

HOUSE BILL No. 2935

By Representative Yonally

2-14

9 AN ACT concerning crimes and punishment; relating to indecent sol-
10 itation of a child and aggravated indecent solicitation of a child; amend-
11 ing K.S.A. 2005 Supp. 21-3510, 21-3511 and 22-3717 and repealing
12 the existing sections.

13

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

15 Section 1. K.S.A. 2005 Supp. 21-3510 is hereby amended to read as
16 follows: 21-3510. (a) Indecent solicitation of a child is:

17 (1) Enticing or soliciting a child 14 or more years of age but less than
18 16 years of age *or a person the defendant believed was a child 14 or more*
19 *years of age but less than 16 years of age* to commit or to submit to an
20 unlawful sexual act; or

21 (2) inviting, persuading or attempting to persuade a child 14 or more
22 years of age but less than 16 years of age *or a person the defendant*
23 *believed was a child 14 or more years of age but less than 16 years of age*
24 to enter any vehicle, building, room or secluded place with intent to
25 commit an unlawful sexual act upon or with the child.

26 (b) *Except as provided further*, indecent solicitation of a child is a
27 severity level 6, person felony. *If the offender has previously been con-*
28 *victed of subsection (a)(1) or subsection (a)(1) of K.S.A. 21-3511, and*
29 *amendments thereto, indecent solicitation of a child is a severity level 4,*
30 *person felony.*

31 (c) *As used in this section, "enticing", "soliciting", "inviting", "per-*
32 *suading" or "attempting to persuade" shall include, but not be limited to,*
33 *communication through the internet.*

34 Sec. 2. K.S.A. 2005 Supp. 21-3511 is hereby amended to read as
35 follows: 21-3511. (a) Aggravated indecent solicitation of a child is:

36 ~~(a)~~ (1) Enticing or soliciting a child under the age of 14 years *or a*
37 *person the defendant believed was a child under the age of 14 years* to
38 commit or to submit to an unlawful sexual act; or

39 ~~(b)~~ (2) inviting, persuading or attempting to persuade a child under
40 the age of 14 years *or a person the defendant believed was a child under*
41 *the age of 14 years* to enter any vehicle, building, room or secluded place
42 with intent to commit an unlawful sexual act upon or with the child.

43 (b) *Except as provided further*, aggravated indecent solicitation of a

1 child is a severity level 5, person felony. *If the offender has previously*
2 *been convicted of subsection (a)(1) or subsection (a)(1) of K.S.A. 21-3510,*
3 *and amendments thereto, aggravated indecent liberties with a child is a*
4 *severity level 4, person felony.*

5 (c) *As used in this section, “enticing”, “soliciting”, “inviting”, “per-*
6 *suading” or “attempting to persuade” has the meaning ascribed thereto*
7 *in K.S.A. 21-3510, and amendments thereto.*

8 Sec. 3. K.S.A. 2005 Supp. 22-3717 is hereby amended to read as
9 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
10 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638
11 and amendments thereto; K.S.A. 8-1567, and amendments thereto; and
12 K.S.A. 21-4624, and amendments thereto, an inmate, including an inmate
13 sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be
14 eligible for parole after serving the entire minimum sentence imposed by
15 the court, less good time credits.

16 (b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and
17 amendments thereto, an inmate sentenced to imprisonment for the crime
18 of capital murder, or an inmate sentenced for the crime of murder in the
19 first degree based upon a finding of premeditated murder, committed on
20 or after July 1, 1994, shall be eligible for parole after serving 25 years of
21 confinement, without deduction of any good time credits.

22 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
23 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,
24 and amendments thereto, an inmate sentenced to imprisonment for an
25 off-grid offense committed on or after July 1, 1993, but prior to July 1,
26 1999, shall be eligible for parole after serving 15 years of confinement,
27 without deduction of any good time credits and an inmate sentenced to
28 imprisonment for an off-grid offense committed on or after July 1, 1999,
29 shall be eligible for parole after serving 20 years of confinement without
30 deduction of any good time credits.

31 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
32 repeal, an inmate sentenced for a class A felony committed before July
33 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and
34 amendments thereto, shall be eligible for parole after serving 15 years of
35 confinement, without deduction of any good time credits.

36 (4) An inmate sentenced to imprisonment for a violation of subsec-
37 tion (a) of K.S.A. 21-3402 and amendments thereto committed on or after
38 July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after
39 serving 10 years of confinement without deduction of any good time
40 credits.

