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21-5302. Conspiracy. (a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. 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 such person or by a co-conspirator.

(b) It is immaterial to the criminal liability of a person charged with conspiracy that any other person with whom the defendant conspired lacked the actual intent to commit the underlying crime provided that the defendant believed the other person did have the actual intent to commit the underlying crime.

(c) It shall be 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 the accused person's co-conspirators, before any overt act in furtherance of the conspiracy was committed by the accused or by a co-conspirator.

(d) (1) Conspiracy to commit an off-grid felony shall be ranked at nondrug severity level 2. Conspiracy to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for conspiracy to commit a nondrug felony shall be a severity level 10.

(2) The provisions of this subsection shall not apply to a violation of conspiracy to commit the crime of:

(A) Aggravated human trafficking, as defined in K.S.A. [21-5426\(b\)](#), and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;

(B) terrorism, as defined in K.S.A. [21-5421](#), and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. [21-5422](#), and amendments thereto;

(D) rape, as defined in K.S.A. [21-5503\(a\)\(3\)](#), and amendments thereto, if the offender is 18 years of age or older;

(E) aggravated indecent liberties with a child, as defined in K.S.A. [21-5506\(b\)\(3\)](#), and amendments thereto, if the offender is 18 years of age or older;

(F) aggravated criminal sodomy, as defined in K.S.A. [21-5504\(b\)\(1\)](#) or (2), and amendments thereto, if the offender is 18 years of age or older;

(G) commercial sexual exploitation of a child, as defined in K.S.A. [21-6422](#), and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;

(H) sexual exploitation of a child, as defined in K.S.A. [21-5510\(a\)\(1\)](#) or (4), and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age;

(I) aggravated internet trading in child pornography, as defined in K.S.A. [21-5514\(b\)](#), and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; or

(J) violations of the Kansas racketeer influenced and corrupt organization act, as described in K.S.A. [21-6329](#), and amendments thereto.

(e) Conspiracy to commit a felony which prescribes a sentence on the drug

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grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(f) A conspiracy to commit a misdemeanor is a class C misdemeanor.

History: L. 2010, ch. 136, § 34; L. 2011, ch. 30, § 15; L. 2012, ch. 150, § 3; L. 2013, ch. 78, § 6; L. 2013, ch. 133, § 4; L. 2017, ch. 78, § 7; July 1.

Source or Prior Law:

21-3302.

Revisor's Note:

Section was also amended by L. 2013, ch. 120, § 12, but that version was repealed by L. 2013, ch. 133, § 37.

CASE ANNOTATIONS

1. Overt acts alleged to have been committed in furtherance of one conspiracy that are presented to jury are not alternative means requiring jury unanimity. *State v. Cottrell*, 53 Kan. App. 2d 425, 390 P.3d 44 (2017), rev. granted (Oct. 27, 2017).

2. Statute does not set forth an alternative means for committing an overt act in furtherance of a conspiracy. *State v. Butler*, 307 Kan. 831, 840, 416 P.3d 116 (2018).

3. Alternate means for a crime are created only by the language of the statute, not by a jury instruction, and the conspiracy statute does not set forth alternative means for committing an overt act. *State v. Cottrell*, 310 Kan. 150, 160, 445 P.3d 1132 (2019).

4. The double jeopardy clause does not bar separate punishments for the substantive crime of murder and for conspiracy to commit the murder. *State v. Alston*, 318 Kan. 979, 985, 551 P.3d 116 (2024).

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