

**HOUSE BILL No. 2321**

By Committee on Corrections and Juvenile Justice

2-11

1 AN ACT concerning crimes and punishment; creating the crimes of  
2 armed criminal action and endangerment; relating to further  
3 amendments to the recodified criminal code; amending K.S.A. 2010  
4 Supp. 21-4010 and 21-4012 and sections 9, 34, 37, 61, 68, 71, 81, 92,  
5 93, 129, 130, 132, 136, 165, 197, 223, 224 and 300 of chapter 136 of  
6 the 2010 Session Laws of Kansas and repealing the existing sections;  
7 also repealing K.S.A. 2010 Supp. 21-3302, 21-3446, 21-3447, 21-  
8 3506 and 21-4311.

9  
10 *Be it enacted by the Legislature of the State of Kansas:*

11 New Section 1. (a) Armed criminal action is committing or  
12 attempting to commit any felony under the laws of this state by use of a  
13 firearm.

14 (b) Armed criminal action is a nonperson felony. Upon conviction, a  
15 person shall be sentenced to a term of 12 months imprisonment. The  
16 person convicted shall not be eligible for release on probation, suspension  
17 or reduction of sentence or parole until the person has served the  
18 mandatory 12 months imprisonment, unless application of such a  
19 mandatory sentence would result in a manifest injustice.

20 (c) The crime of armed criminal action shall be treated as a separate  
21 and distinct offense from the crime or crimes committed, and the sentence  
22 imposed under this section shall be consecutive to any other sentence  
23 imposed.

24 (d) This section shall not apply when the felony committed is  
25 criminal distribution of a firearm to a felon, as defined in section 188 of  
26 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
27 thereto, criminal possession of a firearm by a convicted felon, as defined  
28 in section 189 of chapter 136 of the 2010 Session Laws of Kansas, and  
29 amendments thereto, criminal possession of a firearm by a juvenile, as  
30 defined in section 186 of chapter 136 of the 2010 Session Laws of  
31 Kansas, and amendments thereto, criminal discharge of a firearm, as  
32 defined in section 193 of chapter 136 of the 2010 Session Laws of  
33 Kansas, and amendments thereto, or unauthorized possession of a firearm  
34 on the grounds of or within certain state-owned or leased buildings, as  
35 defined in section 194 of chapter 136 of the 2010 Session Laws of  
36 Kansas, and amendments thereto.

1 (e) As used in this section, “use of a firearm” includes: (A) The  
2 discharge, employment or visible display of any part of a firearm during,  
3 immediately prior to or immediately after the commission of a felony; or  
4 (B) communication to another indicating the presence of a firearm during,  
5 immediately prior to or immediately after the commission of a felony,  
6 regardless of whether such firearm was discharged, actively employed or  
7 displayed.

8 New Sec. 2. (a) Endangerment is recklessly exposing another person  
9 to a danger of great bodily harm or death.

10 (b) Endangerment is a class A person misdemeanor.

11 New Sec. 3. Sections 1 and 2, and amendments thereto, shall be part  
12 of and supplemental to the Kansas criminal code.

13 Sec. 4. K.S.A. 2010 Supp. 21-4010 is hereby amended to read as  
14 follows: 21-4010. (a) ~~No person shall~~ *It shall be unlawful, with no*  
15 *requirement of a culpable mental state, to smoke in an enclosed area or at*  
16 *a public meeting including, but not limited to:*

17 (1) Public places;

18 (2) taxicabs and limousines;

19 (3) restrooms, lobbies, hallways and other common areas in public  
20 and private buildings, condominiums and other multiple-residential  
21 facilities;

22 (4) restrooms, lobbies and other common areas in hotels and motels  
23 and in at least 80% of the sleeping quarters within a hotel or motel that  
24 may be rented to guests;

25 (5) access points of all buildings and facilities not exempted  
26 pursuant to subsection (d); and

27 (6) any place of employment.

28 (b) Each employer having a place of employment that is an enclosed  
29 area shall provide a smoke-free workplace for all employees. Such  
30 employer shall also adopt and maintain a written smoking policy which  
31 shall prohibit smoking without exception in all areas of the place of  
32 employment. Such policy shall be communicated to all current employees  
33 within one week of its adoption and shall be communicated to all new  
34 employees upon hiring. Each employer shall provide a written copy of  
35 the smoking policy upon request to any current or prospective employee.

36 (c) Notwithstanding any other provision of this section, K.S.A. 21-  
37 4011 or 21-4012, and amendments thereto, the proprietor or other person  
38 in charge of an adult care home, as defined in K.S.A. 39-923, and  
39 amendments thereto, or a medical care facility, may designate a portion of  
40 such adult care home, or the licensed long-term care unit of such medical  
41 care facility, as a smoking area, and smoking may be permitted within  
42 such designated smoking area.

43 (d) The provisions of this section shall not apply to:

1 (1) The outdoor areas of any building or facility beyond the access  
2 points of such building or facility;

3 (2) private homes or residences, except when such home or  
4 residence is used as a day care home, as defined in K.S.A. 65-530, and  
5 amendments thereto;

6 (3) a hotel or motel room rented to one or more guests if the total  
7 percentage of such hotel or motel rooms in such hotel or motel does not  
8 exceed 20%;

9 (4) the gaming floor of a lottery gaming facility or racetrack gaming  
10 facility, as those terms are defined in K.S.A. 74-8702, and amendments  
11 thereto;

12 (5) that portion of an adult care home, as defined in K.S.A. 39-923,  
13 and amendments thereto, that is expressly designated as a smoking area  
14 by the proprietor or other person in charge of such adult care home  
15 pursuant to subsection (c) and that is fully enclosed and ventilated;

16 (6) that portion of a licensed long-term care unit of a medical care  
17 facility that is expressly designated as a smoking area by the proprietor or  
18 other person in charge of such medical care facility pursuant to  
19 subsection (c) and that is fully enclosed and ventilated and to which  
20 access is restricted to the residents and their guests;

21 (7) tobacco shops;

22 (8) a class A or class B club defined in K.S.A. 41-2601, and  
23 amendments thereto, which (A) held a license pursuant to K.S.A. 41-  
24 2606 et seq., and amendments thereto, as of January 1, 2009; and (B)  
25 notifies the secretary of health and environment in writing, not later than  
26 90 days after the effective date of this act, that it wishes to continue to  
27 allow smoking on its premises; and

28 (9) a private club in designated areas where minors are prohibited.

29 Sec. 5. K.S.A. 2010 Supp. 21-4012 is hereby amended to read as  
30 follows: 21-4012. (a) It shall be unlawful for any person who owns,  
31 manages, operates or otherwise controls the use of any public place, or  
32 other area where smoking is prohibited, to fail to comply with all or any  
33 of the provisions of K.S.A. 21-4009 through 21-4014, and amendments  
34 thereto.

35 (b) It shall be unlawful for any person who owns, manages, operates  
36 or otherwise controls the use of any public place, or other area where  
37 smoking is prohibited, to allow smoking to occur where prohibited by  
38 law. Any such person shall be deemed to allow smoking to occur under  
39 this subsection if such person: (1) Has knowledge that smoking is  
40 occurring; and (2) ~~acquiesces to the~~ *recklessly permits* smoking under the  
41 totality of the circumstances.

42 (c) It shall be unlawful for any person, *with no requirement of a*  
43 *culpable mental state*, to smoke in any area where smoking is prohibited

1 by the provisions of K.S.A. 21-4010, and amendments thereto.

2 (d) Any person who violates any provision of K.S.A. 21-4009  
3 through 21-4014, and amendments thereto, shall be guilty of a cigarette  
4 or tobacco infraction punishable by a fine:

5 (1) Not exceeding \$100 for the first violation;

6 (2) not exceeding \$200 for a second violation within a one-year  
7 period after the first violation; or

8 (3) not exceeding \$500 for a third or subsequent violation within a  
9 one-year period after the first violation.

10 For purposes of this subsection, the number of violations within a year  
11 shall be measured by the date the smoking violations occur.

12 (e) Each individual allowed to smoke by a person who owns,  
13 manages, operates or otherwise controls the use of any public place, or  
14 other area where smoking is prohibited, in violation of subsection (b)  
15 shall be considered a separate violation for purposes of determining the  
16 number of violations under subsection (d).

