

## HOUSE BILL No. 2769

By Representative Mast

1-31

9 AN ACT concerning crimes, punishment and criminal procedure; relat-  
10 ing to sex offenders; amending K.S.A. 21-3603 and K.S.A. 2005 Supp.  
11 21-4603d and repealing the existing section.  
12

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

14 Section 1. K.S.A. 21-3603 is hereby amended to read as follows: 21-  
15 3603. (a) Aggravated incest is: (1) Marriage to a person who is under 18  
16 years of age and who is known to the offender to be related to the offender  
17 as any of the following biological, step or adoptive relatives: Child, grand-  
18 child of any degree, brother, sister, half-brother, half-sister, uncle, aunt,  
19 nephew or niece; or

20 (2) engaging in: (A) Otherwise lawful sexual intercourse or sodomy  
21 as defined by K.S.A. 21-3501 and amendments thereto; or (B) any lewd  
22 fondling, as described in subsection (a)(1) of K.S.A. 21-3503 and amend-  
23 ments thereto, with a person who is 16 or more years of age but under  
24 18 years of age and who is known to the offender to be related to the  
25 offender as any of the following biological, step or adoptive relatives:  
26 Child, grandchild of any degree, brother, sister, half-brother, half-sister,  
27 uncle, aunt, nephew or niece.

28 (b) ~~Aggravated incest as described in subsection (a)(2)(A) is a severity~~  
29 ~~level 5, person felony. Aggravated incest as described in subsections (a)(1)~~  
30 ~~and (a)(2)(B) is a severity level 7, person felony.~~

31 Sec. 2. K.S.A. 2005 Supp. 21-4603d is hereby amended to read as  
32 follows: 21-4603d. (a) Whenever any person has been found guilty of a  
33 crime, the court may adjudge any of the following:

34 (1) Commit the defendant to the custody of the secretary of correc-  
35 tions if the current crime of conviction is a felony and the sentence pre-  
36 sumes imprisonment, or the sentence imposed is a dispositional departure  
37 to imprisonment; or, if confinement is for a misdemeanor, to jail for the  
38 term provided by law;

39 (2) impose the fine applicable to the offense;

40 (3) release the defendant on probation if the current crime of con-  
41 viction and criminal history fall within a presumptive nonprison category  
42 or through a departure for substantial and compelling reasons subject to  
43 such conditions as the court may deem appropriate. In felony cases except

1 for violations of K.S.A. 8-1567, and amendments thereto, the court may  
2 include confinement in a county jail not to exceed 60 days, which need  
3 not be served consecutively, as a condition of an original probation sen-  
4 tence and up to 60 days in a county jail upon each revocation of the  
5 probation sentence, or community corrections placement;

6 (4) assign the defendant to a community correctional services pro-  
7 gram as provided in K.S.A. 75-5291, and amendments thereto, or through  
8 a departure for substantial and compelling reasons subject to such con-  
9 ditions as the court may deem appropriate, including orders requiring full  
10 or partial restitution;

11 (5) assign the defendant to a conservation camp for a period not to  
12 exceed six months as a condition of probation followed by a six-month  
13 period of follow-up through adult intensive supervision by a community  
14 correctional services program, if the offender successfully completes the  
15 conservation camp program;

16 (6) assign the defendant to a house arrest program pursuant to K.S.A.  
17 21-4603b and amendments thereto;

18 (7) order the defendant to attend and satisfactorily complete an al-  
19 cohol or drug education or training program as provided by subsection  
20 (3) of K.S.A. 21-4502, and amendments thereto;

