

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 A.M. on March 20, 2006, in Room 123-S of the Capitol.

All members were present,

Phil Journey arrived, 9:42 a.m.
Barbara Allen arrived, 9:43 a.m.
Terry Bruce arrived, 9:52 a.m.
David Haley arrived, 10:08 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Helen Pedigo, Office of Revisor of Statutes
Karen Clowers, Committee Secretary

Others attending:

See attached list.

The Chairman opened the Confirmation Hearing on appointment of Roger S. Villanueva to serve a four-year on the Crime Victims Compensation Board.

The Chairman called for discussion and final action on the confirmation of Roger S. Villanueva to the Crime Victims Compensation Board. Mr. Villanueva testified providing a brief background of himself and his qualifications with respect to the appointment. Discussion followed regarding Mr. Villanueva's availability and philosophy regarding the Crime Victims Compensation Board.

Senator Goodwin moved, Senator Betts seconded, to recommend confirmation of Roger S. Villanueva to the Crime Victims Compensation Board. Motion carried.

The Chairman called for final action on SB 568--Delay of phased in increase of court of appeals to 14 judges. The Chairman reviewed the bill.

Senator Umbarger moved, Senator Donovan seconded, to recommend SB 568 favorably for passage. Motion carried.

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 reviewed the bill heard on March 15 proposing a gut and go substituting the proposed balloon amendments SB 334 (Attachment 1) and SB 243 including a portion of HB 2688 (Attachment 2) into HB 2576.

Senator Schmidt moved, Senator Donovan seconded, to amend HB 2576 by deleting existing language and inserting the proposed balloons amendments containing the SB 334 and SB 243 and a portion of HB 2688.

It was requested to amend the bill in parts. The Chairman accommodated by calling the question to amend HB 2576 by deleting existing language and inserting the contents of SB 334 represented in the balloon. Motion carried.

The Chairman called the question of inserting the contents of SB 243 and a portion of HB 2688 represented in the balloon. Motion carried. Senator Betts and Senator Journey voted in opposition and requested their votes recorded.

Senator Schmidt moved, Senator Umbarger seconded, to recommend Senate Substitute for HB 2576 as amended favorably for passage. Motion carried.

The Chairman called for final action on HB 2761--Crime victims compensation; reasons compensation reduced or denied. The Chairman reviewed the bill heard on March 8 and distributed a balloon amendment proposed by the Crime Victims Compensation Board (Attorney General) (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE Senate Judiciary Committee at 9:30 A.M. on March 20, 2006, in Room 123-S of the Capitol.

Senator Schmidt moved, Senator Goodwin seconded, to adopt the proposed balloon amendment. Motion carried.

Senator Schmidt moved, Senator Goodwin seconded, recommend **HB 2761** as amended favorably for passage. Motion carried.

The Chairman called for final action on **HB 2748--Traffic violation; failing to report an accident** and reviewed the bill heard on March 8.

Senator Schmidt proposed inserting the contents of **SB 81** into the bill (Attachment 4).

Senator Schmidt moved, Senator Goodwin seconded, to amend **HB 2748** by adding the contents of **SB 81**. Motion carried.

Senator Donovan moved, Senator Umbarger seconded, to amend the bill on page 1, line 40, by striking "of" the first time it appears and inserting "or". Motion carried.

Senator Bruce moved, Senator Donovan seconded, on page on 1, to strike lines 34-42. Motion carried.

Senator Schmidt moved, Senator Donovan seconded, to recommend **HB 2748** as amended favorably for passage. Motion carried.

The Chairman called for final action on **HB 2916--Driving privileges, DUI; ignition interlock, proof of installation**. The Chairman reviewed the bill heard on March 9 and referred to the proposed amendment by Dan Hermes to clarify the one year restricted period (Attachment 5).

Senator Umbarger moved, Senator Umbarger seconded, to adopt the balloon amendment. Motion carried.

Senator Schmidt moved, Senator Goodwin seconded, to recommend **HB 2916** as amended favorably for passage. Motion carried. Senator Haley voted no and requested his vote recorded.

The Chairman called for final action on **HB 2893--Criminal offenders in custody, health care costs** and reviewed the bill heard on March 20.

Senator Donovan moved, Senator O'Connor seconded, to recommend **HB 2893** favorably for passage. Motion carried.