17 (f) No employer shall discharge, refuse to hire or ~~in any manner~~  
18 ~~retaliate~~ *take any other adverse action* against an employee, applicant for  
19 employment or customer ~~because~~ *with the intent to retaliate against* that  
20 employee, applicant or customer ~~reports or attempts for reporting or~~  
21 ~~attempting~~ *to prosecute a violation of any of the provisions of K.S.A. 21-*  
22 *4009 through 21-4014, and amendments thereto.*

23 Sec. 6. Section 9 of chapter 136 of the 2010 Session Laws of Kansas  
24 is hereby amended to read as follows: Sec. 9. (a) When the same conduct  
25 of a defendant may establish the commission of more than one crime  
26 under the laws of this state, the defendant may be prosecuted for each of  
27 such crimes. Each of such crimes may be alleged as a separate count in a  
28 single complaint, information or indictment.

29 (b) Upon prosecution for a crime, the defendant may be convicted of  
30 either the crime charged or a lesser included crime, but not both. A lesser  
31 included crime is:

32 (1) A lesser degree of the same crime;

33 (2) a crime where all elements of the lesser crime are identical to  
34 some of the elements of the crime charged;

35 (3) an attempt to commit the crime charged; or

36 (4) an attempt to commit a crime defined under paragraph (1) or (2).

37 (c) Whenever charges are filed against a person, accusing the person  
38 of a crime which includes another crime of which the person has been  
39 convicted, the conviction of the lesser included crime shall not bar  
40 prosecution or conviction of the crime charged if the crime charged was  
41 not consummated at the time of conviction of the lesser included crime,  
42 but the conviction of the lesser included crime shall be annulled upon the  
43 filing of such charges. Evidence of the person's plea or any admission or

1 statement made by the person in connection therewith in any of the  
2 proceedings which resulted in the person's conviction of the lesser  
3 included crime shall not be admissible at the trial of the crime charged. If  
4 the person is convicted of the crime charged, or of a lesser included  
5 crime, the person so convicted shall receive credit against any prison  
6 sentence imposed or fine to be paid for the period of confinement actually  
7 served or the amount of any fine actually paid under the sentence  
8 imposed for the annulled conviction.

9 (d) Unless otherwise provided by law, when crimes differ only in  
10 that one is defined to prohibit a designated kind of conduct generally and  
11 the other to prohibit a specific instance of such conduct, the defendant:

12 (1) May not be convicted of the two crimes based upon the same  
13 conduct; and

14 (2) shall be sentenced according to the terms of the more specific  
15 crime.

16 (e) *A defendant may not be convicted of identical offenses based*  
17 *upon the same conduct. The prosecution may choose which such offense*  
18 *to charge and, upon conviction, the defendant shall be sentenced*  
19 *according to the terms of that offense.*

20 Sec. 7. Section 34 of chapter 136 of the 2010 Session Laws of  
21 Kansas is hereby amended to read as follows: Sec. 34. (a) A conspiracy is  
22 an agreement with another person to commit a crime or to assist in  
23 committing a crime. No person may be convicted of a conspiracy unless  
24 an overt act in furtherance of such conspiracy is alleged and proved to  
25 have been committed by such person or by a co-conspirator.

26 (b) *It is immaterial to the criminal liability of a person charged with*  
27 *conspiracy that any other person with whom the defendant conspired*  
28 *lacked the actual intent to commit the underlying crime provided that the*  
29 *defendant believed the other person did have the actual intent to commit*  
30 *the underlying crime.*

31 ~~(b)~~ (c) It shall be a defense to a charge of conspiracy that the  
32 accused voluntarily and in good faith withdrew from the conspiracy, and  
33 communicated the fact of such withdrawal to one or more of the accused  
34 person's co-conspirators, before any overt act in furtherance of the  
35 conspiracy was committed by the accused or by a co-conspirator.

36 ~~(e)~~ (d) (1) Conspiracy to commit an off-grid felony shall be ranked  
37 at nondrug severity level 2. Conspiracy to commit any other nondrug  
38 felony shall be ranked on the nondrug scale at two severity levels below  
39 the appropriate level for the underlying or completed crime. The lowest  
40 severity level for conspiracy to commit a nondrug felony shall be a  
41 severity level 10.

42 (2) The provisions of this subsection shall not apply to a violation of  
43 conspiracy to commit the crime of:

1 (A) Aggravated trafficking, as defined in subsection (b) of section  
2 61 of chapter 136 of the 2010 Session Laws of Kansas, and amendments  
3 thereto, if the offender is 18 years of age or older and the victim is less  
4 than 14 years of age;

5 (B) terrorism ~~pursuant to~~ as defined in section 56 of chapter 136 of  
6 the 2010 Session Laws of Kansas, and amendments thereto; ~~or of~~

7 (C) illegal use of weapons of mass destruction ~~pursuant to~~ as  
8 defined in section 57 of chapter 136 of the 2010 Session Laws of Kansas,  
9 and amendments thereto;

10 (D) rape, as defined in subsection (a)(3) of section 67 of chapter  
11 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the  
12 offender is 18 years of age or older;

13 (E) aggravated indecent liberties with a child, as defined in  
14 subsection (b)(3) of section 70 of chapter 136 of the 2010 Session Laws  
15 of Kansas, and amendments thereto, if the offender is 18 years of age or  
16 older;

17 (F) aggravated criminal sodomy, as defined in subsection (b)(1) or  
18 (b)(2) of section 68 of chapter 136 of the 2010 Session Laws of Kansas,  
19 and amendments thereto, if the offender is 18 years of age or older;

20 (G) promoting prostitution, as defined in section 230 of chapter 136  
21 of the 2010 Session Laws of Kansas, and amendments thereto, if the  
22 offender is 18 years of age or older and the prostitute is less than 14  
23 years of age; or

24 (H) sexual exploitation of a child, as defined in subsection (a)(1) or  
25 (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas,  
26 and amendments thereto, if the offender is 18 years of age or older and  
27 the child is less than 14 years of age.

28 ~~(d)~~ (e) Conspiracy to commit a felony which prescribes a sentence  
29 on the drug grid shall reduce the prison term prescribed in the drug grid  
30 block for an underlying or completed crime by six months.

31 ~~(e)~~ (f) A conspiracy to commit a misdemeanor is a class C  
32 misdemeanor.

33 Sec. 8. Section 37 of chapter 136 of the 2010 Session Laws of  
34 Kansas is hereby amended to read as follows: Sec. 37. (a) Murder in the  
35 first degree is the killing of a human being committed:

36 (1) Intentionally, and with premeditation; or

37 (2) in the commission of, attempt to commit, or flight from any  
38 inherently dangerous felony.

39 (b) Murder in the first degree is an off-grid person felony.

40 (c) As used in this section, an "inherently dangerous felony" means:

41 (1) Any of the following felonies, whether such felony is so distinct  
42 from the homicide alleged to be a violation of subsection (a)(2) as not to  
43 be an ingredient of the homicide alleged to be a violation of subsection

