

HOUSE BILL No. 2092

By Committee on Corrections and Juvenile Justice

1-18

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to loss values; amending K.S.A. 2016 Supp. 21-5417, 21-5802, 21-
3 5813, 21-5821, 21-5825, 21-5828, 21-5830, 21-5927, 21-6002, 21-
4 6004, 21-6005 and 21-6205 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 21-5417 is hereby amended to read as
8 follows: 21-5417. (a) Mistreatment of a dependent adult is knowingly
9 committing one or more of the following acts:

10 (1) Infliction of physical injury, unreasonable confinement or
11 unreasonable punishment upon a dependent adult;

12 (2) taking the personal property or financial resources of a dependent
13 adult for the benefit of the defendant or another person by taking control,
14 title, use or management of the personal property or financial resources of
15 a dependent adult through:

16 (A) Undue influence, coercion, harassment, duress, deception, false
17 representation, false pretense or without adequate consideration to such
18 dependent adult;

19 (B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et
20 seq., and amendments thereto; or

21 (C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et
22 seq., and amendments thereto; or

23 (3) omission or deprivation of treatment, goods or services that are
24 necessary to maintain physical or mental health of such dependent adult.

25 (b) Mistreatment of an elder person is knowingly committing one or
26 more of the following acts:

27 (1) Taking the personal property or financial resources of an elder
28 person for the benefit of the defendant or another person by taking control,
29 title, use or management of the personal property or financial resources of
30 an elder person through:

31 (A) Undue influence, coercion, harassment, duress, deception, false
32 representation, false pretense or without adequate consideration to such
33 elder person;

34 (B) a violation of the Kansas power of attorney act, K.S.A. 58-650 et
35 seq., and amendments thereto; or

36 (C) a violation of the Kansas uniform trust code, K.S.A. 58a-101 et

- 1 seq., and amendments thereto; or
- 2 (2) omission or deprivation of treatment, goods or services that are
- 3 necessary to maintain physical or mental health of such elder person.
- 4 (c) Mistreatment of a dependent adult as defined in:
- 5 (1) Subsection (a)(1) is a severity level 5, person felony;
- 6 (2) subsection (a)(2) if the aggregate amount of the value of the
- 7 personal property or financial resources is:
 - 8 (A) \$1,000,000 or more is a severity level 2, person felony;
 - 9 (B) at least \$250,000 but less than \$1,000,000 is a severity level 3,
 - 10 person felony;
 - 11 (C) at least \$100,000 but less than \$250,000 is a severity level 4,
 - 12 person felony;
 - 13 (D) at least \$25,000 but less than \$100,000 is a severity level 5,
 - 14 person felony;
 - 15 (E) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 7,
 - 16 person felony;
 - 17 (F) less than ~~\$1,000~~ \$1,500 is a class A person misdemeanor, except
 - 18 as provided in subsection (c)(2)(G); and
 - 19 (G) less than ~~\$1,000~~ \$1,500 and committed by a person who has,
 - 20 within five years immediately preceding commission of the crime, been
 - 21 convicted of mistreatment of a dependent adult two or more times is a
 - 22 severity level 7, person felony; and
 - 23 (3) subsection (a)(3) is a severity level 8, person felony.
- 24 (d) Mistreatment of an elder person as defined in:
 - 25 (1) Subsection (b)(1) if the aggregate amount of the value of the
 - 26 personal property or financial resources is:
 - 27 (A) \$1,000,000 or more is a severity level 2, person felony;
 - 28 (B) at least \$250,000 but less than \$1,000,000 is a severity level 3,
 - 29 person felony;
 - 30 (C) at least \$100,000 but less than \$250,000 is a severity level 4,
 - 31 person felony;
 - 32 (D) at least \$25,000 but less than \$100,000 is a severity level 5,
 - 33 person felony;
 - 34 (E) at least \$5,000 but less than \$25,000 is a severity level 7, person
 - 35 felony;
 - 36 (F) less than \$5,000 is a class A person misdemeanor, except as
 - 37 provided in subsection (d)(1)(G); and
 - 38 (G) less than \$5,000 and committed by a person who has, within five
 - 39 years immediately preceding commission of the crime, been convicted of
 - 40 mistreatment of an elder person two or more times is a severity level 7,
 - 41 person felony; and
 - 42 (2) subsection (b)(2) is a severity level 8, person felony.
 - 43 (e) It shall be an affirmative defense to any prosecution for

