

## MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 15, 2006, in Room 123-S of the Capitol.

All members were present,

Phil Journey arrived, 9:40 a.m.

David Haley arrived, 10:02 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department

Helen Pedigo, Office of Revisor of Statutes

Karen Clowers, Committee Secretary

Conferees appearing before the committee:

Representative Patricia Kilpatrick

Phil Kline, Attorney General, State of Kansas

Sandy Barnett, Executive Director, Kansas Coalition Against Sexual and Domestic Violence

Others attending:

See attached list.

The hearing on **HB 2576--Persistent sex offender, life without possibility of parole; hard 25 or 50 for certain sex offenders; task force to review feasibility of GPS monitoring of certain offenders** was opened.

Phil Kline appeared in support encouraging the committee to enhance the safety of Kansas children (Attachment 1). The Attorney General listed recent steps taken to protect children and indicated several actions which he feels would further enhance the safety of Kansas children.

Representative Kilpatrick spoke in support providing a general overview of the bill (No written testimony).

Sandy Barnett appeared as a proponent and provided a copy of *Update* by the American Prosecutor Research Institute pertinent to the issues be addressed (Attachment 2). Ms. Barnett suggested the creation of a Sex Offender Policy Board to assist law enforcement and the judicial system in addressing sexual violence.

Written testimony in support of **HB 2576** was submitted by:

Roger Werholtz, Secretary, Kansas Department of Corrections (Attachment 3)

Written testimony in a neutral stance was submitted by:

Michael White, Kansas County and District Attorneys Association (Attachment 4)

There being no further conferees, the hearing on **HB 2576** was closed.

The Chairman called for final action on **HB 2576--Persistent sex offender, life without possibility of parole; hard 25 or 50 for certain sex offenders; task force to review feasibility of GPS monitoring of certain offenders**. The Chairman suggested the committee substitute **SB 334** into **HB 2576** to insure a vehicle for the conference committee to work. Following discussion concerning the benefits of substituting **SB 334** into **HB 2576** the Chairman suggested also inserting **SB 243** into **HB 2576**. Copies of both bills had been provided and it was suggested the committee members take time to consider both bills and continue at a later date (Attachments 5 & 6).

The Chairman called for final action on **Sub HB 2706--Contempt of court; child support arrearage, driver's license suspension**.

Senator Journey moved, Senator Betts seconded, to amend HB 2706 to exempt the driving restriction to the same restrictions as those for first time DUI offenders. Motion carried. Senator Goodwin voted no, and requested her vote recorded in the minutes.

The meeting adjourned at 10:30 a.m. The next scheduled meeting is March 16, 2006.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/15/06

NAME	REPRESENTING
Sandy Barnett	KCSOV
Frank Henderson	KS Atty Gen -
Judy Nightingale	KS. A.G.
Marie Landry	XCSOV
Oppe Shover	KCSOV
Marcus Baber	KCOR
Pete Bodyk	KDOT
Ken Gudenkauf	KDOT
Fred Lucky	Kan. Hosp. Assn.
Bob Keller	JCSO
Kathy Sparks	SRS
Crystal Bachmeier	SRS
Charbetee Esau	KRA
Natalie Gibson	KSC
Brenda Harmon	KSC
Tim Madden	KDOC
Heather Morgan	SJA
Gawl Luthigam	

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/15/06

NAME	REPRESENTING
J. Masina	Rep. Ed O'Malley



STATE OF KANSAS  
OFFICE OF THE ATTORNEY GENERAL

**PHILL KLINE**  
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR  
TOPEKA, KS 66612-1597  
(785) 296-2215 • FAX (785) 296-6296  
WWW.KSAG.ORG

March 15, 2006

SENATE JUDICIARY COMMITTEE  
Testimony of Phill Kline  
in support of  
House Bill 2576

Mr. Chairman and Members of the Committee

I appreciate the opportunity to address you today and encourage your support for enhancing the safety of Kansas children through needed changes in Kansas sentencing law.

The sexual exploitation of a child is the most invasive and utterly damaging crimes, next to murder. Children who are victims of these acts are sentenced to a lifetime of trying to regain a healthy sense of self and of their own sexuality. Yet, our state laws do not adequately protect children from such abuse.

If desired, I can provide you with the criminal histories of several Kansas sexual predators of children who had the opportunity to offend again and did so. There is not a need to search hard. In fact, since I have had the honor of serving as Attorney General, three high profile cases of national interest have indicated the weakness of Kansas' sentencing laws.

In this city, a man was convicted of sexually molesting a six-year old boy and videotaping the crime so that he could view the rape later. He received probation. In Lawrence, 4 young men repeatedly raped a 13 year old girl and all received probation. And in the last two months, a man in Texas was sentenced to over 300 years in prison for the kidnapping and rape of a 14 year old girl. The untold story of his conviction is that 4 of the young girls testifying at his trial were Kansas girls who he molested; and for which he had been convicted in Kansas; crimes for which he received probation.

These instances point to a failure in public policy. A person who rapes a child should not be allowed an opportunity to rape another child. Jessica's law, as originally introduced, provides for a mandatory 25 year to life sentence for the first conviction of raping a child 13 years of age or younger. The message is clear, Kansas will not tolerate the rape of children.

Senate Judiciary

3-15-06

Attachment 1

And the message will be heard. There are those who are watching your actions today – I am not speaking of the media, your constituents or colleagues – I am referring to those who would prey on our children. There are websites that teach predators how to be successful pedophiles. These websites explain the weaknesses in state laws, inform predators how to pose as children on the Internet; how to identify the lonely child looking for a pen pal and how to extract information from the child; the websites even list lawyers to call who specialize in representing such predators. The websites also report on legislative action and update their readers on “safe states” in which to exploit children.

When I was first elected Attorney General these websites indicated that Kansas laws were weak – and they were. Probation was routine for several types of child sex crimes. We have partnered to change some of this.

Over the past three years, working together, we have taken strides to send a clear message that those who would harm our children will face severe and swift sanctions in Kansas. Those steps include:

- At the request of Governor Sebelius and myself you have strengthened our state’s laws against rape by doubling the sentence for rape and insuring that a second rape conviction results in an absolute minimum of 40 years in prison without parole;
- At my request you passed legislation providing for prison time for aggravated child solicitation and child solicitation;
- At my request your strengthened our ability to prosecute child pornography cases,
- You passed, at my request, an increase in our state’s statute of limitations on a whole host of criminal activity allowing a greater ability to prosecute dangerous offenders;
- You appropriated monies for the initiation of a statewide educational program to teach Kansas children, parents and teachers about internet safety; and
- You took the initial steps to fill the KBI special agent vacancies by funding 9 slots of the 18 vacancies.

Additionally, I have directed several actions that further enhance the safety of Kansas children, including:

- By reducing office expenditures I providing funding and assigned two KBI agents to the newly created Cyber Crimes Task Force in Kansas City. This joint effort by my office, the US Department of Justice and local law enforcement in Kansas and Missouri provides needed computer forensics assistance in all types of cases and actively and proactively investigates child exploitation cases;
- I have directed the training and application and acceptance of Special Assistant United States Attorneys in my office so that we can prosecute cases in federal court when such prosecution will achieve lengthier sentences for child predators.
- As Co-Chairman of the Violent Sexual Predator Task Force of the National Association of Attorneys General(NAAG); President of the Midwest Association

of Attorneys General and member of the NAAG Executive Committee I have worked with other AG's around the nation to establish a national database of registered offenders and to better coordinate the sharing of information regarding the movement of registered offenders; and

- My office and KBI jointly have investigated and prosecuted or referred for prosecution or investigation over 700 cases involving the sexual exploitation of children since I have had the honor of serving as Attorney General.

This past interim I appointed the SAFE Kansas Task Force. SAFE is comprised of 29 leading citizens of our state who are directly involved in law enforcement or policy decisions regarding law enforcement.

SAFE held two public hearings and several working group and conference call meetings to discuss methods and policies that will improve the reliability and integrity of the state's offender registration and strengthen our ability to investigate, prosecute and incarcerate those who prey upon our children.

I am confident that you agree with me and the SAFE members that Kansans have the right to expect their state government to enact those policies and make those budget decisions that best insure the safety of our communities, neighborhoods and schools.

- First and foremost, the Task Force and I are requesting a great strengthening of the penalties faced by child predators.

Together, however, we can do more and take the next step to insure the safety of our children. The Task Force has many proposals that are detailed in this report but specifically I would like to draw your attention to the following:

- 1) Strengthening penalties on those who rape children 13 years and younger by providing for a 25 year to life sentence on a first conviction and a life sentence for second conviction. We should not allow child rapists a third chance to victimize a child.
- 2) Providing sufficient funding for the KBI to effectively monitor the offender registration list and to assist local law enforcement officials in prosecuting those who fail to comply with our state's registration requirements.
- 3) Making failure to register a felony punishable by prison. Currently, weak penalties provide a disincentive for predators to register.
- 4) Making it a crime to harbor or assist an offender in evading the registration process.
- 5) Once again passing the long overdue funding to expand the KBI laboratory so that DNA and other evidence is more readily available for prosecution of current and cold cases. This will allow a complete elimination of any DNA backlog regarding national utilization of the Combined Offender DNA Index System ("CODIS").

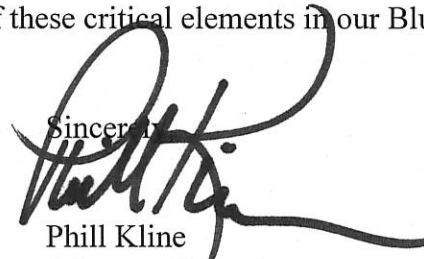
- 6) Continuing the effort to bring the KBI up to full strength by completing our efforts to fund the KBI special agent vacancies. These agents are critical to tracking, investigating and prosecuting those who prey upon our children and are also critical in our continuing efforts against methamphetamine – a war in which we are making great progress. The Kansas Meth Watch program, public education programs, the implementation of the Matt Samuels legislation relating to ephedrine sales and aggressive law enforcement and prosecution efforts have reduced Kansas meth labs in half since I have been serving as Attorney General. I grow increasingly worried, however, about efforts to import meth from California and Mexico into our state and to stop this organized criminal element I must have the human resources to place agents in the dangerous and long term undercover efforts necessary to break these criminal elements. Filling these agency vacancies moves us in the right direction.

The Task Force has recommended a study of electronic monitoring and expressed a desire to move that direction. The Task Force at this time, however, desired greater study of emerging technologies before a full program is implemented.

I join Governor Sebelius in calling for lifetime electronic monitoring of repeat offenders. I do mention, however, that if you strengthen our penalties as called for by the Task Force monitoring of repeat offenders of children will be accomplished by the Department of Corrections in a prison and electronic monitoring is not necessary. The option certainly is available for those guilty of less serious offenses and I encourage you to join the Governor and I in determining the best method to achieve this objective.

Protecting our children from predatory activity is one of the priorities of my administration. Together we have achieved much in providing a safer environment for our children to grow, play and learn. I look forward to our continued partnership with the passage of these critical elements in our Blueprint for a Safer Kansas.

Sincerely,



Phill Kline  
Attorney General

634 SW Harrison Topeka, Kansas 66603  
785-232-9784 • FAX 785-266-1874 • coalition@kcsdv.org • www.kcsdv.org

Senate Judiciary Committee  
House Bill 2576  
PROPONENT

Chairman Vratil and Members of the Committee:

KCSDV supports HB 2576 as amended by the House. We also want to acknowledge the hundreds of hours of work and dedication spent by the many sponsors of this bill.

Attached is an Update from the American Prosecutor Research Institute that is pertinent to the issues addressed today.

My testimony today focuses on putting this policy initiative into context of the full scope of sex crimes in Kansas. KCSDV presents this context not to infer any lack of support for HB 2576, but to suggest that this initiative is the first step necessary to address sexual violence in Kansas.

There is no reason to believe that rape and sexual assault in Kansas occurs at different rates than it does in other states across the nation. Consider the following:

In the United States<sup>1</sup>

- Prevalence studies indicate that 3% of the population experienced rape in the 12 months previous to the survey.
- 17.7 million women and 2.8 million men have been raped at some time in their life.
- Of those, 3.6% of females and 1.3% of males experienced rape before their 12<sup>th</sup> birthday and 6.3% of females and .07% of males experienced rape between 12 and 17 years old.
- The same study reviewed rapes committed since the 18th birthday of respondents: 19.1% of female victims and 12.9% of male victims reported the rape to law enforcement. Of those reported, 43.3 % resulted in an arrest of a perpetrator. Of those arrested, 37% were prosecuted. And, of those prosecuted, 46.2% were convicted and of those 76% were sentenced to jail or prison. In real terms, of every 100 rapes, only 3.26 are convicted and 2.48 sentenced to jail or prison.

In Kansas<sup>2</sup>

- 1,153 rapes were reported to law enforcement in 2004, of those, 57 victims were under 10 years old and 175 were between 10 and 14 years old.



- Twenty-one percent of the perpetrators were arrested. In real numbers that means only 242 were arrested. There are no prosecution and conviction rates easily available in Kansas.
- Extrapolation from national statistics would indicate that of the 242 arrested, 89.54 would be prosecuted, 41.36 would be convicted and 31 will serve time in jail or prison.

These numbers represent lives. The chances are great that we know some of them. Some lives affected by sexual assault and rape will never be the same. For some victims, their entire childhood is stolen, their education and economic opportunity is lost, and their mental health and social functioning is temporarily or permanently impaired.

The opportunity for justice at the sentencing phase of a sex crime trial begins far before the trial ever starts. The numbers presented above clearly indicate a massive gap between the numbers of crimes that occur and those that result in trials and sentencing. In fact, we can safely assume that fewer than 4% of offenders ever reach the penalty phase. That means that the vast majority of sex offenders are never identified or held accountable by the criminal justice system. They are still in our communities and in our homes.

Addressing these gaps from the reporting of sex crimes to offender accountability must be addressed. A critical provision in HB 2576 offers an opportunity to do just that. KCSDV strongly supports the creation of the Sex Offender Policy Board.

It is KCSDV's hope that the Sex Offender Policy Board will begin to study and recommend ways to:

- Increase reporting to law enforcement of all sexual violence
- Improve the climate of the criminal justice system
- Increase the arrest rate of sex offenders
- Increase the number of prosecutions of sex offenders
- Increase conviction rates of sex offenders
- Enhance the management of sex offenders
- Educate the potential jury pool
- Prevent sexual violence

We are a long way from addressing the full scope of sexual violence in Kansas, but HB 2576 has certainly brought the issue forward and KCSDV urges the Committee to pass it to the Senate floor.

Submitted by,

Sandy Barnett  
Executive Director

---

<sup>1</sup> Extent, Nature, and Consequences of Rape Victimization: Finding From the National Violence Against Women Survey. U.S. Department of Justice, Office of Justice Programs, *National Institute of Justice*. January, 2006

<sup>2</sup> Taken from The Domestic Violence and Rape in Kansas Report, Kansas Bureau of Investigation, 2004

APRI

# Update

American  
Prosecutors  
Research  
Institute

## Innovative Legislative Strategies for Dealing with Sexual Offenders

By Susan Broderick<sup>1</sup>

### INVESTIGATION AND PROSECUTION OF CHILD FATALITIES AND PHYSICAL ABUSE

June 7-9, 2006

San Antonio, Texas

Multidisciplinary team training on handling child physical abuse, neglect and fatality cases. Conference details and on-line registration can be found on our Web site at [www.ndaa-apri.org](http://www.ndaa-apri.org) or call us at 703-549-9222.

