

CHAPTER XI. PUBLIC OFFENSES

- Article 1. Uniform Public Offense Code
 - Article 2. Loitering
 - Article 3. Curfew
 - Article 4. Noise
 - Article 5. Laser Pointers
 - Article 6. Drugs
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11-101. INCORPORATING UNIFORM PUBLIC OFFENSE CODE. There is hereby incorporated by reference for the purpose of regulating public offenses within the corporate limits of the City of Spring Hill, Kansas, that certain code known as the "Uniform Public Offense Code," 26th Edition of 2010, prepared and published in book form by the League of Kansas Municipalities, Topeka, Kansas, save and except such articles, sections, parts or portions as are hereafter omitted, deleted, modified or changed. A minimum of one copy of said Uniform Public Offense Code shall be marked or stamped "Official Copy as Incorporated by Ordinance No. 2010-12 of the City of Spring Hill, Kansas," with all sections or portions thereof intended to be omitted, deleted, modified or changed clearly marked to show any such omissions, deletions, modifications or changes, and to which shall be attached a copy of this ordinance and filed with the City Clerk to be open for inspection and available to the public at all reasonable hours. The police department, municipal judge, and all administrative departments of the City charged with enforcement of this ordinance shall be supplied, at the cost of the City, such number of official copies of such Uniform Public Offense Code similarly marked as may be deemed expedient. (Ord. 2010-12)

11-102. Repealed by Ord. 2008-28.

11-103. AMENDMENT TO UNIFORM PUBLIC OFFENSE CODE. Section 6.8 of the Uniform Public Offense Code is hereby amended to read as follows:

6.8 CRIMINAL LITTERING.

(a) Except as provided in Section 112 of the Standard Traffic Ordinance as adopted by Section 15-101 of the Code of the City of Spring Hill, Kansas, as amended, criminal littering is intentionally or recklessly depositing or causing to be deposited any object or substance into, upon or about:

- (1) Any public street, highway, alley, road, right-of-way, park or other public place, or any lake, stream, watercourse, or other body of water, except by direction of some public officer or employee authorized by law to direct or permit such acts; or
- (2) Any private property without the consent of the owner or occupant of such property.

(b) Criminal littering is an unclassified violation punishable:

- (1) Upon a first conviction by a fine of not less than \$250 nor more than \$1,000;
- (2) Upon a second conviction by a fine of not less than \$1,000 nor more than \$2,000; and
- (3) Upon a third or subsequent conviction by a fine of not less than \$2,000.

(c) In addition to the fines in subsection (b), a person convicted of criminal littering shall be required to pick up litter for a time prescribed by and a place within the jurisdiction of the court.

(Ord. 2010-12)

VIOLATIONS, PENALTIES CLASSES OF VIOLATIONS AND CONFINEMENT.

- (a) For the purpose of sentencing, the following classes of violations and the punishment and the terms of confinement authorized for each class are established:
- (1) Class A, the sentence for which shall be 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) Class B, the sentence for which shall be 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) Class C, the sentence for which shall be 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 declared to be violations 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 law, the sentence shall be the same penalty as provided herein for a Class C violation.
- (b) Upon conviction of a violation, a person may be punished by a fine, as provided in Section 12.2 of this article, instead of or in addition to confinement, as provided in this section.
- (c) 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 administrative judge of the judicial district or licensed by the secretary of social and rehabilitation services.
- (Ord. 2010-12)

FINES.