1 mistreatment of a dependent adult or mistreatment of an elder person as
2 described in subsections (a)(2) and (b)(1) that:

3 (1) The personal property or financial resources were given as a gift
4 consistent with a pattern of gift giving to the person that existed before the
5 dependent adult or elder person became vulnerable;

6 (2) the personal property or financial resources were given as a gift
7 consistent with a pattern of gift giving to a class of individuals that existed
8 before the dependent adult or elder person became vulnerable;

9 (3) the personal property or financial resources were conferred as a
10 gift by the dependent adult or elder person to the benefit of a person or
11 class of persons, and such gift was reasonable under the circumstances; or

12 (4) a court approved the transaction before the transaction occurred.

13 (f) No dependent adult or elder person is considered to be mistreated
14 under subsection (a)(1), (a)(3) or (b)(2) for the sole reason that such
15 dependent adult or elder person relies upon or is being furnished treatment
16 by spiritual means through prayer in lieu of medical treatment in
17 accordance with the tenets and practices of a recognized church or
18 religious denomination of which such dependent adult or elder person is a
19 member or adherent.

20 (g) As used in this section:

21 (1) "Adequate consideration" means the personal property or
22 financial resources were given to the person as payment for bona fide
23 goods or services provided by such person and the payment was at a rate
24 customary for similar goods or services in the community that the
25 dependent adult or elder person resided in at the time of the transaction.

26 (2) "Dependent adult" means an individual 18 years of age or older
27 who is unable to protect the individual's own interest. Such term shall
28 include, but is not limited to, any:

29 (A) Resident of an adult care home including, but not limited to,
30 those facilities defined by K.S.A. 39-923, and amendments thereto;

31 (B) adult cared for in a private residence;

32 (C) individual kept, cared for, treated, boarded, confined or otherwise
33 accommodated in a medical care facility;

34 (D) individual with intellectual disability or a developmental
35 disability receiving services through a community facility for people with
36 intellectual disability or residential facility licensed under K.S.A. 75-
37 3307b, and amendments thereto;

38 (E) individual with a developmental disability receiving services
39 provided by a community service provider as provided in the
40 developmental disability reform act; or

41 (F) individual kept, cared for, treated, boarded, confined or otherwise
42 accommodated in a state psychiatric hospital or state institution for people
43 with intellectual disability.

1 (3) "Elder person" means a person 70 years of age or older.

2 (h) An offender who violates the provisions of this section may also
3 be prosecuted for, convicted of, and punished for any other offense in
4 article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or
5 K.S.A. 2016 Supp. 21-6418, and amendments thereto.

6 Sec. 2. K.S.A. 2016 Supp. 21-5802 is hereby amended to read as
7 follows: 21-5802. (a) Theft of property lost, mislaid or delivered by
8 mistake is obtaining control of property of another by a person who:

9 (1) Knows or learns the identity of the owner thereof;

10 (2) fails to take reasonable measures to restore to the owner lost
11 property, mislaid property or property delivered by a mistake; and

12 (3) intends to permanently deprive the owner of the possession, use
13 or benefit of the property.

14 (b) Theft of property lost, mislaid or delivered by mistake of the
15 value of:

16 (1) \$100,000 or more is a severity level 5, nonperson felony;

17 (2) at least \$25,000 but less than \$100,000 is a severity level 7,
18 nonperson felony;

19 (3) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9,
20 nonperson felony; and

21 (4) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

22 (c) As used in this section, "property delivered by mistake" includes,
23 but is not limited to, a mistake as to the:

24 (1) Nature or amount of the property; or

25 (2) identity of the recipient of the property.

26 Sec. 3. K.S.A. 2016 Supp. 21-5813 is hereby amended to read as
27 follows: 21-5813. (a) Criminal damage to property is by means other than
28 by fire or explosive:

29 (1) Knowingly damaging, destroying, defacing or substantially
30 impairing the use of any property in which another has an interest without
31 the consent of such other person; or

32 (2) damaging, destroying, defacing or substantially impairing the use
33 of any property with intent to injure or defraud an insurer or lienholder.

