

Chapter 11.24
CRIMES AGAINST PUBLIC MORALS AND DECENCY

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ARTICLE I. SEX OFFENSES

11.24.010 Adultery.

"Adultery" is sexual intercourse by a person with another who is not his spouse if:

- A. Such person is married; or
- B. Such person is not married and knows that the other person involved in such intercourse is married.

(History: KSA 21-3507; Ord. POC-625 §17, 72)

11.24.020 Indecent Solicitation of a Child.

Repealed.

(History: KSA 21-3510; Ord. POC-1801 §18, 93; POC-625 §19,72; POC-598 §18; PO-84 §13, 61)

11.24.030 Lewd and Lascivious Behavior.

Lewd and lascivious behavior is:

- A. Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or
- B. publicly exposing a sex organ or female breast or exposing a sex organ or female breast 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.

(History: KSA 21-3508; Ord. POC-2119 §4, 98; POC-1801 §14, 93; POC-625 §18, 72; POC-598 §17; PO-84 §28 & 32, 61)

11.24.035 Urinating/Defecating in Public Prohibited.

No person shall urinate or defecate in or upon any street, sidewalk, alley, plaza, park, public building, public property, private parking lot, or in any place open to the public or exposed to public view. This section shall not apply to urination or defecation utilizing appropriate fixtures in any restroom or other facility designed for the sanitary disposal of human waste.

(History: Ord. POC-1225 §1, 83)

11.24.040 Patronizing a Prostitute.

"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.

(History: KSA 21-3515; Ord. POC-625 §22, 72; POC-598 §21; PO-84 §47)

11.24.045 Harassment by Telecommunication Device.

- A. Harassment by telecommunication device is the use of:
1. A telecommunication device to:
 - a. knowingly make or transmit any comment, request, suggestion, proposal, image or text which is obscene, lewd, lascivious or indecent;
 - b. make or transmit a call, whether or not conversation ensues, with intent to abuse, threaten or harass any person at the receiving end;
 - c. make or transmit any comment, request, suggestion, proposal, image or text with intent to abuse, threaten or harass any person at the receiving end;
 - d. make or cause a telecommunication device to repeatedly ring or activate, with intent to harass any person at the receiving end;
 - e. knowingly play any recording on a telephone, except recordings such as weather information or sports information when the number thereof is dialed, unless the person or group playing the recording shall identify itself or himself or herself and state that it is a recording; or
 - f. knowingly permit any telecommunication device under one's control to be used for any of the purposes mentioned herein.
 2. Telefacsimile communication to send or transmit such communication to a court in the State of Kansas for a use other than court business, with no requirement of culpable mental state.
- B. Every telephone directory published for distribution to members of the general public shall contain a notice setting forth a summary of the provisions of this Section. Such notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "WARNING."
- C. As used in this Section, "telecommunications device" includes telephones, cellular telephones, telefacsimile machines and any other electronic device which makes use of an electronic communication service, as defined in K.S.A. 22-2514, and amendments thereto.
- D. Every person convicted of violating this Section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. (KSA 21-6206)

(History: Ord. POC-2928 §3, 2011; POC-1778 §1, 93; POC-1381 §5, 86; POC-979 §4, 78; POC-625 §57)

11.24.050 Promoting Prostitution.

1. "Promoting prostitution" is:
 - a. Establishing, owning, maintaining or managing a house of prostitution, or participating in the establishment, ownership, maintenance or management thereof; or
 - b. Permitting any place partially or wholly owned or controlled by the defendant to be used as a house of prostitution; or

- c. Procuring a prostitute for a house of prostitution; or
 - d. Inducing another to become a prostitute; or
 - e. Soliciting a patron for a prostitute or for a house of prostitution; or
 - f. Procuring a prostitute for a patron; or
 - g. Procuring transportation for, paying for the transportation of, or transporting a person within this city with the intention of assisting or promoting that person's engaging in prostitution; or
 - h. Being employed to perform an act which is prohibited by this section.
2. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500, or both such fine and imprisonment. (KSA 21-3513)

(History: Ord. POC-1381 §5, 86; POC-625 §21, 72; POC-598 §20 & 21; PO-84 §48 & 49,61)

11.24.060 Prostitution.

"Prostitution" is performing for hire, or offering or agreeing to perform for hire where there is an exchange of value, any of the following acts:

- A. Sexual intercourse; or
- B. Oral or anal copulation; or
- C. Manual or other bodily contact stimulation of the genitals of any person with the intent to arouse or gratify the sexual desires of the offender or another. (KSA 21-3512)

(History: Ord. POC-1099 §2, 80; POC-625 §20, 72; POC-598 §19; PO-84 §46)

11.24.070 Sodomy.

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

(History: KSA 21-3505; Ord. POC-625 §16, 72)

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ARTICLE II. FORTUNETELLING

11.24.080 Findings of Governing Body.

Repealed.