- (a) A person convicted of a violation may, in addition to or instead of the confinement authorized by law, be sentenced to pay a fine which shall be fixed by the court as follows:
- (1) Class A violation, a sum not exceeding \$2,500.
 - (2) Class B violation, a sum not exceeding \$1,000.
 - (3) Class C violation, a sum not exceeding \$500.
 - (4) Unclassified violation, any sum authorized by the section that defines the offense. If no penalty is provided in such law, the fine shall not exceed the fine provided herein for a Class C violation.
- (b) 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.
- (Ord. 2010-12)

ARTICLE 2. LOITERING

11-201. LOITERING AS MISDEMEANOR--EXCEPTION. Any person who shall loiter on the public streets, avenues, alleys, sidewalks, school grounds and/or buildings, and other public places within the city, unless such person is for the time being engaged in some lawful business demanding his or her presence upon such street, avenue, alley, sidewalk, school ground and/or building, or other public place, or who shall habitually lurk in public place without being engaged in some lawful business, shall be guilty of a misdemeanor. (Ord 97-01)

ARTICLE 3. CURFEW

11-301. DEFINITIONS.

- a) Minor is a person under the age of eighteen (18) years of age.
- b) Parent is any person having legal custody of a minor (i) as a natural or adoptive parent, (ii) as a legal guardian, (iii) as a person who stands in loco parentis, or (iv) as a person to whom legal custody has been given by court order.

11-302. CURFEWS FOR CERTAIN MINOR CHILDREN. It is unlawful for any minor to loiter, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places, public buildings, places of amusement, eating places, vacant lots or any place unsupervised by an adult having the lawful authority to be at such places, between the hours of 11:00 o'clock P.M. on any day and 5:00 o'clock A.M. of the following day; provided, however, that on Fridays and Saturdays the effective hours are between 12:00 o'clock midnight and 5:00 o'clock A.M. of the following day.

11-303. EXCEPTIONS. The following shall constitute valid exceptions to the operation of this article:

- a) When a minor is accompanied by his or her parent;
- b) When the minor is upon an emergency errand directed by his or her parent;
- c) When the minor is returning directly home from a school activity, entertainment, recreational activity or dance;
- d) When the minor is returning directly home from lawful employment that makes it necessary to be in the above-referenced places during the prescribed period of time;
- e) When the minor is attending or traveling directly to or from an activity involving the exercise of first amendment rights of free speech, freedom of assembly or free exercise of religion; and
- f) In interstate travel through the City of Spring Hill, Kansas.

11-304. PARENTAL RESPONSIBILITY. It shall be unlawful for the parent to permit, or by insufficient control, to allow such minor to be in, about, or upon the public streets, highways, roads, alleys, parks, playgrounds or other public grounds, public places, public buildings, places of amusement, eating places, vacant lots or any place unsupervised by an adult having the lawful authority to be at such places, under circumstances not constituting an exception to, or otherwise beyond the scope of this article.

11-305. ENFORCEMENT PROCEDURES.

- a) If a police officer has reasonable grounds to believe that the minor is in a public place in violation of this article, for the first time, the procedure shall be to take the minor to the police station where a parent having custody or control of the minor shall immediately be notified to take custody of the minor. When the parent arrives at the police station to take custody of the minor, the minor shall be released to the custody of such person.
- b) In the case of a first violation of the article, the Chief of Police shall, by certified mail, send to the parent, written notice of the violation with a warning that any subsequent violation will result in full enforcement of the article, including enforcement of parental responsibility and of applicable penalties.

11-306. PENALTIES.

- a) If after the first violation of this article by a minor, there is a subsequent violation of this article by the minor, the minor shall be charged in Municipal Court. Upon conviction, the minor shall be sentenced to complete a community service program; however, in the alternative, the Municipal Court shall have the discretion to impose a fine not to exceed fifty dollars (\$50.00) and costs, or to impose a sentence of both a community service program and a fine not to exceed fifty dollars (\$50.00) and costs.
- b) If, after the warning notice of the first violation by a minor has been given pursuant to 11-305 (b), a

parent, having custody or control of a minor, violated 11-304, said person, upon conviction, shall be subject to a fine not to exceed one hundred dollars (\$100.00) and costs. In lieu of a fine, the Municipal Court may impose probation, provided however, that as a condition of probation, attendance is required at family counseling sessions by the parent having custody or control of the minor.