The meeting adjourned at 10:30 a.m.

PLEASE CONTINUE TO ROUTE TO NEXT GUEST

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 3/20/06

NAME	REPRESENTING
Lana Walsh	Office of Judicial Admin.
Judy Nightingale	Ks A.G. CVCB
Frank Henderson Jr.	" " "
Roger Ollmann	" "
Dan Memmes	Public Solutions
Star Jones	John Peterson
Whites Danna	Ks Bar Assn.

HOUSE BILL No. 2576

By Representative Kilpatrick

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PROPOSED AMENDMENT

Insert SB 334

March 15, 2006

Senate Judiciary
3-20-06
Attachment 1

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.~~

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

1-2

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, 74-5602 and 74-~~
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.

SENATE BILL No. 334

By Senators D. Schmidt, Apple, 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, 21-4625, 21-~~
23 ~~4628 and 21-3516, 21-4706, 22-3717, 22-4903 and 74-9501~~ and
24 repealing the existing sections.

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

26 New Section 1. (a) ~~A persistent~~ **An aggravated habitual sex** of-
27 fender shall be sentenced to imprisonment for life without the possibility
28 of parole. Such offender shall spend the remainder of the offender's nat-
29 ural life incarcerated and in the custody of the secretary of corrections.
30 An offender who is sentenced to imprisonment for life without the pos-
31 sibility of parole shall not be eligible for parole, probation, assignment to
32 a community correctional services program, conditional release, post-
33 release supervision, or suspension, modification or reduction of sentence.
34 (b) Upon sentencing a defendant to imprisonment for life without
35 the possibility of parole, the court shall commit the defendant to the
36 custody of the secretary of corrections and the court shall state in the
37 sentencing order of the judgment form or journal entry, whichever is
38 delivered with the defendant to the correctional institution, that the de-
39 fendant has been sentenced to imprisonment for life without the possi-
40 bility of parole.

41 (c) As used in this section:

42 (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 sex-
37 ually 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),**

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 (G) 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 reasons,
11 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. 23. (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 employee's scope of employment.

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

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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. 21-4625 is hereby amended to read as
11 follows: 21-4625. (a) Except as provided in K.S.A. 21-4622, 21-4623, and
12 21-4624, 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 quested 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 21-2202, 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 nonviolent 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) (c) (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 *outweighs* 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 (c) 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 erties 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 con-
 19 victed 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

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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, circ-*
 21 *ulating, 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. 7 12. 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 consecu-
6 tively, 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 (G) ~~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 revocation, 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)(3) 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 (c) If an inmate is sentenced to imprisonment for a crime committed

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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. 21-4625, 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, con-
 26 ditional 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

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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 render
16 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 (u) ~~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 rati-
36 onal 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 appropri-
40 ate 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-

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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 regard-
4 ing 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 eution, 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-

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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 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 council
19 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

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1 maintenance for various electronic monitoring devices or systems as compared to the potential benefit of increased ability to locate, track and supervise monitored individuals; (C) a cost-benefit analysis comparing the costs of purchase of electronic monitoring equipment and the equipment and software necessary for tracking monitored individuals by governmental agencies to operate independently versus contracting with vendors to provide the necessary equipment and services; and (D) an analysis by geographic region within the state of Kansas detailing areas where, due to geography or lack of necessary infrastructure such as radio transmission towers, electronic monitoring may be more or less effective. Subject to appropriations therefor, the council may contract with other entities to provide evaluation and comparison studies or other resources necessary 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 without the possibility of parole or any provision of this act authorizing such term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no term of imprisonment for life without the possibility of parole and shall sentence the defendant to the maximum term of imprisonment otherwise provided by law.

22 New Sec. ~~49~~ 17. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

27 Sec. ~~44~~ 18. K.S.A. 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~~ are hereby repealed.

31 Sec. ~~42~~ 19. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL No. 2576

By Representative Kilpatrick

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

Senate Judiciary
3-20-06
Attachment 2

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 4639, 21 4704, 22 3717, 22 4003, 22-~~
21 ~~4904, 22 4906, 74 5602 and 74 9501~~ and repealing the existing
22 sections.

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

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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, ~~74 5602~~ and 74~~
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 243 as amended by Senate
Committee of the Whole, Sections 1 through 23;
and renumber the remaining section.

