

HOUSE BILL No. 2176

AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 21-3701, 21-4614, 22-3303 and 38-1611 and K.S.A. 2000 Supp. 21-2511, 21-3106, 21-3520, 21-3764, 22-4902, 22-4904, 22-4905, 22-4906, 22-4907, 22-4908 and 22-4909 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2000 Supp. 21-3520 is hereby amended to read as follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy *is a person 16 years of age or older who is an inmate; or*

(2) the offender is a parole officer and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy *is a person 16 years of age or older who is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender; or*

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy *is a person 16 years of age or older who is confined by lawful custody to such jail; or*

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy *is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house; or*

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy *is a person 16 years of age or older who is confined by lawful custody to such facility; or*

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy *is 16 years of age or older and (A) released on conditional release from a juvenile correctional facility under the direct supervision and control of the offender or (B) placed in the custody of the juvenile justice authority under the direct supervision and control of the offender;*

(7) *the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide services in a social and rehabilitation services institution and the person with whom the offender is engaging in consensual sexual intercourse, not otherwise subject to subsection (a)(1)(C) of K.S.A. 21-3502, and amendments thereto, lewd fondling or touching, or sodomy, not otherwise subject to subsection (a)(3)(C) of K.S.A. 21-3506, and amendments thereto, is a person 16 years of age or older who is a patient in such institution; or*

(8) *the offender is a teacher or a person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching or sodomy is 16 or 17 years of age and a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of K.S.A. 21-3603, and amendments thereto, shall apply, not this subsection.*

(b) For purposes of this act:

(1) "Correctional institution" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(2) "inmate" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(3) "parole officer" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(4) “postrelease supervision” means the same as prescribed in the Kansas sentencing guidelines act in K.S.A. 21-4703, *and amendments thereto*;

(5) “juvenile detention facility” means the same as prescribed by K.S.A. 38-1602, and amendments thereto;

(6) “juvenile correctional facility” means the same as prescribed by K.S.A. 38-1602, and amendments thereto;

(7) “sanctions house” means the same as prescribed by K.S.A. 38-1602, and amendments thereto;

(8) “institution” means the same as prescribed by K.S.A. 76-12a01, *and amendments thereto*; and

(9) “teacher” means and includes teachers, supervisors, principals, superintendents and any other professional employee in any public or private school.

(c) Unlawful sexual relations is a severity level 10 person felony.

Sec. 2. K.S.A. 2000 Supp. 21-2511 is hereby amended to read as follows: 21-2511. (a) Any person convicted as an adult or adjudicated as a juvenile offender because of the commission of any offense which requires such person to register as an offender pursuant to the Kansas offender registration act, K.S.A. 22-4901 *et seq.*, *any off-grid felony, any nondrug severity level 1 through 6 felony*, or a violation of subsection (a)(1) of K.S.A. 21-3505, 21-3508, 21-3602 ~~or 21-3609~~, 21-3715, 21-4310, subsections (e)(2), (e)(3) and (e)(4) of K.S.A. 65-4142 or K.S.A. 65-4159, and amendments thereto, including an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such offenses provided in this subsection regardless of the sentence imposed, shall be required to submit specimens of blood and saliva to the Kansas bureau of investigation in accordance with the provisions of this act, if such person is:

(1) Convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act;

(2) ordered institutionalized as a result of being convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in subsection (a) on or after the effective date of this act; or

(3) convicted as an adult or adjudicated as a juvenile offender because of the commission of a crime specified in this subsection before the effective date of this act and is presently confined as a result of such conviction or adjudication in any state correctional facility or county jail or is presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663, and amendments thereto.

(b) Notwithstanding any other provision of law, the Kansas bureau of investigation is authorized to obtain fingerprints and other identifiers for all persons, whether juveniles or adults, covered by this act.

(c) Any person required by paragraphs (a)(1) and (a)(2) to provide specimens of blood and saliva shall be ordered by the court to have specimens of blood and saliva collected within 10 days after sentencing or adjudication:

(1) If placed directly on probation, that person must provide specimens of blood and saliva, at a collection site designated by the Kansas bureau of investigation. Failure to cooperate with the collection of the specimens and any deliberate act by that person intended to impede, delay or stop the collection of the specimens shall be punishable as contempt of court and constitute grounds to revoke probation;

(2) if sentenced to the secretary of corrections, the specimens of blood and saliva will be obtained immediately upon arrival at the Topeka correctional facility; or

(3) if a juvenile offender is placed in the custody of the commissioner of juvenile justice, in a youth residential facility or in a juvenile correctional facility, the specimens of blood and saliva will be obtained immediately upon arrival.