11-307. SEVERABILITY. Severability is intended throughout and within the provisions of the article. If any provision, including any exception, part, phrase, or term, or the application thereof to any person or circumstances is held invalid, the application to other persons or circumstances shall not be affected thereby and the validity of the article in any and all other respects shall not be affected thereby. (Ord 97-08)

ARTICLE 4. NOISE

11-401. DEFINITION OF PERSON. The word "person" as used herein shall include the singular and the plural and shall also mean and include any person, firm, corporation, association, club, co-partnership, society, or any other organization.

11-402. UNNECESSARY SOUND FROM RADIO, ETC. PROHIBITED. No person owning or having the care, custody or possession of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or the reproducing of sound shall play, use, operate, or permit to be played, used or operated such set, instrument, phonograph, machine or device in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the persons or person who are in the room or chamber in which such machine or device is operated and who are voluntary listeners thereto. The operation of any such set, instrument, phonograph, machine or device between the hours of ten o'clock P.M. and seven o'clock A.M., in such a manner as to be plainly audible at a distance of fifty (50) feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this ordinance.

11-403. LOUD SPEAKERS, AMPLIFIERS FOR ADVERTISING, ETC. PROHIBITED, EXCEPTION STATED. No person owning or operating any building, structure or vehicle shall play, use, operate or permit to be played, used, or operated any radio receiving set, musical instrument, phonograph, loud-speaker, sound amplifier, or other machine or device for the producing or reproducing of sound for the purpose of advertising or attracting the attention of the public to such building structure or vehicle. This section and Section 11-402 hereof shall not be construed as prohibiting the use of sound amplifiers, loud speakers or other devices emitting loud noises during unusual and non-commercial, national, state or municipal events of general public interest.

11-404. ANY LOUD OR HARMFUL NOISE. It shall be unlawful for any person to make, continue or cause to be made or continue any loud, improper, unnecessary or unusual noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the City of Spring Hill, Kansas.

11-405. PENALTIES FOR VIOLATION. Any person who violates any provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not exceeding \$500 or imprisonment for not more than six months. Each person shall be deemed guilty of a separate offense for each day during any portion of which violation of the provisions of this ordinance is committed, continued or permitted.

11-406. SEVERABILITY. It is the intention of the City Governing Body that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the City Governing Body that if any provision of this Act be declared to be invalid, all other provisions thereof shall remain valid and enforceable.

ARTICLE 5. LASER POINTERS

11-501. LASER POINTERS.

- a.
 1. Possession by Minors Prohibited: It shall be unlawful for any person under the age of eighteen (18) to possess a laser pointer, except in the residence of that person. All laser pointers in the possession of a minor are deemed contraband, subject to seizure by any duly authorized peace officer with or without process or warrant and shall be subject to forfeiture.
 2. Affirmative Defense: It shall be a defense to paragraph (a) (1) above where the laser pointer would have been or was used for a valid school-related or employment purpose and under the direct supervision of a school staff person, instructor, employer, parent, guardian or other responsible adult.
 3. Penalty: Any person violating 11-501 shall be guilty of a laser pointer infraction and shall be fined no more than twenty-five dollars (\$25.00).
- b. Illumination of Persons Prohibited: It shall be unlawful for any person to use a laser pointer in such a manner that the laser beam illuminates on any other person tending to reasonably anger, alarm, arouse or cause resentment in that other person.
- c. Illumination of Vehicle Operators Prohibited: It shall be unlawful for any person to use a laser pointer in such a manner that the laser beam illuminates the operator of a motor vehicle.
- d. Illumination of Uniformed Officers Prohibited: It shall be unlawful for any person to use a laser pointer in such a manner that the laser beam illuminates a uniformed police officer, uniformed security guard, uniformed school safety officer, uniformed firefighter, uniformed ambulance worker, uniformed public safety officer, uniformed animal control officer, uniformed parking control member or the marked service vehicle of any of the above listed persons.