- 1 (a)(2):
- 2 (A) Kidnapping, as defined in subsection (a) of section 43 of
- 3 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 4 thereto;
- 5 (B) aggravated kidnapping, as defined in subsection (b) of section
- 6 *43 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 7 thereto;
- 8 (C) robbery, as defined in subsection (a) of section 55 of *chapter*
- 9 *136 of the 2010 Session Laws of Kansas*, and amendments thereto;
- 10 (D) aggravated robbery, as defined in subsection (b) of section 55 of
- 11 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 12 thereto;
- 13 (E) rape, as defined in section 67 of *chapter 136 of the 2010 Session*
- 14 *Laws of Kansas*, and amendments thereto;
- 15 (F) aggravated criminal sodomy, as defined in subsection (b) of
- 16 section 68 of *chapter 136 of the 2010 Session Laws of Kansas*, and
- 17 amendments thereto;
- 18 (G) abuse of a child, as defined in section 79 of *chapter 136 of the*
- 19 *2010 Session Laws of Kansas*, and amendments thereto;
- 20 (H) felony theft of property as defined in subsection (a)(1) or (a)(3)
- 21 of section 87 of *chapter 136 of the 2010 Session Laws of Kansas*, and
- 22 amendments thereto;
- 23 (I) burglary, as defined in subsection (a) of section 93 of *chapter 136*
- 24 *of the 2010 Session Laws of Kansas*, and amendments thereto;
- 25 (J) aggravated burglary, as defined in subsection (b) of section 93 of
- 26 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 27 thereto;
- 28 (K) arson, as defined in subsection (a) of section 98 of *chapter 136*
- 29 *of the 2010 Session Laws of Kansas*, and amendments thereto;
- 30 (L) aggravated arson, as defined in subsection (b) of section 98 of
- 31 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 32 thereto;
- 33 (M) treason, as defined in section 126 of *chapter 136 of the 2010*
- 34 *Session Laws of Kansas*, and amendments thereto;
- 35 (N) any felony offense as provided in K.S.A. ~~2009~~ *2010* Supp. 21-
- 36 *36a03, 21-36a05 or 21-36a06*, and amendments thereto;
- 37 (O) any felony offense as provided in subsection (a) or (b) of section
- 38 *193 of chapter 136 of the 2010 Session Laws of Kansas*, and amendments
- 39 thereto;
- 40 (P) endangering the food supply, as defined in subsection (a) of
- 41 section 202 of *chapter 136 of the 2010 Session Laws of Kansas*, and
- 42 amendments thereto;
- 43 (Q) aggravated endangering the food supply, as defined in

1 subsection (b) of section 202 of chapter 136 of the 2010 Session Laws of  
2 Kansas, and amendments thereto;

3 (R) fleeing or attempting to elude a police officer, as defined in  
4 subsection (b) of K.S.A. 8-1568, and amendments thereto; ~~or~~

5 (S) aggravated endangering a child, as defined in subsection (b)(1)  
6 of section 78 of chapter 136 of the 2010 Session Laws of Kansas, and  
7 amendments thereto; ~~and or~~

8 (T) abandonment of a child, as defined in section 82 of chapter 136  
9 of the 2010 Session Laws of Kansas, and amendments thereto; and

10 (2) any of the following felonies, only when such felony is so  
11 distinct from the homicide alleged to be a violation of subsection (a)(2) as  
12 to not be an ingredient of the homicide alleged to be a violation of  
13 subsection (a)(2):

14 (A) Murder in the first degree, as defined in subsection (a)(1);

15 (B) murder in the second degree, as defined in subsection (a)(1) of  
16 section 38 of chapter 136 of the 2010 Session Laws of Kansas, and  
17 amendments thereto;

18 (C) voluntary manslaughter, as defined in subsection (a)(1) of  
19 section 39 of chapter 136 of the 2010 Session Laws of Kansas, and  
20 amendments thereto;

21 (D) aggravated assault, as defined in subsection (b) of section 47 of  
22 chapter 136 of the 2010 Session Laws of Kansas, and amendments  
23 thereto;

24 (E) aggravated assault of a law enforcement officer, as defined in  
25 subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of  
26 Kansas, and amendments thereto;

27 (F) aggravated battery, as defined in subsection (b)(1) of section 48  
28 of chapter 136 of the 2010 Session Laws of Kansas, and amendments  
29 thereto; or

30 (G) aggravated battery against a law enforcement officer, as defined  
31 in subsection (d) of section 48 of chapter 136 of the 2010 Session Laws of  
32 Kansas, and amendments thereto.

33 Sec. 9. Section 61 of chapter 136 of the 2010 Session Laws of  
34 Kansas is hereby amended to read as follows: Sec. 61. (a) Human  
35 trafficking is:

36 (1) ~~Recruiting, harboring, transporting, providing or obtaining, by~~  
37 ~~any means, another person with knowledge that force, fraud, threat or~~  
38 ~~coercion will be used to cause the person to engage in forced labor or~~  
39 ~~involuntary servitude; or~~ *The intentional recruitment, harboring,*  
40 *transportation, provision or obtaining of a person for labor or services,*  
41 *through the use of force, fraud or coercion for the purpose of subjecting*  
42 *the person to involuntary servitude or forced labor;*

43 (2) *intentionally benefiting* financially or by receiving anything of



1 value from participation in a venture that the person has reason to know  
2 has engaged in acts set forth in subsection (a)(1);:

3 (3) knowingly coercing employment by obtaining or maintaining  
4 labor or services that are performed or provided by another person  
5 through any of the following:

6 (A) Causing or threatening to cause physical injury to any person;

7 (B) physically restraining or threatening to physically restrain  
8 another person;

9 (C) abusing or threatening to abuse the law or legal process;

10 (D) threatening to withhold food, lodging or clothing; or

11 (E) knowingly destroying, concealing, removing, confiscating or  
12 possessing any actual or purported government identification document  
13 of another person; or

14 (4) knowingly holding another person in a condition of peonage in  
15 satisfaction of a debt owed the person who is holding such other person.

16 (b) Aggravated human trafficking is:

17 ~~(1)~~ human trafficking, as defined in subsection (a):

18 ~~(A)~~ (1) Involving the commission or attempted commission of  
19 kidnapping, as defined in subsection (a) of section 43 of chapter 136 of  
20 the 2010 Session Laws of Kansas, and amendments thereto;

21 ~~(B)~~ (2) committed in whole or in part for the purpose of the sexual  
22 gratification of the defendant or another; or

23 ~~(C)~~ (3) resulting in a death; or

24 ~~(2)~~ (4) involving recruiting, harboring, transporting, providing or  
25 obtaining, by any means, a person under 18 years of age knowing that the  
26 person, with or without force, fraud, threat or coercion, will be used to  
27 engage in forced labor, involuntary servitude or sexual gratification of the  
28 defendant or another.

29 (c) (1) Human trafficking is a severity level 2, person felony.

30 (2) Aggravated human trafficking is a:

31 ~~(A)~~ severity level 1, person felony, except as provided in subsection

32 ~~(c)(2)(B); and (3).~~

33 ~~(B)~~(3) Aggravated human trafficking or attempt, conspiracy or  
34 criminal solicitation to commit aggravated human trafficking is an off-  
35 grid person felony, when the offender is 18 years of age or older and the  
36 victim is less than 14 years of age.

37 (d) If the offender is 18 years of age or older and the victim is less  
38 than 14 years of age, the provisions of:

39 (1) Subsection (c) of section 33 of chapter 136 of the 2010 Session  
40 Laws of Kansas, and amendments thereto, shall not apply to a violation  
41 of attempting to commit the crime of aggravated human trafficking  
42 pursuant to this section;

43 (2) subsection (c) of section 34 of chapter 136 of the 2010 Session

1 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
 2 *of conspiracy to commit the crime of aggravated human trafficking*  
 3 *pursuant to this section; and*

4 (3) *subsection (d) of section 35 of chapter 136 of the 2010 Session*  
 5 *Laws of Kansas, and amendments thereto, shall not apply to a violation*  
 6 *of criminal solicitation to commit the crime of aggravated human*  
 7 *trafficking pursuant to this section.*

8 (e) *The provisions of this section shall not apply to the use of the*  
 9 *labor of any person incarcerated in a state or county correctional facility*  
 10 *or city jail.*

11 (f) *As used in this section, "peonage" means a condition of*  
 12 *involuntary servitude in which the victim is forced to work for another*  
 13 *person by the use or threat of physical restraint or physical injury, or by*  
 14 *the use or threat of coercion through law or the legal process.*

15 Sec. 10. Section 68 of chapter 136 of the 2010 Session Laws of  
 16 Kansas is hereby amended to read as follows: Sec. 68. (a) Criminal  
 17 sodomy is:

18 ~~(1) Sodomy between persons who are 16 or more years of age and~~  
 19 ~~members of the same sex;~~

20 ~~(2) (1) Sodomy between a person and an animal;~~

21 ~~(3) (2) sodomy with a child who is 14 or more years of age but less~~  
 22 ~~than 16 years of age; or~~

23 ~~(4) (3) causing a child 14 or more years of age but less than 16 years~~  
 24 ~~of age to engage in sodomy with any person or animal.~~

25 (b) Aggravated criminal sodomy is:

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

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

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

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

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

34 (C) when the victim is incapable of giving consent because of  
 35 mental deficiency or disease, or when the victim is incapable of giving  
 36 consent because of the effect of any alcoholic liquor, narcotic, drug or  
 37 other substance, which condition was known by, or was reasonably  
 38 apparent to, the offender.