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2005

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 compa-
27 rable 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 (c) 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 (d) 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;

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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 persede 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 op-
5 erated pursuant to this act.

6 New Sec. 21. There is hereby created in the state treasury the correc-
7 tions 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 (a) 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 classifi-
27 cation for confinement in facilities other than correctional or other insti-
28 tutions 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.

HOUSE BILL No. 2761

By Committee on Judiciary

1-30

PROPOSED AMENDMENT
Attorney General
March 10, 2006

Senate Judiciary
3-20-06
Attachment 3

10 AN ACT concerning compensation for victims of crime; amending K.S.A.
11 2005 Supp. 74-7305 and repealing the existing section.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2005 Supp. 74-7305 is hereby amended to read as
15 follows: 74-7305. (a) An application for compensation shall be made in
16 the manner and form prescribed by the board.

17 (b) Compensation may not be awarded unless an application has been
18 filed with the board within two years of the reporting of the incident to
19 law enforcement officials if the victim was less than 16 years of age and
20 the injury or death is the result of any of the following crimes: (1) Indecent
21 liberties with a child as defined in K.S.A. 21-3503 and amendments
22 thereto; (2) aggravated indecent liberties with a child as defined in K.S.A.
23 21-3504 and amendments thereto; (3) aggravated criminal sodomy as de-
24 fined in K.S.A. 21-3506 and amendments thereto; (4) enticement of a
25 child as defined in K.S.A. 21-3509 and amendments thereto; (5) indecent
26 solicitation of a child as defined in K.S.A. 21-3510 and amendments
27 thereto; (6) aggravated indecent solicitation of a child as defined in K.S.A.
28 21-3511 and amendments thereto; (7) sexual exploitation of a child as
29 defined in K.S.A. 21-3516 and amendments thereto; or (8) aggravated
30 incest as defined in K.S.A. 21-3603 and amendments thereto. Compen-
31 sation for mental health counseling may be awarded, if a claim is filed
32 within two years of testimony, to a claimant who is, or will be, required
33 to testify in a sexually violent predator commitment, pursuant to article
34 29a of chapter 59 of the Kansas Statutes Annotated, and amendments
35 thereto, of an offender who victimized the claimant or the victim on
36 whose behalf the claim is made. For all other incidents of criminally
37 injurious conduct, compensation may not be awarded unless the claim
38 has been filed with the board within two years after the injury or death
39 upon which the claim is based, ~~unless, with respect to a claim for com-
40 pensation that arises out of a violent crime that was committed outside
41 the United States against a person whose domicile is in Kansas: (1) The
2 violent crime caused death; (2) the violent crime that caused the death
3 was committed after January 1, 2001; and (3) the claimant makes a claim~~

3-2

1 for compensation within 30 days of the effective date of this act. Com-
2 pensation may not be awarded to a claimant who was the offender or an
3 accomplice of the offender and may not be awarded to another person if
4 the award would unjustly benefit the offender or accomplice.

5 (c) Compensation otherwise payable to a claimant shall be ~~diminished~~
6 *reduced or denied, to the extent, if any that the:*

7 (1) ~~To the extent, if any, that the~~ Economic loss upon which the
8 claimant's claim is based is recouped from other persons, including col-
9 lateral sources; ~~and~~

10 (2) ~~to the extent, if any, that the~~ board deems reasonable because of
11 the contributory misconduct of the claimant or of a victim through whom
12 the claimant claims; *or*

13 (3) *board deems reasonable, because the victim was likely engaging*
14 *in, or attempting to engage in, unlawful activity at the time of the crime*
15 *upon which the claim for compensation is based.*

This subsection shall not be construed to reduce or deny compensation to a victim of domestic abuse or sexual assault.

16 (d) Compensation may be awarded only if the board finds that unless
17 the claimant is awarded compensation the claimant will suffer financial
18 stress as the result of economic loss otherwise reparable. A claimant suf-
19 fers financial stress only if the claimant cannot maintain the claimant's
20 customary level of health, safety and education for self and dependents
21 without undue financial hardship. In making its determination of financial
22 stress, the board shall consider all relevant factors, including:

23 (1) The number of claimant's dependents;

24 (2) the usual living expenses of the claimant and the claimant's family;

25 (3) the special needs of the claimant and the claimant's dependents;

26 (4) the claimant's income and potential earning capacity; and

27 (5) the claimant's resources.