34 (b) Aggravated criminal damage to property is criminal damage to
35 property, as defined in subsection (a)(1), if the value or amount of damage
36 exceeds \$5,000, committed with the intent to obtain any regulated scrap
37 metal as defined in K.S.A. 2016 Supp. 50-6,109, and amendments thereto,
38 or any items listed in K.S.A. 2016 Supp. 50-6,111(d), and amendments
39 thereto, upon:

40 (1) Any building, structure, personal property or place used primarily
41 for worship or any religious purpose;

42 (2) any building, structure or place used as a school or as an
43 educational facility;

- 1 (3) any building, structure or place used by a non-profit or charitable
- 2 business, corporation, firm, service or association;
- 3 (4) any grave, cemetery, mortuary or personal property of the
- 4 cemetery or mortuary or other facility used for the purpose of burial or
- 5 memorializing the dead;
- 6 (5) any agricultural property or agricultural infrastructure;
- 7 (6) any construction, mining or recycling facility, structure or site;
- 8 (7) any utility, utility service, telecommunication, telecommunication
- 9 service, cable or video service facility, property, building, structure, site or
- 10 component thereof;
- 11 (8) any municipal, county or state building, structure, site or property;
- 12 (9) any residential, commercial, industrial or agricultural irrigation,
- 13 sprinkler or watering system or component thereof;
- 14 (10) the infrastructure of any residence, building or structure;
- 15 (11) any historical marker, plaque or work of art;
- 16 (12) any vehicle or transportation building, facility, structure, site or
- 17 property; or
- 18 (13) any other building, structure, residence, facility, site, place,
- 19 property, vehicle or any infrastructure thereof.
- 20 (c) Criminal damage to property if the property:
 - 21 (1) Is damaged to the extent of \$25,000 or more is a severity level 7,
 - 22 nonperson felony;
 - 23 (2) is damaged to the extent of at least ~~\$1,000~~ \$1,500 but less than
 - 24 \$25,000 is a severity level 9, nonperson felony; and
 - 25 (3) damaged is of the value of less than ~~\$1,000~~ \$1,500 or is of the
 - 26 value of ~~\$1,000~~ \$1,500 or more and is damaged to the extent of less than
 - 27 ~~\$1,000~~ \$1,500 is a class B nonperson misdemeanor.
 - 28 (d) Aggravated criminal damage to property is a severity level 6,
 - 29 nonperson felony.
 - 30 (e) (1) As used in subsection (b):
 - 31 (A) "Infrastructure" includes any fixture to, attachment upon or part
 - 32 of a residence, building or structure's framework, electrical wiring and
 - 33 appurtenances, plumbing or heating and air systems; and
 - 34 (B) "site" includes any area, place or location set aside for specific
 - 35 use or uses, including, but not limited to, storage, staging, repair, sorting,
 - 36 transportation, planning or organization.
 - 37 (2) Any of the items or locations listed in subsection (b) shall include
 - 38 the curtilage, adjoining land and any improvements thereupon.
 - 39 (3) Nothing in subsection (b) shall be construed to require the:
 - 40 (A) Construction or existence of any door, gate, fence, barrier or wall;
 - 41 or
 - 42 (B) existence of notice, postings or signs to potential trespassers.
 - 43 (f) In determining the amount of damage to property, damages may

1 include the cost of repair or replacement of the property that was damaged,
2 the reasonable cost of the loss of production, crops and livestock,
3 reasonable labor costs of any kind, reasonable material costs of any kind
4 and any reasonable costs that are attributed to equipment that is used to
5 abate or repair the damage to the property.

6 Sec. 4. K.S.A. 2016 Supp. 21-5821 is hereby amended to read as
7 follows: 21-5821. (a) Giving a worthless check is the making, drawing,
8 issuing or delivering or causing or directing the making, drawing, issuing
9 or delivering of any check on any financial institution for the payment of
10 money or its equivalent with intent to defraud and knowing, at the time of
11 the making, drawing, issuing or delivering of such check that the maker or
12 drawer has no deposit in or credits with the financial institution or has not
13 sufficient funds in, or credits with, the financial institution for the payment
14 of such check in full upon its presentation.