### EQUAL JUSTICE FOR CHILDREN:

### INVESTIGATION AND PROSECUTION OF CHILD ABUSE

July 24-28, 2006

Clearwater, Florida

Multidisciplinary training for child abuse professionals striving to excel or to maintain excellent in their response to allegations of abuse. Conference details and online registration can be found on our Web site at [www.ndaa-apri.org](http://www.ndaa-apri.org) or call us at 703-549-9222.



UPDATE is published by the American Prosecutors Research Institute's National Center for Prosecution of Child Abuse. Items may be reprinted if attributed to APRI's National Center for Prosecution of Child Abuse. Please provide copies to UPDATE. Contact us if you have inquiries or article suggestions at 703.549.4253.

Civil commitment is seen by many as an important way to deal with sexual offenders.<sup>2</sup> However, these procedures often only apply to the "worst of the worst" offenders and a vast majority of sex offenders will not be eligible for civil commitment. This is because the civil commitment statutes require: (1) a conviction for a predicate offense; (2) current incarceration; and (3) a diagnosed mental condition coupled with an expert's opinion regarding the offender's future dangerousness. Furthermore, only 19 states have passed civil commitment statutes. Consequently, prosecutors and lawmakers must aggressively pursue other viable options to address these offenders. This article will review a number of approaches being developed and implemented nationwide.

#### The Problems and Possible Solutions

Prosecutors and allied professionals in the field know the difficulties inherent in prosecuting cases of child sexual abuse. Because of problems such as delayed disclosure, very often allegations do not surface until months, or even years, after the crimes are committed. This often leads to a myriad of problems, including an inability to prosecute because of the expiration of the statute of limitations. Several states, including Alaska, Maine and Rhode Island, have responded to this problem by passing legislation abolishing the statute of limitations on cases of felony child sexual abuse.<sup>3</sup>

Another approach relates to rules governing the admissibility of evidence in trials. In California, evidence of prior acts of abuse against a minor may be admitted at trial where there are current charges of sexual abuse against a minor.<sup>4</sup> Michigan recently passed a similar bill, which is scheduled to become law in 2006.<sup>5</sup> While critics argue that these laws will result in juries convicting based on past behavior alone, proponents point to the most recent Michael Jackson case as proof that jurors can be fair and follow the law.<sup>6</sup> There, a jury heard past allegations regarding five other boys, and found him not guilty in the case before them.

While changes to the actual trial procedures against sex offenders have not been abundant, changes in sentencing procedures have. Most states have either proposed or actually passed legislation with regard to increased sentencing provisions. Probably the most well known of these is the Jessica Lunsford Act, which went into effect in Florida, on September 1, 2005.<sup>7</sup> This law calls for a mandatory minimum of 25 years and the possibility of a life-

time sentence for those convicted of sex crimes against a child under the age of 12.

Although initially hailed as a major weapon in the fight against sexual predators, those on the front lines are in disagreement over how effective these new enhanced sentencing provisions will actually be. In fact, some prosecutors believe these new laws might even have adverse consequences in certain cases. For example, with significant mandatory minimums, defendants are less likely to plead guilty, thereby forcing more children to testify in cases where they have already been terribly traumatized. In certain cases, children cannot or will not testify for a variety of reasons, and without the option of a plea bargain, these cases may be more likely to result in acquittals. Another unintended result may occur in cases where the perpetrator is a relative or otherwise known to the victim (which is the vast majority of sexual abuse cases.) In these situations, family members may be reluctant to file charges where they know that a 25-year sentence is involved. While the enhanced sentencing statutes are certainly valuable for cases involving the "worst of the worst," there are certainly some unintended adverse consequences with which prosecutors will have to contend.

Although these new sentencing laws will put some offenders behind bars for lengthier periods, many offenders will still eventually spend a portion of their sentences in the community. There has been a great deal of legislative activity concerning the monitoring of sex offenders in the community. An important provision of the Jessica Lunsford Act concerns lifetime supervision of offenders once they are released from prison.<sup>8</sup> One form of community supervision is through global tracking devices. This type of electronic monitoring uses satellite technology to follow the movements of sex offenders and is relatively inexpensive (estimates range from approximately seven to nine dollars a day). Iowa has passed legislation where the unauthorized removal of a monitor or disregard of a curfew will trigger a parole or probation violation.<sup>9</sup> Alabama has provisions requiring offenders to pay or share the cost of the monitoring.<sup>10</sup>

Another initiative involves zoning restrictions for sex offenders within the community. Sixteen states now have buffer zones prohibiting registered sex offenders from living near places where children congregate. While proponents argue that such measures are necessary for public safety and child protection, critics argue that such laws will create a false sense of security. Since most children are

moles. By someone they know, opponents fear that these buffer zones will fail to protect the majority of children who are in danger of being sexually abused. A recent study also calls into question the effectiveness of these zones. In a study involving 135 sex offenders in Florida, researchers found that these offenders will circumvent restrictions if they are determined to re-offend, and noted that many sex offenders are more likely to travel to another neighborhood where they could seek victims without being recognized.<sup>11</sup>

Other legislative initiatives have focused on offender registration and community notification. The first laws regarding registration and notification were passed in 1994 and today all 50 states have such legislation. Recently there have been increased efforts to improve the effectiveness of these programs. In certain jurisdictions, Web sites are now including more information about offenders (including physical descriptions and criminal histories, rather than only name, zip code and type of offender).<sup>12</sup> Rhode Island recently amended its law to require the posting of the identity of all Level 2 and Level 3 sex offenders (previously it had been applied only to Level 3 offenders).<sup>13</sup>

While it is crucial for each state to keep track of the registered offenders within its borders, perhaps one of the biggest problems facing the nation is the number of unaccounted for sex offenders. Although all fifty states have responded to the federal mandate of registration and notification, there is no national guideline or database. Because of this lack of a uniform and coordinated system, once these offenders cross state lines they become virtually unaccounted for. According to recent statistics, of the 551,987 registered sex offenders around the country, 24 percent are failing to comply with the continuing registration requirements.<sup>14</sup> In an effort to combat this problem, the Justice Department has recently created the "National Sex Offender Public Registry" as a national repository for the names of those sex offenders now listed on separate state registries throughout the country. This registry, located at [www.nsopr.gov](http://www.nsopr.gov), is a cooperative effort between the state agencies responsible for maintaining their sex offender registries and the federal government. Currently there are records from 48 states, and the District of Columbia and Guam posted on the Web site, and it is expected that that the rest of the states will be included by the end of the year.<sup>15</sup>

Another federal measure currently pending before Congress is the Children's Safety Act.<sup>16</sup> This bill seeks to improve the current sex offender registration program by increasing penalties for failure to comply with registration requirements, increasing information sharing among the states, increasing periods of time for registration and expanding the types of offenders covered to include juveniles who victimize children. It also increases the minimum and maximum sentences on specified sexual offenses against children and authorizes civil commitment at the federal level.

## Conclusion

This past year has certainly seen a flurry of legislative activity with regard to those who commit sex crimes against our children. While the majority of cases that prosecutors handle on a daily basis will not involve the likes of the dangerous sexual predators such as John Couey and Joseph Duncan, the fact remains that these individuals exist.<sup>17</sup> Even though they may be the exceptions rather than the norm, even one "Joseph Duncan" is enough of a threat to the safety of our children that we must remain vigilant in passing laws aimed at these types of offenders. However, we must also be cognizant of the fact that most cases of

child sexual abuse involve perpetrators that are known to the child. These types of cases have very different dynamics and issues than the cases posed by "stranger danger." Recognizing these differences, and the fact that a "one size fits all" remedy is not the answer, must be incorporated into these laws if they are going to truly protect our children.

- <sup>1</sup> Susan Broderick, Senior Attorney, National Center for Prosecution of Child Abuse.
- <sup>2</sup> For an earlier analysis of this issue, see NCPA Update, "Innovative Approaches to Dealing with Sexual Predators: Civil Commitment," Volume 18, Number 3 (2005).
- <sup>3</sup> Alaska Stat. § 12.10.010 (2004); Me. Rev. Stat. Ann. tit. 14, § 75 (West 2005); RI ST § 12-12-17.
- <sup>4</sup> Cal. Evid. Code § 1108 (West 2005).
- <sup>5</sup> H.B. 4937, 2005., 93rd Sess. (Mich. 2005).
- <sup>6</sup> People v. Michael Jackson, Superior Court of the State of California, Case No. 1133603 (2004).
- <sup>7</sup> Fla. Stat. Ann. § 1012.465 (West 2005).
- <sup>8</sup> *Id.*
- <sup>9</sup> H.F. 619, 2005 Leg., 80th Sess (Iowa 2005).
- <sup>10</sup> 2005 Ala. Acts 301.
- <sup>11</sup> Levenson, J.S., and Cotter, L., "The Impact of Sex Offender Residence Restrictions: 1,000 Feet from Danger or One Step from Absurd?" *International Journal of Offender Therapy and Comparative Criminology*, 49(2), 2005 168-178.
- <sup>12</sup> S.B. 341, 2005 Leg., 73rd Sess. (Nev. 2005).
- <sup>13</sup> R.I. Gen Laws §(2004).
- <sup>14</sup> For more information on statistics, go to [www.parentsformeganslaw.com](http://www.parentsformeganslaw.com).
- <sup>15</sup> Oregon and South Dakota are the only two states not on the Web site.
- <sup>16</sup> Children's Safety Act, H.R. 3132 109th Congress (2005).
- <sup>17</sup> In March of 2005, John Couey, a registered sex offender, confessed to killing 9 year-old Jessica Lunsford. In July of 2005, Joseph Duncan, also a registered sex offender, was charged with the kidnapping of 8 year-old Shasta Groene and the murder of her brother and other family members.

The National Center for Prosecution of Child Abuse is a program of the American Prosecutors Research Institute, the non-profit research, training and technical assistance affiliate of the National District Attorneys Association. This publication was prepared under Grant No. 2003-CI-FX-K008 from the Office of Juvenile Justice and Delinquency Prevention, US Department of Justice. This information is offered for educational purposes only and is not legal advice. Points of view in this publication are those of the authors and do not necessarily represent the official position of the US Department of Justice, NDA or APRIL.



American Prosecutors Research Institute  
National Center for Prosecution of Child Abuse  
99 Canal Center Plaza, Suite 510  
Alexandria, Virginia 22314  
www.ndaa-apri.org

Non Profit  
Organization  
U.S. Postage  
PAID  
Merrifield, VA  
Permit No. 768

2-4



# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2576  
to  
The Senate Judiciary Committee

By Roger Werholtz  
Secretary  
Kansas Department of Corrections

March 15, 2006

The Department of Corrections supports HB 2576. HB 2576 was passed by the House by a vote of 122 to 3. In addition to providing for increased penalties for sex offenders, HB 2576 also establishes a Sex Offender Policy Board to study and make recommendations regarding substantive issues pertaining to the treatment, sentencing, rehabilitation, reintegration, and supervision of sex offenders.

The management of sex offenders in the most effective and efficient manner possible is the corner stone of making Kansans safer. The Kansas Department of Corrections, through a technical assistance grant from the National Institute of Corrections, was a leader in the utilization of plethysmographs and polygraphs in the treatment and supervision of sex offenders. However, the field of sex offender treatment and management is not static. The Sex Offender Policy Board would assist Kansas in utilizing the latest research and best practices in the field. HB 2576 mandates, inter alia, that the Sex Offender Policy Board report on residential restrictions and the utilization of electronic monitoring by the beginning of the 2007 Legislative Session.

The department urges favorable consideration of HB 2576.

OFFICERS

Douglas Witteman, President  
Edmond D. Brancart, Vice President  
Thomas Stanton, Secretary/Treasurer  
Steve Kearney, Executive Director  
Thomas J. Drees, Past President



DIRECTORS

David Debenham  
Ann Swegle  
Jacqie Spradling  
John P. Wheeler, Jr.

## Kansas County & District Attorneys Association

1200 S.W. 10th Avenue  
Topeka, Kansas 66604  
(785) 232-5822 FAX: (785) 234-2433  
www.kcdaa.org

March 15, 2006

Senate Judiciary Committee  
Written testimony on HB 2576

Chairman Vratil and members of the committee:

The Kansas County and District Attorneys Association is supportive of the underlying public policy outlined in HB 2576. The board of directors supports the increased sentences for habitual sex offenders. Our board, however, is not supportive of the procedural steps outlined in HB 2576 that a prosecutor must argue to secure those increased penalties.

HB 2576 would require a bifurcated trial very similar to the trial system currently used in death penalty cases. This additional trial adds a tremendous amount of expense to the county for which the case is held. The bifurcated trial is not only more expensive at the district court level but will certainly lead to more appeals and more costs at the appellate court level. Our association believes that SB 334 allows the same review to take place, only it will be under the review of the judge by allowing for the downward departure of the sentence, instead of holding an entire separate trial decided by a jury on whether to increase the sentence.

Certainly HB 2576 is a much more complicated and complex system for prosecuting habitual sex offenders. HB 2576 is contrary to the sentencing guidelines adopted by this legislature in the early 1990's. The sentencing guidelines were to ensure equality of sentences for like crimes. Under HB 2576, you could certainly have a disparity of sentencing for habitual sex offenders.

The Attorney General's Safe Task Force, comprised of prosecutors and other law enforcement representatives, reviewed Jessica's law and many of the provisions found in HB 2576. After much discussion and debate, the task force endorsed the provisions of SB 334 and not the bifurcated trial system in HB 2576.

There are other public policy decisions in HB 2576 that our board feels needs to be thoroughly reviewed and understood before passing this measure. We would encourage the committee to not adopt HB 2576 and continue to support SB 334. Our association stands ready to help make SB 334 a good and meaningful piece of legislation for the safety of all Kansans.

Thank you for the opportunity to present written testimony.