For purposes of this Section, a "laser pointer" is any device which emits light amplified by the stimulated emission of radiation that is visible to the human eye and designed to be used as a pointer or highlighter, to indicate, mark or identify a specific position or place, including but not limited to Class 2 lasers, Class 3a and 3b lasers, and Class 4 lasers. For purposes of this Section, any laser used for medical, educational or other legitimate commercial use is not a "laser pointer".

ARTICLE 6. DRUGS

11-601. DEFINITIONS. As used in this article:

- A. "Controlled substance" means any drug or substance included in Schedules I through V of the Uniform Controlled Substances Act found in Chapter 65, Article 41 of the Kansas Statutes Annotated.
- B. "Drug" means:
 1. Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;
 2. Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals;
 3. Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 4. Substances intended for use as a component of any article specified in clause 1, 2, or 3 of this subsection. It does not include devices or their components, parts or accessories.
- C. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to

another of a controlled substance, whether or not there is an agency relationship.

- D. "Dangerous drug" means one that is unsafe for use except under the supervision of a practitioner because of its toxicity or other potentiality for human effect, method of use, or collateral measures necessary to use; "Dangerous Drugs" shall include all other drugs or compounds, preparations or mixtures thereof which the state board of health shall find and declare by rule or regulation duly promulgates after reasonable public notice and opportunity for hearing to have a dangerous hallucinogenic hypnotic, somnifacient or stimulating effect of the body of a human or animal.
- E. "Marijuana" means all parts of all varieties of the plant Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.
- F. "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging or labeling of a controlled substance:
 - 1. By a practitioner or his agent pursuant to a lawful order of a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
 - 2. By a practitioner or by his authorized agent under his supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or hospital as an incident to his or its dispensing of a controlled substance.
- G. "Patient" means, as the case may be:
 - 1. The individual for whom a drug is prescribed or to whom a drug is administered; or
 - 2. The owner or the agent of the owner of the animal for which a drug is prescribed or to which a drug is administered; provided, that the prescribing or administering referred to in 1 and 2 of this subsection is in good faith and in the course of professional practice only;
- H. "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.
- I. "Pharmacist" means an individual currently licensed by the board to practice the profession of pharmacy in this state.
- J. "Practitioner" means a physician (M.D. or D.O.), dentist, podiatrist, veterinarian, scientific investigator or other person licensed, registered or otherwise authorized by law to administer and prescribe, use in teaching or chemical analysis, or conduct research with respect to a controlled substance in the course of professional practice and research.
- K. "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
- L. "Prescription" means a written order, and in cases of emergency, a telephonic order, issued by a practitioner in good faith in the course of his professional practice to a pharmacist for a drug for a

particular patient, which specifies the date of its issue, the name and address of the patient (and, if such drug is prescribed for an animal, the species of such animal), the name and quantity of the drug prescribed, the directions for use of such drug, and the signature of such practitioner.

- M. "Somnifacient" and "stimulating" have the meaning attributable in standard medical lexicons.
- N. "Warehouseman" means a person who, in the usual course of business, stores drugs for others lawfully entitled to possess them and who has no control over the disposition of such drugs except for the purpose of such storage.
- O. "Wholesaler" means a person engaged in the business of distributing drugs to persons included in any of the classes named in clauses a to e inclusive of 11.603(A)(2).
- P. "Drug paraphernalia" means any device intended for use in ingesting, smoking, administering or preparing marijuana, cocaine, phencyclidine, opium or any derivative thereof, or any other controlled substance.

For purposes of this subsection, the phrase "intended for use" shall refer to the intent of the person selling, offering to sell, dispensing, giving away or displaying the drug paraphernalia herein defined.