(d) Any person required by paragraph (a)(3) to provide specimens of blood and saliva shall be required to provide such samples prior to final discharge or conditional release at a collection site designated by the Kansas bureau of investigation.

(e) The Kansas bureau of investigation shall provide all specimen vials, mailing tubes, labels and instructions necessary for the collection of

blood and saliva samples. The collection of samples shall be performed in a medically approved manner. No person authorized by this section to withdraw blood and collect saliva, and no person assisting in the collection of these samples shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices. The withdrawal of blood for purposes of this act may be performed only by: (1) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person; (2) a registered nurse or a licensed practical nurse; or (3) any qualified medical technician including, but not limited to, an emergency medical technician-intermediate or mobile intensive care technician, as those terms are defined in K.S.A. 65-6112, and amendments thereto, or a phlebotomist. The samples shall thereafter be forwarded to the Kansas bureau of investigation for analysis and categorizing into genetic marker groupings.

(f) The genetic marker groupings shall be maintained by the Kansas bureau of investigation. The Kansas bureau of investigation shall establish, implement and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching and storing analysis of DNA (deoxyribonucleic acid) and other biological molecules. The genetic marker grouping analysis information and identification system as established by this act shall be compatible with the procedures specified by the federal bureau of investigation's combined DNA index system (CODIS). The Kansas bureau of investigation may participate in the CODIS program by sharing data and utilizing compatible test procedures, laboratory equipment, supplies and computer software.

(g) The genetic marker grouping analysis information obtained pursuant to this act shall be confidential and shall be released only to law enforcement officers of the United States, of other states or territories, of the insular possessions of the United States, or foreign countries duly authorized to receive the same, to all law enforcement officers of the state of Kansas and to all prosecutor's agencies.

(h) The Kansas bureau of investigation shall be the state central repository for all genetic marker grouping analysis information obtained pursuant to this act. The Kansas bureau of investigation may promulgate rules and regulations for the form and manner of the collection of blood and saliva samples and other procedures for the operation of this act. The provisions of the Kansas administrative procedure act shall apply to all actions taken under the rules and regulations so promulgated.

Sec. 3. K.S.A. 2000 Supp. 21-3106 is hereby amended to read as follows: 21-3106. (1) A prosecution for murder may be commenced at any time.

(2) Except as provided by ~~subsection~~ *subsections (7) and (8) (9)*, a prosecution for any of the following crimes must be commenced within five years after its commission if the victim is less than 16 years of age: (a) Indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (b) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (c) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (f) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; or (g) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto.

(3) Except as provided in subsection ~~(8) (9)~~, a prosecution for any crime must be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(4) Except as provided by ~~subsection (8) subsections (7) and (9)~~, a prosecution for rape, as defined in K.S.A. 21-3502 and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, must be commenced within five years after its commission.

(5) Except as provided in subsection ~~(8) (9)~~, a prosecution for any crime found in the Kansas medicaid fraud control act must be commenced within five years after its commission.

(6) Except as provided by subsection ~~(8) (9)~~, a prosecution for the crime of arson, as defined in K.S.A. 21-3718 and amendments thereto,

or aggravated arson, as defined in K.S.A. 21-3719 and amendments thereto, must be commenced within five years after its commission.

(7) (a) *Except as provided in subsection (9), a prosecution for any offense provided in subsection (2) or a sexually violent offense as defined in K.S.A. 22-3717, and amendments thereto, must be commenced within the limitation of time provided by the law pertaining to such offense or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later.*

(b) *For purposes of this section, "DNA" means deoxyribonucleic acid.*

(8) Except as provided by subsection ~~(8)~~ (9), a prosecution for any crime not governed by subsections (1), (2), (3), (4), (5) ~~and~~, (6) and (7) must be commenced within two years after it is committed.

~~(8)~~ (9) The period within which a prosecution must be commenced shall not include any period in which:

- (a) The accused is absent from the state;
- (b) the accused is concealed within the state so that process cannot be served upon the accused;
- (c) the fact of the crime is concealed;
- (d) 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;
- (e) 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

(f) 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.

~~(9)~~ (10) 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.

~~(10)~~ (11) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

New Sec. 4. (a) Notwithstanding any other provision of law, a person in state custody, at any time after conviction for murder as defined by K.S.A. 21-3401, and amendments thereto, or for rape as defined by K.S.A. 21-3502, and amendments thereto, may petition the court that entered the judgment for forensic DNA testing (deoxyribonucleic acid testing) of any biological material that:

(1) Is related to the investigation or prosecution that resulted in the conviction;

(2) is in the actual or constructive possession of the state; and
(3) was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(b) (1) The court shall notify the prosecuting attorney of a petition made under subsection (a) and shall afford the prosecuting attorney an opportunity to respond.