Michael White  
Vice-President Association Operations/Lobbyist

Senate Judiciary

3-15-06

Attachment 4

HOUSE BILL No. 2576

By Representative Kilpatrick

1-5

PROPOSED AMENDMENT

Insert SB 334

March 15, 2006

Senate Judiciary  
3-15-06  
Attachment 5

12 AN ACT concerning crimes, punishment and criminal procedure; en-  
13 acting a lifetime imprisonment sentence for ~~persistent aggravated~~  
14 ~~habitual sex~~ offenders; ~~mandatory~~ penalties for certain sex offenses;  
15 ~~domestic battery, plea agreements, duties of board of education,~~  
16 ~~department of corrections and criminal justice coordinating council~~  
17 ~~relating to offender registration~~; amending K.S.A. ~~21-3504, 21-3506,~~  
18 ~~21-3513, 21-3812 and, 21-4625 and[,] 22-3436 [and 38-1663] and~~  
19 ~~K.S.A. 2005 Supp. 21-3412a, 21-3447, 21-3502, 21-3510, 21-3511,~~  
20 ~~21-3516, 21-4611, 21-4635, 21-4638, 21-4704, 22-3717, 22-4903, 22-~~  
21 ~~4904, 22-4906, 74-5602 and 74-9501~~ and repealing the existing  
22 sections.

lifetime parole for certain offenders; duties of the  
Kansas sentencing commission and the criminal  
justice coordinating council; tampering with an  
electronic monitoring device

21-3504, 21-3506, 21-3513, 21-3812 and 74-9101 and K.S.A. 2005  
Supp. 21-3447, 21-3502, 21-4635, 21-4638 and 21-3516, 21-4706,  
22-3717, 22-4903 and 74-9501

23  
24 *Be it enacted by the Legislature of the State of Kansas:*  
25 ~~New~~ Section 1. (a) A ~~persistent An aggravated habitual sex~~ of-  
26 fender shall be sentenced to imprisonment for life without the possibility  
27 of parole. Such offender shall spend the remainder of the offender's nat-  
28 ural life incarcerated and in the custody of the secretary of corrections.  
29 An offender who is sentenced to imprisonment for life without the pos-  
30 sibility of parole shall not be eligible for parole, probation, assignment to  
31 a community correctional services program, conditional release, post-  
32 release supervision, or suspension, modification or reduction of sentence.  
33 (b) Upon sentencing a defendant to imprisonment for life without  
34 the possibility of parole, the court shall commit the defendant to the  
35 custody of the secretary of corrections and the court shall state in the  
36 sentencing order of the judgment form or journal entry, whichever is  
37 delivered with the defendant to the correctional institution, that the de-  
38 fendant has been sentenced to imprisonment for life without the possi-  
39 bility of parole.  
40 (c) As used in this section:  
41 (1) "Persistent Aggravated habitual sex offender" means a person  
42 who, on and after July 1, 2006: (A) Has been convicted in this state of a  
43 sexually violent crime, as described in paragraphs (3)(A) through

Strike all in pages 2 through 53.

5-2

1 ~~effect without the invalid provisions or application, and to this end the~~  
2 ~~provisions of this act are severable.~~

3 ~~Sec. ~~23 20~~ [30]. K.S.A. 21 3504, 21 3506, 21 3513, 21 3812 and, 21~~  
4 ~~4625 and[,] ~~22 3436~~ [and ~~38 1663~~] and K.S.A. 2005 Supp. ~~21 3412a,~~~~  
5 ~~21 3447, 21 3502, ~~21 3510, 21 3511,~~ 21 3516, 21 4611, 21 4635, 21~~  
6 ~~4638, 21 4704, ~~22 3717, 22 4903, 22 4904, 22 4906,~~ ~~71 5602~~ and 71~~  
7 ~~9501 are hereby repealed.~~

8 ~~Sec. ~~24 30~~ [31]. This act shall take effect and be in force from and~~  
9 ~~after its publication in the statute book.~~

Insert contents of SB 334 as amended by Senate  
Committee of the Whole, Sections 1 through 18;  
and renumber the remaining section.

[As Amended by Senate Committee of the Whole]

(Corrected)

As Amended by Senate Committee

Session of 2009

SENATE BILL No. 334

By Senators D. Schmidt, Applc, Barnett, Barone, Bruce, Emler, Gilstrap, Hensley, Jordan, McGinn, Morris, Pine, Schodorf, Taddiken, Teichman, Umbarger, Vratil, Wagle, Wilson and Wysong

1-5

15 AN ACT concerning crimes, punishment and criminal procedure; en-  
16 acting a life imprisonment sentence for ~~persistent aggravated habit-~~  
17 ~~ual sex~~ offenders; lifetime parole for certain offenders; mandatory  
18 penalties for ~~rape and aggravated criminal sodomy~~ *certain sex of-*  
19 *fenses*; duties of the Kansas sentencing commission *and the criminal*  
20 *justice coordinating council*; tampering with an electronic monitor-  
21 ing device; amending K.S.A. ~~21-3504~~, ~~21-3506~~, ~~21-3513~~, ~~21-3812~~  
22 ~~and 74-9101~~ and K.S.A. 2005 Supp. ~~21-3447~~, ~~21-3502~~, ~~21-4695~~, ~~21-~~  
23 ~~4698~~ *and 21-3516, 21-4706, 22-3717, 22-4903 and 74-9501* and  
24 repealing the existing sections.  
25

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

27 New Section 1. (a) ~~A persistent An aggravated habitual sex~~ of-  
28 fender shall be sentenced to imprisonment for life without the possibility  
29 of parole. Such offender shall spend the remainder of the offender's nat-  
30 ural life incarcerated and in the custody of the secretary of corrections.  
31 An offender who is sentenced to imprisonment for life without the possi-  
32 bility of parole shall not be eligible for parole, probation, assignment to  
33 a community correctional services program, conditional release, post-  
34 release supervision, or suspension, modification or reduction of sentence.

35 (b) Upon sentencing a defendant to imprisonment for life without  
36 the possibility of parole, the court shall commit the defendant to the  
37 custody of the secretary of corrections and the court shall state in the  
38 sentencing order of the judgment form or journal entry, whichever is  
39 delivered with the defendant to the correctional institution, that the de-  
40 fendant has been sentenced to imprisonment for life without the possi-  
41 bility of parole.

42 (c) As used in this section:

43 (1) ~~"Persistent Aggravated habitual sex offender"~~ means a person

1 who, on and after July 1, 2006, *as described in paragraphs (3)(A)*  
2 *through 3(J) or (3)(L)*; (A) has been convicted in this state of a sexually  
3 violent crime; and (B) prior to the conviction of the felony under sub-  
4 paragraph (A), has been convicted on at least two prior conviction events  
5 of any sexually violent crime.

6 (2) "Prior conviction event" means ~~crimes committed on or after July~~  
7 ~~1, 2006~~ of one or more felony convictions of a sexually violent crime  
8 occurring on the same day and within a single count. These convictions  
9 may result from multiple counts within an information or from more than  
10 one information. If a person crosses a county line and commits a felony  
11 as part of the same criminal act or acts, such felony, if such person is  
12 convicted, shall be considered part of the prior conviction event.

13 (3) "Sexually violent crime" means:

14 (A) Rape, K.S.A. 21-3502, and amendments thereto;

15 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments  
16 thereto;

17 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and  
18 amendments thereto;

19 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,  
20 and amendments thereto;

21 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments  
22 thereto;

23 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments  
24 thereto;

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

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

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

31 (J) *aggravated incest, K.S.A. 21-3603, and amendments thereto;*

32 ~~(K)~~ (K) any federal or other state conviction for a felony offense that  
33 under the laws of this state would be a sexually violent crime as defined  
34 in this section;

35 ~~(L)~~ (L) an attempt, conspiracy or criminal solicitation, as defined in  
36 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sexu-  
37 ally violent crime as defined in this section; or

38 ~~(M)~~ (M) any act which at the time of sentencing for the offense has  
39 been determined beyond a reasonable doubt to have been sexually moti-  
40 vated. As used in this subparagraph, "sexually motivated" means that  
41 one of the purposes for which the defendant committed the crime was  
42 for the purpose of the defendant's sexual gratification.

43 *New Sec. 2. (a) (1) Except as provided in subsection (b) or (d),*

5-3



1 a defendant who is 18 years of age or older and is convicted of the  
2 following crimes committed on or after July 1, 2006, shall be sen-  
3 tenced to a term of imprisonment for life with a mandatory mini-  
4 mum term of imprisonment of not less than 25 years unless the court  
5 determines that the defendant should be sentenced as determined  
6 in paragraph (2):

7 (A) Aggravated trafficking, as defined in K.S.A. 2005 Supp. 21-  
8 3447, and amendments thereto, if the victim is less than 14 years of  
9 age;

10 (B) rape, as defined in subsection (a)(2) of K.S.A. 21-3502, and  
11 amendments thereto;

12 (C) aggravated indecent liberties with a child, as defined in sub-  
13 section (a)(3) of K.S.A. 21-3504, and amendments thereto;

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

16 (E) promoting prostitution, as defined in K.S.A. 21-3513, and  
17 amendments thereto, if the prostitute is less than 14 years of age;

18 (F) sexual exploitation of a child, as defined in subsection (a)(5)  
19 or (a)(6) of K.S.A. 21-3516, and amendments thereto; and

20 (C) an attempt, conspiracy or criminal solicitation, as defined  
21 in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of  
22 an offense defined in paragraphs (A) through (F).

23 (2) The provision of paragraph (1) requiring a mandatory mini-  
24 mum term of imprisonment of not less than 25 years shall not apply  
25 if the court finds:

26 (A) The defendant is an aggravated [habitual] sex offender and  
27 sentenced pursuant to section 1, and amendments thereto; or

28 (B) the defendant, because of the defendant's criminal history  
29 classification, is subject to presumptive imprisonment pursuant to  
30 the sentencing guidelines grid for nondrug crimes and the sentenc-  
31 ing range exceeds 300 months. In such case, the defendant is re-  
32 quired to serve a mandatory minimum term equal to the sentence  
33 established pursuant to the sentencing range.

34 (b) On and after July 1, 2006, if a defendant who is 18 years of  
35 age or older is convicted of a crime listed in subsection (a)(1) and  
36 such defendant has previously been convicted of a crime listed in  
37 subsection (a)(1) or a crime under a law of another jurisdiction  
38 which is substantially the same as such crime, the court shall sen-  
39 tence the defendant to a term of imprisonment for life with a man-  
40 datory minimum term of imprisonment of not less than 40 years.

41 (c) When a person is sentenced pursuant to subsection (a) or  
42 (b), such person shall be sentenced to a mandatory minimum term  
43 of imprisonment of not less than 25 years, 40 years or be sentenced

1 as determined in subsection (a)(2), whichever is applicable, and  
2 shall not be eligible for probation or suspension, modification or  
3 reduction of sentence. In addition, a person sentenced pursuant to  
4 this section shall not be eligible for parole prior to serving such  
5 mandatory term of imprisonment, and such imprisonment shall not  
6 be reduced by the application of good time credits.

7 (d) On or after July 1, 2006, for a first time conviction of an  
8 offense listed in paragraph (a)(1), the sentencing judge shall impose  
9 the mandatory minimum term of imprisonment provided by sub-  
10 section (a), unless the judge finds substantial and compelling rea-  
11 sons, following a review of mitigating circumstances, to impose a  
12 departure. If the sentencing judge departs from such mandatory  
13 minimum term of imprisonment, the judge shall state on the record  
14 at the time of sentencing the substantial and compelling reasons for  
15 the departure. The departure sentence shall be the sentence pur-  
16 suant to the sentencing guidelines act, K. S. A. 21-4701 et seq., and  
17 amendments thereto, and no sentence of a mandatory minimum  
18 term of imprisonment shall be imposed hereunder. [As used in this  
19 subsection, mitigating circumstances shall include, but are not lim-  
20 ited to, the following:

21 [(1) The defendant has no significant history of prior criminal  
22 activity.

23 [(2) The crime was committed while the defendant was under  
24 the influence of extreme mental or emotional disturbances.

25 [(3) The victim was an accomplice in the crime committed by  
26 another person, and the defendant's participation was relatively  
27 minor.

28 [(4) The defendant acted under extreme distress or under the  
29 substantial domination of another person.

30 [(5) The capacity of the defendant to appreciate the criminality  
31 of the defendant's conduct or to conform the defendant's conduct to  
32 the requirements of law was substantially impaired.

33 [(6) The age of the defendant at the time of the crime.]

34 New Sec. 2 3. (a) Unlawfully tampering with electronic monitoring  
35 equipment is intentionally removing, disabling, altering, tampering with,  
36 damaging or destroying any electronic monitoring equipment used pur-  
37 suant to court order or as a condition of parole.

38 (b) The provisions of this section shall not apply to:

39 (1) The owner of the equipment, or an agent of the owner, perform-  
40 ing ordinary maintenance and repairs upon such equipment; or

41 (2) an employee of the department of corrections acting within such  
42 employec's scope of employment.

43 (c) Unlawfully tampering with electronic monitoring equipment is a

7-5

1 severity level 6, nonperson felony.

2 (d) This section shall be a part of and supplemental to the Kansas  
3 criminal code.

4 Sec. 34. K.S.A. 2005 Supp. 21-3502 is hereby amended to read as  
5 follows: 21-3502. (a) Rape is: (1) Sexual intercourse with a person who  
6 does not consent to the sexual intercourse, under any of the following  
7 circumstances:

8 (A) When the victim is overcome by force or fear;

9 (B) when the victim is unconscious or physically powerless; or

10 (C) when the victim is incapable of giving consent because of mental  
11 deficiency or disease, or when the victim is incapable of giving consent  
12 because of the effect of any alcoholic liquor, narcotic, drug or other sub-  
13 stance, which condition was known by the offender or was reasonably  
14 apparent to the offender;

15 (2) sexual intercourse with a child who is under 14 years of age;

16 (3) sexual intercourse with a victim when the victim's consent was  
17 obtained through a knowing misrepresentation made by the offender that  
18 the sexual intercourse was a medically or therapeutically necessary pro-  
19 cedure; or

20 (4) sexual intercourse with a victim when the victim's consent was  
21 obtained through a knowing misrepresentation made by the offender that  
22 the sexual intercourse was a legally required procedure within the scope  
23 of the offender's authority.

24 (b) It shall be a defense to a prosecution of rape under subsection  
25 (a)(2) that the child was married to the accused at the time of the offense.

26 (c) Except as provided further, rape as described in subsection (a)(1)  
27 or (2) is a severity level 1, person felony. Rape as described in subsection  
28 (a)(2), when the offender is 18 years of age or older, is an off-grid person  
29 felony. Rape as described in subsection (a)(3) or (4) is a severity level 2,  
30 person felony.

31 Sec. 45. K.S.A. 21-3506 is hereby amended to read as follows: 21-  
32 3506. (a) Aggravated criminal sodomy is:

33 (1) Sodomy with a child who is under 14 years of age;

34 (2) causing a child under 14 years of age to engage in sodomy with  
35 any person or an animal; or

36 (3) sodomy with a person who does not consent to the sodomy or  
37 causing a person, without the person's consent, to engage in sodomy with  
38 any person or an animal, under any of the following circumstances:

39 (A) When the victim is overcome by force or fear;

40 (B) when the victim is unconscious or physically powerless; or

41 (C) when the victim is incapable of giving consent because of mental  
42 deficiency or disease, or when the victim is incapable of giving consent  
43 because of the effect of any alcoholic liquor, narcotic, drug or other sub-

1 stance, which condition was known by the offender or was reasonably  
2 apparent to the offender.

3 (b) It shall be a defense to a prosecution of aggravated criminal sod-  
4 omy under subsection (a)(1) that the child was married to the accused at  
5 the time of the offense.

6 (c) Except as provided further, aggravated criminal sodomy is a se-  
7 verity level 2 I, person felony. Aggravated criminal sodomy as described  
8 in subsection (a)(1) or (a)(2), when the offender is 18 years of age or older,  
9 is an off-grid person felony.