39 (c) (1) Criminal sodomy as defined in:

40 (A) Subsection (a)(1) ~~or (a)(2)~~ is a class B nonperson misdemeanor;  
 41 and

42 (B) subsection (a)(2) or (a)(3) ~~or (a)(4)~~ is a severity level 3, person  
 43 felony.

- 1       ~~(e)~~—(2) Aggravated criminal sodomy as defined in:
- 2       (A) Subsection (b)(3) is a severity level 1, person felony; and
- 3       (B) subsection (b)(1) or (b)(2) is a:
- 4       ~~(i)~~ severity level 1, person felony, except as provided in subsection
- 5       ~~(c)(2)(B)(ii); and (3).~~
- 6       ~~(ii) off-grid person felony, when the offender is 18 years of age or~~
- 7       ~~older.~~
- 8       (3) *Aggravated criminal sodomy as defined in subsection (b)(1) or*
- 9       *(b)(2) or attempt, conspiracy or criminal solicitation to commit*
- 10       *aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is*
- 11       *an off-grid person felony, when the offender is 18 years of age or older.*
- 12       (d) *If the offender is 18 years of age or older, the provisions of:*
- 13       (1) *Subsection (c) of section 33 of chapter 136 of the 2010 Session*
- 14       *Laws of Kansas, and amendments thereto, shall not apply to a violation*
- 15       *of attempting to commit the crime of aggravated criminal sodomy as*
- 16       *defined in subsection (b)(1) or (b)(2);*
- 17       (2) *subsection (c) of section 34 of chapter 136 of the 2010 Session*
- 18       *Laws of Kansas, and amendments thereto, shall not apply to a violation*
- 19       *of conspiracy to commit the crime of aggravated criminal sodomy as*
- 20       *defined in subsection (b)(1) or (b)(2); and*
- 21       (3) *subsection (d) of section 35 of chapter 136 of the 2010 Session*
- 22       *Laws of Kansas, and amendments thereto, shall not apply to a violation*
- 23       *of criminal solicitation to commit the crime of aggravated criminal*
- 24       *sodomy as defined in subsection (b)(1) or (b)(2).*
- 25       ~~(d)~~(e) It shall be a defense to a prosecution of criminal sodomy, as
- 26       defined in subsection (a)~~(3)~~ (2), and aggravated criminal sodomy, as
- 27       defined in subsection (b)(1), that the child was married to the accused at
- 28       the time of the offense.
- 29       ~~(e)~~(f) Except as provided in subsection (b)(3)(C), it shall not be a
- 30       defense that the offender did not know or have reason to know that the
- 31       victim did not consent to the sodomy, that the victim was overcome by
- 32       force or fear, or that the victim was unconscious or physically powerless.
- 33       Sec. 11. Section 71 of chapter 136 of the 2010 Session Laws of
- 34       Kansas is hereby amended to read as follows: Sec. 71. (a) Unlawful
- 35       voluntary sexual relations is:
- 36       (1) Engaging in any of the following acts with a child who is 14 or
- 37       more years of age but less than 16 years of age:
- 38       (A) Voluntary sexual intercourse;
- 39       (B) voluntary sodomy; or
- 40       (C) voluntary lewd fondling or touching;
- 41       (2) when the offender is less than 19 years of age;
- 42       (3) when the offender is less than four years of age older than the
- 43       child; *and*

1 (4) when the child and the offender are the only parties involved;  
2 and .

3 ~~(5) when the child and the offender are members of the opposite sex.~~

4 (b) Unlawful voluntary sexual relations as defined in:

5 (1) Subsection (a)(1)(A) is a severity level 8, person felony;

6 (2) subsection (a)(1)(B) is a severity level 9, person felony; and

7 (3) subsection (a)(1)(C) is a severity level 10, person felony.

8 Sec. 12. Section 81 of chapter 136 of the 2010 Session Laws of  
9 Kansas is hereby amended to read as follows: Sec. 81. (a) Incest is  
10 marriage to or engaging in otherwise lawful sexual intercourse or  
11 sodomy, as defined in section 65, and amendments thereto, with a person  
12 who is 18 or more years of age and who is known to the offender to be  
13 related to the offender as any of the following biological relatives: Parent,  
14 child, grandparent of any degree, grandchild of any degree, brother, sister,  
15 half-brother, half-sister, uncle, aunt, nephew or niece.

16 (b) Aggravated incest is:

17 (1) Marriage to a person who is under 18 years of age and who is  
18 known to the offender to be related to the offender as any of the following  
19 biological, step or adoptive relatives: Child, grandchild of any degree,  
20 brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or

21 (2) engaging in the following acts with a person who is 16 or more  
22 years of age but under 18 years of age and who is known to the offender  
23 to be related to the offender as any of the following biological, step or  
24 adoptive relatives: Child, grandchild of any degree, brother, sister, half-  
25 brother, half-sister, uncle, aunt, nephew or niece:

26 (A) Otherwise lawful sexual intercourse or sodomy as defined by  
27 section 65 of chapter 136 of the 2010 Session Laws of Kansas, and  
28 amendments thereto; or

29 (B) any lewd fondling, as described in subsection (a)(1) of section  
30 70 of chapter 136 of the 2010 Session Laws of Kansas, and amendments  
31 thereto.

32 (c) (1) Incest is a severity level 10, person felony.

33 (2) Aggravated incest as defined in:

34 (A) Subsection (b)(2)(A) is a :

35 (i) Severity level 5, person felony, *except as provided in subsection*  
36 *(c)(2)(A)(ii)*; and

37 (ii) *severity level 3, person felony if the victim is the offender's*  
38 *biological, step or adoptive child; and*

39 (B) subsection (b)(1) or (b)(2)(B) is a severity level 7, person felony.

40 Sec. 13. Section 92 of chapter 136 of the 2010 Session Laws of  
41 Kansas is hereby amended to read as follows: Sec. 92. (a) Unlawful use  
42 of recordings is:

43 (1) Knowingly, and without the consent of the owner, duplicating or

1 causing to be duplicated any sounds recorded on a phonograph record,  
2 disc, wire, tape, film or other article on which sounds are recorded, or  
3 recording or causing to be recorded any live performance, with the intent  
4 to sell, rent or cause to be sold or rented, any such duplicated sounds or  
5 any such recorded performance, or to give away such duplicated sounds  
6 or recorded performance as part of a promotion for any product or  
7 service;

8 (2) distributing or possessing with the intent to distribute, any article  
9 produced in violation of subsection (a)(1) knowing or having reasonable  
10 grounds to know that such article was produced in violation of law; ~~or~~

11 (3) *possessing any article produced in violation of subsection (a)(1)*  
12 *knowing or having reasonable grounds to know that such article was*  
13 *produced in violation of law; or*

14 ~~(3) (4)~~ knowingly selling, renting, offering for sale or rental, or  
15 possessing, transporting or manufacturing with intent to sell or rent, any  
16 phonograph record, audio or video disc, wire, audio or video tape, film or  
17 other article now known or later developed on which sounds, images, or  
18 both sounds and images are recorded or otherwise stored, unless the  
19 outside cover, box or jacket clearly and conspicuously discloses the name  
20 and address of the manufacturer of such recorded article.

21 (b) Unlawful use of recordings:

22 (1) Is a severity level 9, nonperson felony, except as provided in  
23 *subsections (b)(2) and (b)(3); and*

24 (2) as defined in subsection (a)(2) or ~~(a)(3) (4)~~, is a class A  
25 nonperson misdemeanor if the offense involves fewer than seven audio  
26 visual recordings, or fewer than 100 sound recordings during a 180-day  
27 period; ; *and*

28 (3) *as defined in subsection (a)(3), is a class B nonperson*  
29 *misdemeanor.*

30 (c) The provisions of subsection (a)(1) shall not apply to:

31 (1) Any broadcaster who, in connection with or as part of a radio or  
32 television broadcast or cable transmission, or for the purpose of archival  
33 preservation, duplicates any such sounds recorded on a sound recording;

34 (2) any person who duplicates such sounds or such performance for  
35 personal use, and without compensation for such duplication; or

36 (3) any sounds initially fixed in a tangible medium of expression  
37 after February 15, 1972.