(2) Upon receiving notice of a petition made under subsection (a), the prosecuting attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured in connection with the case is preserved pending the completion of proceedings under this section.

(c) The court shall order DNA testing pursuant to a petition made under subsection (a) upon a determination that testing may produce non-cumulative, exculpatory evidence relevant to the claim of the petitioner that the petitioner was wrongfully convicted or sentenced.

(d) The cost of DNA testing ordered under subsection (c) shall be borne by the state or the petitioner, as the court may order in the interests of justice, if it is shown that the petitioner is not indigent and possesses the means to pay.

(e) The court may at any time appoint counsel for an indigent applicant under this section.

(f) (1) If the results of DNA testing conducted under this section are unfavorable to the petitioner, the court:

(A) Shall dismiss the petition; and
(B) in the case of a petitioner who is not indigent, may assess the petitioner for the cost of such testing.

(2) If the results of DNA testing conducted under this section are favorable to the petitioner, the court shall:

(A) order a hearing, notwithstanding any provision of law that would bar such a hearing; and
(B) enter any order that serves the interests of justice, including, but not limited to, an order:

- (i) Vacating and setting aside the judgment;
- (ii) discharging the petitioner if the petitioner is in custody;
- (iii) resentencing the petitioner; or
- (iv) granting a new trial.

(3) If the results of DNA testing conducted under this section are inconclusive, the court may order a hearing to determine whether there is a substantial question of innocence. If the petitioner proves by a preponderance of the evidence that there is a substantial question of innocence, the court shall proceed as provided in subsection (f)(2).

(g) Nothing in this section shall be construed to limit the circumstances under which a person may obtain DNA testing or other postconviction relief under any other provision of law.

Sec. 5. K.S.A. 21-3701 is hereby amended to read as follows: 21-3701. (a) Theft is any of the following acts done with intent to deprive the owner permanently of the possession, use or benefit of the owner's property:

(1) Obtaining or exerting unauthorized control over property;
(2) obtaining by deception control over property;
(3) obtaining by threat control over property; or
(4) obtaining control over stolen property knowing the property to have been stolen by another.

(b) (1) Theft of property of the value of \$25,000 or more is a severity level 7, nonperson felony.

(2) Theft of property of the value of at least \$500 but less than \$25,000 is a severity level 9, nonperson felony.

(3) *Theft of property regardless of the value from three separate mercantile establishments within a period of 72 hours as part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct is a severity level 9, nonperson felony.*

~~(3)~~ (4) Theft of property of the value of less than \$500 is a class A nonperson misdemeanor.

~~(4)~~ (5) Theft of property of the value of less than \$500 is a severity level 9, nonperson felony if committed by a person who has, within five

years immediately preceding commission of the crime, been convicted of theft two or more times.

Sec. 6. K.S.A. 2000 Supp. 21-3764 is hereby amended to read as follows: 21-3764. (a) Unlawful manufacturing or selling of a theft detection shielding device is intentionally manufacturing, selling, offering for sale or distributing in any way a laminated or coated bag or device particular to and intentionally marketed for shielding and intended to shield merchandise from detection by electronic or magnetic theft alarm sensor.

(b) Unlawful possession of a theft detection shielding device is intentionally possessing any laminated or coated bag or device particular to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.

(c) Unlawful possession of a theft detection device remover is intentionally possessing any tool or device designed to allow the removal of any theft detection device from any merchandise with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding such merchandise.

(d) Unlawful removal of a theft detection device is intentionally removing the device from merchandise prior to purchase.

(e) *Unlawful possession of a sales receipt or universal product code label is possessing 15 or more fraudulent retail sales receipts or universal product code labels, or any combination thereof, or possessing the device which manufactures fraudulent retail sales receipts or universal product code labels. A person having possession, custody or control of 15 or more such receipts or labels or such device shall be presumed to possess such items with the intent to cheat or defraud a retailer.*

~~(e)~~ (f) Violation of this section is a severity level 9, nonperson felony.