10 Sec. 5. K.S.A. 2005 Supp. 21-4635 is hereby amended to read as  
11 follows: 21-4635. (a) Except as provided in K.S.A. 21-4622, 21-4623 and  
12 21-4634, and amendments thereto, if a defendant is convicted of the  
13 crime of capital murder and a sentence of death is not imposed pursuant  
14 to subsection (c) of K.S.A. 21-4624, and amendments thereto, or re-  
15 quired pursuant to subsection (a) or (b) of K.S.A. 21-4624, and amend-  
16 ments thereto, the defendant shall be sentenced to life without the pos-  
17 sibility of parole.

18 (b) If a defendant is convicted of murder in the first degree based  
19 upon the finding of premeditated murder, the court shall determine  
20 whether the defendant shall be required to serve a mandatory term of  
21 imprisonment of 40 years or for crimes committed on and after July 1,  
22 1999, a mandatory term of imprisonment of 50 years or sentenced as  
23 otherwise provided by law.

24 (c) (1) If a defendant who is 18 years of age or older is convicted of  
25 the following crimes committed on or after July 1, 2006, the court shall  
26 sentence the defendant to a term of imprisonment for life with a manda-  
27 tory minimum term of imprisonment of not less than 25 years unless the  
28 court determines that the defendant should be sentenced as determined  
29 in paragraph (2):

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

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

34 (C) an attempt, conspiracy or criminal solicitation, as defined in  
35 K.S.A. 21-2201, 21-2202 or 21-2203, and amendments thereto, of an of-  
36 fense defined in paragraph (A) or (B);

37 (2) The provision of paragraph (1) requiring a mandatory minimum  
38 term of imprisonment of not less than 25 years shall not apply if the court  
39 finds:

40 (A) The defendant is a persistent offender and sentenced pursuant to  
41 section 1, and amendments thereto; or

42 (B) the defendant, because of the defendant's criminal history clas-  
43 sification, is subject to presumptive imprisonment pursuant to the sen-

1 ~~sentencing guidelines grid for nondrug crimes and the sentencing range ex-~~  
 2 ~~ceeds 300 months. In such case, the defendant is required to serve a~~  
 3 ~~mandatory minimum term equal to the sentence established pursuant to~~  
 4 ~~the sentencing range.~~

5 ~~(c) (d) —In order to make such determination, the court may be pre-~~  
 6 ~~sented evidence concerning any matter that the court deems relevant to~~  
 7 ~~the question of sentence and shall include matters relating to any of the~~  
 8 ~~aggravating circumstances enumerated in K.S.A. 21-4626, and amend-~~  
 9 ~~ments thereto, and any mitigating circumstances. Any such evidence~~  
 10 ~~which the court deems to have probative value may be received regardless~~  
 11 ~~of its admissibility under the rules of evidence, provided that the defend-~~  
 12 ~~ant is accorded a fair opportunity to rebut any hearsay statements. Only~~  
 13 ~~such evidence of aggravating circumstances as the state has made known~~  
 14 ~~to the defendant prior to the sentencing shall be admissible and no evi-~~  
 15 ~~dence secured in violation of the constitution of the United States or of~~  
 16 ~~the state of Kansas shall be admissible. No testimony by the defendant~~  
 17 ~~at the time of sentencing shall be admissible against the defendant at any~~  
 18 ~~subsequent criminal proceeding. At the conclusion of the evidentiary~~  
 19 ~~presentation, the court shall allow the parties a reasonable period of time~~  
 20 ~~in which to present oral argument.~~

21 ~~—(d) (e) (1) —If a defendant is convicted of an offense defined in sub-~~  
 22 ~~section (b), if the court finds that one or more of the aggravating circum-~~  
 23 ~~stances enumerated in K.S.A. 21-4626, and amendments thereto, exist~~  
 24 ~~and, further, that the existence of such aggravating circumstances is not~~  
 25 ~~outweighed by outweigh any mitigating circumstances which are found~~  
 26 ~~to exist, the defendant shall be sentenced pursuant to subsection (a) of~~  
 27 ~~K.S.A. 21-4628, and amendments thereto, otherwise, the defendant shall~~  
 28 ~~be sentenced as provided by law.~~

29 ~~—(2) —If a defendant is convicted of an offense defined in subsection (c),~~  
 30 ~~if the court finds that one or more of the aggravating circumstances enu-~~  
 31 ~~merated in K.S.A. 21-4626, and amendments thereto, exist and, further,~~  
 32 ~~that the existence of such aggravating circumstances outweighs any miti-~~  
 33 ~~gating circumstances which are found to exist, the defendant shall be~~  
 34 ~~sentenced to life without the possibility of parole; otherwise, the defendant~~  
 35 ~~shall be sentenced pursuant to subsection (b) of K.S.A. 21-4628, and~~  
 36 ~~amendments thereto.~~

37 ~~—(f) —The court shall designate, in writing, the statutory aggravating cir-~~  
 38 ~~cumstances which it found.~~

39 ~~—(g) —The court may make the findings required by this subsection for~~  
 40 ~~the purpose of determining whether to sentence a defendant pursuant to~~  
 41 ~~subsection (a) of K.S.A. 21-4628, and amendments thereto, notwithstand-~~  
 42 ~~ing contrary findings made by the jury or court pursuant to subsection~~  
 43 ~~(e) of K.S.A. 21-4624, and amendments thereto, for the purpose of de-~~

1 ~~termining whether to sentence such defendant to death.~~

2 ~~—Sec. 6. —K.S.A. 2005 Supp. 21-4628 is hereby amended to read as~~  
 3 ~~follows: 21-4628. (a) When it is provided by law that a person shall be~~  
 4 ~~sentenced pursuant to this section subsection, such person shall be sen-~~  
 5 ~~tenced to imprisonment for life and shall not be eligible for probation or~~  
 6 ~~suspension, modification or reduction of sentence. Except as otherwise~~  
 7 ~~provided, in addition, a person sentenced pursuant to this section shall~~  
 8 ~~not be eligible for parole prior to serving 40 years' imprisonment, and~~  
 9 ~~such 40 years' imprisonment shall not be reduced by the application of~~  
 10 ~~good time credits. For crimes committed on and after July 1, 1999, a~~  
 11 ~~person sentenced pursuant to this section shall not be eligible for parole~~  
 12 ~~prior to serving 50 years' imprisonment, and such 50 years' imprisonment~~  
 13 ~~shall not be reduced by the application of good time credits.~~

14 ~~—(b) —When it is provided by law that a person shall be sentenced pur-~~  
 15 ~~suant to this subsection, such person shall be sentenced to a mandatory~~  
 16 ~~minimum term of imprisonment of not less than 25 years or be sentenced~~  
 17 ~~as determined in subsection (c)(2) of K.S.A. 21-4628, and amendments~~  
 18 ~~thereto, and shall not be eligible for probation or suspension, modification~~  
 19 ~~or reduction of sentence. In addition, a person sentenced pursuant to this~~  
 20 ~~section shall not be eligible for parole prior to serving such mandatory~~  
 21 ~~term of imprisonment, and such imprisonment shall not be reduced by~~  
 22 ~~the application of good time credits.~~

23 ~~—(c) —Upon sentencing a defendant pursuant to this section, the court~~  
 24 ~~shall commit the defendant to the custody of the secretary of corrections~~  
 25 ~~and the court shall state in the sentencing order of the judgment form or~~  
 26 ~~journal entry, whichever is delivered with the defendant to the correc-~~  
 27 ~~tional institution, that the defendant has been sentenced pursuant to~~  
 28 ~~K.S.A. 21-4628, and amendments thereto.~~

29 ~~Sec. 6. K.S.A. 2005 Supp. 21-3447 is hereby amended to read~~  
 30 ~~as follows: 21-3447. (a) Aggravated trafficking is:~~

31 ~~(1) Trafficking, as defined in K.S.A. 2005 Supp. 21-3446, and~~  
 32 ~~amendments thereto;~~

33 ~~(A) Involving the commission or attempted commission of kid-~~  
 34 ~~napping, as defined in K.S.A. 21-3420, and amendments thereto;~~

35 ~~(B) committed in whole or in part for the purpose of the sexual~~  
 36 ~~gratification of the defendant or another; or~~

37 ~~(C) resulting in a death; or~~

38 ~~(2) recruiting, harboring, transporting, providing or obtaining,~~  
 39 ~~by any means, a person under 18 years of age knowing that the~~  
 40 ~~person, with or without force, fraud, threat or coercion, will be used~~  
 41 ~~to engage in forced labor, involuntary servitude or sexual gratifi-~~  
 42 ~~cation of the defendant or another.~~

43 ~~(b) Except as provided further, aggravated trafficking is a severity~~

1 level 1, person felony. When the offender is 18 years of age or older,  
 2 aggravated trafficking, if the victim is less than 14 years of age, is an off-  
 3 grid person felony.

4 (c) This section shall be part of and supplemental to the Kansas  
 5 criminal code.

6 Sec. 7. K.S.A. 21-3504 is hereby amended to read as follows:  
 7 21-3504. (a) Aggravated indecent liberties with a child is:

8 (1) Sexual intercourse with a child who is 14 or more years of  
 9 age but less than 16 years of age;

10 (2) engaging in any of the following acts with a child who is 14  
 11 or more years of age but less than 16 years of age and who does not  
 12 consent thereto:

13 (A) Any lewd fondling or touching of the person of either the  
 14 child or the offender, done or submitted to with the intent to arouse  
 15 or satisfy the sexual desires of either the child or the offender, or  
 16 both; or

17 (B) causing the child to engage in any lewd fondling or touching  
 18 of the person of another with the intent to arouse or satisfy the  
 19 sexual desires of the child, the offender or another; or

20 (3) engaging in any of the following acts with a child who is  
 21 under 14 years of age:

22 (A) Any lewd fondling or touching of the person of either the  
 23 child or the offender, done or submitted to with the intent to arouse  
 24 or to satisfy the sexual desires of either the child or the offender, or  
 25 both; or

26 (B) soliciting the child to engage in any lewd fondling or touch-  
 27 ing of the person of another with the intent to arouse or satisfy the  
 28 sexual desires of the child, the offender or another.

29 (b) It shall be a defense to a prosecution of aggravated indecent  
 30 liberties with a child as provided in subsection (a)(1), (a)(2)(A) and  
 31 (a)(3)(A) that the child was married to the accused at the time of  
 32 the offense.

33 (c) Except as provided further, aggravated indecent liberties with  
 34 a child as described in subsections (a)(1) and (a)(3) is a severity  
 35 level 3, person felony. Aggravated indecent liberties with a child as  
 36 described in subsection (a)(2) is a severity level 4, person felony.  
 37 When the offender is 18 years of age or older, aggravated indecent lib-  
 38 erities with a child as described in subsection (a)(3) is an off-grid person  
 39 felony.

40 Sec. 8. K.S.A. 21-3513 is hereby amended to read as follows:  
 41 21-3513. (a) Promoting prostitution is:

42 (1) Establishing, owning, maintaining or managing a house of  
 43 prostitution, or participating in the establishment, ownership,

1 maintenance, or management thereof;

2 (2) permitting any place partially or wholly owned or con-  
 3 trolled by the defendant to be used as a house of prostitution;

4 (3) procuring a prostitute for a house of prostitution;

5 (4) inducing another to become a prostitute;

6 (5) soliciting a patron for a prostitute or for a house of  
 7 prostitution;

8 (6) procuring a prostitute for a patron;

9 (7) procuring transportation for, paying for the transportation  
 10 of, or transporting a person within this state with the intention of

11 assisting or promoting that person's engaging in prostitution; or  
 12 (8) being employed to perform any act which is prohibited by

13 this section.

14 (b) (1) Promoting prostitution is a class A person misdemeanor  
 15 when the prostitute is 16 or more years of age.

16 (2) Promoting prostitution when the prostitute is 16 or more  
 17 years of age is a severity level 7, person felony if committed by a  
 18 person who has, prior to the commission of the crime, been convicted  
 19 of promoting prostitution.

20 (3) Except as provided in paragraph (4), promoting prostitution is  
 21 a severity level 6, person felony when the prostitute is under 16  
 22 years of age.

23 (4) Promoting prostitution is an off-grid person felony when the of-  
 24 fender is 18 years of age or older and the prostitute is less than 14 years  
 25 of age.

26 Sec. 9. K.S.A. 2005 Supp. 21-3516 is hereby amended to read  
 27 as follows: 21-3516. (a) Sexual exploitation of a child is:

28 (1) Except as provided in subsection (a)(5), employing, using, per-  
 29 suading, inducing, enticing or coercing a child under 18 years of  
 30 age to engage in sexually explicit conduct for the purpose of pro-  
 31 moting any performance;

32 (2) possessing any visual depiction, including any photograph,  
 33 film, video picture, digital or computer generated image or picture,  
 34 whether made or produced by electronic, mechanical or other  
 35 means, where such visual depiction of a child under 18 years of age  
 36 is shown or heard engaging in sexually explicit conduct with intent  
 37 to arouse or satisfy the sexual desires or appeal to the prurient in-  
 38 terest of the offender, the child or another;

39 (3) being a parent, guardian or other person having custody or  
 40 control of a child under 18 years of age and knowingly permitting  
 41 such child to engage in, or assist another to engage in, sexually  
 42 explicit conduct for any purpose described in subsection (a)(1) or  
 43 (2); or

1 (4) *except as provided in subsection (a)(6), promoting any perform-*  
 2 *ance that includes sexually explicit conduct by a child under 18*  
 3 *years of age, knowing the character and content of the*  
 4 *performance;*

5 (5) *employing, using, persuading, inducing, enticing or coercing a*  
 6 *child under 14 years of age to engage in sexually explicit conduct for the*  
 7 *purpose of promoting any performance; or*

8 (6) *promoting any performance that includes sexually explicit conduct*  
 9 *by a child under 14 years of age, knowing the character and content of*  
 10 *the performance.*

11 (b) *As used in this section:*

12 (1) *"Sexually explicit conduct" means actual or simulated: Ex-*  
 13 *hibition in the nude; sexual intercourse or sodomy, including gen-*  
 14 *ital-genital, oral-genital, anal-genital or oral-anal contact, whether*  
 15 *between persons of the same or opposite sex; masturbation; sado-*  
 16 *masochistic abuse for the purpose of sexual stimulation; or lewd*  
 17 *exhibition of the genitals, female breasts or pubic area of any*  
 18 *person.*

19 (2) *"Promoting" means procuring, selling, providing, lending,*  
 20 *mailing, delivering, transferring, transmitting, distributing, circu-*  
 21 *lating, disseminating, presenting, producing, directing, manufac-*  
 22 *turing, issuing, publishing, displaying, exhibiting or advertising;*

23 (A) *For pecuniary profit; or*

24 (B) *with intent to arouse or gratify the sexual desire or appeal*  
 25 *to the prurient interest of the offender, the child or another.*

26 (3) *"Performance" means any film, photograph, negative, slide,*  
 27 *book, magazine or other printed or visual medium, any audio tape*  
 28 *recording or any photocopy, video tape, video laser disk, computer*  
 29 *hardware, software, floppy disk or any other computer related*  
 30 *equipment or computer generated image that contains or incorpo-*  
 31 *rates in any manner any film, photograph, negative, photocopy,*  
 32 *video tape or video laser disk or any play or other live presentation.*