21 (8) order the defendant to repay the amount of any reward paid by  
22 any crime stoppers chapter, individual, corporation or public entity which  
23 materially aided in the apprehension or conviction of the defendant; repay  
24 the amount of any costs and expenses incurred by any law enforcement  
25 agency in the apprehension of the defendant, if one of the current crimes  
26 of conviction of the defendant includes escape, as defined in K.S.A. 21-  
27 3809, and amendments thereto, or aggravated escape, as defined in K.S.A.  
28 21-3810, and amendments thereto; repay expenses incurred by a fire dis-  
29 trict, fire department or fire company responding to a fire which has been  
30 determined to be arson under K.S.A. 21-3718 or 21-3719, and amend-  
31 ments thereto, if the defendant is convicted of such crime; repay the  
32 amount of any public funds utilized by a law enforcement agency to pur-  
33 chase controlled substances from the defendant during the investigation  
34 which leads to the defendant's conviction; or repay the amount of any  
35 medical costs and expenses incurred by any law enforcement agency or  
36 county. Such repayment of the amount of any such costs and expenses  
37 incurred by a county, law enforcement agency, fire district, fire depart-  
38 ment or fire company or any public funds utilized by a law enforcement  
39 agency shall be deposited and credited to the same fund from which the  
40 public funds were credited to prior to use by the county, law enforcement  
41 agency, fire district, fire department or fire company;

42 (9) order the defendant to pay the administrative fee authorized by  
43 K.S.A. 2005 Supp. 22-4529, and amendments thereto, unless waived by

1 the court;

2 (10) order the defendant to pay a domestic violence special program  
3 fee authorized by K.S.A. 2005 Supp. 20-369, and amendments thereto;

4 (11) impose any appropriate combination of (1), (2), (3), (4), (5), (6),  
5 (7), (8), (9) and (10); or

6 (12) suspend imposition of sentence in misdemeanor cases.

7 (b) (1) In addition to or in lieu of any of the above, the court shall  
8 order the defendant to pay restitution, which shall include, but not be  
9 limited to, damage or loss caused by the defendant's crime, unless the  
10 court finds compelling circumstances which would render a plan of res-  
11 titution unworkable. *As a part of restitution, if the defendant has com-*  
12 *mitted a sexually violent crime and is a sex offender as defined in K.S.A.*  
13 *2005 Supp. 22-4902, and amendments thereto, the defendant shall be*  
14 *ordered to reimburse the victim of the sexually violent crime for the cost*  
15 *of counseling related to the crime.* If the court finds a plan of restitution  
16 unworkable, the court shall state on the record in detail the reasons  
17 therefor.

18 (2) If the court orders restitution, the restitution shall be a judgment  
19 against the defendant which may be collected by the court by garnishment  
20 or other execution as on judgments in civil cases. If, after 60 days from  
21 the date restitution is ordered by the court, a defendant is found to be in  
22 noncompliance with the plan established by the court for payment of  
23 restitution, and the victim to whom restitution is ordered paid has not  
24 initiated proceedings in accordance with K.S.A. 2005 Supp. 60-4301 et  
25 seq., and amendments thereto, the court shall assign an agent procured  
26 by the attorney general pursuant to K.S.A. 75-719, and amendments  
27 thereto, to collect the restitution on behalf of the victim. The administra-  
28 tive judge of each judicial district may assign such cases to an appropriate  
29 division of the court for the conduct of civil collection proceedings.

30 (c) In addition to or in lieu of any of the above, the court shall order  
31 the defendant to submit to and complete an alcohol and drug evaluation,  
32 and pay a fee therefor, when required by subsection (4) of K.S.A. 21-  
33 4502, and amendments thereto.

34 (d) In addition to any of the above, the court shall order the defend-  
35 ant to reimburse the county general fund for all or a part of the expend-  
36 itures by the county to provide counsel and other defense services to the  
37 defendant. Any such reimbursement to the county shall be paid only after  
38 any order for restitution has been paid in full. In determining the amount  
39 and method of payment of such sum, the court shall take account of the  
40 financial resources of the defendant and the nature of the burden that  
41 payment of such sum will impose. A defendant who has been required  
42 to pay such sum and who is not willfully in default in the payment thereof  
43 may at any time petition the court which sentenced the defendant to

1 waive payment of such sum or any unpaid portion thereof. If it appears  
2 to the satisfaction of the court that payment of the amount due will im-  
3 pose manifest hardship on the defendant or the defendant's immediate  
4 family, the court may waive payment of all or part of the amount due or  
5 modify the method of payment.

6 (e) In imposing a fine the court may authorize the payment thereof  
7 in installments. In releasing a defendant on probation, the court shall  
8 direct that the defendant be under the supervision of a court services  
9 officer. If the court commits the defendant to the custody of the secretary  
10 of corrections or to jail, the court may specify in its order the amount of  
11 restitution to be paid and the person to whom it shall be paid if restitution  
12 is later ordered as a condition of parole, conditional release or postrelease  
13 supervision.