~~(f)~~ (g) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 7. K.S.A. 21-4614 is hereby amended to read as follows: 21-4614. In any criminal action in which the defendant is convicted upon a plea of guilty or *no contest* or trial by court or jury or upon completion of an appeal, the judge, if ~~he or she~~ *the judge* sentences the defendant to confinement, shall direct that for the purpose of computing defendant's sentence and ~~his or her~~ parole eligibility and conditional release dates thereunder, that such sentence is to be computed from a date, to be specifically designated by the court in the sentencing order of the journal entry of judgment or the judgment form, whichever is delivered with the defendant to the correctional institution, such date shall be established to reflect and shall be computed as an allowance for the time which the defendant has spent incarcerated pending the disposition of the defendant's case. In recording the commencing date of such sentence the date as specifically set forth by the court shall be used as the date of sentence and all good time allowances as are authorized by the Kansas ~~adult au-~~ ~~thority~~ *parole board* are to be allowed on such sentence from such date as though the defendant were actually incarcerated in any of the institutions of the state correctional system. Such jail time credit is not to be considered to reduce the minimum or maximum terms of confinement as are authorized by law for the offense of which the defendant has been convicted.

Sec. 8. K.S.A. 22-3303 is hereby amended to read as follows: 22-3303. (1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever

occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. *When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, “mentally ill person subject to involuntary commitment for care and treatment” means a mentally ill person, as defined in subsection (e) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 2000 Supp. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, shall not apply.*

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. *When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, “mentally ill person subject to involuntary commitment for care and treatment” means a mentally ill person, as defined in subsection (e) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 2000 Supp. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, shall not apply.*

(3) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302 and amendments thereto to determine the person's present mental condition. Reasonable notice of such hearings shall be given to the prosecuting attorney, the defendant and the defendant's attorney of record, if any. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

New Sec. 9. The secretary of social and rehabilitation services shall convene a task force to study current programs and laws for alleged offenders with disabilities that render such offenders potentially incompetent to stand trial, but who do not meet the criteria for involuntary commitment under Kansas law. The task force shall review and make recommendations on the adequacy of Kansas programs and services, and current Kansas law, in protecting public safety and in providing services and support to such alleged offenders. The secretary shall report to the judiciary committee during the 2001 interim and shall make a final report including programmatic and statutory recommendations to the 2002 legislature.

Sec. 10. K.S.A. 2000 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in this act, unless the context otherwise requires:

- (a) “Offender” means: (1) A sex offender as defined in subsection (b);
- (2) a violent offender as defined in subsection (d);
- (3) a sexually violent predator as defined in subsection (f);
- (4) any person who, on and after the effective date of this act, is convicted of any of the following crimes when the victim is less than 18 years of age:
 - (A) Kidnapping as defined in K.S.A. 21-3420 and amendments thereto, except by a parent;

(B) aggravated kidnapping as defined in K.S.A. 21-3421 and amendments thereto; or

(C) criminal restraint as defined in K.S.A. 21-3424 and amendments thereto, except by a parent;

~~(4)~~ (5) any person convicted of any of the following criminal sexual conduct if one of the parties involved is less than 18 years of age:

(A) Adultery as defined by K.S.A. 21-3507, and amendments thereto;

(B) criminal sodomy as defined by subsection (a)(1) of K.S.A. 21-3505, and amendments thereto;

(C) promoting prostitution as defined by K.S.A. 21-3513, and amendments thereto;

(D) patronizing a prostitute as defined by K.S.A. 21-3515, and amendments thereto;

(E) lewd and lascivious behavior as defined by K.S.A. 21-3508, and amendment thereto; or

(F) unlawful sexual relations as defined by K.S.A. 21-3520, and amendments thereto;

~~(5) any conviction for~~ (6) any person who is a resident of this state who has been required to register under any federal, military or other state's law;

(7) any person who has been convicted of an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in subsection ~~(3) or (4)~~ (4) or (5), or any federal, military or other state conviction for an offense that under the laws of this state would be an offense defined in subsection ~~(3) or (4)~~ (4) or (5); or

~~(6)~~ (8) any person who has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection ~~(3) or (4)~~ (4) or (5).

Convictions which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law is not a conviction for purposes of this section. A conviction from another state shall constitute a conviction for purposes of this section.

(b) "Sex offender" includes any person who, after the effective date of this act, is convicted of any sexually violent crime set forth in subsection (c).