33 (4) *"Nude" means any state of undress in which the human gen-*  
 34 *itals, pubic region, buttock or female breast, at a point below the*  
 35 *top of the areola, is less than completely and opaquely covered.*

36 (c) *Sexual exploitation of a child as described in subsection (a)(1),*  
 37 *(a)(2), (a)(3) or (a)(4) is a severity level 5, person felony. Sexual ex-*  
 38 *ploitation of a child as described in subsection (a)(5) or (a)(6) when the*  
 39 *offender is 18 years of age or older is an off-grid person felony.*

40 (d) *This section shall be part of and supplemental to the Kansas*  
 41 *criminal code.*

42 *Sec. 10. K.S.A. 21-3812 is hereby amended to read as follows:*  
 43 *21-3812. (a) Aiding a felon is knowingly harboring, concealing or*

1 *aiding any person who has committed a felony under the laws of*  
 2 *this state, other than a violation of K.S.A. 22-4903, and amendments*  
 3 *thereto, or another state or the United States with intent that such*  
 4 *person shall avoid or escape from arrest, trial, conviction or pun-*  
 5 *ishment for such felony.*

6 *Aiding a felon is a severity level 8, nonperson felony.*

7 (b) *Aiding a person charged with a felony is knowingly harbor-*  
 8 *ing, concealing or aiding a person who has been charged with a*  
 9 *felony under the laws of this state, other than a violation of K.S.A. 22-*  
 10 *4903, and amendments thereto, or another state or the United States*  
 11 *with intent that such person shall avoid or escape from arrest, trial,*  
 12 *conviction or punishment for such felony.*

13 *Aiding a person charged with a felony is a severity level 8, non-*  
 14 *person felony.*

15 (c) ~~*Aiding a person convicted of or charged with committing a mis-*~~  
 16 ~~*demeanor.*~~

17 (c) *Aiding a person who has been convicted of or who has been*  
 18 *charged with committing a misdemeanor under the laws of Kansas*  
 19 *or another state is knowingly concealing or aiding such person with*  
 20 *intent that such person shall avoid or escape from arrest, trial, con-*  
 21 *viction or punishment for such misdemeanor.*

22 *Aiding a person convicted of or charged with committing a mis-*  
 23 *demeanor is a class C misdemeanor.*

24 (d) *Aiding a person required to register under the Kansas offender*  
 25 *registration act, K.S.A. 22-4901 et seq., and amendments thereto, is know-*  
 26 *ingly harboring, concealing or aiding any person who is required to reg-*  
 27 *ister under the act and who is not in compliance with the requirements*  
 28 *of the act with intent that such person shall avoid or escape from regis-*  
 29 *tration, arrest, trial, conviction, punishment or any criminal charges aris-*  
 30 *ing from the person's failure to comply with the requirements of the act.*

31 *Aiding a person required to register under the Kansas offender regis-*  
 32 *tration act is a severity level 5, person felony.*

33 *Sec. 11. K.S.A. 2005 Supp. 21-4706 is hereby amended to read*  
 34 *as follows: 21-4706. (a) For crimes committed on or after July 1,*  
 35 *1993, the sentences of imprisonment shall represent the time a per-*  
 36 *son shall actually serve, subject to a reduction of up to 15% of the*  
 37 *primary sentence for good time as authorized by law.*

38 (b) *The sentencing court shall pronounce sentence in all felony*  
 39 *cases.*

40 (c) *Violations of K.S.A. 21-3401, 21-3439 and 21-3801 and*  
 41 *amendments thereto are off-grid crimes for the purpose of sentenc-*  
 42 *ing. Except as otherwise provided by K.S.A. 21-4622 through 21-*  
 43 *4627, and 21-4629 through 21-4631, and amendments thereto, the*

1 sentence shall be imprisonment for life.

2 (d) As identified in K.S.A. 21-3502, 21-3404, 21-3506, 21-3513, 21-  
3 3516 and K.S.A. 2005 Supp. 21-3447, and amendments thereto, if the  
4 offender is 18 years of age or older and the victim is under 14 years of  
5 age, such violations are off-grid crimes for the purposes of sentencing.  
6 Except as provided in section 1, and amendments thereto, the sentence  
7 shall be imprisonment for life pursuant to section 2, and amendments  
8 thereto.

9 Sec. 712. K.S.A. 2005 Supp. 22-3717 is hereby amended to read as  
10 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.  
11 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638,  
12 and amendments thereto; K.S.A. 8-1567, and amendments thereto; sec-  
13 tion 1, and amendments thereto; and K.S.A. 21-4624, and amendments  
14 thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-  
15 4618, and amendments thereto, shall be eligible for parole after serving  
16 the entire minimum sentence imposed by the court, less good time  
17 credits.

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

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

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

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

43 (5) An inmate sentenced to imprisonment pursuant to ~~subsection (b)~~

1 ~~of K.S.A. 21-4638 section 2, and amendments thereto, committed on or~~  
2 ~~after July 1, 2006, shall be eligible for parole after serving the mandatory~~  
3 ~~term of imprisonment without deduction of any good time credits.~~

4 (c) (1) Except as provided in subsection (c), if an inmate is sentenced  
5 to imprisonment for more than one crime and the sentences run consec-  
6 utively, the inmate shall be eligible for parole after serving the total of:

7 (A) The aggregate minimum sentences, as determined pursuant  
8 to K.S.A. 21-4608 and amendments thereto, less good time credits for  
9 those crimes which are not class A felonies; and

10 (B) an additional 15 years, without deduction of good time credits,  
11 for each crime which is a class A felony.

12 (2) If an inmate is sentenced to imprisonment pursuant to ~~subsection~~  
13 ~~(b) of K.S.A. 21-4638 section 2, and amendments thereto, for crimes~~  
14 ~~committed on or after July 1, 2006, the inmate shall be eligible for parole~~  
15 ~~after serving the mandatory term of imprisonment.~~

16 (d) (1) Persons sentenced for crimes, other than off-grid crimes,  
17 committed on or after July 1, 1993, ~~persons sentenced pursuant to sub-~~  
18 ~~section (b) of K.S.A. 21-4638, and amendments thereto, for crimes com-~~  
19 ~~mitted on or after July 1, 2006, or persons subject to subparagraph (C),~~  
20 will not be eligible for parole, but will be released to a mandatory period  
21 of postrelease supervision upon completion of the prison portion of their  
22 sentence as follows:

23 (A) Except as provided in subparagraphs (D) and (E), persons sen-  
24 tenced for nondrug severity level 1 through 4 crimes and drug severity  
25 levels 1 and 2 crimes must serve 36 months, plus the amount of good  
26 time earned and retained pursuant to K.S.A. 21-4722, and amendments  
27 thereto, on postrelease supervision.

28 (B) Except as provided in subparagraphs (D) and (E), persons sen-  
29 tenced for nondrug severity levels 5 and 6 crimes and drug severity level  
30 3 crimes must serve 24 months, plus the amount of good time earned  
31 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on  
32 postrelease supervision.

33 (C) Except as provided in subparagraphs (D) and (E), persons sen-  
34 tenced for nondrug severity level 7 through 10 crimes and drug severity  
35 level 4 crimes must serve 12 months, plus the amount of good time earned  
36 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on  
37 postrelease supervision.

38 (D) (i) The sentencing judge shall impose the postrelease supervi-  
39 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),  
40 unless the judge finds substantial and compelling reasons to impose a  
41 departure based upon a finding that the current crime of conviction was  
42 ~~sexually violent or~~ sexually motivated. In that event, departure may be  
43 imposed to extend the postrelease supervision to a period of up to 60

1 months.

2 (ii) If the sentencing judge departs from the presumptive postrelease  
3 supervision period, the judge shall state on the record at the time of  
4 sentencing the substantial and compelling reasons for the departure. De-  
5 partures in this section are subject to appeal pursuant to K.S.A. 21-4721,  
6 and amendments thereto.

7 (iii) In determining whether substantial and compelling reasons exist,  
8 the court shall consider:

9 (a) Written briefs or oral arguments submitted by either the defend-  
10 ant or the state;

11 (b) any evidence received during the proceeding;

12 (c) the presentence report, the victim's impact statement and any  
13 psychological evaluation as ordered by the court pursuant to subsection  
14 (c) of K.S.A. 21-4714, and amendments thereto; and

15 (d) any other evidence the court finds trustworthy and reliable.

16 (iv) The sentencing judge may order that a psychological evaluation  
17 be prepared and the recommended programming be completed by the  
18 offender. The department of corrections or the parole board shall ensure  
19 that court ordered sex offender treatment be carried out.

20 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court  
21 shall refer to K.S.A. 21-4718, and amendments thereto.

22 (vi) Upon petition, the parole board may provide for early discharge  
23 from the postrelease supervision period upon completion of court or-  
24 dered programs and completion of the presumptive postrelease super-  
25 vision period, as determined by the crime of conviction, pursuant to sub-  
26 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from  
27 postrelease supervision is at the discretion of the parole board.

28 (vii) Persons convicted of crimes deemed sexually violent or sexually  
29 motivated, shall be registered according to the habitual sex offender reg-  
30 istration act, K.S.A. 22-4901 through 22-4910, and amendments thereto.

31 (E) The period of postrelease supervision provided in subparagraphs  
32 (A) and (B) may be reduced by up to 12 months and the period of post-  
33 release supervision provided in subparagraph (C) may be reduced by up  
34 to six months based on the offender's compliance with conditions of su-  
35 pervision and overall performance while on postrelease supervision. The  
36 reduction in the supervision period shall be on an earned basis pursuant  
37 to rules and regulations adopted by the secretary of corrections.

38 (F) In cases where sentences for crimes from more than one severity  
39 level have been imposed, the offender shall serve the longest period of  
40 postrelease supervision as provided by this section available for any crime  
41 upon which sentence was imposed irrespective of the severity level of the  
42 crime. Supervision periods will not aggregate.

43 (C) ~~Persons~~ Except as provided in subsection (u), persons con-

1 ~~victed of a sexually violent crime committed on or after July 1, 2006, and~~  
2 ~~who are released from prison, shall be released to a mandatory period of~~  
3 ~~postrelease supervision for the duration of the person's natural life. If the~~  
4 ~~court determines that such person has violated a condition of such lifetime~~  
5 ~~postrelease supervision, in addition to any other reevaluation, sentence or~~  
6 ~~condition, the court shall order the person to be electronically monitored~~  
7 ~~during any subsequent period of postrelease supervision for the duration~~  
8 ~~of the person's natural life.~~

9 (2) As used in this section, "sexually violent crime" means:

10 (A) Rape, ~~subsection (a)(1), (a)(2) and (a)(4) of~~ K.S.A. 21-3502, and  
11 amendments thereto;

12 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments  
13 thereto;

14 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and  
15 amendments thereto;

16 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,  
17 and amendments thereto;

18 (E) aggravated criminal sodomy, ~~subsection (a)(2) of~~ K.S.A. 21-3506,  
19 and amendments thereto;

20 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments  
21 thereto;

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

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

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

28 (J) ~~any conviction for a felony offense in effect at any time prior to~~  
29 ~~the effective date of this act, that is comparable to a sexually violent crime~~  
30 ~~as defined in subparagraphs (A) through (I), or any federal or other state~~  
31 ~~conviction for a felony offense that under the laws of this state would be~~  
32 ~~a sexually violent crime as defined in this section aggravated incest, K.S.A.~~  
33 ~~21-3603, and amendments thereto; or~~

34 (K) an attempt, conspiracy or criminal solicitation, as defined in  
35 K.S.A. 21-3301, 21-3302, or 21-3303, and amendments thereto, of a sex-  
36 ually violent crime as defined in this section, ~~or~~.

37 (L) ~~any act which at the time of sentencing for the offense has been~~  
38 ~~determined beyond a reasonable doubt to have been sexually motivated.~~  
39 ~~As used in this subparagraph;~~

40 "Sexually motivated" means that one of the purposes for which the  
41 defendant committed the crime was for the purpose of the defendant's  
42 sexual gratification.

43 (e) If an inmate is sentenced to imprisonment for a crime committed

1 while on parole or conditional release, the inmate shall be eligible for  
2 parole as provided by subsection (c), except that the Kansas parole board  
3 may postpone the inmate's parole eligibility date by assessing a penalty  
4 not exceeding the period of time which could have been assessed if the  
5 inmate's parole or conditional release had been violated for reasons other  
6 than conviction of a crime.

7 (f) If a person is sentenced to prison for a crime committed on or  
8 after July 1, 1993, while on probation, parole, conditional release or in a  
9 community corrections program, for a crime committed prior to July 1,  
10 1993, and the person is not eligible for retroactive application of the  
11 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-  
12 4724, and amendments thereto, the new sentence shall not be aggregated  
13 with the old sentence, but shall begin when the person is paroled or  
14 reaches the conditional release date on the old sentence. If the offender  
15 was past the offender's conditional release date at the time the new of-  
16 fense was committed, the new sentence shall not be aggregated with the  
17 old sentence but shall begin when the person is ordered released by the  
18 Kansas parole board or reaches the maximum sentence expiration date  
19 on the old sentence, whichever is earlier. The new sentence shall then  
20 be served as otherwise provided by law. The period of postrelease su-  
21 pervision shall be based on the new sentence, except that those offenders  
22 whose old sentence is a term of imprisonment for life, imposed pursuant  
23 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate  
24 sentence with a maximum term of life imprisonment, for which there is  
25 no conditional release or maximum sentence expiration date, shall remain  
26 on postrelease supervision for life or until discharged from supervision  
27 by the Kansas parole board.

28 (g) Subject to the provisions of this section, the Kansas parole board  
29 may release on parole those persons confined in institutions who are el-  
30 igible for parole when: (1) The board believes that the inmate should be  
31 released for hospitalization, for deportation or to answer the warrant or  
32 other process of a court and is of the opinion that there is reasonable  
33 probability that the inmate can be released without detriment to the com-  
34 munity or to the inmate; or (2) the secretary of corrections has reported  
35 to the board in writing that the inmate has satisfactorily completed the  
36 programs required by any agreement entered under K.S.A. 75-5210a, and  
37 amendments thereto, or any revision of such agreement, and the board  
38 believes that the inmate is able and willing to fulfill the obligations of a  
39 law abiding citizen and is of the opinion that there is reasonable proba-  
40 bility that the inmate can be released without detriment to the community  
41 or to the inmate. Parole shall not be granted as an award of clemency and  
42 shall not be considered a reduction of sentence or a pardon.