In determining whether an item constitutes drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

- (a) Whether a person charged with violating this ordinance is a licensed distributor or dealer of tobacco products under Chapter 79, Article 33 of the Kansas Statutes Annotated.
- (b) Expert testimony as to the use of the item.
- (c) Evidence concerning the total business of a person or business establishment and the type of items involved in the business.
- (d) National and local advertising concerning the use of the item of which the person charged with violating this ordinance has knowledge.
- (e) Evidence of advertising concerning the nature of the business establishment.
- (f) Statements by a person charged with violating this ordinance concerning the use of the item.
- (g) Prior convictions, if any, of a person charged with violating this ordinance, under any state, federal or municipal law relating to any controlled substance.
- (h) Instructions, oral or written, provided with the item concerning its use.
- (i) Descriptive materials accompanying the item which explain or depict its use.
- (j) Catalogues or other promotional materials concerning the item of which the person charged with violating this ordinance has knowledge.

- Q. "Minor" shall mean any person who has not attained 18 years of age.
- R. "Premises open to minors" means any business establishment which sells its wares or merchandise to minors or which permits minors to enter into its place of business.
- S. "Simulated drugs" and "simulated controlled substances" are any products which identify themselves by using a common name or slang term associated with a controlled substance or indicate by label or accompanying promotional material that the product simulates the effect of a controlled substance or drug.
- T. "Place of display" means any museum, library, school or other similar public place upon which business is not transacted for a profit.
- U. "School" means any public or private elementary, junior high, or high school.
- V. "Close proximity" means within 500 feet on a straight line commencing at the property lines nearest to

each other.

- W. "Premises" means a business establishment and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of patrons.

11-602. UNLAWFUL POSSESSION OF DRUGS - EXCEPTIONS.

- A. It is unlawful for any person to deliver, possess, manufacture, have under his control, sell, or offer for sale any drug controlled substance or marijuana all as defined in 11.601, unless:
1. Such drug is delivered by a pharmacist, or his authorized agent, in good faith upon prescription and there is affixed to the immediate container in which such drug is delivered a label bearing:
 - (a) The name and address of the owner of the establishment from which such drug was delivered;
 - (b) The date on which the prescription for such drug was filled;
 - (c) The number of such prescription as filed in the prescription files of the pharmacist who filled such prescription;
 - (d) The name of the practitioner who prescribed such drug;
 - (e) The name and address of the patient, and if such drug was prescribed for an animal, a statement showing the species of the animal; and
 - (f) The direction for use of the drug and cautionary statements, if any, as contained in the prescription; and
 2. In the event such delivery is pursuant to telephonic order, such prescription shall be promptly reduced to writing and filed by the pharmacist; or
 3. Such drug is delivered by a practitioner in good faith and in the course of his professional practice only.
- B. It is unlawful for any person to refill any prescription for a drug unless such refiling is specifically authorized by the prescriber.
- C. It is unlawful for any person to fail to keep the records required by 11.604.
- D. It is unlawful for any person to possess a drug unless such person obtained such drug on the prescription of a practitioner or in accordance with subsection A(3) of this section or from a person licensed by the laws of any other state or the District of Columbia to prescribe or dispense drugs.
- E. It is unlawful for any person to refuse to make available and to accord full opportunity to check any record, file, stock or inventory as required by 11.605.
- F. It is unlawful for any person to use to his own advantage, or to reveal other than to a public officer or employee charged with the duty of enforcing laws relating to the handling, sale and distribution of drugs, or to a court when relevant in a judicial proceeding, any information acquired under the authority of 11.605 concerning any method or process which as a trade secret is entitled to protection.
- G. It is unlawful for any person to obtain or attempt to obtain a drug by fraud, deceit, misrepresentation or subterfuge; or by the forgery or alteration of a prescription; or by the use of a false name or the giving of a false address.
- H. It is unlawful for any person to sell, offer for sale or have in his possession with the intent to sell any hallucinogenic or stimulating drug described in 11.601.

11-603. EXEMPTIONS FROM ARTICLE.