(c) "Sexually violent crime" means:

(1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

(2) indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto;

(3) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto;

(4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and amendments thereto;

(6) indecent solicitation of a child as defined by K.S.A. 21-3510 and amendments thereto;

(7) aggravated indecent solicitation of a child as defined by K.S.A. 21-3511 and amendments thereto;

(8) sexual exploitation of a child as defined by K.S.A. 21-3516 and amendments thereto;

(9) sexual battery as defined by K.S.A. 21-3517 and amendments thereto;

(10) aggravated sexual battery as defined by K.S.A. 21-3518 and amendments thereto;

(11) aggravated incest as defined by K.S.A. 21-3603 and amendments thereto; or

(12) any conviction for a *an* offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (1) through (11), or any federal, military or other state conviction for a ~~felony~~ *an* offense that under the laws of this state would be a sexually violent crime as defined in this section;

(13) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of a sexually violent crime, as defined in this section; or

(14) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, “sexually motivated” means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant’s sexual gratification.

(d) “Violent offender” includes any person who, after the effective date of this act, is convicted of any of the following crimes:

(1) Capital murder as defined by K.S.A. 21-3439 and amendments thereto;

(2) murder in the first degree as defined by K.S.A. 21-3401 and amendments thereto;

(3) murder in the second degree as defined by K.S.A. 21-3402 and amendments thereto;

(4) voluntary manslaughter as defined by K.S.A. 21-3403 and amendments thereto;

(5) involuntary manslaughter as defined by K.S.A. 21-3404 and amendments thereto; or

(6) any conviction for an offense in effect at any time prior to the effective date of this act, that is comparable to any crime defined in this subsection, or any federal, *military* or other state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(7) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in this subsection.

(e) “Law enforcement agency having jurisdiction” means the sheriff of the county in which the offender expects to reside upon the offender’s discharge, parole or release.

(f) “*Sexually violent predator*” means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.

(g) “*Nonresident student or worker*” includes any offender who crosses into the state or county for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year, for the purposes of employment, with or without compensation, or to attend school as a student.

(h) “Aggravated offenses” means engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence, or engaging in sexual acts involving penetration with victims less than 14 years of age, and includes the following offenses:

(1) Rape as defined in subsection (a)(1)(A) and subsection (a)(2) of K.S.A. 2000 Supp. 21-3502, and amendments thereto;

(2) aggravated criminal sodomy as defined in subsection (a)(1) and subsection (a)(3)(A) of K.S.A. 21-3506, and amendments thereto; and

(3) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of an offense defined in subsection (f).

Sec. 11. K.S.A. 2000 Supp. 22-4904 is hereby amended to read as follows: 22-4904. (a) (1) Except as provided in subsection (a)(2), within 10 days of the offender coming into any county in which the offender resides or is temporarily domiciled for more than 10 days, the offender shall register with the sheriff of the county.

(2) Within 10 days of the offender coming into any county in which the offender resides or temporarily resides for more than 10 days, any offender who has provided the information and completed and signed the registration form as required in K.S.A. 22-4905 and amendments thereto, shall verify with the sheriff of the county that the sheriff has received such offender’s information and registration form.

(3) *Upon registration with a school or educational institution, a nonresident student attending such school or educational institution shall register with the sheriff within 10 days of the commencement of the school term.*

(4) *Upon commencement of employment, a nonresident worker shall register with the sheriff within 10 days of the commencement date of employment.*

~~(3)~~ (5) For persons required to register as provided in ~~subsection~~ subsections (a)(1), (a)(3) and (a)(4), the sheriff shall: (A) Explain the duty to register and the procedure for registration;

(B) obtain the information required for registration as provided in K.S.A. 22-4907 and amendments thereto;

(C) inform the offender that the offender must give written notice of any change of address within 10 days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;

(D) *inform the nonresident student offender that the offender must give written notice to the sheriff and the Kansas bureau of investigation of any change or termination of attendance at the school or educational institution the offender is attending, within 10 days of such change or termination;*

(E) *inform the nonresident worker offender that the offender must give written notice to the sheriff and the Kansas bureau of investigation of any termination of employment at the offender's place of employment, within 10 days of such termination;*

(F) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within 10 days of such change in residence; ~~and~~

(G) *inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student; and*

~~(E)~~ (H) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.

~~(4)~~ (6) Such sheriff, within three days of receipt of the initial registration shall forward this information to the Kansas bureau of investigation.

~~(5)~~ (7) Notwithstanding any other provision of law, if a diversionary agreement or probation order, either adult or juvenile, or a juvenile offender sentencing order, requires registration under the Kansas offender registration act then all provisions of that act shall apply, except that the term of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.

(b) (1) If any person required to register as provided in this act changes the address of the person's residence, the offender, within 10 days, shall inform in writing the Kansas bureau of investigation of the new address.

(2) After receipt of the change of address, the Kansas bureau of investigation shall forward this information to the law enforcement agency having jurisdiction of the new place of residence within 10 days of such receipt of the change of address.