38 (d) The provisions of subsections (a)(1) and (a)(3) shall not apply to  
39 any computer program or any audio or visual recording that is part of any  
40 computer program or to any article or device on which is exclusively  
41 recorded any such computer program.

42 (e) As used in this section:

43 (1) "Owner" means the person who owns the original fixation of

1 sounds embodied in the master phonograph record, master disc, master  
2 wire, master tape, master film or other device used for reproducing  
3 sounds on phonograph records, discs, wires, tapes, films or other articles  
4 now known or later developed upon which sound is recorded or otherwise  
5 stored, and from which the duplicated recorded sounds are directly or  
6 indirectly derived, or the person who owns the right to record such live  
7 performance; and

8 (2) "computer program" means a set of statements or instructions to  
9 be used directly or indirectly in a computer in order to bring about a  
10 certain result.

11 (f) It shall be the duty of all law enforcement officers, upon  
12 discovery, to confiscate all recorded devices that do not conform to the  
13 provisions of this section and that are possessed for the purpose of selling  
14 or renting such recorded devices, and all equipment and components used  
15 or intended to be used to knowingly manufacture recorded devices that do  
16 not conform to the provisions of such section for the purpose of selling or  
17 renting such recorded devices. The nonconforming recorded devices that  
18 are possessed for the purpose of selling or renting such recorded devices  
19 are contraband and shall be delivered to the district attorney for the  
20 county in which the confiscation was made, by court order, and shall be  
21 destroyed or otherwise disposed of, if the court finds that the person  
22 claiming title to such recorded devices possessed such recorded devices  
23 for the purpose of selling or renting such recorded devices. The  
24 equipment and components confiscated shall be delivered to the district  
25 attorney for the county in which the confiscation was made, by court  
26 order upon conviction, and may be given to a charitable or educational  
27 organization.

28 Sec. 14. Section 93 of chapter 136 of the 2010 Session Laws of  
29 Kansas is hereby amended to read as follows: Sec. 93. (a) Burglary is,  
30 without authority, entering into or remaining within any:

31 (1) Dwelling, with intent to commit a felony, theft or ~~sexual battery~~  
32 *sexually motivated crime* therein;

33 (2) building, manufactured home, mobile home, tent or other  
34 structure which is not a dwelling, with intent to commit a felony, theft or  
35 ~~sexual battery~~ *sexually motivated crime* therein; or

36 (3) vehicle, aircraft, watercraft, railroad car or other means of  
37 conveyance of persons or property, with intent to commit a felony, theft  
38 or ~~sexual battery~~ *sexually motivated crime* therein.

39 (b) Aggravated burglary is, without authority, entering into or  
40 remaining within any building, manufactured home, mobile home, tent or  
41 other structure, or any vehicle, aircraft, watercraft, railroad car or other  
42 means of conveyance of persons or property in which there is a human  
43 being with intent to commit a felony, theft or ~~sexual battery~~ *sexually*

1 *motivated crime* therein.

2 (c) (1) Burglary as defined in:

3 (A) Subsection (a)(1) is a severity level 7, person felony;

4 (B) subsection (a)(2) is a severity level 7, nonperson felony; and

5 (C) subsection (a)(3) is a severity level 9, nonperson felony.

6 (2) Aggravated burglary is a severity level 5, person felony.

7 (d) *As used in this section, "sexually motivated" means that one of*  
 8 *the purposes for which the defendant committed the crime was for the*  
 9 *purpose of the defendant's sexual gratification.*

10 Sec. 15. Section 129 of chapter 136 of the 2010 Session Laws of  
 11 Kansas is hereby amended to read as follows: Sec. 129. (a) Interference  
 12 with law enforcement is:

13 (1) Falsely reporting to a law enforcement officer or state  
 14 investigative agency ~~that a crime has been committed, knowing that such~~  
 15 ~~information is false and intending that the officer or agency shall act in~~  
 16 ~~reliance upon such information; or .~~

17 (A) *That a particular person has committed a crime, knowing that*  
 18 *such information is false and intending that the officer or agency shall*  
 19 *act in reliance upon such information; or*

20 (B) *any information, knowing that such information is false and*  
 21 *intending to influence, impede or obstruct such officer's or agency's duty;*

22 (2) *concealing, destroying or materially altering evidence with the*  
 23 *intent to prevent or hinder the apprehension or prosecution of any*  
 24 *person; or*

25 ~~(2)~~ (3) knowingly obstructing, resisting or opposing any person  
 26 authorized by law to serve process in the service or execution or in the  
 27 attempt to serve or execute any writ, warrant, process or order of a court,  
 28 or in the discharge of any official duty.

29 (b) (1) Interference with law enforcement as defined in subsection  
 30 (a)(1) or (a)(2) is a class A *nonperson* misdemeanor, *except as provided*  
 31 *in subsection (b)(2).*

32 (2) *Interference with law enforcement as defined in:*

33 (A) *Subsection (a)(1)(A) or (a)(2) is a severity level 8, nonperson*  
 34 *felony in the case of a felony; and*

35 (B) *subsection (a)(1)(B) is a severity level 9, nonperson felony in the*  
 36 *case of a felony.*

37 ~~(2)~~ (3) Interference with law enforcement as defined in subsection  
 38 (a)~~(2)~~ (3) is a:

39 (A) Severity level 9, nonperson felony in the case of a felony, or  
 40 resulting from parole or any authorized disposition for a felony; and

41 (B) class A nonperson misdemeanor in the case of a misdemeanor,  
 42 or resulting from any authorized disposition for a misdemeanor, or a civil  
 43 case.

1       Sec. 16. Section 130 of chapter 136 of the 2010 Session Laws of  
2 Kansas is hereby amended to read as follows: Sec. 130. (a) Interference  
3 with the judicial process is:

4       (1) Communicating with any judicial officer in relation to any matter  
5 which is or may be brought before such judge, magistrate, master or juror  
6 with intent improperly to influence such officer;

7       (2) committing any of the following acts, with intent to influence,  
8 impede or obstruct the finding, decision, ruling, order, judgment or decree  
9 of such judicial officer or prosecutor on any matter then pending before  
10 the officer or prosecutor:

11       (A) Communicating in any manner a threat of violence to any  
12 judicial officer or any prosecutor;

13       (B) harassing a judicial officer or a prosecutor by repeated  
14 vituperative communication; or

15       (C) picketing, parading or demonstrating near such officer's or  
16 prosecutor's residence or place of abode;

17       (3) picketing, parading or demonstrating in or near a building  
18 housing a judicial officer or a prosecutor with intent to impede or obstruct  
19 the finding, decision, ruling, order, judgment or decree of such judicial  
20 officer or prosecutor on any matter then pending before the officer or  
21 prosecutor;

22       (4) knowingly accepting or agreeing to accept anything of value as  
23 consideration for a promise:

24       (A) Not to initiate or aid in the prosecution of a person who has  
25 committed a crime; or

26       (B) to conceal ~~or~~, destroy *or materially alter* evidence of a crime; or  
27       (5) *concealing, destroying or materially altering evidence with the*  
28 *intent to influence, impede or obstruct any proceeding, civil or criminal;*  
29 *or*

30       ~~(5)~~ (6) when performed by a person summoned or sworn as a juror  
31 in any case:

32       (A) Intentionally soliciting, accepting or agreeing to accept from  
33 another any benefit as consideration to wrongfully give a verdict for or  
34 against any party in any proceeding, civil or criminal;

35       (B) intentionally promising or agreeing to wrongfully give a verdict  
36 for or against any party in any proceeding, civil or criminal; or

37       (C) knowingly receiving any evidence or information from anyone  
38 in relation to any matter or cause for the trial of which such juror has  
39 been or will be sworn, without the authority of the court or officer before  
40 whom such juror has been summoned, and without immediately  
41 disclosing the same to such court or officer.