43 (h) The Kansas parole board shall hold a parole hearing at least the

1 month prior to the month an inmate will be eligible for parole under  
2 subsections (a), (b) and (c). At least the month preceding the parole hear-  
3 ing, the county or district attorney of the county where the inmate was  
4 convicted shall give written notice of the time and place of the public  
5 comment sessions for the inmate to any victim of the inmate's crime who  
6 is alive and whose address is known to the county or district attorney or,  
7 if the victim is deceased, to the victim's family if the family's address is  
8 known to the county or district attorney. Except as otherwise provided,  
9 failure to notify pursuant to this section shall not be a reason to postpone  
10 a parole hearing. In the case of any inmate convicted of an off-grid felony  
11 or a class A felony the secretary of corrections shall give written notice  
12 of the time and place of the public comment session for such inmate at  
13 least one month preceding the public comment session to any victim of  
14 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338,  
15 and amendments thereto. If notification is not given to such victim or  
16 such victim's family in the case of any inmate convicted of an off-grid  
17 felony or a class A felony, the board shall postpone a decision on parole  
18 of the inmate to a time at least 30 days after notification is given as  
19 provided in this section. Nothing in this section shall create a cause of  
20 action against the state or an employee of the state acting within the scope  
21 of the employee's employment as a result of the failure to notify pursuant  
22 to this section. If granted parole, the inmate may be released on parole  
23 on the date specified by the board, but not earlier than the date the  
24 inmate is eligible for parole under subsections (a), (b) and (c). At each  
25 parole hearing and, if parole is not granted, at such intervals thereafter  
26 as it determines appropriate, the Kansas parole board shall consider: (1)  
27 Whether the inmate has satisfactorily completed the programs required  
28 by any agreement entered under K.S.A. 75-5210a, and amendments  
29 thereto, or any revision of such agreement; and (2) all pertinent infor-  
30 mation regarding such inmate, including, but not limited to, the circum-  
31 stances of the offense of the inmate; the presentence report; the previous  
32 social history and criminal record of the inmate; the conduct, employ-  
33 ment, and attitude of the inmate in prison; the reports of such physical  
34 and mental examinations as have been made; comments of the victim and  
35 the victim's family including in person comments, contemporaneous com-  
36 ments and prerecorded comments made by any technological means;  
37 comments of the public; official comments; and capacity of state correc-  
38 tional institutions.

39 (i) In those cases involving inmates sentenced for a crime committed  
40 after July 1, 1993, the parole board will review the inmates proposed  
41 release plan. The board may schedule a hearing if they desire. The board  
42 may impose any condition they deem necessary to insure public safety,  
43 aid in the reintegration of the inmate into the community, or items not



1 completed under the agreement entered into under K.S.A. 75-5210a, and  
 2 amendments thereto. The board may not advance or delay an inmate's  
 3 release date. Every inmate while on postrelease supervision shall remain  
 4 in the legal custody of the secretary of corrections and is subject to the  
 5 orders of the secretary.

6 (j) Before ordering the parole of any inmate, the Kansas parole board  
 7 shall have the inmate appear before either in person or via a video con-  
 8 ferencing format and shall interview the inmate unless impractical be-  
 9 cause of the inmate's physical or mental condition or absence from the  
 10 institution. Every inmate while on parole shall remain in the legal custody  
 11 of the secretary of corrections and is subject to the orders of the secretary.  
 12 Whenever the Kansas parole board formally considers placing an inmate  
 13 on parole and no agreement has been entered into with the inmate under  
 14 K.S.A. 75-5210a, and amendments thereto, the board shall notify the  
 15 inmate in writing of the reasons for not granting parole. If an agreement  
 16 has been entered under K.S.A. 75-5210a, and amendments thereto, and  
 17 the inmate has not satisfactorily completed the programs specified in the  
 18 agreement, or any revision of such agreement, the board shall notify the  
 19 inmate in writing of the specific programs the inmate must satisfactorily  
 20 complete before parole will be granted. If parole is not granted only  
 21 because of a failure to satisfactorily complete such programs, the board  
 22 shall grant parole upon the secretary's certification that the inmate has  
 23 successfully completed such programs. If an agreement has been entered  
 24 under K.S.A. 75-5210a, and amendments thereto, and the secretary of  
 25 corrections has reported to the board in writing that the inmate has sat-  
 26 isfactorily completed the programs required by such agreement, or any  
 27 revision thereof, the board shall not require further program participa-  
 28 tion. However, if the board determines that other pertinent information  
 29 regarding the inmate warrants the inmate's not being released on parole,  
 30 the board shall state in writing the reasons for not granting the parole. If  
 31 parole is denied for an inmate sentenced for a crime other than a class A  
 32 or class B felony or an off-grid felony, the board shall hold another parole  
 33 hearing for the inmate not later than one year after the denial unless the  
 34 parole board finds that it is not reasonable to expect that parole would  
 35 be granted at a hearing if held in the next three years or during the interim  
 36 period of a deferral. In such case, the parole board may defer subsequent  
 37 parole hearings for up to three years but any such deferral by the board  
 38 shall require the board to state the basis for its findings. If parole is denied  
 39 for an inmate sentenced for a class A or class B felony or ; or an off-grid  
 40 felony ~~or pursuant to subsection (b) of K.S.A. 21-4628, and amendments~~  
 41 ~~thereto~~, the board shall hold another parole hearing for the inmate not  
 42 later than three years after the denial unless the parole board finds that  
 43 it is not reasonable to expect that parole would be granted at a hearing if

1 held in the next 10 years or during the interim period of a deferral. In  
 2 such case, the parole board may defer subsequent parole hearings for up  
 3 to 10 years but any such deferral shall require the board to state the basis  
 4 for its findings.

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

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

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

19 (1) Unless it finds compelling circumstances which would render a  
 20 plan of payment unworkable, shall order as a condition of parole or post-  
 21 release supervision that the parolee or the person on postrelease super-  
 22 vision pay any transportation expenses resulting from returning the pa-  
 23 rolee or the person on postrelease supervision to this state to answer  
 24 criminal charges or a warrant for a violation of a condition of probation,  
 25 assignment to a community correctional services program, parole, condi-  
 26 tional release or postrelease supervision;

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

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

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

40 (5) unless it finds compelling circumstances which would render a  
 41 plan of payment unworkable, shall order that the parolee or person on  
 42 postrelease supervision reimburse the state for all or part of the expend-  
 43 itures by the state board of indigents' defense services to provide counsel

5-12

1 and other defense services to the person. In determining the amount and  
2 method of payment of such sum, the parole board shall take account of  
3 the financial resources of the person and the nature of the burden that  
4 the payment of such sum will impose. Such amount shall not exceed the  
5 amount claimed by appointed counsel on the payment voucher for indi-  
6 gents' defense services or the amount prescribed by the board of indi-  
7 gents' defense services reimbursement tables as provided in K.S.A. 22-  
8 4522, and amendments thereto, whichever is less, minus any previous  
9 payments for such services.

10 (n) If the court which sentenced an inmate specified at the time of  
11 sentencing the amount and the recipient of any restitution ordered as a  
12 condition of parole or postrelease supervision, the Kansas parole board  
13 shall order as a condition of parole or postrelease supervision that the  
14 inmate pay restitution in the amount and manner provided in the journal  
15 entry unless the board finds compelling circumstances which would ren-  
16 der a plan of restitution unworkable.

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

21 (p) When an inmate is to be released on postrelease supervision, the  
22 secretary, within 30 days prior to release, shall provide the county or  
23 district attorney of the county where the inmate was sentenced written  
24 notice of the release date.

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

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

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

38 (t) For offenders sentenced prior to the effective date of this act who  
39 are eligible for modification of their postrelease supervision obligation,  
40 the department of corrections shall modify the period of postrelease su-  
41 pervision as provided for by this section for offenders convicted of severity  
42 level 9 and 10 crimes on the sentencing guidelines grid for nondrug  
43 crimes and severity level 4 crimes on the sentencing guidelines grid for

1 drug crimes on or before September 1, 2000; for offenders convicted of  
2 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug  
3 crimes on or before November 1, 2000; and for offenders convicted of  
4 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug  
5 crimes and severity level 3 crimes on the sentencing guidelines grid for  
6 drug crimes on or before January 1, 2001.

7 (ii) An inmate sentenced to imprisonment pursuant to ~~subsection (b)~~  
8 ~~of K.S.A. 21-4638 section 2, and amendments thereto, for crimes com-~~  
9 ~~mitted on or after July 1, 2006, shall be placed on parole for life and shall~~  
10 ~~not be discharged from supervision by the Kansas parole board. When~~  
11 ~~the board orders the parole of an inmate pursuant to this subsection, the~~  
12 ~~board shall order as a condition of parole that the inmate be electronically~~  
13 ~~monitored for the duration of the inmate's natural life. An electronically~~  
14 ~~monitored system shall actively monitor and identify the inmate's location~~  
15 ~~and timely report or record the inmate's presence near or within a crime~~  
16 ~~scene or in a prohibited area or the inmate's departure from specified~~  
17 ~~geographic limitations.~~

18 (v) Whenever the Kansas parole board or the court orders a person  
19 to be electronically monitored, the board or court shall order the person  
20 to reimburse the state for all or part of the cost of such monitoring. In  
21 determining the amount and method of payment of such sum, the board  
22 or court shall take account of the financial resources of the person and  
23 the nature of the burden that the payment of such sum will impose.

24 **Sec. 13. K.S.A. 2005 Supp. 22-4903 is hereby amended to read**  
25 **as follows: 22-4903. Any person who is required to register as pro-**  
26 **vided in this the Kansas offender registration act who violates any of**  
27 **the provisions of this such act, including all duties set out in K.S.A.**  
28 **22-4904 through K.S.A. 22-4907, and amendments thereto, is guilty**  
29 **of a severity level 10, nonperson 5, person felony.**

30 **Sec. 8 14. K.S.A. 74-9101 is hereby amended to read as follows: 74-**  
31 **9101. (a) There is hereby established the Kansas sentencing commission.**

32 (b) The commission shall:

33 (1) Develop a sentencing guideline model or grid based on fairness  
34 and equity and shall provide a mechanism for linking justice and correc-  
35 tions policies. The sentencing guideline model or grid shall establish ra-  
36 tional and consistent sentencing standards which reduce sentence dis-  
37 parity, to include, but not be limited to, racial and regional biases which  
38 may exist under current sentencing practices. The guidelines shall specify  
39 the circumstances under which imprisonment of an offender is appro-  
40 priate and a presumed sentence for offenders for whom imprisonment is  
41 appropriate, based on each appropriate combination of reasonable of-  
42 fense and offender characteristics. In developing its recommended sen-  
43 tencing guidelines, the commission shall take into substantial considera-

5-13

1 tion current sentencing and release practices and correctional resources,  
 2 including but not limited to the capacities of local and state correctional  
 3 facilities. In its report, the commission shall make recommendations re-  
 4 garding whether there is a continued need for and what is the projected  
 5 role of, if any, the Kansas parole board and whether the policy of allo-  
 6 cating good time credits for the purpose of determining an inmate's eli-  
 7 gibility for parole or conditional release should be continued;

8 (2) consult with and advise the legislature with reference to the im-  
 9 plementation, management, monitoring, maintenance and operations of  
 10 the sentencing guidelines system;

11 (3) direct implementation of the sentencing guidelines system;

12 (4) assist in the process of training judges, county and district attor-  
 13 neys, court services officers, state parole officers, correctional officers,  
 14 law enforcement officials and other criminal justice groups. For these  
 15 purposes, the sentencing commission shall develop an implementation  
 16 policy and shall construct an implementation manual for use in its training  
 17 activities;

18 (5) receive presentence reports and journal entries for all persons  
 19 who are sentenced for crimes committed on or after July 1, 1993, to  
 20 develop post-implementation monitoring procedures and reporting  
 21 methods to evaluate guideline sentences. In developing the evaluative  
 22 criteria, the commission shall take into consideration rational and consis-  
 23 tent sentencing standards which reduce sentence disparity to include, but  
 24 not be limited to, racial and regional biases;

25 (6) advise and consult with the secretary of corrections and members  
 26 of the legislature in developing a mechanism to link guidelines sentence  
 27 practices with correctional resources and policies, including but not lim-  
 28 ited to the capacities of local and state correctional facilities. Such linkage  
 29 shall include a review and determination of the impact of the sentencing  
 30 guidelines on the state's prison population, review of corrections pro-  
 31 grams and a study of ways to more effectively utilize correction dollars  
 32 and to reduce prison population;

33 (7) make recommendations relating to modification to the sentencing  
 34 guidelines as provided in K.S.A. 21-4725, and amendments thereto;

35 (8) prepare and submit fiscal impact and correctional resource state-  
 36 ment as provided in K.S.A. 74-9106, and amendments thereto;

37 (9) make recommendations to those responsible for developing a  
 38 working philosophy of sentencing guideline consistency and rationality;

39 (10) develop prosecuting standards and guidelines to govern the con-  
 40 duct of prosecutors when charging persons with crimes and when engag-  
 41 ing in plea bargaining;

42 (11) analyze problems in criminal justice, identify alternative solu-  
 43 tions and make recommendations for improvements in criminal law, pros-

1 ceution, community and correctional placement, programs, release pro-  
 2 cedures and related matters including study and recommendations  
 3 concerning the statutory definition of crimes and criminal penalties and  
 4 review of proposed criminal law changes;

5 (12) perform such other criminal justice studies or tasks as may be  
 6 assigned by the governor or specifically requested by the legislature, de-  
 7 partment of corrections, the chief justice or the attorney general;

8 (13) develop a program plan which includes involvement of business  
 9 and industry in the public or other social or fraternal organizations for  
 10 admitting back into the mainstream those offenders who demonstrate  
 11 both the desire and ability to reconstruct their lives during their incar-  
 12 ceration or during conditional release;

13 (14) appoint a task force to make recommendations concerning the  
 14 consolidation of probation, parole and community corrections services;

15 (15) produce official inmate population projections annually on or  
 16 before six weeks following the date of receipt of the data from the de-  
 17 partment of corrections. When the commission's projections indicate that  
 18 the inmate population will exceed available prison capacity within two  
 19 years of the date of the projection, the commission shall identify and  
 20 analyze the impact of specific options for (A) reducing the number of  
 21 prison admissions; or (B) adjusting sentence lengths for specific groups  
 22 of offenders. Options for reducing the number of prison admissions shall  
 23 include, but not be limited to, possible modification of both sentencing  
 24 grids to include presumptive intermediate dispositions for certain cate-  
 25 gories of offenders. Intermediate sanction dispositions shall include, but  
 26 not be limited to: intensive supervision; short-term jail sentences; halfway  
 27 houses; community-based work release; electronic monitoring and house  
 28 arrest; substance abuse treatment; and pre-revocation incarceration. In-  
 29 termediate sanction options shall include, but not be limited to, mecha-  
 30 nisms to explicitly target offenders that would otherwise be placed in  
 31 prison. Analysis of each option shall include an assessment of such options  
 32 impact on the overall size of the prison population, the effect on public  
 33 safety and costs. In preparing the assessment, the commission shall review  
 34 the experience of other states and shall review available research regard-  
 35 ing the effectiveness of such option. The commission's findings relative  
 36 to each sentencing policy option shall be presented to the governor and  
 37 the joint committee on corrections and juvenile justice oversight no later  
 38 than November 1; and

39 (16) at the request of the governor or the joint committee on correc-  
 40 tions and juvenile justice oversight, initiate and complete an analysis of  
 41 other sentencing policy adjustments not otherwise evaluated by the  
 42 commission;

43 (17) develop information relating to the number of offenders on post-

1 release supervision and subject to electronic monitoring for the duration  
2 of the person's natural life; and

3 (18) determine the effect the mandatory sentencing established in section  
4 tion 1 and ~~K.S.A. 21-4625~~ section 2, and amendments thereto, would  
5 have on the number of offenders civilly committed to a treatment facility  
6 as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et  
7 seq. and amendments thereto.