- A. The provisions of paragraphs A and E of 11.602 shall not be applicable:
1. To the delivery of drugs for medical or scientific purposes only to persons included in any of the classes hereinafter named, or to the agents or employees of such persons, for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; or
 2. To the possession of drugs by such persons or their agents or employees for such use:
 - (a) Pharmacists;
 - (b) Practitioners;
 - (c) Persons who procure drugs: (i) for disposition by or under the supervision of pharmacists or practitioners employed by them or (ii) for the purpose of lawful research, teaching, or testing and not for resale.
 - (d) Hospitals and other institutions which procure drugs for lawful administration by or under the supervision of practitioners;
 - (e) Manufacturers and wholesalers;
 - (f) Carriers and warehousemen.
- B. Nothing contained in 11.602 shall make it unlawful for a public officer, agent or employee, or person aiding such public officer in performing his official duties to possess, obtain or attempt to obtain a drug for the purpose of enforcing the provisions of any law of this state or of the United States relating to the regulation of the handling, sale or distribution of drugs.
- C. Nothing in this ordinance shall apply to a compound, mixture, or preparation containing a drug which is sold in good faith for the purpose for which it is intended and not for the purpose of evading the provisions of this ordinance if such compound, mixture, or preparation contains a sufficient quantity of another therapeutic agent or agents, in addition to such a drug, to cause it to prevent the ingestion of a sufficient amount of drug to cause a dangerous hypnotic somnifacient or stimulating action.

11-604. RECORDS AND INVENTORIES BY CERTAIN PERSONS.

- A. Persons to whom the exemptions of 11.603 are applicable shall maintain detailed, but not necessarily separate, records and inventories relating to drugs manufactured, purchased, sold, distributed and handled and retain all such records and inventories required by this subsection A for not less than two calendar years after the date of the transaction shown by such record and inventory.
- B. Pharmacists shall, in addition to complying with the provisions of subsection A of this section, retain each prescription and written record of telephonic order for a drug filled by them, for not less than two calendar years immediately following the date of the filling or the date of the last refilling of such prescription whichever is the later date.

11-605. ACCESS TO RECORDS - INSPECTION.

Persons required by 11-604 to keep files, inventories or records relating to drugs shall, upon the written request of a public officer or employee charged with the duty of enforcing laws relating to the handling, sale and distribution of drugs:

- A. Make such files, inventories or records available to such officer or employee, at all reasonable hours, for inspection and copying; and
- B. Afford to such officer or employee full opportunity to check the correctness of such files, inventories or records, including opportunity to make inventory of all stocks of drugs on hand.

11.606. VIOLATION OF ARTICLE - PENALTY.

Any person violating 11-602, 11-604, 11-605 or 11-607 shall be punished as follows:

- a. Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 30 days nor more than six months imprisonment, and fined not less than \$200 nor more than \$500. The person convicted must serve a minimum of 48 consecutive hours before or as a condition of any grant of probation, suspension or reduction of sentence or parole. In addition, the court shall enter a sentencing order that requires:
- (1) That the convicted person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided by K.S.A. 8-1008 and any amendments thereto; and
 - (2) That as a condition of parole the convicted person not consume any alcohol or illegal drugs during the period of probation and submit to any testing of breath or bodily fluids to verify compliance with this requirement; and
 - (3) That should the convicted person violate any of the conditions of parole, the convicted person serve the remaining period of imprisonment set forth in the sentencing order of the court.
- b. Upon a second conviction of a violation of this section, a person shall be sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$500 nor more than \$1,000. The person convicted must serve a minimum of five consecutive days imprisonment before or as a condition of any grant of probation, suspension or reduction of sentence or parole. In addition, the court shall enter a sentencing order that requires:
- (1) That the convicted person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided by K.S.A. 8-1008 and any amendments thereto; and
 - (2) That as a condition of parole the convicted person no consume any alcohol or illegal drugs during the period of probation and submit to any testing of breath or bodily fluids to verify compliance with this requirement.
 - (3) That should the convicted person violate any of the conditions of parole, the convicted person serve the remaining period of imprisonment set forth in the sentencing order of the court.
- c. Upon a third and subsequent conviction of a violation of this section, a person shall be sentenced to not less than 180 days nor more than one year's imprisonment and fined not less than \$1,000 nor more than \$2,500. The person convicted must serve a minimum of 90 days imprisonment before or as a condition of any grant of probation, suspension or reduction of sentence or parole. In addition, the court shall enter an order of sentencing that requires:
- (1) That the convicted person enroll in and successfully complete an alcohol and drug safety action program or a treatment program as provided by K.S.A. 8-1008 and any amendments thereto; and
 - (2) That as a condition of parole the convicted person not consume any alcohol or illegal drugs during the period of probation and submit to any testing of breath or bodily fluids to verify compliance with this requirement.
 - (3) That should the convicted person violate any of the conditions of parole, the convicted person serve the remaining period of imprisonment set forth in the sentencing order of the court.
- d. The court may place a person convicted under this section in a house-arrest program, pursuant to K.S.A. 21-4603b, and amendments thereto; provided, placement in a house-arrest program shall be ordered only after a person has served a minimum of 48 consecutive hours imprisonment.
- e. The court may establish the terms and time for payment of any fines, fees, assessments and costs imposed pursuant to this section. Any assessment and costs shall be required to be paid not later than 90 days after imposed, and any remainder of the fine shall be paid prior to the final release of the defendant by the court.