42       (b) Interference with the judicial process as defined in:

43       (1) Subsection (a)(1) is a severity level 9, nonperson felony;



- 1 (2) subsection (a)(2) and (a)(3) is a class A nonperson misdemeanor;  
 2 (3) subsection (a)(4) is a:  
 3 (A) Severity level 8, nonperson felony if the crime is a felony; ~~or~~  
 4 *and*  
 5 (B) class A nonperson misdemeanor if the crime is a misdemeanor;  
 6 (4) *subsection (a)(5) is a:*  
 7 (A) *Severity level 8, nonperson felony if the proceeding is a felony*  
 8 *prosecution; and*  
 9 (B) *class A nonperson misdemeanor if the proceeding is any*  
 10 *proceeding other than a felony prosecution;*  
 11 (4) (5) ~~subsection (a)(5)(A)~~ (a)(6)(A) is a severity level 7, nonperson  
 12 felony; and  
 13 (5) (6) ~~subsection (a)(5)(B)~~ (a)(6)(B) or ~~(a)(5)(C)~~ (a)(6)(C) is a  
 14 severity level 9, nonperson felony.  
 15 (c) Nothing in this section shall limit or prevent the exercise by any  
 16 court of this state of its power to punish for contempt.

17 Sec. 17. Section 132 of chapter 136 of the 2010 Session Laws of  
 18 Kansas is hereby amended to read as follows: Sec. 132. (a) Simulating  
 19 legal process is:

20 (1) Distributing to another any document which simulates or  
 21 purports to be, or is designed to cause others to believe it to be, a  
 22 summons, petition, complaint or other ~~judicial~~ *legal* process, with ~~intent~~  
 23 ~~thereby to induce payment of a claim~~ *the intent to mislead the recipient*  
 24 *and cause the recipient to take action in reliance thereon;* or

25 (2) printing or distributing any such document, knowing that it shall  
 26 be so used.

27 (b) Simulating legal process is a class A nonperson misdemeanor.

28 (c) This section shall not apply to the printing or distribution of  
 29 blank forms of legal documents intended for actual use in judicial  
 30 proceedings.

31 Sec. 18. Section 136 of chapter 136 of the 2010 Session Laws of  
 32 Kansas is hereby amended to read as follows: Sec. 136. (a) Escape from  
 33 custody is escaping while held in custody on a:

34 (1) Charge or conviction of *or arrest for* a misdemeanor;

35 (2) charge ~~or~~, adjudication *or arrest* as a juvenile offender where  
 36 the act, if committed by an adult, would constitute a misdemeanor; or

37 (3) commitment to the state security hospital as provided in K.S.A.  
 38 22-3428, and amendments thereto, based on a finding that the person  
 39 committed an act constituting a misdemeanor or by a person 18 years of  
 40 age or over who is being held in custody on a adjudication of a  
 41 misdemeanor.

42 (b) Aggravated escape from custody is:

43 (1) Escaping while held in custody:

- 1 (A) Upon a charge or conviction of *or arrest for* a felony;
- 2 (B) upon a charge ~~or~~ , adjudication *or arrest* as a juvenile offender
- 3 where the act, if committed by an adult, would constitute a felony;
- 4 (C) prior to or upon a finding of probable cause for evaluation as a
- 5 sexually violent predator as provided in K.S.A. 59-29a05, and
- 6 amendments thereto;
- 7 (D) upon commitment to a treatment facility as a sexually violent
- 8 predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;
- 9 (E) upon a commitment to the state security hospital as provided in
- 10 K.S.A. 22-3428, and amendments thereto, based on a finding that the
- 11 person committed an act constituting a felony;
- 12 (F) by a person 18 years of age or over who is being held on an
- 13 adjudication of a felony; or
- 14 (G) upon incarceration at a state correctional institution while in the
- 15 custody of the secretary of corrections.
- 16 (2) Escaping effected or facilitated by the use of violence or the
- 17 threat of violence against any person while held in custody:
- 18 (A) On a charge or conviction of any crime;
- 19 (B) on a charge or adjudication as a juvenile offender where the act,
- 20 if committed by an adult, would constitute a felony;
- 21 (C) prior to or upon a finding of probable cause for evaluation as a
- 22 sexually violent predator as provided in K.S.A. 59-29a05, and
- 23 amendments thereto;
- 24 (D) upon commitment to a treatment facility as a sexually violent
- 25 predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;
- 26 (E) upon a commitment to the state security hospital as provided in
- 27 K.S.A. 22-3428, and amendments thereto, based on a finding that the
- 28 person committed an act constituting any crime;
- 29 (F) by a person 18 years of age or over who is being held on a
- 30 charge or adjudication of a misdemeanor of felony; or
- 31 (G) upon incarceration at a state correctional institution while in the
- 32 custody of the secretary of corrections.
- 33 (c) (1) Escape from custody is a class A nonperson misdemeanor.
- 34 (2) Aggravated escape from custody as defined in:
- 35 (A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F)
- 36 is a severity level 8, nonperson felony;
- 37 (B) subsection (b)(1)(B); *or* (b)(1)(G), ~~(b)(2)(B) or (b)(2)(G)~~ is a
- 38 severity level 5, nonperson felony;
- 39 (C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F)
- 40 is a severity level 6, ~~nonperson~~ *person* felony; *and*
- 41 (D) *subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person*
- 42 *felony.*
- 43 (d) As used in this section and section 137 of chapter 136 of the

1 2010 Session Laws of Kansas, and amendments thereto:

2 (1) "Custody" means arrest; detention in a facility for holding  
3 persons charged with or convicted of crimes or charged or adjudicated as  
4 a juvenile offender; detention for extradition or deportation; detention in a  
5 hospital or other facility pursuant to court order, imposed as a specific  
6 condition of probation or parole or imposed as a specific condition of  
7 assignment to a community correctional services program; commitment  
8 to the state security hospital as provided in K.S.A. 22-3428, and  
9 amendments thereto; or any other detention for law enforcement  
10 purposes. "Custody" does not include general supervision of a person on  
11 probation or parole or constraint incidental to release on bail;

12 (2) "escape" means departure from custody without lawful authority  
13 or failure to return to custody following temporary leave lawfully granted  
14 pursuant to express authorization of law or order of a court;

15 (3) "juvenile offender" means the same as in K.S.A. 2009 2010  
16 Supp. 38-2302, and amendments thereto; and

17 (4) "state correctional institution" means the same as in K.S.A. 75-  
18 5202, and amendments thereto.

19 (e) *As used in this section, the term "charge" shall not require that*  
20 *the offender was held on a written charge contained in a complaint,*  
21 *information or indictment, if such offender was arrested prior to such*  
22 *offender's escape from custody.*

23 Sec. 19. Section 165 of chapter 136 of the 2010 Session Laws of  
24 Kansas is hereby amended to read as follows: Sec. 165. (a) Bribery is:

25 (1) ~~Offering, giving or promising to give, directly or indirectly, to~~  
26 ~~any person who is a public officer, candidate for public office or public~~  
27 ~~employee any benefit, reward or consideration to which the person is not~~  
28 ~~legally entitled with intent thereby to influence the person with respect to~~  
29 ~~the performance of the person's powers or duties as a public officer or~~  
30 ~~employee with the intent to improperly influence a public official,~~  
31 ~~offering, giving or promising to give, directly or indirectly, to any public~~  
32 ~~official any benefit, reward or consideration which the public official is~~  
33 ~~not permitted by law to accept, in exchange for the performance or~~  
34 ~~omission of performance of the public official's powers or duties or a~~  
35 ~~promise to perform or omit performance of such powers or duties; or~~

36 (2) ~~the act of a person who is a public officer, candidate for public~~  
37 ~~office or public employee, in requesting, receiving or agreeing to receive,~~  
38 ~~directly or indirectly, any benefit, reward or consideration given with~~  
39 ~~intent that the person will be so influenced the act of a public official,~~  
40 ~~intentionally requesting, receiving or agreeing to receive, directly or~~  
41 ~~indirectly, any benefit, reward or consideration, which the public official~~  
42 ~~is not permitted by law to accept, with the intent to improperly influence~~  
43 ~~such public official and in exchange for the performance or omission of~~

1 *performance of the public official's powers or duties or a promise to*  
2 *perform or omit performance of such powers or duties.*

3 (b) Bribery is a severity level 7, nonperson felony. Upon conviction  
4 of bribery, a public ~~officer or public employee~~ *official* shall forfeit the  
5 person's office or employment. Notwithstanding an expungement of the  
6 conviction pursuant to section 254 *of chapter 136 of the 2010 Session*  
7 *Laws of Kansas*, and amendments thereto, any person convicted of  
8 bribery under the provisions of this section shall be forever disqualified  
9 from holding public office or public employment in this state.