15 (b) Giving a worthless check is a:

16 (1) Severity level 7, nonperson felony if:

17 (A) The check is drawn for \$25,000 or more; or

18 (B) more than one worthless check is given within a seven-day period
19 and the combined total of the checks is \$25,000 or more;

20 (2) severity level 9, nonperson felony if:

21 (A) The check is drawn for at least ~~\$1,000~~ *\$1,500* but less than
22 \$25,000;

23 (B) more than one worthless check is given within a seven-day period
24 and the combined total of the checks is at least ~~\$1,000~~ *\$1,500* but less than
25 \$25,000; or

26 (C) the person giving the worthless check has, within five years
27 immediately preceding commission of the crime, been convicted of giving
28 a worthless check two or more times; and

29 (3) class A nonperson misdemeanor if the check is drawn for less than
30 ~~\$1,000~~ *\$1,500*.

31 (c) As used in this section and K.S.A. 2016 Supp. 21-5822, and
32 amendments thereto:

33 (1) "Check" is any check, order or draft on a financial institution;

34 (2) "financial institution" means any bank, credit union, savings and
35 loan association or depository; and

36 (3) "notice" includes oral or written notice to the person entitled
37 thereto.

38 (d) In any prosecution against the maker or drawer of a check,
39 payment of which has been refused by the financial institution on account
40 of insufficient funds, the making, drawing, issuing or delivering of such
41 check shall be prima facie evidence of intent to defraud and of knowledge
42 of insufficient funds in, or on deposit with, the financial institution:

43 (1) Unless the maker or drawer pays the holder thereof the amount

1 due thereon and a service charge not exceeding \$30 for each check, within
2 seven days after notice has been given to the maker or drawer that such
3 check has not been paid by the financial institution. Written notice shall be
4 presumed to have been given when deposited as restricted matter in the
5 United States mail, addressed to the person to be given notice at such
6 person's address as it appears on such check; or

7 (2) if a postdated date is placed on the check without the knowledge
8 or consent of the payee.

9 (e) It shall not be a defense to a prosecution under this section that the
10 check upon which such prosecution is based was:

11 (1) Postdated, unless such check was presented for payment prior to
12 the postdated date; or

13 (2) given to a payee who had knowledge or had been informed, when
14 the payee accepted such check that the maker did not have sufficient funds
15 in the hands of the financial institution to pay such check upon
16 presentation, unless such check was presented for payment prior to the
17 date the maker informed the payee there would be sufficient funds.

18 (f) In addition to all other costs and fees allowed by law, each
19 prosecutor who takes any action under the provisions of this section may
20 collect from the issuer in such action an administrative handling cost,
21 except in cases filed in a court of appropriate jurisdiction. The cost shall
22 not exceed \$10 for each check. If the issuer of the check is convicted in a
23 district court, the administrative handling costs may be assessed as part of
24 the court costs in the matter. The moneys collected pursuant to this
25 subsection shall be deposited into a trust fund which shall be administered
26 by the board of county commissioners. The funds shall be expended only
27 with the approval of the board of county commissioners, but may be used
28 to help fund the normal operating expenses of the county or district
29 attorney's office.

30 Sec. 5. K.S.A. 2016 Supp. 21-5825 is hereby amended to read as
31 follows: 21-5825. (a) Counterfeiting is manufacturing, using,
32 displaying, advertising, distributing or possessing with intent to distribute
33 any item or services knowing such item or services bear or are identified
34 by a counterfeit mark.

35 (b) Counterfeiting is a:

36 (1) Severity level 7, nonperson felony if:

37 (A) The retail value of such item or service is \$25,000 or more;

38 (B) such counterfeiting involves 1,000 or more items bearing a
39 counterfeit mark; or

40 (C) a third or subsequent violation of this section;

41 (2) severity level 9, nonperson felony if:

42 (A) The retail value of such item or service is at least ~~\$1,000~~ \$1,500
43 but less than \$25,000;

1 (B) such counterfeiting involves more than 100 but less than 1,000
2 items bearing a counterfeit mark; or

3 (C) a second violation of this section; and

4 (3) class A nonperson misdemeanor, if the retail value of such item or
5 service is less than ~~\$1,000~~ \$1,500.

6 (c) A person having possession, custody or control of more than 25
7 items bearing a counterfeit mark shall be presumed to possess such items
8 with intent to distribute.

9 (d) Any state or federal certificate of registration of any intellectual
10 property shall be prima facie evidence of the facts stated therein.