28 (e) Compensation may not be awarded unless the criminally injurious
29 conduct resulting in injury or death was reported to a law enforcement
30 officer within 72 hours after its occurrence or the board finds there was
31 good cause for the failure to report within that time.

32 (f) The board, upon finding that the claimant or victim has not fully
33 cooperated with appropriate law enforcement agencies, may deny, with-
34 draw or reduce an award of compensation.

35 (g) Except in K.S.A. 21-3602 or 21-3603 or cases of sex offenses es-
36 tablished in article 35 of chapter 21, of the Kansas Statutes Annotated,
37 and amendments thereto, compensation may not be awarded if the eco-
38 nomic loss is less than \$100.

39 (h) Compensation for work loss, replacement services loss, depend-
40 ent's economic loss and dependent's replacement service loss may not
41 exceed \$400 per week or actual loss, whichever is less.

42 (i) Compensation payable to a victim and to all other claimants sus-
43 taining economic loss because of injury to or death of that victim may not

3-2

SENATE BILL No. 81

By Senator D. Schmidt

(By request)

1-21

11 AN ACT regulating traffic; concerning the use of head lamps; amending
12 K.S.A. 8-1703 and repealing the existing section.

13

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

15 Section 1. K.S.A. 8-1703 is hereby amended to read as follows: 8-

16 1703. (a) Every vehicle, except as provided in subsection (b), upon a
17 highway within this state, at ~~any time~~

18 *all times shall display lighted head and other lamps and illuminating de-*
19 *VICES as required for different classes of vehicles, subject to exceptions with*
20 *respect to parked vehicles:*

21 (1) From sunset to sunrise ~~and at any other time;~~

22 ;

23 (2) when due to insufficient light or unfavorable atmospheric condi-
24 tions, **including smoke or fog**, persons and vehicles on the highway are
25 not clearly discernible at a distance of 1,000 feet ahead, ~~shall display~~
26 ~~lighted head and other lamps and illuminating devices as required for~~
27 ~~different classes of vehicles, subject to exceptions with respect to parked~~
28 ~~vehicles; or~~

29 (3) *when windshield wipers are in continuous use as a result of*
30 ~~smoke, fog, rain, sleet or snow, except when such windshield wipers are~~
31 ~~used intermittently in misting rain, sleet or snow.~~ Stop lights, turn signals
32 and other signaling devices shall be lighted as prescribed for the use of
33 such devices.

34 (b) Motorcycles, motor-driven cycles and motorized bicycles manu-
35 factured after January 1, 1978, shall display lighted head and tail lights at
36 all times that such vehicles are operated on any highway.

37 (c) *Law enforcement officers shall not stop drivers for violations of*
38 *subsection (a)(3) in the absence of another violation of law. A citation for*
39 *a violation of subsection (a)(3) shall not be issued without citing the vio-*
40 *lation that initially caused the officer to effect the enforcement stop.*

41 Sec. 2. K.S.A. 8-1703 is hereby repealed.

42 Sec. 3. This act shall take effect and be in force from and after its
43 publication in the statute book.

Dan Hermes
Proposed Amendment
3-9-06

HB 2916—Am.

6

For the full
year of the
restricted period

1 ~~of the suspension, the division shall restrict the person's driving privileges~~
2 ~~for the balance of such second year to driving only a motor vehicle~~
3 ~~equipped with an ignition interlock device~~ **Proof of the installation of**
4 **such device shall be provided to the division before the person's**
5 **driving privileges are fully reinstated; and**

6 (3) on the person's fifth or subsequent occurrence, the person's driv-
7 ing privileges shall be permanently revoked.

8 (c) Except as provided by subsection (e) and K.S.A. 8-2,142, and
9 amendments thereto, if a person who is less than 21 years of age fails a
10 test or has an alcohol or drug-related conviction in this state, the division
11 shall suspend the person's driving privileges for one year.

12 (d) Whenever the division is notified by an alcohol and drug safety
13 action program that a person has failed to complete any alcohol and drug
14 safety action education or treatment program ordered by a court for a
15 conviction of a violation of K.S.A. 8-1567, and amendments thereto, the
16 division shall suspend the person's driving privileges until the division
17 receives notice of the person's completion of such program.