41 (c) Except as provided in subsection (e), if an inmate is sentenced to
42 imprisonment for more than one crime and the sentences run consecu-
43 tively, the inmate shall be eligible for parole after serving the total of:

- 1 (1) The aggregate minimum sentences, as determined pursuant to
2 K.S.A. 21-4608 and amendments thereto, less good time credits for those
3 crimes which are not class A felonies; and
- 4 (2) an additional 15 years, without deduction of good time credits,
5 for each crime which is a class A felony.
- 6 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
7 committed on or after July 1, 1993, will not be eligible for parole, but will
8 be released to a mandatory period of postrelease supervision upon com-
9 pletion of the prison portion of their sentence as follows:
- 10 (A) Except as provided in subparagraphs (D) and (E), persons sen-
11 tenced for nondrug severity level 1 through 4 crimes and drug severity
12 levels 1 and 2 crimes must serve 36 months, plus the amount of good
13 time earned and retained pursuant to K.S.A. 21-4722 and amendments
14 thereto, on postrelease supervision.
- 15 (B) Except as provided in subparagraphs (D) and (E), persons sen-
16 tenced for nondrug severity levels 5 and 6 crimes and drug severity level
17 3 crimes must serve 24 months, plus the amount of good time earned
18 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on
19 postrelease supervision.
- 20 (C) Except as provided in subparagraphs (D) and (E), persons sen-
21 tenced for nondrug severity level 7 through 10 crimes and drug severity
22 level 4 crimes must serve 12 months, plus the amount of good time earned
23 and retained pursuant to K.S.A. 21-4722 and amendments thereto, on
24 postrelease supervision.
- 25 (D) (i) The sentencing judge shall impose the postrelease supervi-
26 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),
27 unless the judge finds substantial and compelling reasons to impose a
28 departure based upon a finding that the current crime of conviction was
29 sexually violent or sexually motivated. In that event, departure may be
30 imposed to extend the postrelease supervision to a period of up to 60
31 months.
- 32 (ii) If the sentencing judge departs from the presumptive postrelease
33 supervision period, the judge shall state on the record at the time of
34 sentencing the substantial and compelling reasons for the departure. De-
35 partures in this section are subject to appeal pursuant to K.S.A. 21-4721
36 and amendments thereto.
- 37 (iii) In determining whether substantial and compelling reasons exist,
38 the court shall consider:
- 39 (a) Written briefs or oral arguments submitted by either the defend-
40 ant or the state;
- 41 (b) any evidence received during the proceeding;
- 42 (c) the presentence report, the victim's impact statement and any
43 psychological evaluation as ordered by the court pursuant to subsection

- 1 (e) of K.S.A. 21-4714 and amendments thereto; and
2 (d) any other evidence the court finds trustworthy and reliable.
- 3 (iv) The sentencing judge may order that a psychological evaluation
4 be prepared and the recommended programming be completed by the
5 offender. The department of corrections or the parole board shall ensure
6 that court ordered sex offender treatment be carried out.
- 7 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
8 shall refer to K.S.A. 21-4718 and amendments thereto.
- 9 (vi) Upon petition, the parole board may provide for early discharge
10 from the postrelease supervision period upon completion of court or-
11 dered programs and completion of the presumptive postrelease super-
12 vision period, as determined by the crime of conviction, pursuant to sub-
13 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
14 postrelease supervision is at the discretion of the parole board.
- 15 (vii) Persons convicted of crimes deemed sexually violent or sexually
16 motivated, shall be registered according to the habitual sex offender reg-
17 istration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.
- 18 *(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amend-*
19 *ments thereto, shall be required to participate in a treatment program for*
20 *sex offenders during the postrelease supervision period.*
- 21 (E) The period of postrelease supervision provided in subparagraphs
22 (A) and (B) may be reduced by up to 12 months and the period of post-
23 release supervision provided in subparagraph (C) may be reduced by up
24 to six months based on the offender's compliance with conditions of su-
25 pervision and overall performance while on postrelease supervision. The
26 reduction in the supervision period shall be on an earned basis pursuant
27 to rules and regulations adopted by the secretary of corrections.
- 28 (F) In cases where sentences for crimes from more than one severity
29 level have been imposed, the offender shall serve the longest period of
30 postrelease supervision as provided by this section available for any crime
31 upon which sentence was imposed irrespective of the severity level of the
32 crime. Supervision periods will not aggregate.
- 33 (2) As used in this section, "sexually violent crime" means:
- 34 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 35 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
36 thereto;
- 37 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
38 amendments thereto;
- 39 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505
40 and amendments thereto;
- 41 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
42 thereto;
- 43 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments

1 thereto;

2 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and
3 amendments thereto;

4 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments
5 thereto;

6 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments
7 thereto;

8 (J) any conviction for a felony offense in effect at any time prior to
9 the effective date of this act, that is comparable to a sexually violent crime
10 as defined in subparagraphs (A) through (I), or any federal or other state
11 conviction for a felony offense that under the laws of this state would be
12 a sexually violent crime as defined in this section;

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

16 (L) any act which at the time of sentencing for the offense has been
17 determined beyond a reasonable doubt to have been sexually motivated.
18 As used in this subparagraph, "sexually motivated" means that one of the
19 purposes for which the defendant committed the crime was for the pur-
20 pose of the defendant's sexual gratification.