14 (f) When a new felony is committed while the offender is incarcer-  
15 ated and serving a sentence for a felony or while the offender is on pro-  
16 bation, assignment to a community correctional services program, parole,  
17 conditional release, or postrelease supervision for a felony, a new sentence  
18 shall be imposed pursuant to the consecutive sentencing requirements of  
19 K.S.A. 21-4608, and amendments thereto, and the court may sentence  
20 the offender to imprisonment for the new conviction, even when the new  
21 crime of conviction otherwise presumes a nonprison sentence. In this  
22 event, imposition of a prison sentence for the new crime does not consti-  
23 tute a departure. When a new felony is committed while the offender  
24 is on release for a felony pursuant to the provisions of article 28 of chapter  
25 22 of the Kansas Statutes Annotated, a new sentence may be imposed  
26 pursuant to the consecutive sentencing requirements of K.S.A. 21-4608,  
27 and amendments thereto, and the court may sentence the offender to  
28 imprisonment for the new conviction, even when the new crime of con-  
29 viction otherwise presumes a nonprison sentence. In this event, imposi-  
30 tion of a prison sentence for the new crime does not constitute a  
31 departure.

32 (g) Prior to imposing a dispositional departure for a defendant whose  
33 offense is classified in the presumptive nonprison grid block of either  
34 sentencing guideline grid, prior to sentencing a defendant to incarceration  
35 whose offense is classified in grid blocks 5-H, 5-I or 6-G of the sentencing  
36 guidelines grid for nondrug crimes or in grid blocks 3-E, 3-F, 3-G, 3-H  
37 or 3-I of the sentencing guidelines grid for drug crimes, prior to sen-  
38 tencing a defendant to incarceration whose offense is classified in grid  
39 blocks 4-E or 4-F of the sentencing guideline grid for drug crimes and  
40 whose offense does not meet the requirements of K.S.A. 2005 Supp. 21-  
41 4729, and amendments thereto, prior to revocation of a nonprison sanc-  
42 tion of a defendant whose offense is classified in grid blocks 4-E or 4-F  
43 of the sentencing guideline grid for drug crimes and whose offense does

1 not meet the requirements of K.S.A. 2005 Supp. 21-4729, and amend-  
2 ments thereto, or prior to revocation of a nonprison sanction of a de-  
3 fendant whose offense is classified in the presumptive nonprison grid  
4 block of either sentencing guideline grid or grid blocks 5-H, 5-I or 6-G  
5 of the sentencing guidelines grid for nondrug crimes or in grid blocks 3-  
6 E, 3-F, 3-G, 3-H or 3-I of the sentencing guidelines grid for drug crimes,  
7 the court shall consider placement of the defendant in the Labette cor-  
8 rectional conservation camp, conservation camps established by the sec-  
9 retary of corrections pursuant to K.S.A. 75-52,127, and amendment  
10 thereto or a community intermediate sanction center. Pursuant to this  
11 paragraph the defendant shall not be sentenced to imprisonment if space  
12 is available in a conservation camp or a community intermediate sanction  
13 center and the defendant meets all of the conservation camp's or a com-  
14 munity intermediate sanction center's placement criteria unless the court  
15 states on the record the reasons for not placing the defendant in a con-  
16 servation camp or a community intermediate sanction center.

17 (h) The court in committing a defendant to the custody of the sec-  
18 retary of corrections shall fix a term of confinement within the limits  
19 provided by law. In those cases where the law does not fix a term of  
20 confinement for the crime for which the defendant was convicted, the  
21 court shall fix the term of such confinement.