11 (e) As used in this section:

12 (1) "Counterfeit mark" means:

13 (A) Any unauthorized reproduction or copy of intellectual property;
14 or

15 (B) intellectual property affixed to any item knowingly sold, offered
16 for sale, manufactured or distributed, or identifying services offered or
17 rendered, without the authority of the owner of the intellectual property;

18 (2) "intellectual property" means any trademark, service mark or
19 trade name as such terms are defined in K.S.A. 2016 Supp. 81-202, and
20 amendments thereto; and

21 (3) "retail value" means the counterfeiter's regular selling price for the
22 item or service bearing or identified by the counterfeit mark. In the case of
23 items bearing a counterfeit mark which are components of a finished
24 product, the retail value shall be the counterfeiter's regular selling price of
25 the finished product on or in which the component would be utilized.

26 (f) The quantity or retail value of items or services shall include the
27 aggregate quantity or retail value of all items bearing, or services
28 identified by, every counterfeit mark the defendant manufactures, uses,
29 displays, advertises, distributes or possesses.

30 Sec. 6. K.S.A. 2016 Supp. 21-5828 is hereby amended to read as
31 follows: 21-5828. (a) Criminal use of a financial card is any of the
32 following acts done with intent to defraud and to obtain money, goods,
33 property or services:

34 (1) Using a financial card without the consent of the cardholder;

35 (2) using a financial card, or the number or description thereof, which
36 has been revoked or canceled; or

37 (3) using a falsified, mutilated, altered or nonexistent financial card or
38 a number or description thereof.

39 (b) Criminal use of a financial card is a:

40 (1) Severity level 7, nonperson felony if the money, goods, property
41 or services obtained within any seven-day period are of the value of
42 \$25,000 or more;

43 (2) Severity level 9, nonperson felony if the money, goods, property

1 or services obtained within any seven-day period are of the value of at
2 least ~~\$1,000~~ *\$1,500* but less than \$25,000; and

3 (3) class A nonperson misdemeanor if the money, goods, property or
4 services obtained within a seven-day period are of the value of less than
5 ~~\$1,000~~ *\$1,500*.

6 (c) As used in this section:

7 (1) "Financial card" means an identification card, plate, instrument,
8 device or number issued by a business organization authorizing the
9 cardholder to purchase, lease or otherwise obtain money, goods, property
10 or services or to conduct other financial transactions; and

11 (2) "cardholder" means the person or entity to whom or for whose
12 benefit a financial card is issued.

13 (d) For the purposes of subsection (a)(2), a financial card shall be
14 deemed canceled or revoked when notice in writing thereof has been
15 received by the named holder thereof as shown on such financial card or
16 by the records of the company.

17 Sec. 7. K.S.A. 2016 Supp. 21-5830 is hereby amended to read as
18 follows: 21-5830. (a) Impairing a security interest is, with intent to
19 defraud the secured party:

20 (1) Damaging, destroying or concealing any personal property subject
21 to a security interest;

22 (2) selling, exchanging or otherwise disposing of any personal
23 property subject to a security interest without the written consent of the
24 secured party, where such sale, exchange or other disposition is not
25 authorized by the secured party under the terms of the security agreement;
26 or

27 (3) failing to account to the secured party for the proceeds of the sale,
28 exchange or other disposition of any personal property subject to a security
29 interest, where such sale, exchange or other disposition is authorized and
30 such accounting for proceeds is required by the secured party under the
31 terms of the security agreement or otherwise.

32 (b) Impairing a security interest, when the personal property subject
33 to the security interest is of the value of:

34 (1) \$25,000 or more and is subject to a security interest of \$25,000 or
35 more is a severity level 7, nonperson felony;

36 (2) at least ~~\$1,000~~ *\$1,500* and is subject to a security interest of at
37 least ~~\$1,000~~ *\$1,500* and either the value of the property or the security
38 interest is less than \$25,000 is a severity level 9, nonperson felony; and

39 (3) less than ~~\$1,000~~ *\$1,500*, or of the value of ~~\$1,000~~ *\$1,500* or more
40 but subject to a security interest of less than ~~\$1,000~~ *\$1,500* is a class A
41 nonperson misdemeanor.