21 (e) If an inmate is sentenced to imprisonment for a crime committed
22 while on parole or conditional release, the inmate shall be eligible for
23 parole as provided by subsection (c), except that the Kansas parole board
24 may postpone the inmate's parole eligibility date by assessing a penalty
25 not exceeding the period of time which could have been assessed if the
26 inmate's parole or conditional release had been violated for reasons other
27 than conviction of a crime.

28 (f) If a person is sentenced to prison for a crime committed on or
29 after July 1, 1993, while on probation, parole, conditional release or in a
30 community corrections program, for a crime committed prior to July 1,
31 1993, and the person is not eligible for retroactive application of the
32 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
33 4724 and amendments thereto, the new sentence shall not be aggregated
34 with the old sentence, but shall begin when the person is paroled or
35 reaches the conditional release date on the old sentence. If the offender
36 was past the offender's conditional release date at the time the new of-
37 fense was committed, the new sentence shall not be aggregated with the
38 old sentence but shall begin when the person is ordered released by the
39 Kansas parole board or reaches the maximum sentence expiration date
40 on the old sentence, whichever is earlier. The new sentence shall then
41 be served as otherwise provided by law. The period of postrelease su-
42 pervision shall be based on the new sentence, except that those offenders
43 whose old sentence is a term of imprisonment for life, imposed pursuant

1 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate
2 sentence with a maximum term of life imprisonment, for which there is
3 no conditional release or maximum sentence expiration date, shall remain
4 on postrelease supervision for life or until discharged from supervision
5 by the Kansas parole board.

6 (g) Subject to the provisions of this section, the Kansas parole board
7 may release on parole those persons confined in institutions who are el-
8 igible for parole when: (1) The board believes that the inmate should be
9 released for hospitalization, for deportation or to answer the warrant or
10 other process of a court and is of the opinion that there is reasonable
11 probability that the inmate can be released without detriment to the com-
12 munity or to the inmate; or (2) the secretary of corrections has reported
13 to the board in writing that the inmate has satisfactorily completed the
14 programs required by any agreement entered under K.S.A. 75-5210a and
15 amendments thereto, or any revision of such agreement, and the board
16 believes that the inmate is able and willing to fulfill the obligations of a
17 law abiding citizen and is of the opinion that there is reasonable proba-
18 bility that the inmate can be released without detriment to the community
19 or to the inmate. Parole shall not be granted as an award of clemency and
20 shall not be considered a reduction of sentence or a pardon.

21 (h) The Kansas parole board shall hold a parole hearing at least the
22 month prior to the month an inmate will be eligible for parole under
23 subsections (a), (b) and (c). At least the month preceding the parole hear-
24 ing, the county or district attorney of the county where the inmate was
25 convicted shall give written notice of the time and place of the public
26 comment sessions for the inmate to any victim of the inmate's crime who
27 is alive and whose address is known to the county or district attorney or,
28 if the victim is deceased, to the victim's family if the family's address is
29 known to the county or district attorney. Except as otherwise provided,
30 failure to notify pursuant to this section shall not be a reason to postpone
31 a parole hearing. In the case of any inmate convicted of an off-grid felony
32 or a class A felony the secretary of corrections shall give written notice
33 of the time and place of the public comment session for such inmate at
34 least one month preceding the public comment session to any victim of
35 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and
36 amendments thereto. If notification is not given to such victim or such
37 victim's family in the case of any inmate convicted of an off-grid felony
38 or a class A felony, the board shall postpone a decision on parole of the
39 inmate to a time at least 30 days after notification is given as provided in
40 this section. Nothing in this section shall create a cause of action against
41 the state or an employee of the state acting within the scope of the em-
42 ployee's employment as a result of the failure to notify pursuant to this
43 section. If granted parole, the inmate may be released on parole on the