10 (c) *As used in this section, "public official" means any person who*  
11 *is a public officer, candidate for public office or public employee.*

12 Sec. 20. Section 197 of chapter 136 of the 2010 Session Laws of  
13 Kansas is hereby amended to read as follows: Sec. 197. (a) Criminal  
14 possession of explosives is the possession of any explosive or detonating  
15 substance by a person who, within five years preceding such possession,  
16 has been convicted of a felony under the laws of this or any other  
17 jurisdiction or has been released from imprisonment for a felony.

18 (b) Criminal disposal of explosives is knowingly *and without lawful*  
19 *authority* distributing any explosive or detonating substance to a person:

20 (1) Under 21 years of age, *regardless of whether the seller, donor or*  
21 *transferor knows the age of such person;*

22 (2) who is both addicted to and an unlawful user of a controlled  
23 substance; or

24 (3) who, within the preceding five years, has been convicted of a  
25 felony under the laws of this or any other jurisdiction or has been released  
26 from imprisonment for a felony.

27 (c) Carrying concealed explosives is carrying any explosive or  
28 detonating substance on the person in a wholly or partly concealed  
29 manner.

30 (d) (1) Criminal possession of explosives is a severity level 7,  
31 person felony.

32 (2) Criminal disposal of explosives is a severity level 10, person  
33 felony.

34 (3) Carrying concealed explosives is a class  $\in$  *A person*  
35 misdemeanor.

36 (e) As used in subsections (a) and (b), "explosives" means any  
37 chemical compound, mixture or device, of which the primary purpose is  
38 to function by explosion, and includes, but is not limited to, dynamite and  
39 other high explosives, black powder, pellet powder, initiating explosives,  
40 detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

41 Sec. 21. Section 223 of chapter 136 of the 2010 Session Laws of  
42 Kansas is hereby amended to read as follows: Sec. 223. (a) Cruelty to  
43 animals is:

1 (1) Knowingly and maliciously killing, injuring, maiming, torturing,  
2 burning or mutilating any animal;

3 (2) knowingly abandoning any animal in any place without making  
4 provisions for its proper care;

5 (3) having physical custody of any animal and knowingly failing to  
6 provide such food, potable water, protection from the elements,  
7 opportunity for exercise and other care as is needed for the health or well-  
8 being of such kind of animal;

9 (4) intentionally using a wire, pole, stick, rope or any other object to  
10 cause an equine to lose its balance or fall, for the purpose of sport or  
11 entertainment;

12 (5) knowingly but not maliciously killing or injuring any animal; or

13 (6) administering any poison to any domestic animal.

14 (b) Cruelty to animals as defined in:

15 (1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon  
16 conviction of subsection (a)(1) or (a)(6), a person shall be sentenced to  
17 not less than 30 days or more than one year's imprisonment and be fined  
18 not less than \$500 nor more than \$5,000. The person convicted shall not  
19 be eligible for release on probation, suspension or reduction of sentence  
20 or parole until the person has served the minimum mandatory sentence as  
21 provided herein. During the mandatory 30 days imprisonment, such  
22 offender shall have a psychological evaluation prepared for the court to  
23 assist the court in determining conditions of probation. Such conditions  
24 shall include, but not be limited to, the completion of an anger  
25 management program; and

26 (2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) ~~are~~ is a:

27 (A) Class A nonperson misdemeanor, except as provided in  
28 subsection (b)(2)(B); and

29 (B) nonperson felony upon the second or subsequent conviction of  
30 cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5).  
31 Upon such conviction, a person shall be sentenced to not less than five  
32 days or more than one year's imprisonment and be fined not less than  
33 \$500 nor more than \$2,500. The person convicted shall not be eligible for  
34 release on probation, suspension or reduction of sentence or parole until  
35 the person has served the minimum mandatory sentence as provided  
36 herein.

37 (c) The provisions of this section shall not apply to:

38 (1) Normal or accepted veterinary practices;

39 (2) bona fide experiments carried on by commonly recognized  
40 research facilities;

41 (3) killing, attempting to kill, trapping, catching or taking of any  
42 animal in accordance with the provisions of chapter 32 or chapter 47 of  
43 the Kansas Statutes Annotated, and amendments thereto;

- 1 (4) rodeo practices accepted by the rodeo cowboys' association;
- 2 (5) the humane killing of an animal which is diseased or disabled  
3 beyond recovery for any useful purpose, or the humane killing of animals  
4 for population control, by the owner thereof or the agent of such owner  
5 residing outside of a city or the owner thereof within a city if no animal  
6 shelter, pound or licensed veterinarian is within the city, or by a licensed  
7 veterinarian at the request of the owner thereof, or by any officer or agent  
8 of an incorporated humane society, the operator of an animal shelter or  
9 pound, a local or state health officer or a licensed veterinarian three  
10 business days following the receipt of any such animal at such society,  
11 shelter or pound;
- 12 (6) with respect to farm animals, normal or accepted practices of  
13 animal husbandry, including the normal and accepted practices for the  
14 slaughter of such animals for food or by-products and the careful or  
15 thrifty management of one's herd or animals, including animal care  
16 practices common in the industry or region;
- 17 (7) the killing of any animal by any person at any time which may  
18 be found outside of the owned or rented property of the owner or  
19 custodian of such animal and which is found injuring or posing a threat to  
20 any person, farm animal or property;
- 21 (8) an animal control officer trained by a licensed veterinarian in the  
22 use of a tranquilizer gun, using such gun with the appropriate dosage for  
23 the size of the animal, when such animal is vicious or could not be  
24 captured after reasonable attempts using other methods;
- 25 (9) laying an equine down for medical or identification purposes;
- 26 (10) normal or accepted practices of pest control, as defined in  
27 subsection (x) of K.S.A. 2-2438a, and amendments thereto; or
- 28 (11) accepted practices of animal husbandry pursuant to regulations  
29 promulgated by the United States department of agriculture for domestic  
30 pet animals under the animal welfare act, public law 89-544, as amended  
31 and in effect on July 1, 2006.
- 32 (d) The provisions of subsection (a)(6) shall not apply to any person  
33 exposing poison upon their premises for the purpose of destroying  
34 wolves, coyotes or other predatory animals.
- 35 (e) Any public health officer, law enforcement officer, licensed  
36 veterinarian or officer or agent of any incorporated humane society,  
37 animal shelter or other appropriate facility may take into custody any  
38 animal, upon either private or public property, which clearly shows  
39 evidence of cruelty to animals, ~~as defined in this section~~. Such officer,  
40 agent or veterinarian may inspect, care for or treat such animal or place  
41 such animal in the care of a duly incorporated humane society or licensed  
42 veterinarian for treatment, boarding or other care or, if an officer of such  
43 humane society or such veterinarian determines that the animal appears to

1 be diseased or disabled beyond recovery for any useful purpose, for  
2 humane killing. If the animal is placed in the care of an animal shelter,  
3 the animal shelter shall notify the owner or custodian, if known or  
4 reasonably ascertainable. If the owner or custodian is charged with a  
5 violation of this section, the board of county commissioners in the county  
6 where the animal was taken into custody shall establish and approve  
7 procedures whereby the animal shelter may petition the district court to  
8 be allowed to place the animal for adoption or euthanize the animal at any  
9 time after 2021 days after the owner or custodian is notified or, if the  
10 owner or custodian is not known or reasonably ascertainable after 2021  
11 days after the animal is taken into custody, unless the owner or custodian  
12 of the animal files a renewable cash or performance bond with the county  
13 clerk of the county where the animal is being held, in an amount equal to  
14 not less than the cost of care and treatment of the animal for 30 days.  
15 Upon receiving such petition, the court shall determine whether the  
16 animal may be placed for adoption or euthanized. The board of county  
17 commissioners in the county where the animal was taken into custody  
18 shall review the cost of care and treatment being charged by the animal  
19 shelter maintaining the animal.