(c) For any person required to register as provided in this act, every 90 days after the person's initial registration date during the period the person is required to register, the following applies:

(1) The Kansas bureau of investigation shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall mail the verification form to the Kansas bureau of investigation within 10 days after receipt of the form.

(3) ~~The verification form shall be signed by the person; and shall state provide that the person still resides at the address last reported to the Kansas bureau of investigation~~ *the following information, as applicable, to the Kansas bureau of investigation: (A) Whether the person still resides at the address last reported; (B) whether the person still attends the school or educational institution last reported; (C) whether the person is still employed at the place of employment last reported; and (D) whether the person's vehicle registration information is the same as last reported.*

(4) If the person fails to mail the verification form to the Kansas bureau of investigation within 10 days after receipt of the form, the person shall be in violation of the Kansas offender registration act.

(5) Nothing contained in this section shall be construed to alleviate any person required to register as provided in this act from meeting the requirements prescribed in ~~subsection~~ *subsections* (a)(1), (a)(2) and (b)(1).

Sec. 12. K.S.A. 2000 Supp. 22-4905 is hereby amended to read as follows: 22-4905. (a) (1) Any offender, who is discharged or paroled from

a prison, hospital or other institution or facility involving a violation of any crime *or confinement* as provided in subsection (a), (b) ~~or~~, (d) *or (f)* of K.S.A. 22-4902 and amendments thereto, prior to discharge, parole or release, shall be informed by the staff of the facility in which the offender was confined of the duty to register as provided in this act.

(2) (A) The staff of the facility shall: (i) Explain the duty to register and the procedure for registration;

(ii) obtain the information required for registration as provided in K.S.A. 22-4907 and amendments thereto;

(iii) inform the offender that the offender must give written notice of any change of address within 10 days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;

(iv) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within 10 days of such change in residence; ~~and~~

(v) *inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student; and*

(vi) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.

(B) The staff of the facility shall give one copy of the form to the person, within three days, and shall send two copies of the form provided by subsection (2)(A)(v) to the Kansas bureau of investigation, which shall then forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon discharge, parole or release. The Kansas bureau of investigation must immediately ensure that such information is entered in the state law enforcement record system. The Kansas bureau of investigation shall transmit such conviction data and fingerprints to the federal bureau of investigation.

(b) (1) Any offender who is released on probation, receives a suspended sentence, sentenced to community corrections or released on postrelease supervision because of the commission of any crime as provided in subsection (a), (b) or (d) of K.S.A. 22-4902 and amendments thereto, prior to release, shall be informed of the offenders duty to register as provided in this act by the court in which the offender is convicted.

(2) (A) The court shall: (i) Explain the duty to register and the procedure for registration;

(ii) obtain the information required for registration as provided in K.S.A. 22-4907 and amendments thereto;

(iii) inform the offender that the offender must give written notice of any change of address within 10 days of a change in residence to the law enforcement agency where last registered and the Kansas bureau of investigation;

(iv) inform the offender that if the offender changes residence to another state, the offender must inform the law enforcement agency where last registered and the Kansas bureau of investigation of such change in residence and must register in the new state within 10 days of such change in residence; ~~and~~

(v) *inform the offender that the offender must also register in any state or county where the offender is employed, carries on a vocation or is a student; and*

(vi) require the offender to read and sign the registration form which shall include a statement that the requirements provided in this subsection have been explained to the offender.

(B) The court shall give one copy of the form to the person and, within three days, shall send two copies of the form provided by subsection (2)(A)(v) to the Kansas bureau of investigation which shall then forward one copy to the law enforcement agency having jurisdiction where the person expects to reside upon release. The Kansas bureau of investigation must immediately ensure that such information is entered in the state law enforcement record system. The Kansas bureau of investigation shall transmit such conviction data and fingerprints to the federal bureau of investigation.

Sec. 13. K.S.A. 2000 Supp. 22-4906 is hereby amended to read as follows: 22-4906. (a) Any person required to register as provided in this act shall be required to register: (1) Upon the first conviction of a sexually violent crime as defined in subsection (c) of K.S.A. 22-4902 and amendments thereto, any offense as defined in subsection (a) of K.S.A. 22-4902 and amendments thereto or any offense as defined in subsection (d) of K.S.A. 22-4902 and amendments thereto, if not confined, for a period of 10 years after conviction, or, if confined, for a period of 10 years after paroled, discharged or released; or (2) upon a second or subsequent conviction for such person's lifetime.