(History: Ord. POC-2090 §1, 97; Ord. FT-708 §1, 72)

11.24.090 Definitions.

Repealed.

(History: Ord. POC-2090 §1, 97; Ord. FT-708 §2, 72)

11.24.100 Prohibitions.

Repealed.

(History: Ord. POC-2090 §1, 97; Ord. FT-718 §1, 72; Ord. FT-708 §3, 72; POC-84 §19)

11.24.110 Exceptions to Article.

Repealed.

(History: Ord. POC-2090 §1, 97; Ord. FT-718 §2, 72; FT-708 §4, 72)

11.24.120 Penalty for Violation of City Ordinances.

Repealed.

(History: Ord. POC-1381 §10, 86; FT-708 §5, 72)

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ARTICLE III. DESECRATION

11.24.130 Desecration.

Repealed.

(History: KSA 21-4114; Ord. POC-2620 §11, 2006; POC-1381 §5, 86; POC-805 §1, 74; POC-625 §60, 72; POC-598 §56; PO-84 §36, 61)

11.24.140 Desecrating a Cemetery.

Repealed.

(History: KSA 21-4115; Ord. POC-2620 §11, 2006; POC-625 §62, 72; PO-84 §26, 61)

11.24.150 Desecrating a Dead Body.

Repealed.

(History: KSA 21-4112; Ord. POC-2620 §11, 2006; POC-625 §61, 72)

11.24.155 Criminal Desecration.

A. Criminal desecration is:

1. Obtaining or attempting to obtain unauthorized control of a dead body or remains of any human being or the coffin, urn or other article containing a dead body or remains of any human being;
2. by means other than by fire or explosive:
 - a. Damaging, defacing or destroying the flag, ensign or other symbol of the United States or this state in which another has a property interest without the consent of such other person;
 - b. damaging, defacing or destroying any public monument or structure;
 - c. damaging, defacing or destroying any tomb, monument, memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other property in a cemetery; or
 - d. damaging, defacing or destroying a place of worship.

B. Criminal desecration as described in subsections (A)(2)(b), (A)(2)(c) and (A)(2)(d) is a class A violation if the property is damaged to the extent of less than \$1,000. Criminal desecration as described in subsections (A)(1) and (A)(2)(a) is a class A violation. Criminal desecration as described in subsections (A)(2)(b), (A)(2)(c) and (A)(2)(d) is a felony charge if the property is damaged to the extent of \$1,000 or more. A felony charge is not subject to the jurisdiction of the Municipal Court and must be charged in the District Court.

(History: Ord. POC-2620 §9, 2006)

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ARTICLE IV. MISCELLANEOUS OFFENSES**11.24.160 Contributing to a Child's Misconduct or Deprivation.**

1. Contributing to a child's misconduct or deprivation is:
 - a. Causing or encouraging a child under 18 years of age to become or remain a child in need of care as defined by the Kansas code for care of children;
 - b. causing or encouraging a child under 18 years of age to commit a traffic infraction or an act which, if committed by an adult, would be a misdemeanor or to violate the provisions of K.S.A. 41-727 or subsection (j) of K.S.A. 1991 Supp. 74-8810 and amendments thereto;
 - c. failure to reveal, upon inquiry by a uniformed or properly identified law enforcement officer engaged in performance of such officer's duty, any information one has regarding a runaway, with intent to aid the runaway in avoiding detection or apprehension;
 - d. sheltering or concealing a runaway with intent to aid the runaway in avoiding detection or apprehension by law enforcement officers; or
 - e. causing or encouraging a child under 18 years of age to commit an act which, if committed by an adult, would be a felony.
 - f. causing or encouraging a child to violate the terms or conditions of the child's probation or conditional release pursuant to subsection (a)(1) of K.S.A. 38-1663, and amendments thereto.
2. A person may be found guilty of this section even though no prosecution of the child, whose misconduct or deprivation the defendant caused or encouraged, has been commenced pursuant to the Kansas juvenile code, Kansas Code for Care of Children, Kansas Juvenile Offenders Code, or Kansas code of criminal procedure.
3. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment. (KSA 21-3612, as amended)

