Unclassified violations, which shall include all offenses without specification as to class, the sentence for which shall be in accordance with the sentence specified in the section that defines the offense; if no penalty is provided in such section, the penalty shall be the same penalty as provided herein for a class C violation.

C. Upon conviction of a violation, a person may be punished by a fine, as provided in paragraph E, instead of or in addition to confinement, as provided in this section.

D. In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the violation was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.

E. Fines.

1. A person convicted of a public offense violation may, in addition to or instead of the confinement set forth in paragraph B above, be sentenced to pay a fine which shall be fixed by the court as follows:
 - a. Class A violation, a sum not exceeding \$2,500.
 - b. Class B violation, a sum not exceeding \$1,000.
 - c. Class C violation, a sum not exceeding \$500.
 - d. Unclassified violation, any sum authorized by the section that defines the offense or if no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C violation.
2. As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(History: K.S.A. Supp. 21-4502; K.S.A. 21-4503a; Ord. POC-2055 §1, 97; POC-1986 §1, 96; POC- 1381 §1, 86)

11.04.270 Severability Clause.

If any part or parts of this title shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this title. The governing body hereby declares that it would have passed the remaining parts of this title if it had known that such part or parts thereof would be declared invalid.

(History: Ord. POC-1381 §1, 86)

11.04.280 Savings Clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. POC-1381 §1, 86)

11.04.290 Time Limitations.

- A. Except as provided by Subsections B and C a prosecution for any offense must be commenced within five (5) years after it is committed.
- B. The period within which a prosecution must be commenced shall not include any period in which:
 - 1. the accused is absent from the State;
 - 2. the accused is concealed within the State so that process cannot be served upon the accused;
 - 3. the fact of the crime is concealed;
 - 4. a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;
 - 5. an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of Article 41 of Chapter 25 and Article 2 of Chapter 46 of the Kansas Statutes Annotated which may be discovered as a result thereof regardless of who obtains the order of restraint;
or
- C. Whether or not the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: (i) The victim was a child under 15 years of age at the time of the crime; (ii) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime; (iii) the victim was prevented by a parent or other legal authority from making known to law enforcement authorities the fact of the crime whether or not the parent or other legal authority is the accused; and (iv) there is substantially competent expert testimony indicating the victim

psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this Section later than the date the victim turns 28 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime. 'Parent or other legal authority' shall include but not be limited to natural and stepparents, grandparents, aunts, uncles or siblings.

- D. An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.
- E. A prosecution is commenced when a complaint and notice to appear are filed and served.

(History: Ord. POC-2928 §1, 2011)

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