1 date specified by the board, but not earlier than the date the inmate is
2 eligible for parole under subsections (a), (b) and (c). At each parole hear-
3 ing and, if parole is not granted, at such intervals thereafter as it deter-
4 mines appropriate, the Kansas parole board shall consider: (1) Whether
5 the inmate has satisfactorily completed the programs required by any
6 agreement entered under K.S.A. 75-5210a and amendments thereto, or
7 any revision of such agreement; and (2) all pertinent information regard-
8 ing such inmate, including, but not limited to, the circumstances of the
9 offense of the inmate; the presentence report; the previous social history
10 and criminal record of the inmate; the conduct, employment, and attitude
11 of the inmate in prison; the reports of such physical and mental exami-
12 nations as have been made; comments of the victim and the victim's
13 family including in person comments, contemporaneous comments and
14 prerecorded comments made by any technological means; comments of
15 the public; official comments; and capacity of state correctional
16 institutions.

17 (i) In those cases involving inmates sentenced for a crime committed
18 after July 1, 1993, the parole board will review the inmates proposed
19 release plan. The board may schedule a hearing if they desire. The board
20 may impose any condition they deem necessary to insure public safety,
21 aid in the reintegration of the inmate into the community, or items not
22 completed under the agreement entered into under K.S.A. 75-5210a and
23 amendments thereto. The board may not advance or delay an inmate's
24 release date. Every inmate while on postrelease supervision shall remain
25 in the legal custody of the secretary of corrections and is subject to the
26 orders of the secretary.

27 (j) Before ordering the parole of any inmate, the Kansas parole board
28 shall have the inmate appear before either in person or via a video con-
29 ferencing format and shall interview the inmate unless impractical be-
30 cause of the inmate's physical or mental condition or absence from the
31 institution. Every inmate while on parole shall remain in the legal custody
32 of the secretary of corrections and is subject to the orders of the secretary.
33 Whenever the Kansas parole board formally considers placing an inmate
34 on parole and no agreement has been entered into with the inmate under
35 K.S.A. 75-5210a and amendments thereto, the board shall notify the in-
36 mate in writing of the reasons for not granting parole. If an agreement
37 has been entered under K.S.A. 75-5210a and amendments thereto and
38 the inmate has not satisfactorily completed the programs specified in the
39 agreement, or any revision of such agreement, the board shall notify the
40 inmate in writing of the specific programs the inmate must satisfactorily
41 complete before parole will be granted. If parole is not granted only
42 because of a failure to satisfactorily complete such programs, the board
43 shall grant parole upon the secretary's certification that the inmate has

1 successfully completed such programs. If an agreement has been entered
2 under K.S.A. 75-5210a and amendments thereto and the secretary of
3 corrections has reported to the board in writing that the inmate has sat-
4 isfactorily completed the programs required by such agreement, or any
5 revision thereof, the board shall not require further program participa-
6 tion. However, if the board determines that other pertinent information
7 regarding the inmate warrants the inmate's not being released on parole,
8 the board shall state in writing the reasons for not granting the parole. If
9 parole is denied for an inmate sentenced for a crime other than a class A
10 or class B felony or an off-grid felony, the board shall hold another parole
11 hearing for the inmate not later than one year after the denial unless the
12 parole board finds that it is not reasonable to expect that parole would
13 be granted at a hearing if held in the next three years or during the interim
14 period of a deferral. In such case, the parole board may defer subsequent
15 parole hearings for up to three years but any such deferral by the board
16 shall require the board to state the basis for its findings. If parole is denied
17 for an inmate sentenced for a class A or class B felony or an off-grid
18 felony, the board shall hold another parole hearing for the inmate not
19 later than three years after the denial unless the parole board finds that
20 it is not reasonable to expect that parole would be granted at a hearing if
21 held in the next 10 years or during the interim period of a deferral. In
22 such case, the parole board may defer subsequent parole hearings for up
23 to 10 years but any such deferral shall require the board to state the basis
24 for its findings.

25 (k) Parolees and persons on postrelease supervision shall be assigned,
26 upon release, to the appropriate level of supervision pursuant to the cri-
27 teria established by the secretary of corrections.

28 (l) The Kansas parole board shall adopt rules and regulations in ac-
29 cordance with K.S.A. 77-415 et seq., and amendments thereto, not in-
30 consistent with the law and as it may deem proper or necessary, with
31 respect to the conduct of parole hearings, postrelease supervision reviews,
32 revocation hearings, orders of restitution, reimbursement of expenditures
33 by the state board of indigents' defense services and other conditions to
34 be imposed upon parolees or releasees. Whenever an order for parole or
35 postrelease supervision is issued it shall recite the conditions thereof.