22 (i) In addition to any of the above, the court shall order the defendant  
23 to reimburse the state general fund for all or a part of the expenditures  
24 by the state board of indigents' defense services to provide counsel and  
25 other defense services to the defendant. In determining the amount and  
26 method of payment of such sum, the court shall take account of the  
27 financial resources of the defendant and the nature of the burden that  
28 payment of such sum will impose. A defendant who has been required  
29 to pay such sum and who is not willfully in default in the payment thereof  
30 may at any time petition the court which sentenced the defendant to  
31 waive payment of such sum or any unpaid portion thereof. If it appears  
32 to the satisfaction of the court that payment of the amount due will im-  
33 pose manifest hardship on the defendant or the defendant's immediate  
34 family, the court may waive payment of all or part of the amount due or  
35 modify the method of payment. The amount of attorney fees to be in-  
36 cluded in the court order for reimbursement shall be the amount claimed  
37 by appointed counsel on the payment voucher for indigents' defense serv-  
38 ices or the amount prescribed by the board of indigents' defense services  
39 reimbursement tables as provided in K.S.A. 22-4522, and amendments  
40 thereto, whichever is less.

41 (j) This section shall not deprive the court of any authority conferred  
42 by any other Kansas statute to decree a forfeiture of property, suspend  
43 or cancel a license, remove a person from office, or impose any other civil

1 penalty as a result of conviction of crime.

2 (k) An application for or acceptance of probation or assignment to a  
3 community correctional services program shall not constitute an acqui-  
4 escence in the judgment for purpose of appeal, and any convicted person  
5 may appeal from such conviction, as provided by law, without regard to  
6 whether such person has applied for probation, suspended sentence or  
7 assignment to a community correctional services program.

8 (l) The secretary of corrections is authorized to make direct place-  
9 ment to the Labette correctional conservation camp or a conservation  
10 camp established by the secretary pursuant to K.S.A. 75-52,127, and  
11 amendments thereto, of an inmate sentenced to the secretary's custody  
12 if the inmate: (1) Has been sentenced to the secretary for a probation  
13 revocation, as a departure from the presumptive nonimprisonment grid  
14 block of either sentencing grid, for an offense which is classified in grid  
15 blocks 5-H, 5-I, or 6-G of the sentencing guidelines grid for nondrug  
16 crimes or in grid blocks 3-E, 3-F, 3-G, 3-H or 3-I of the sentencing  
17 guidelines grid for drug crimes, or for an offense which is classified in  
18 gridblocks 4-E or 4-F of the sentencing guidelines grid for drug crimes  
19 and such offense does not meet the requirements of K.S.A. 2005 Supp.  
20 21-4729, and amendments thereto, and (2) otherwise meets admission  
21 criteria of the camp. If the inmate successfully completes a conservation  
22 camp program, the secretary of corrections shall report such completion  
23 to the sentencing court and the county or district attorney. The inmate  
24 shall then be assigned by the court to six months of follow-up supervision  
25 conducted by the appropriate community corrections services program.  
26 The court may also order that supervision continue thereafter for the  
27 length of time authorized by K.S.A. 21-4611 and amendments thereto.

28 (m) When it is provided by law that a person shall be sentenced pur-  
29 suant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, the provisions of  
30 this section shall not apply.

31 (n) Except as provided by subsection (f) of K.S.A. 21-4705, and  
32 amendments thereto, in addition to any of the above, for felony violations  
33 of K.S.A. 65-4160 or 65-4162, and amendments thereto, the court shall  
34 require the defendant who meets the requirements established in K.S.A.  
35 2005 Supp. 21-4729, and amendments thereto, to participate in a certified  
36 drug abuse treatment program, as provided in K.S.A. 2005 Supp. 75-  
37 52,144, and amendments thereto, including but not limited to, an ap-  
38 proved after-care plan. If the defendant fails to participate in or has a  
39 pattern of intentional conduct that demonstrates the offender's refusal to  
40 comply with or participate in the treatment program, as established by  
41 judicial finding, the defendant shall be subject to revocation of probation  
42 and the defendant shall serve the underlying prison sentence as estab-  
43 lished in K.S.A. 21-4705, and amendments thereto. For those offenders

1 who are convicted on or after the effective date of this act, upon com-  
2 pletion of the underlying prison sentence, the defendant shall not be  
3 subject to a period of postrelease supervision. The amount of time spent  
4 participating in such program shall not be credited as service on the un-  
5 derlying prison sentence.

6 Sec. 3. K.S.A. 21-3603 and K.S.A. 2005 Supp. 21-4603d are hereby  
7 repealed.

8 Sec. 4. This act shall take effect and be in force from and after its  
9 publication in the statute book.