(b) Upon the first conviction, liability for registration terminates, if not confined, at the expiration of 10 years from the date of conviction, or, if confined, at the expiration of 10 years from the date of parole, discharge or release, if the convicted offender does not again become liable to register as provided by this act during that period.

(c) ~~On and after July 1, 1999,~~ Any person who has been convicted of an aggravated offense shall be required to register for such person's lifetime. The provisions of this subsection shall expire on June 30, 2009.

(d) *Any person who has been declared a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall register for such person's lifetime.*

(e) *Any nonresident worker shall register for the duration of such person's employment. The provisions of this subsection are in addition to subsections (a) and (b).*

(f) *Any nonresident student shall register for the duration of such person's attendance at a school or educational institution as provided in this act. The provisions of this subsection are in addition to subsections (a) and (b).*

Sec. 14. K.S.A. 2000 Supp. 22-4907 is hereby amended to read as follows: 22-4907. (a) Registration as required by this act shall consist of a form prepared by the Kansas bureau of investigation, which shall include a statement that the requirements provided in this section have been explained to the person, and shall be signed by the person. Such registration form shall include the following:

- (1) Name;
- (2) date and place of birth;
- (3) offense or offenses committed, date of conviction or convictions obtained;
- (4) city or county of conviction or convictions obtained;
- (5) sex and age of victim;
- (6) current address;
- (7) social security number;
- (8) identifying characteristics such as race, *skin tone*, sex, age, hair and eye color, scars, *tattoos* and blood type;
- (9) occupation ~~and~~, name of employer *and place of employment*;
- (10) drivers license and vehicle information;
- (11) documentation of any treatment received for a mental abnormality or personality disorder of the offender; for purposes of documenting the treatment received, sheriffs, prison officials and courts may rely on information that is readily available to them from existing records and the offender.
- (12) anticipated future residence;
- (13) a photograph; ~~and~~
- (14) fingerprints; *and*
- (15) *school*.

(b) (1) The offender shall also provide to the registering law enforcement agency DNA exemplars, unless already on file.

(2) If the exemplars to be taken require the withdrawal of blood, such withdrawal may be performed only by: (A) A person licensed to practice medicine and surgery or a person acting under the supervision of any such licensed person;

- (B) a registered nurse or a licensed practical nurse;
- (C) any qualified medical technician; or
- (D) a licensed phlebotomist.

(c) Unless the person has provided the information and completed and signed the registration form as provided in K.S.A. 22-4905 and amendments thereto within three days, the registering law enforcement

agency shall forward the registration form to the Kansas bureau of investigation.

(d) *The Kansas bureau of investigation may participate in the federal bureau of investigation's NCIC 2000.*

Sec. 15. K.S.A. 2000 Supp. 22-4908 is hereby amended to read as follows: 22-4908. ~~(a) Any offender registered as provided in this act may apply to the sentencing court for an order relieving the offender of the duty of registration, except that no offender may apply as provided in this section for an order relieving the offender of the duty of registration until such offender has registered for a period of at least 10 years for each conviction for which an offender must register as provided by this act. The court shall hold a hearing on the application at which the applicant and any interested persons may present witnesses and other evidence.~~

~~(b) At such hearing, if the person is a person who is required to register due to a conviction of a sexually violent crime as defined in K.S.A. 22-4902 and amendments thereto, the court shall receive and consider a report by a board composed of experts in the field of the behavior and treatment of sexual offenders. Such board shall be appointed as provided by rules and regulations promulgated by the attorney general. If, after the hearing involving such person, the court finds by a preponderance of the evidence that the sex offender is rehabilitated and that the sex offender, does not suffer from a mental abnormality or personality disorder that would make the person likely to engage in a predatory sexually violent crime, the court shall grant an order relieving the offender of the duty of further registration under this act. For purposes of this act, "mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit a sexually violent crime in a degree constituting such person a menace to the health and safety of others.~~

~~(c) If, after the hearing involving a person who is an offender who was not required to register due to a conviction of a sexually violent crime as defined in K.S.A. 22-4902 and amendments thereto, the court finds by a preponderance of the evidence that the offender is rehabilitated, the court shall grant an order relieving the offender of the duty of further registration under this act.~~

~~(d) Any person registered as provided in this act may apply to the sentencing court for an order relieving such person of the duty of registration for any conviction which has been set aside. The court shall hold a hearing on the application at which the applicant shall present evidence verifying that such applicant's conviction was set aside. If the court finds that the person's conviction was set aside, the court shall grant an order relieving the person of the duty of further registration under this act for any conviction which has been set aside. Such court granting such an order shall forward a copy of such order to the sheriff of the county in which such person has registered and to the Kansas bureau of investigation. Upon receipt of such copy of the order, such sheriff and the Kansas bureau of investigation shall remove such person's name from the registry for any conviction which has been set aside. Nothing contained in this subsection shall relieve any person of the duty to register or any other duty prescribed under this act for any conviction which has not been set aside.~~