20 (f) The owner or custodian of an animal placed for adoption or killed  
21 pursuant to subsection (e) shall not be entitled to recover damages for the  
22 placement or killing of such animal unless the owner proves that such  
23 placement or killing was unwarranted.

24 (g) Expenses incurred for the care, treatment or boarding of any  
25 animal, taken into custody pursuant to subsection (e), pending  
26 prosecution of the owner or custodian of such animal for the crime of  
27 cruelty to animals, shall be assessed to the owner or custodian as a cost of  
28 the case if the owner or custodian is adjudicated guilty of such crime.

29 ~~(h) Upon the filing of a sworn complaint by any public health  
30 officer, law enforcement officer, licensed veterinarian or officer or agent  
31 of any incorporated humane society, animal shelter or other appropriate  
32 facility alleging the commission of cruelty to animals, the county or  
33 district attorney shall determine the validity of the complaint and shall  
34 forthwith file charges for the crime if the complaint appears to be valid.~~

35 (i) (h) If a person is adjudicated guilty of the crime of cruelty to  
36 animals, and the court having jurisdiction is satisfied that an animal  
37 owned or possessed by such person would be in the future subjected to  
38 such crime, such animal shall not be returned to or remain with such  
39 person. Such animal may be turned over to a duly incorporated humane  
40 society or licensed veterinarian for sale or other disposition.

41 (j) (i) As used in this section:

42 (1) "Equine" means a horse, pony, mule, jenny, donkey or hinny; and

43 (2) "maliciously" means a state of mind characterized by actual evil-

1 mindedness or specific intent to do a harmful act without a reasonable  
2 justification or excuse.

3 Sec. 22. Section 224 of chapter 136 of the 2010 Session Laws of  
4 Kansas is hereby amended to read as follows: Sec. 224. (a) Unlawful  
5 disposition of animals is knowingly raffling; *or giving as a prize or*  
6 *premium or using as an advertising device or promotional display* living  
7 rabbits or chickens, ducklings or goslings.

8 (b) Unlawful disposition of animals is a class C misdemeanor.

9 (c) The provisions of this section shall not apply to a person giving  
10 such animals to minors for use in agricultural projects under the  
11 supervision of commonly recognized youth farm organizations.

12 Sec. 23. Section 300 of chapter 136 of the 2010 Session Laws of  
13 Kansas is hereby amended to read as follows: Sec. 300. (a) The  
14 provisions of subsections (a), (b), (c), (d), (e) and (h) of section 246 *of*  
15 *chapter 136 of the 2010 Session Laws of Kansas*, and amendments  
16 thereto, regarding multiple sentences shall apply to the sentencing of  
17 offenders pursuant to the sentencing guidelines. The mandatory  
18 consecutive sentence requirements contained in subsections (c), (d) and  
19 (e) of section 246 *of chapter 136 of the 2010 Session Laws of Kansas*, and  
20 amendments thereto, shall not apply if such application would result in a  
21 manifest injustice.

22 (b) The sentencing judge shall otherwise have discretion to impose  
23 concurrent or consecutive sentences in multiple conviction cases. The  
24 sentencing judge *may consider the need to impose an overall sentence*  
25 *that is proportionate to the harm and culpability and shall state on the*  
26 *record if the sentence is to be served concurrently or consecutively. In*  
27 *cases where consecutive sentences may be imposed by the sentencing*  
28 *judge, the following shall apply:*

29 (1) When the sentencing judge imposes multiple sentences  
30 consecutively, the consecutive sentences shall consist of an imprisonment  
31 term which *is may not exceed* the sum of the consecutive imprisonment  
32 terms, and a supervision term. *The sentencing judge shall have the*  
33 *discretion to impose a consecutive term of imprisonment for a crime*  
34 *other than the primary crime of any term of months not to exceed the*  
35 *nonbase sentence as determined under subsection (b)(5).* The postrelease  
36 supervision term will be based on the longest supervision term imposed  
37 for any of the crimes.

38 (2) The sentencing judge shall establish a base sentence for the  
39 primary crime. The primary crime is the crime with the highest crime  
40 severity ranking. An off-grid crime shall not be used as the primary crime  
41 in determining the base sentence when imposing multiple sentences. If  
42 sentences for off-grid and on-grid convictions are ordered to run  
43 consecutively, the offender shall not begin to serve the on-grid sentence



1 until paroled from the off-grid sentence, and the postrelease supervision  
2 term will be based on the off-grid crime. If more than one crime of  
3 conviction is classified in the same crime category, the sentencing judge  
4 shall designate which crime will serve as the primary crime. In the  
5 instance of sentencing with both the drug grid and the nondrug grid and  
6 simultaneously having a presumption of imprisonment and probation, the  
7 sentencing judge shall use the crime which presumes imprisonment as the  
8 primary crime. In the instance of sentencing with both the drug grid and  
9 the nondrug grid and simultaneously having a presumption of either both  
10 probation or both imprisonment, the sentencing judge shall use the crime  
11 with the longest sentence term as the primary crime.

12 (3) The base sentence is set using the total criminal history score  
13 assigned.

14 (4) The total prison sentence imposed in a case involving multiple  
15 convictions arising from multiple counts within an information,  
16 complaint or indictment cannot exceed twice the base sentence. This limit  
17 shall apply only to the total sentence, and it shall not be necessary to  
18 reduce the duration of any of the nonbase sentences imposed to be served  
19 consecutively to the base sentence. The postrelease supervision term will  
20 reflect only the longest such term assigned to any of the crimes for which  
21 consecutive sentences are imposed. Supervision periods shall not be  
22 aggregated.

23 (5) Nonbase sentences shall not have criminal history scores applied,  
24 as calculated in the criminal history I column of the grid, but base  
25 sentences shall have the full criminal history score assigned. In the event  
26 a conviction designated as the primary crime in a multiple conviction  
27 case is reversed on appeal, the appellate court shall remand the multiple  
28 conviction case for resentencing. Upon resentencing, if the case remains a  
29 multiple conviction case the court shall follow all of the provisions of this  
30 section concerning the sentencing of multiple conviction cases.

31 (6) If the sentence for the primary crime is a prison term, the entire  
32 imprisonment term of the consecutive sentences will be served in prison.

33 (7) If the sentence for the consecutive sentences is a prison term, the  
34 postrelease supervision term is a term of postrelease supervision as  
35 established for the primary crime.

36 (8) If the sentence for the primary crime is a nonprison sentence, a  
37 nonprison term will be imposed for each crime conviction, but the  
38 nonprison terms shall not be aggregated or served consecutively even  
39 though the underlying prison sentences have been ordered to be served  
40 consecutively. Upon revocation of the nonprison sentence, the offender  
41 shall serve the prison sentences consecutively as provided in this section.

42 (c) The following shall apply for a departure from the presumptive  
43 sentence based on aggravating factors within the context of consecutive

1 sentences:

2 (1) The court may depart from the presumptive limits for  
3 consecutive sentences only if the judge finds substantial and compelling  
4 reasons to impose a departure sentence for any of the individual crimes  
5 being sentenced consecutively.

6 (2) When a departure sentence is imposed for any of the individual  
7 crimes sentenced consecutively, the imprisonment term of that departure  
8 sentence shall not exceed twice the maximum presumptive imprisonment  
9 term that may be imposed for that crime.

10 (3) The total imprisonment term of the consecutive sentences,  
11 including the imprisonment term for the departure crime, shall not exceed  
12 twice the maximum presumptive imprisonment term of the departure  
13 sentence following aggravation.

14 Sec. 24. K.S.A. 2010 Supp. 21-3302, 21-3446, 21-3447, 21-3506,  
15 21-4010, 21-4012 and 21-4311 and sections 9, 34, 37, 61, 68, 71, 81, 92,  
16 93, 129, 130, 132, 136, 165, 197, 223, 224 and 300 of chapter 136 of the  
17 2010 Session Laws of Kansas are hereby repealed.

18 Sec. 25. This act shall take effect and be in force from and after its  
19 publication in the statute book.

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