36 (m) Whenever the Kansas parole board orders the parole of an in-
37 mate or establishes conditions for an inmate placed on postrelease su-
38 pervision, the board:

39 (1) Unless it finds compelling circumstances which would render a
40 plan of payment unworkable, shall order as a condition of parole or post-
41 release supervision that the parolee or the person on postrelease super-
42 vision pay any transportation expenses resulting from returning the pa-
43 rolee or the person on postrelease supervision to this state to answer

1 criminal charges or a warrant for a violation of a condition of probation,
2 assignment to a community correctional services program, parole, con-
3 ditional release or postrelease supervision;

4 (2) to the extent practicable, shall order as a condition of parole or
5 postrelease supervision that the parolee or the person on postrelease su-
6 pervision make progress towards or successfully complete the equivalent
7 of a secondary education if the inmate has not previously completed such
8 educational equivalent and is capable of doing so;

9 (3) may order that the parolee or person on postrelease supervision
10 perform community or public service work for local governmental agen-
11 cies, private corporations organized not-for-profit or charitable or social
12 service organizations performing services for the community;

13 (4) may order the parolee or person on postrelease supervision to pay
14 the administrative fee imposed pursuant to K.S.A. 2005 Supp. 22-4529,
15 and amendments thereto, unless the board finds compelling circum-
16 stances which would render payment unworkable; and

17 (5) unless it finds compelling circumstances which would render a
18 plan of payment unworkable, shall order that the parolee or person on
19 postrelease supervision reimburse the state for all or part of the expend-
20 itures by the state board of indigents' defense services to provide counsel
21 and other defense services to the person. In determining the amount and
22 method of payment of such sum, the parole board shall take account of
23 the financial resources of the person and the nature of the burden that
24 the payment of such sum will impose. Such amount shall not exceed the
25 amount claimed by appointed counsel on the payment voucher for indi-
26 gents' defense services or the amount prescribed by the board of indi-
27 gents' defense services reimbursement tables as provided in K.S.A. 22-
28 4522 and amendments thereto, whichever is less, minus any previous
29 payments for such services.

30 (n) If the court which sentenced an inmate specified at the time of
31 sentencing the amount and the recipient of any restitution ordered as a
32 condition of parole or postrelease supervision, the Kansas parole board
33 shall order as a condition of parole or postrelease supervision that the
34 inmate pay restitution in the amount and manner provided in the journal
35 entry unless the board finds compelling circumstances which would ren-
36 der a plan of restitution unworkable.

37 (o) Whenever the Kansas parole board grants the parole of an inmate,
38 the board, within 10 days of the date of the decision to grant parole, shall
39 give written notice of the decision to the county or district attorney of the
40 county where the inmate was sentenced.

41 (p) When an inmate is to be released on postrelease supervision, the
42 secretary, within 30 days prior to release, shall provide the county or
43 district attorney of the county where the inmate was sentenced written

1 notice of the release date.

2 (q) Inmates shall be released on postrelease supervision upon the
3 termination of the prison portion of their sentence. Time served while
4 on postrelease supervision will vest.

5 (r) An inmate who is allocated regular good time credits as provided
6 in K.S.A. 22-3725 and amendments thereto may receive meritorious good
7 time credits in increments of not more than 90 days per meritorious act.
8 These credits may be awarded by the secretary of corrections when an
9 inmate has acted in a heroic or outstanding manner in coming to the
10 assistance of another person in a life threatening situation, preventing
11 injury or death to a person, preventing the destruction of property or
12 taking actions which result in a financial savings to the state.

13 (s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and
14 (d)(1)(E) shall be applied retroactively as provided in subsection (t).

15 (t) For offenders sentenced prior to the effective date of this act who
16 are eligible for modification of their postrelease supervision obligation,
17 the department of corrections shall modify the period of postrelease su-
18 pervision as provided for by this section for offenders convicted of severity
19 level 9 and 10 crimes on the sentencing guidelines grid for nondrug
20 crimes and severity level 4 crimes on the sentencing guidelines grid for
21 drug crimes on or before September 1, 2000; for offenders convicted of
22 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug
23 crimes on or before November 1, 2000; and for offenders convicted of
24 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug
25 crimes and severity level 3 crimes on the sentencing guidelines grid for
26 drug crimes on or before January 1, 2001.

27 Sec. 4. K.S.A. 2005 Supp. 21-3510, 21-3511 and 22-3717 are hereby
28 repealed.

29 Sec. 5. This act shall take effect and be in force from and after its
30 publication in the statute book.