8 Sec. 15. K.S.A. 2005 Supp. 74-9501 is hereby amended to read  
9 as follows: 74-9501. (a) There is hereby established the Kansas  
10 criminal justice coordinating council.

11 (b) The council shall consist of the governor or designee, the  
12 chief justice of the supreme court or designee, the attorney general  
13 or designee, the secretary of corrections, the superintendent of the  
14 highway patrol, the commissioner of juvenile justice and the direc-  
15 tor of the Kansas bureau of investigation.

16 (c) The governor shall designate staff to the Kansas criminal  
17 justice coordinating council. The staff shall attend all meetings of  
18 the council, be responsible for keeping a record of council meetings,  
19 prepare reports of the council and perform such other duties as  
20 directed by the council.

21 (d) The council shall elect a chairperson and vice-chairperson  
22 from among the members of the council.

23 (e) The council shall:

24 (1) Appoint a standing local government advisory group to con-  
25 sult and advise the council concerning local government criminal  
26 justice issues and the impact of state criminal justice policy and  
27 decisions on local units of government. The advisory group shall  
28 consist of a sheriff, chief of police, county or district attorney, a  
29 member of a city governing body and a county commissioner. Ap-  
30 pointees to such advisory group shall serve without compensation  
31 or reimbursement for travel and subsistence or any other expenses;

32 (2) define and analyze issues and processes in the criminal jus-  
33 tice system, identify alternative solutions and make recommenda-  
34 tions for improvements;

35 (3) perform such criminal justice studies or tasks as requested  
36 by the governor, the attorney general, the legislature or the chief  
37 justice, as deemed appropriate or feasible by the council;

38 (4) oversee development and management of a criminal justice  
39 database including assuming the designation and functions of the  
40 state statistical analysis center currently assigned to the Kansas bu-  
41 reau of investigation pursuant to K.S.A. 75-712a and amendments  
42 thereto. All criminal justice agencies as defined in subsection (c) of  
43 K.S.A. 22-4701 and amendments thereto and the juvenile justice

1 authority shall provide any data or information, including juvenile  
2 offender information which is requested by the council, in a form  
3 and manner established by the council, in order to facilitate the  
4 development and management of the criminal justice council  
5 database;

6 (5) develop and oversee reporting of all criminal justice federal  
7 funding available to the state or local units of government including  
8 assuming the designation and functions of administering the United  
9 States bureau of justice assistance grants;

10 (6) form such task groups as necessary and appoint individuals  
11 who appropriately represent law enforcement, the judiciary, legal  
12 profession, state, local, or federal government, the public, or other  
13 professions or groups as determined by the council, to represent the  
14 various aspects of the issue being analyzed or studied, when ana-  
15 lyzing criminal justice issues and performing criminal justice stud-  
16 ies. Members of the legislature may be appointed ex officio members  
17 to such task groups. A member of the council shall serve as the  
18 chairperson of each task group appointed by the council. The coun-  
19 cil may appoint other members of the council to any task group  
20 formed by the council; and

21 (7) review reports submitted by each task group named by the  
22 council and shall submit the report with the council's recommen-  
23 dations pertaining thereto to the governor, the attorney general, the  
24 chief justice of the supreme court, the chief clerk of the house of  
25 representatives and the secretary of the senate; and

26 (8) form a task force composed of 11 members who are representatives  
27 of law enforcement, prosecutors, the judiciary, court services, community  
28 corrections, parole services and victims rights organization representa-  
29 tives for the purpose of collecting information and research concerning  
30 the potential utilization of electronic monitoring devices, specifically in-  
31 cluding devices capable of utilizing global positioning satellite (GPS) tech-  
32 nology, for the purposes of monitoring and tracking the locations of of-  
33 fenders placed on bond, probation, parole, postrelease supervision and  
34 individuals subject to civil commitment of sexually violent predators, pur-  
35 suant to K.S.A. 59-29a01, and amendments thereto, who have been placed  
36 on conditional or transitional release. On or before July 1, 2007, the task  
37 force shall submit its findings in writing to the governor, the attorney  
38 general, the speaker of the house of representatives and the president of  
39 the senate. Such report shall include, but not be limited to: (A) An eval-  
40 uation of the effectiveness of such electronic monitoring devices regarding  
41 abilities to track and record the geographic location of a monitored in-  
42 dividual at any given point in time; (B) A cost-benefit analysis of the  
43 financial costs involved in obtaining, monitoring and providing on-going

5-16

1 maintenance for various electronic monitoring devices or systems as com-  
2 pared to the potential benefit of increased ability to locate, track and  
3 supervise monitored individuals; (C) a cost-benefit analysis comparing the  
4 costs of purchase of electronic monitoring equipment and the equipment  
5 and software necessary for tracking monitored individuals by govern-  
6 mental agencies to operate independently versus contracting with vendors  
7 to provide the necessary equipment and services; and (D) an analysis by  
8 geographic region within the state of Kansas detailing areas where, due  
9 to geography or lack of necessary infrastructure such as radio transmis-  
10 sion towers, electronic monitoring may be more or less effective. Subject  
11 to appropriations therefor, the council may contract with other entities  
12 to provide evaluation and comparison studies or other resources necessary  
13 to aid in the development of the report mandated by this paragraph.

14 New Sec. 9 16. In the event the term of imprisonment for life with-  
15 out the possibility of parole or any provision of this act authorizing such  
16 term is held to be unconstitutional by the supreme court of Kansas or the  
17 United States supreme court, the court having jurisdiction over a person  
18 previously sentenced shall cause such person to be brought before the  
19 court and shall modify the sentence to require no term of imprisonment  
20 for life without the possibility of parole and shall sentence the defendant  
21 to the maximum term of imprisonment otherwise provided by law.

22 New Sec. 40 17. If any provisions of this act or the application  
23 thereof to any person or circumstances is held invalid, the invalidity shall  
24 not affect other provisions or applications of the act which can be given  
25 effect without the invalid provisions or application, and to this end the  
26 provisions of this act are severable.

27 Sec. 44 18. K.S.A. 21-3504, 21-3506, 21-3513, 21-3812 and 74-  
28 9101 and K.S.A. 2005 Supp. 21-3447, 21-3502, ~~21-4635~~, ~~21-4638~~ and  
29 21-3516, 21-4706, 22-3717, 22-4903 and 74-9501 are hereby  
30 repealed.

31 Sec. 45 19. This act shall take effect and be in force from and after  
32 its publication in the statute book.

HOUSE BILL No. 2576

By Representative Kilpatrick

1-5

PROPOSED AMENDMENT  
Insert SB 243 and portion of HB 2688  
March 15, 2006

Senate Judiciary  
3-15-06  
Attachment 6

12 AN ACT concerning ~~crimes, punishment and criminal procedure; en-~~  
13 ~~acting a lifetime imprisonment sentence for persistent aggravated~~  
14 ~~habitual sex offenders; mandatory penalties for certain sex offenses;~~  
15 ~~domestic battery; plea agreements; duties of board of education;~~  
16 ~~department of corrections and criminal justice coordinating council;~~  
17 ~~relating to offender registration; amending K.S.A. 21-3504, 21-3506,~~  
18 ~~21-3513, 21-3812 and, 21-4625 and[,] 22-3436 [and 38-1663] and~~  
19 ~~K.S.A. 2005 Supp. 21-3412a, 21-3447, 21-3502, 21-3510, 21-3511,~~  
20 ~~21-3516, 21-4611, 21-4635, 21-4638, 21-4704, 22-3717, 22-4903, 22-~~  
21 ~~4904, 22-4906, 74-5602 and 74-9501 and~~ and repealing the existing  
22 sections.  
23

correctional facilities; relating to construction by private companies; amending K.S.A. 2004 Supp. 75-52,129

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

25 ~~New Section 1. (a) A persistent An aggravated habitual sex of~~  
26 ~~fender shall be sentenced to imprisonment for life without the possibility~~  
27 ~~of parole. Such offender shall spend the remainder of the offender's nat-~~  
28 ~~ural life incarcerated and in the custody of the secretary of corrections.~~  
29 ~~An offender who is sentenced to imprisonment for life without the pos-~~  
30 ~~sibility of parole shall not be eligible for parole, probation, assignment to~~  
31 ~~a community correctional services program, conditional release, post-~~  
32 ~~release supervision, or suspension, modification or reduction of sentence.~~

Strike all in pages 2 through 53.

33 (b) ~~Upon sentencing a defendant to imprisonment for life without~~  
34 ~~the possibility of parole, the court shall commit the defendant to the~~  
35 ~~custody of the secretary of corrections and the court shall state in the~~  
36 ~~sentencing order of the judgment form or journal entry, whichever is~~  
37 ~~delivered with the defendant to the correctional institution, that the de-~~  
38 ~~fendant has been sentenced to imprisonment for life without the possi-~~  
39 ~~bility of parole.~~

40 (c) ~~As used in this section:~~

41 (1) ~~"Persistent Aggravated habitual sex offender" means a person~~  
42 ~~who, on and after July 1, 2006: (A) Has been convicted in this state of a~~  
43 ~~sexually violent crime, as described in paragraphs (3)(A) through~~

6-2

1 ~~effect without the invalid provisions or application, and to this end the~~  
2 ~~provisions of this act are severable.~~

3 ~~Sec. ~~23 20~~ [30]. K.S.A. 21 3504, 21 3506, 21 3513, 21 3812 and, 21-~~  
4 ~~4625 and[,] ~~22 3436~~ [and ~~38 1663~~] and K.S.A. 2005 Supp. ~~21 3412a,~~~~  
5 ~~21 3447, 21 3502, ~~21 3510, 21 3511,~~ 21 3516, 21 4611, 21 4635, 21-~~  
6 ~~4639, 21 4704, ~~22 3717, 22 4903, 22 4904, 22 4906, 74 5602~~ and 74-~~  
7 ~~9501 are hereby repealed.~~

Insert contents of SB 243 as amended by Senate  
Committee of the Whole, Sections 1 through 23;  
and renumber the remaining section.

8 ~~Sec. ~~24 30~~ [31]. This act shall take effect and be in force from and~~  
9 ~~after its publication in the statute book.~~

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2003

SENATE BILL No. 243

By Committee on Ways and Means

2-9

12 AN ACT concerning correctional facilities; relating to construction by  
13 private companies; amending K.S.A. 2004 Supp. 75-52,129 and re-  
14 pealing the existing section.

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

16 New Section 1. This act may be referred to as the private contract  
17 prison act.

18 New Sec. 2. Definitions. As used in the private contract prison act:

19 (a) "Private contract prison" means a correctional facility situated in  
20 this state that is not owned by the state of Kansas or any subdivision  
21 thereof or by the federal government or any subdivision thereof.

22 (b) "Private owner" means any corporation, partnership, limited li-  
23 ability company, trust, person or other legal entity that engages in, or  
24 proposes to engage in, the construction or ownership or both of a private  
25 contract prison in this state.

26 (c) "Private operator" means any corporation, partnership, limited  
27 liability company, person or other legal entity that engages in, or proposes  
28 to engage in, the operation of a private contract prison in this state.

29 (d) "Private contractor" means a private owner or a private operator  
30 or both.

31 (e) "Secretary" means the secretary of corrections.

32 (f) "Department" means the department of corrections.

33 (g) "Applicant" means a private contractor making application to the  
34 department of corrections for a license as provided by this act.

35 (h) "Licensee" means a private contractor to which a valid license has  
36 been issued by the department of corrections as provided by this act.

37 (i) "Private correctional officer" means a correctional officer as de-  
38 fined by subsection (f) of K.S.A. 75-5202, and amendments thereto, ex-  
39 cept that such officer is not an employee of the state of Kansas or any  
40 subdivision thereof.

41 (j) "Non-Kansas inmate" means any inmate in the custody of any  
42 jurisdiction other than the state of Kansas or any of its political  
43

1 subdivisions.

2 (k) "Kansas inmate" means any inmate in the custody of the secretary  
3 of corrections.

4 New Sec. 3. Except as authorized by K.S.A. 75-52,127 or 75-52,133,  
5 and amendments thereto, no private contractor shall authorize, construct,  
6 own or operate any private contract prison in this state for the placement  
7 or confinement of inmates unless such private contractor possesses a valid  
8 license as provided by this act.

9 New Sec. 4. The secretary is hereby authorized to license, monitor  
10 and regulate one or more private contractors meeting the requirements  
11 of this act to construct, own or operate one or more private contract  
12 prisons in this state.

13 New Sec. 5. The secretary shall not approve any application for a  
14 license pursuant to this act unless the secretary has, after due diligence,  
15 made the following findings:

16 (a) The applicant has the qualifications, experience and management  
17 personnel necessary to design, construct, own or operate a private con-  
18 tract prison in a manner that satisfies the requirements of this act;

19 (b) the applicant has the ability, if circumstances warrant, to expedite  
20 the siting, design and construction of a private contract prison;

21 (c) the applicant has the ability to comply with applicable laws, court  
22 orders and state and national correctional standards; and

23 (d) if Kansas inmates are being housed in the private contract prison,  
24 the private operator has the ability to provide correctional services to the  
25 state of Kansas at a cost that is no more than 90% of the department's  
26 average per capita operating cost for the previous fiscal year for compar-  
27 able state correctional facilities and services.