~~(e) Any No person required to register as an offender pursuant to the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, who has a second or subsequent conviction for an offense which requires registration pursuant to such act, and any person who has been convicted of an aggravated offense, shall not be granted an order relieving the offender of further registration under this act. The provisions of this subsection shall expire on June 30, 2009.~~

Sec. 16. K.S.A. 2000 Supp. 22-4909 is hereby amended to read as follows: 22-4909. The statements or any other information required by this act shall be open to inspection ~~in the sheriff's office~~ by the public *at the sheriff's office, at the headquarters of the Kansas bureau of investigation and on any internet website sponsored or created by a sheriff's department or the Kansas bureau of investigation that contains such statements or information*, and specifically are subject to the provisions of the Kansas open records act, K.S.A. 45-215 et seq., and amendments thereto, except that the name, address, telephone number, or any other infor-

mation which specifically and individually identifies the victim of any offender required to register as provided in this act shall not be disclosed other than to law enforcement agencies.

Sec. 17. K.S.A. 38-1611 is hereby amended to read as follows: 38-1611. (a) Fingerprints or photographs shall not be taken of any juvenile who is taken into custody for any purpose, except that:

(1) Fingerprints or photographs of the juvenile may be taken if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall be taken, and photographs of a juvenile may be taken, immediately upon taking the juvenile into custody or upon first appearance or in any event before final sentencing, before the court for an offense which, if committed by a person 18 or more years of age, would make the person liable to be arrested and prosecuted for the commission of a felony as defined by K.S.A. 21-3105 and amendments thereto ~~or~~, a class A or B misdemeanor *or assault, as defined by K.S.A. 21-3408, and amendments thereto*; and

(3) fingerprints or photographs of a juvenile may be taken under K.S.A. 21-2501 and amendments thereto if the juvenile has been:

(A) Prosecuted as an adult by reason of 38-1636, and amendments thereto; or

(B) convicted of aggravated juvenile delinquency as defined by K.S.A. 21-3611 and amendments thereto; or

(C) taken into custody for an offense described in subsection (b)(1) or (2) of K.S.A. 38-1602 and amendments thereto.

(b) Fingerprints and photographs taken under subsection (a)(1) or (2) shall be kept readily distinguishable from those of persons of the age of majority. Fingerprints and photographs taken under subsection (a)(3) may be kept in the same manner as those of persons of the age of majority.

(c) Fingerprints and photographs of a juvenile shall not be sent to a state or federal repository, except that:

(1) Fingerprints and photographs may be sent to a state or federal repository if authorized by a judge of the district court having jurisdiction;

(2) a juvenile's fingerprints shall, and photographs of a juvenile may, be sent to a state or federal repository if taken under subsection (a)(2); and

(3) fingerprints or photographs taken under subsection (a)(3) shall be processed and disseminated in the same manner as those of persons of the age of majority.

(d) Fingerprints or photographs of a juvenile may be furnished to another juvenile justice agency, as defined by K.S.A. 38-1617 and amendments thereto, if the other agency has a legitimate need for the fingerprints or photographs.

(e) Any fingerprints or photographs of a juvenile taken under the provisions of subsection (a)(2) as it existed before the effective date of this act may be sent to a state or federal repository on or before December 31, 1984.

(f) Any law enforcement agency that willfully fails to make any report required by this section shall be liable to the state for the payment of a civil penalty, recoverable in an action brought by the attorney general, in an amount not exceeding \$500 for each report not made. Any civil penalty recovered under this subsection shall be paid into the state general fund.

(g) The director of the Kansas bureau of investigation shall adopt any rules and regulations necessary to implement, administer and enforce the provisions of this section, including time limits within which fingerprints shall be sent to a state or federal repository when required by this section.

(h) Nothing in this section shall preclude the custodian of a juvenile from authorizing photographs or fingerprints of the juvenile to be used in any action under the Kansas parentage act.

Sec. 18. K.S.A. 21-3701, 21-4614, 22-3303 and 38-1611 and K.S.A. 2000 Supp. 21-2511, 21-3106, 21-3520, 21-3764, 22-4902, 22-4904, 22-4905, 22-4906, 22-4907, 22-4908 and 22-4909 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.