(History: Ord. POC-2055 §3, 97; POC-1801 §15, 93; POC-1381 §5, 86; POC-979 §5, 78; POC-625 §23, 72; POC-598 §22)

11.24.165 Regulation of Materials Harmful to Minors.

- A. No person having custody, control or supervision of any commercial establishment shall knowingly:
 1. Display any material which is harmful to minors in such a way that minors, as part of the invited general public, will be exposed to view such material or device;
 2. Sell, furnish, present, distribute or disseminate to a minor, or otherwise allow a minor to view, with or without consideration, any material which is harmful to minors; or
 3. Present to a minor, or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.
- B. Notwithstanding the provisions of K.S.A. 21-3202 and amendments thereto to the contrary, it shall be an affirmative defense to any prosecution under this section that:

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1. The allegedly harmful material or device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.
 2. The defendant is an officer, trustee or employee of a public library and the allegedly harmful material or device was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.
 3. An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.
 4. With respect to a prosecution for an act described by subsection (A)(1), the allegedly harmful material was kept behind blinder racks.
 5. With respect to a prosecution for an act described by subsection (A)(2) or (3), the defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more.
 6. With respect to a prosecution for an act described by subsection (A)(3), the allegedly harmful performance was viewed by the minor in the presence of such minor's parent or parents or such minor's legal guardian.
- C. As used in this section:
1. "Blinder rack" means a device in which material displayed in such a manner that the lower 2/3 of the material is not exposed to view.
 2. "Harmful to minors" means that quality of any description, exhibition, presentation or representation, in whatever form of nudity, sexual conduct, sexual excitement or sadomasochistic abuse when the material or performance, taken as a whole or, with respect to a prosecution for an act described by subsection (A)(1), that portion of the material that was actually exposed to the view of minors, has the following characteristics:
 - a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors;
 - b. The average adult person applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
 - c. A reasonable person would find that the material or performance lacks serious literary, scientific, educational, artistic or political value for minors.

3. "Material" means any book, magazine, newspaper, pamphlet, poster, print, figure, image, description, motion picture film, record, recording tape or video tape.
4. "Minor" means any unmarried person under 18 years of age.
5. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernible state of sexual excitement.
6. "Performance" means any motion picture, film, video tape, played record, phonograph, tape recording, preview, trailer, play, show, skit, dance or other exhibition performed or presented to or before an audience of one or more, with or without consideration.
7. "Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, in a mask or bizarre costume or in the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.
8. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals or pubic area or buttocks or with a human female's breast.
9. "Sexual excitement" means the condition of human male or female genitals when in the state of sexual stimulation or arousal.

- D. The provisions of this act shall not apply to a retail sales clerk, if such clerk has no financial interest in the materials or performance or in the commercial establishment displaying or selling, furnishing, presenting, distributing or disseminating such materials or presenting such performance other than regular employment as a retail sales clerk. The provisions of this section shall not exempt any retail sales clerk from criminal liability for any act unrelated to regular employment as a retail sales clerk.
- E. If any provision or clause of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

(History: Ord. POC-1557 §1, 89; PO-84 §50)

11.24.170 Hypnotic Exhibition.

Repealed.

(History: POC-2070 §1, 97; POC-979 §6, 78; POC-625 §51, 72)

11.24.180 Promoting Obscenity.

1. Promoting obscenity is knowingly or recklessly:
 - a. Manufacturing, issuing, selling, giving, providing, lending, mailing, delivering, transmitting, publishing, distributing, circulating, disseminating, presenting, exhibiting or advertising any obscene material or obscene device; or

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- b. 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; or
 - c. 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
 - d. Producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.
 2. 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
 - a. The materials or devices were promoted to emphasize their prurient appeal or sexually provocative aspect; or
 - b. the person is not a wholesaler and promotes the materials or devices in the course of the person's business.
 3.
 - a. Any material or performance is "obscene" if the average person applying contemporary community standards would find that:
 - (i) The material or performance, taken as a whole, appeals to the prurient interest;
 - (ii) the material or performance has patently offensive representations or descriptions of (A) ultimate sexual acts, normal or perverted actual or simulated, including sexual intercourse or sodomy, or (B) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and
 - (iii) the material or performance, taken as a whole, lacks serious literary, educational, artistic, political or scientific value.
 - b. "Material" means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner.
 - c. "Obscene device" means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.
 - d. "Performance" means any play, motion picture, dance or other exhibition performed before an audience.
 - e. "Sexual intercourse" and "sodomy" have the meanings provided by K.S.A. 21-3501 and amendments thereto.