28 New Sec. 6. Any license issued pursuant to this act shall require as  
29 conditions of such license all of the following:

30 (a) All private correctional officers employed by the licensee must be  
31 certified, at the licensee's expense, as having met the minimum qualifi-  
32 cations and training requirements established for correctional officers by  
33 the secretary and as are required of state correctional officers;

34 (b) the design for any private contract prison constructed, owned or  
35 operated by the licensee shall meet or exceed all requirements of the  
36 association responsible for adopting national correctional standards con-  
37 sistent with the American correctional association standards [as deter-  
38 mined by the secretary];

39 (c) the design for any private contract prison, including, but not lim-  
40 ited to, siting, shall meet or exceed any standard established by the Amer-  
41 ican correctional association [secretary];

42 (d) the licensee shall at all times consult the secretary during the  
43 design and construction of the private contract prison;



1 (e) the licensee shall indemnify the state and the secretary, including  
2 their subdivisions, officials and agents, against any and all liability includ-  
3 ing, but not limited to, any civil rights claims. The secretary shall require  
4 proof of satisfactory insurance. ~~The amount of insurance shall be consist-~~  
5 ~~ent with industry standards, the amount to be determined by the~~  
6 ~~secretary];~~

7 (f) the licensee shall seek, obtain and maintain accreditation by the  
8 American correctional association *and the national commission on cor-*  
9 *rectional health care.* In addition, the licensee shall comply with the  
10 ~~association's those associations~~ amendments to the accreditation stan-  
11 dards upon approval of such amendments by the secretary. The secretary  
12 shall not unreasonably withhold approval so as to facilitate compliance  
13 with required standards by the licensee;

14 (g) the licensee shall agree to abide by operations standards for cor-  
15 rectional facilities as ~~identified by the American correctional association~~  
16 ~~adopted by the secretary;~~

17 (h) if Kansas inmates are being housed in the private contract prison,  
18 the licensee shall be responsible for the range of dental, medical and  
19 psychological services and diet, education and work programs at least  
20 equal to those services and programs provided by the secretary at com-  
21 parable state correctional facilities. The work and education programs  
22 shall be designed to reduce recidivism;

23 (i) the secretary shall monitor all private contract prisons and the  
24 secretary and the department shall have unrestricted access to all private  
25 contract prisons for that purpose. The licensee shall bear the costs of  
26 monitoring the facility ~~through the administration of the licensing fee~~  
27 ~~pursuant to section 21, and amendments thereto;~~

28 (j) if the department contracts to house Kansas inmates at the li-  
29 censee's private contract prison, the licensee shall incarcerate all inmates  
30 assigned to the private contract prison by the department and as specified  
31 by the contract and may not reject inmates assigned to it by the depart-  
32 ment. The department shall have the right of first refusal to any space in  
33 the licensee's private contract prison, whether or not such space is oc-  
34 cupied by non-Kansas inmates. The department may not exceed the max-  
35 imum occupancy designated in the contract for the private contract  
36 prison;

37 (k) the licensee may not benefit financially from the labor of inmates  
38 except that inmates housed in any private contract prison operated by the  
39 licensee in this state may be given job assignments that assist in the op-  
40 eration and maintenance of the facility, including but not limited to jan-  
41 itorial or food service, or constitute work crews for the state or nearby  
42 communities if the inmates have the appropriate custody designation;

43 (l) if the licensee enters into a contract to house non-Kansas inmates,

1 the licensee must require as a condition of that contract that each such  
2 inmate to be released from custody must be released in the sending state;

3 (m) whenever any non-Kansas inmate is proposed to be brought into  
4 this state for the purpose of being incarcerated at a private contract  
5 prison, all records regarding each such inmate, including, but not limited  
6 to, custody records, facility history records, disciplinary records and med-  
7 ical and mental health records, shall be reviewed by the department prior  
8 to such inmate being transported into this state. The cost of such review  
9 shall be borne by the licensee through the administration of the licensing  
10 fee pursuant to section 21, and amendments thereto. The secretary shall  
11 have authority to refuse to allow any non-Kansas inmate to be transported  
12 to or incarcerated in any private contract prison;

13 (n) the licensee shall be subject to review by the legislative division  
14 of post audit; and

15 (o) any other provision the secretary considers necessary and appro-  
16 priate for carrying out the purpose of this act ~~consistent with the con-~~  
17 ~~tractual agreement with the private contractor.~~

18 New Sec. 7. No license issued pursuant to this act shall be construed  
19 as authorizing, allowing or delegating authority to the licensee to:

20 (a) With regard to Kansas inmates being housed at a private contract  
21 prison, reject any inmate appropriately classified by the Kansas custody  
22 classification system for the custody level or levels of the private facility;

23 (b) with regard to Kansas inmates who are being housed at a private  
24 contract prison, develop or adopt disciplinary rules or penalties that differ  
25 from the disciplinary rules and penalties that apply to inmates housed in  
26 correctional facilities operated by the secretary. With regard to non-Kan-  
27 sas inmates, the licensee may develop or adopt disciplinary rules or pen-  
28 alties consistent with the requirements of the sending entity provided that  
29 the secretary shall retain authority to review *[and approve or reject]*  
30 any such rules or penalties;

31 (c) make a final determination on a disciplinary action that affects the  
32 liberty of an inmate. The licensee may remove an inmate from the general  
33 prison population during an emergency, before final resolution of a dis-  
34 ciplinary hearing in response to an inmate's request for assigned housing  
35 in protective custody or when otherwise necessary to maintain order and  
36 security of the private contract prison;

37 (d) make a decision that affects the sentence imposed upon or the  
38 time served by an inmate, including a decision to award, deny or forfeit  
39 earned time;

40 (e) make recommendations to the Kansas parole board with respect  
41 to the denial or granting of parole or release except the licensee may  
42 submit written reports to the Kansas parole board and shall respond to  
43 any written request for information by the Kansas parole board;

6-5

1 (f) develop and implement requirements that inmates engage in any  
2 type of work not previously authorized in this act, except to the extent  
3 that those requirements are accepted by the department; and

4 (g) determine inmate eligibility for any form of release from a cor-  
5 rectional facility including any private contract prison.

6 New Sec. 8. (a) No private contract prison shall house inmates until:

7 (1) The private operator has submitted to the secretary, and the sec-  
8 retary has approved, a plan for the secretary to assume temporary control  
9 and operation of the private contract prison in the event the private op-  
10 erator becomes unable to meet the requirements of this act;

11 (2) each private contractor, whether a private owner or a private op-  
12 erator, or both, involved in the private contract prison has submitted to  
13 the secretary, and the secretary has approved, a plan for the temporary  
14 assumption of operations and purchase of the private contract prison by  
15 the secretary in the event of bankruptcy or the financial insolvency of any  
16 such private contractor; and

17 (3) the private operator has submitted to the secretary, and the sec-  
18 retary has approved, a plan to address emergencies including, but not  
19 limited to, inmate disturbances, employee work stoppages, employee  
20 strikes, escapes, natural disaster threats, bomb threats, riots, hunger  
21 strikes, taking of hostages, fires, explosions, evacuations, hazardous ma-  
22 terial spills or other serious events. The plan shall comply with applicable  
23 national correctional standards. The plan shall identify how the state shall  
24 recover its costs for such assumptions of operation or other interventions  
25 ~~and the general cost parameters.~~ ***The private operator shall be liable***  
26 ***for all expenses incurred by the state and its subdivisions in re-***  
27 ***sponding to any emergency or serious event. Such expenses shall be***  
28 ***consistent with the department's policies and procedures concern-***  
29 ***ing such emergency or serious event.***

30 (b) The secretary may from time to time require the private contrac-  
31 tor to review, revise or update any plan required by this section. The  
32 private contractor shall comply promptly with any request by the secretary  
33 pursuant to this subsection, and failure by any private contractor to do so  
34 within a reasonable period of time shall constitute cause for suspension  
35 of such private contractor's license.

36 (c) Nothing in this section shall be construed to require the state to  
37 purchase or lease any private contract prison or to assume responsibility  
38 for the operation of any private contract prison or to assume costs asso-  
39 ciated with events described in this section.

40 New Sec. 9. The secretary may suspend or revoke a license for cause,  
41 including, but not limited to, failure to obtain or maintain facility accred-  
42 itation or failure to comply with any requirement of this act, after written  
43 notice of material deficiencies and after 60 workdays have been provided

; and  
(4) the private operator shall reimburse Kansas state agencies or political subdivisions of the state for all costs incurred by such entities with respect to the investigation, prosecution, detention, criminal defense or appellate litigation, without regard to whether conviction is obtained, of a Kansas or non-Kansas inmate charged with a crime resulting from criminal conduct allegedly committed within the private contract prison, or a non-Kansas inmate who escapes and allegedly commits criminal conduct

1 to the contractor to submit a plan of action to correct the material  
2 deficiencies.

3 New Sec. 10. If, as determined by the secretary, an emergency oc-  
4 curs involving the noncompliance with or violation of the requirements  
5 of this act and presents a serious threat to the safety, health or security  
6 of the inmates, employees or the public, the secretary may require im-  
7 mediate or timely corrective action or may, without prior notice, tem-  
8 porarily assume operation and control of the private contract prison.  
9 Nothing in this section shall be construed to require the state to assume  
10 responsibility for the operation of private contract prisons or for costs  
11 associated with events described in this section. If the state chooses, it  
12 may assume responsibility upon approval by the legislature through the  
13 enactment of legislation.

14 New Sec. 11. If a private owner intends to sell, convey, transfer, do-  
15 nate, trade, barter or otherwise alienate title to a private contract prison,  
16 the private owner shall first give notice of such intent to the secretary.  
17 The state shall have the right of first refusal to lease or purchase such  
18 private contract prison at fair market value, although the state shall not  
19 be required to do so. Except as provided in this section, a private contract  
20 prison may be transferred only to an entity that is licensed as required by  
21 this act.

22 New Sec. 12. Each private operator shall require applicants for em-  
23 ployment at a private contract prison to submit a set of fingerprints to  
24 the Kansas bureau of investigation for a criminal background check. The  
25 Kansas bureau of investigation may accept fingerprints of individuals who  
26 apply for employment at a private contract prison and who shall be subject  
27 to background checks. For the purpose of conducting background checks,  
28 to the extent provided for by federal law, the Kansas bureau of investi-  
29 gation may exchange with the secretary criminal history records, whether  
30 state, multi-state or federal, of individuals who apply for employment at  
31 a private contract prison.

32 New Sec. 13. This act shall not apply to the contracts between cities  
33 and counties and the secretary under which the city or county agrees to  
34 house the backlog of inmates as provided by K.S.A. 75-52,128 and 75-  
35 52,129, and amendments thereto, which contracts shall be governed by  
36 such.

37 New Sec. 14. Any private operator licensed under this act shall col-  
38 lect and maintain data with respect to all Kansas and non-Kansas inmates  
39 housed by the private contractor, in a fashion compatible with Kansas  
40 department of corrections practices and procedures for inmate data col-  
41 lection and maintenance, as specified by the secretary.

42 New Sec. 15. (a) Any county that meets the requirements of this  
43 section may contract with a private contractor to develop and construct,

1 own or operate a private contract prison in such county.

2 (b) No private contract prison shall be constructed, owned or oper-  
3 ated pursuant to this act in any county unless the county commission has  
4 received written notice of approval from the sheriff of such county and  
5 the secretary of corrections. Upon receipt of such notice, the board shall  
6 adopt a resolution placing on the ballot the question in subsection (c).  
7 No private prison shall be constructed pursuant to this section until the  
8 question has been submitted to and approved by a majority of the qual-  
9 ified voters of the county voting at an election thereon. Such election  
10 shall be called and held in the manner provided by the general bond law.

11 (c) The form of the question described in subsection (b) shall be:  
12 "Shall construction and operation of a private contract prison, pursuant  
13 to the Private Contract Prison Act, be allowed in \_\_\_\_\_ County?"

14 (d) Except for land donation, no direct incentives, such as property  
15 tax abatement, industrial revenue bonds, tax increment financing or utility  
16 cost reductions, shall be offered by the county to the private contractor  
17 wishing to construct, own or operate a private contract prison in such  
18 county.

19 (e) At the discretion of the parties, the contract may allow for the  
20 leasing of the private contract prison by the private owner to the county  
21 or to the state.

22 New Sec. 16. No contract for site construction between the county  
23 and the private contractor authorized by this act shall enter into force  
24 until reviewed and approved by the attorney general, as to form and legal  
25 sufficiency, *and the secretary, as to the determination of the best*  
26 *interests of the state of Kansas*.

27 New Sec. 17. A contract entered into under this act does not accord  
28 third-party beneficiary status to any inmate or to any member of the  
29 general public.

30 New Sec. 18. In the event any provision of any contract authorized  
31 by this act conflicts with any provision of any license issued pursuant to  
32 this act, the provision of the license shall supersede the provision of the  
33 contract. In the event any provision of any contract authorized by this act  
34 conflicts with any provision of this act, the provision of this act shall su-  
35 percede the provision of the contract.

36 New Sec. 19. Nothing in this act shall be construed as requiring the  
37 department of corrections to place Kansas inmates in any private facility  
38 constructed, owned or operated pursuant to this act. Placement of Kansas  
39 inmates in such private facility shall be at the discretion of the secretary  
40 based on department needs and the best interest of the state and shall  
41 only be pursuant to contract between the secretary and the private  
42 operator.

43 New Sec. 20. Not later than December 1 of each year, beginning

1 with the 2006 fiscal year, the secretary shall submit a report to the speaker  
2 of the house of representatives and the president of the senate concerning  
3 the status of contracts in effect and licenses issued, and with respect to  
4 completed prisons, the effectiveness of each private contract prison oper-  
5 ated pursuant to this act.

6 New Sec. 21. There is hereby created in the state treasury the cor-  
7 rections licensing fee fund. All moneys collected by the secretary from  
8 licensing application fees, *monitoring fees, and any other fees au-*  
9 *thorized by this act* shall be remitted to the state treasurer in accord-  
10 ance with the provisions of K.S.A. 75-4215, and amendments thereto.  
11 Upon receipt of each such remittance, the state treasurer shall deposit  
12 the entire amount in the state treasury to the credit of the corrections  
13 licensing fee fund. All the moneys collected and deposited pursuant to  
14 this subsection shall be used solely for payment of *reasonable inspection*  
15 *costs associated with licensing and the costs of inmate record review pur-*  
16 *suant to subsection (m) of section 6, and amendments thereto [the costs*  
17 *associated with the implementation and enforcement of this act. The*  
18 *secretary shall establish rules and regulations prescribing the fees*  
19 *necessary for the implementation and enforcement of this act].*

20 Sec. 22. K.S.A. 2004 Supp. 75-52,129 is hereby amended to read as  
21 follows: 75-52,129. (a) The secretary of corrections is hereby authorized  
22 to negotiate and enter into contracts with Kansas cities and counties for  
23 the placement of inmates, who are classified as medium custody or any  
24 higher custody or security classification, in facilities owned and operated  
25 by the cities and counties. If the secretary of corrections proposes to place  
26 any inmates classified as medium custody or any higher custody classifica-  
27 tion for confinement in facilities other than correctional or other institu-  
28 tions or facilities owned and operated by the department of corrections  
29 or any other state agency, the secretary of corrections shall give first con-  
30 sideration to entering into contracts with Kansas cities and counties under  
31 this section before attempting to place any such inmate for confinement  
32 at any *private contract prison, as defined in section 2, and amendments*  
33 *thereto, or any location outside the state of Kansas if the facilities to be*  
34 *provided under such contracts are substantially equal to private contract*  
35 *prisons or facilities at locations outside the state of Kansas and if arrange-*  
36 *ments can be made in a timely manner. Except as provided in subsection*  
37 *(b), the provisions of this section and any contract or preliminary letter*  
38 *of commitment entered into pursuant to this section shall not apply to*  
39 *any minimum custody or community custody status inmates, or any other*  
40 *custody or security classification lower than medium custody, or to any*  
41 *inmate who may be placed in a work release or prerelease program, cen-*  
42 *ter or facility by the secretary of corrections, who is eligible for parole or*  
43 *who is placed pursuant to the interstate corrections compact. Contracts*

1 entered into pursuant to this section shall not be subject to competitive  
2 bid requirements under K.S.A. 75-3739 and amendments thereto.

3 (b) The secretary shall not enter into any contract as provided in  
4 subsection (a) with any city or county of this state for the placement of  
5 inmates that does not provide that such city or county shall provide and  
6 maintain appropriate and recognized standards of safety, health and  
7 security.

8 Sec. 23. K.S.A. 2004 Supp. 75-52,129 is hereby repealed.

9 Sec. 24. This act shall take effect and be in force from and after its  
10 publication in the statute book.

6-8