18 (e) Except as provided in K.S.A. 8-2,142, and amendments thereto,
19 if a person's driving privileges are subject to suspension pursuant to this
20 section for a test refusal, test failure or alcohol or drug-related conviction
21 arising from the same arrest, the period of such suspension shall not
22 exceed the longest applicable period authorized by subsection (a), (b) or
23 (c), and such suspension periods shall not be added together or otherwise
24 imposed consecutively. In addition, in determining the period of such
25 suspension as authorized by subsection (a), (b) or (c), such person shall
26 receive credit for any period of time for which such person's driving
27 privileges were suspended while awaiting any hearing or final order au-
28 thorized by this act.

29 If a person's driving privileges are subject to restriction pursuant to
30 this section for a test failure or alcohol or drug-related conviction arising
31 from the same arrest, the restriction periods shall not be added together
32 or otherwise imposed consecutively. In addition, in determining the pe-
33 riod of restriction, the person shall receive credit for any period of sus-
34 pension imposed for a test refusal arising from the same arrest.

35 (f) If the division has taken action under subsection (a) for a test
36 refusal or under subsection (b) or (c) for a test failure and such action is
37 stayed pursuant to K.S.A. 8-259, and amendments thereto, or if tempo-
38 rary driving privileges are issued pursuant to K.S.A. 8-1020, and amend-
39 ments thereto, the stay or temporary driving privileges shall not prevent
40 the division from taking the action required by subsection (b) or (c) for
41 an alcohol or drug-related conviction.

42 (g) Upon restricting a person's driving privileges pursuant to this sec-
43 tion, the division shall issue a copy of the order imposing the restrictions

Senate Judiciary

3-20-06
Attachment 5

1 which is required to be carried by the person at any time the person is
2 operating a motor vehicle on the highways of this state.

3 (h) Any person whose license is restricted to operating only a motor
4 vehicle with an ignition interlock device installed may operate an em-
5 ployer's vehicle without an ignition interlock device installed during nor-
6 mal business activities, provided that the person does not partly or entirely
7 own or control the employer's vehicle or business. ~~The provisions of this~~
8 ~~subsection shall be effective on and after July 1, 2001.~~

9 Sec. 3. K.S.A. 8-1015 is hereby amended to read as follows: 8-1015.

10 (a) When subsection (b)(1) of K.S.A. 8-1014, and amendments thereto,
11 requires or authorizes the division to place restrictions on a person's driv-
12 ing privileges, the division shall restrict the person's driving privileges to
13 driving only under the circumstances provided by subsections (a)(1), (2),
14 (3) and (4) of K.S.A. 8-292 and amendments thereto.

15 (b) In lieu of the restrictions set out in subsection (a), the division,
16 upon request of the person whose driving privileges are to be restricted,
17 may restrict the person's driving privileges to driving only a motor vehicle
18 equipped with an ignition interlock device, approved by the division and
19 obtained, installed and maintained at the person's expense. *Prior to is-*
20 *ssuing such restricted license, the division shall receive proof of the in-*
21 *stallation of such device.*

22 (c) When a person has completed the one-year suspension pursuant
23 to subsection (b)(2) of K.S.A. 8-1014, and amendments thereto, the di-
24 vision shall restrict the person's driving privileges for one year to driving
25 only a motor vehicle equipped with an ignition interlock device, approved
26 by the division and maintained at the person's expense. *Prior to issuing*
27 *such restricted license, the division shall receive proof of the installation*
28 *of such device. If proof of such installation is not received by the division*
29 *by the end of such year, the suspension shall be extended for one year. If*
30 *proof of installation of such device is received by the division during the*
31 *second year of the suspension, the division shall restrict the person's driv-*
32 *ing privileges for the balance of such second year to driving only a motor*
33 *vehicle equipped with an ignition interlock device*

34 **Proof of the instal-**
35 **lation of such device shall be provided to the division before the**
36 **person's driving privileges are fully reinstated.**

37 (d) Upon expiration of the period of time for which restrictions are
38 imposed pursuant to this section, the licensee may apply to the division
39 for the return of any license previously surrendered by the licensee. If
40 the license has expired, the person may apply to the division for a new
41 license, which shall be issued by the division upon payment of the proper
42 fee and satisfaction of the other conditions established by law, unless the
43 person's driving privileges have been suspended or revoked prior to
44 expiration.

for the full
year of the
restricted period