- f. In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5.00 for each full hour spent by the person in the specified community service. The community service ordered by the court shall be required to be performed not later than one year after the fine is imposed or by an earlier date specified by the court. If by the required date the person performs an insufficient amount of community service to reduce to zero the portion of the fine required to be paid by the person, the remaining balance of the fine shall become due on that date.
- g. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section:
 - (1) "conviction" includes being convicted of a violation of this section or entering into a diversion agreement in lieu of further criminal proceedings on a complaint alleging a violation of this section;
 - (2) "conviction" includes being convicted of a violation of a law of this state or of any state or of an ordinance of any municipality which prohibits the acts that this section prohibits or entering into a diversion agreement in lieu of further criminal proceedings in a case alleging a violation of such a law or ordinance;
 - (3) only convictions occurring in the immediately preceding five years, including prior to the effective date of this ordinance, shall be taken into account for mandatory sentencing purposes, however, the court may consider other prior drug-related convictions in determining the sentence to be imposed within the limits provided for a first, second, third or subsequent offender, whichever is applicable; and
 - (4) it is irrelevant whether an offense occurred before or after a conviction for a previous offense.
- (h) The prosecution shall not plea bargain charges filed pursuant to this section for the purpose of avoiding the mandatory sentencing requirement set forth herein; provided, however, only first time offenders may be diverted on said charges; provided further, all persons diverted on charges filed pursuant to this section shall pay a minimum diversion fee of \$200 and shall attend and successfully complete an alcohol and drug education and/or treatment program.

11.607. CONTROL OF DRUG PARAPHERNALIA AND CONTROL OF SIMULATED DRUGS AND SIMULATED CONTROLLED SUBSTANCES.

(a) **Sale and Display Prohibited.**

It shall be unlawful for any person to sell, dispense, give away or display any drug paraphernalia or simulated controlled substance or simulated drug to minors in or upon any premises. It shall also be unlawful for any person to sell, offer to sell, dispense, give away or display any drug paraphernalia or simulated controlled substance or simulated drug to persons other than minors in or upon any premises which: (1) are premises open to minors, unless the drug paraphernalia, simulated controlled substances or simulated drugs are kept in such part of the premises that is not open to view by minors and to which minors do not have access; or (2) are in close proximity to a school. Provided, however, that display of any such items at a place of display for educational or scientific purposes shall not be unlawful. Provided further, that nothing in this section shall be construed to prohibit the selling, dispensing, or giving away of such items by a practitioner or pharmacist to a patient for lawful purposes.

(b) **Nuisance.**

In addition to any penalty authorized by 11.606, a violation of 11.607 is hereby declared to be a public nuisance."