- f. "Wholesaler" means a person who sells, distributes or offers for sale or distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.
4. It is a defense to a prosecution for obscenity that:
 - a. The persons to whom the allegedly obscene material was disseminated, or the audience to an allegedly obscene performance consisted of persons or institutions having scientific, educational, or governmental justification for possessing or viewing the same;
 - b. The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or
 - c. The allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
 5. The provisions of this section prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.
 6. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment.
 7. Upon any conviction for a violation of this section, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance. (KSA 21-4301)

(History: Ord. POC-1381 §5, 86; POC- 1099 §3, 81; POC-869 §1, 76; POC-625 §52 & 70, 72; POC-598 §67, 70)

11.24.185 Promoting Obscenity to Minors.

1. Promoting obscenity to minors is promoting obscenity, as defined in 11.24.180, where the recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.
2. Notwithstanding the provisions of 11.04.100 to the contrary, it shall be an affirmative defense to any prosecution under this section that:

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- a. The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official document purporting to establish that such minor was 18 years old or more.
 - b. The allegedly obscene material was purchased, leased or otherwise acquired by a public, private or parochial school, college or university and that such material was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incident to an approved course or program of instruction at such school.
 - c. The defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by a public library and was disseminated in accordance with regular library policies approved by its governing body.
 - d. An exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.
3. Every person convicted of violating this section shall be imprisoned for not more than one year or fined not to exceed \$2,500 or both such fine and imprisonment. (KSA 21-4301a)
 4. Upon any conviction for a violation of this section, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity to minors within two years after such conviction, the defendant shall forfeit the recognizance. (KSA 21-4301a)

(History: Ord. POC-1381 §5, 86; POC- 1099 §4, 81; POC-869 §2, 76)

11.24.190 Vagrancy.

Repealed.

(History: Ord. POC-1857 §1, 94; KSA 21-4108; Ord. POC-625 §57, 72; POC-598 §53; PO-84 §55)

11.24.195 Definitions.

The following words and phrases shall, for the purpose of O.P.M.C 11.24.200 and 11.24.205, have the meanings respectively ascribed to them in this section unless otherwise defined in the text of the section.

Nudity - the exposure of the human bare buttocks, anus, genitals, the areola or the nipple of the female breast or a state of dress which fails to opaquely or fully cover the anus, genitals or the areola or the nipple of the female breast; the showing of the covered male genitals in a discernibly turgid state; the exposure of any device, costume, or covering which gives the

realistic appearance of or simulates the human bare buttocks, anus, genitals, the areola or the nipple of the female breast.

Public Place – any location open to the public, or any location visible from public property or public right-of-way. These locations shall be considered public places regardless of whether they are for profit or not for profit and regardless of whether they are open to the public at large or whether entrance is limited by a cover charge or membership requirement.

(History: Ord. POC-2375 §1, 2002)

11.24.200 Nudity In a Public Place

It shall be unlawful for a person to knowingly or intentionally appear in a state of Nudity in a Public Place.

(History: Ord. POC-2375 §2, 2002)

11.24.205 Exemptions

The prohibitions of O.P.M.C. 11.24.200 shall not apply to:

1. Any child under ten (10) years of age.
2. The appearance of the areola or the nipple of the female breast in the process of breastfeeding a child.
3. Nudity in any theatrical production performed in a theater by a professional or amateur theatrical or musical company wherein the persons attending have been informed of the nudity involved in the production.
4. Nudity in a Public Place where a reasonable person would necessarily and customarily expect such Nudity outside of the home unless prohibited by the owners or others having lawful control of the property.
5. Adult businesses, as adult businesses are regulated in Chapter 5 of the Overland Park Municipal Code.

(History: Ord. POC-2375 §3, 2002)

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