42 Sec. 8. K.S.A. 2016 Supp. 21-5927 is hereby amended to read as
43 follows: 21-5927. (a) Medicaid fraud is:

1 (1) With intent to defraud, making, presenting, submitting, offering or
2 causing to be made, presented, submitted or offered:

3 (A) Any false or fraudulent claim for payment for any goods, service,
4 item, facility [or] accommodation for which payment may be made, in
5 whole or in part, under the medicaid program, whether or not the claim is
6 allowed or allowable;

7 (B) any false or fraudulent statement or representation for use in
8 determining payments which may be made, in whole or in part, under the
9 medicaid program, whether or not the claim is allowed or allowable;

10 (C) any false or fraudulent report or filing which is or may be used in
11 computing or determining a rate of payment for any goods, service, item,
12 facility or accommodation, for which payment may be made, in whole or
13 in part, under the medicaid program, whether or not the claim is allowed or
14 allowable;

15 (D) any false or fraudulent statement or representation made in
16 connection with any report or filing which is or may be used in computing
17 or determining a rate of payment for any goods, service, item, facility or
18 accommodation for which payment may be made, in whole or in part,
19 under the medicaid program, whether or not the claim is allowed or
20 allowable;

21 (E) any statement or representation for use by another in obtaining
22 any goods, service, item, facility or accommodation for which payment
23 may be made, in whole or in part, under the medicaid program, knowing
24 the statement or representation to be false, in whole or in part, by
25 commission or omission, whether or not the claim is allowed or allowable;

26 (F) any claim for payment, for any goods, service, item, facility, or
27 accommodation, which is not medically necessary in accordance with
28 professionally recognized parameters or as otherwise required by law, for
29 which payment may be made, in whole or in part, under the medicaid
30 program, whether or not the claim is allowed or allowable;

31 (G) any wholly or partially false or fraudulent book, record,
32 document, data or instrument, which is required to be kept or which is kept
33 as documentation for any goods, service, item, facility or accommodation
34 or of any cost or expense claimed for reimbursement for any goods,
35 service, item, facility or accommodation for which payment is, has been,
36 or can be sought, in whole or in part, under the medicaid program, whether
37 or not the claim is allowed or allowable;

38 (H) any wholly or partially false or fraudulent book, record,
39 document, data or instrument to any properly identified law enforcement
40 officer, any properly identified employee or authorized representative of
41 the attorney general, or to any properly identified employee or agent of the
42 Kansas department for aging and disability services, Kansas department of
43 health and environment, or its fiscal agent, in connection with any audit or

1 investigation involving any claim for payment or rate of payment for any
2 goods, service, item, facility or accommodation payable, in whole or in
3 part, under the medicaid program; or

4 (1) any false or fraudulent statement or representation made, with the
5 intent to influence any acts or decision of any official, employee or agent
6 of a state or federal agency having regulatory or administrative authority
7 over the medicaid program; or

8 (2) intentionally executing or attempting to execute a scheme or
9 artifice to defraud the medicaid program or any contractor or subcontractor
10 thereof.

11 (b) (1) Except as provided in subsection (b)(2), for each individual
12 count of medicaid fraud as defined in subsection (a)(1)(A), (a)(1)(B), (a)
13 (1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F), (a)(1)(G) or (a)(2), where the
14 aggregate amount of payments illegally claimed is:

15 (A) \$250,000 or more, medicaid fraud is a severity level 3, nonperson
16 felony;

17 (B) at least \$100,000 but less than \$250,000, medicaid fraud is a
18 severity level 5, nonperson felony;

19 (C) at least \$25,000 but less than \$100,000, medicaid fraud is a
20 severity level 7, nonperson felony;

21 (D) at least ~~\$1,000~~ \$1,500 but less than \$25,000, medicaid fraud is a
22 severity level 9, nonperson felony; and

23 (E) less than ~~\$1,000~~ \$1,500, medicaid fraud is a class A nonperson
24 misdemeanor.

25 (2) For each individual count of medicaid fraud as defined in
26 subsection (a)(1)(A), (a)(1)(B), (a)(1)(C), (a)(1)(D), (a)(1)(E), (a)(1)(F),
27 (a)(1)(G) or (a)(2):

28 (A) When great bodily harm results from such act, regardless of the
29 aggregate amount of payments illegally claimed, medicaid fraud is a
30 severity level 4, person felony, except as provided in subsection (b)(2)(B);
31 and

32 (B) when death results from such act, regardless of the aggregate
33 amount of payments illegally claimed, medicaid fraud is a severity level 1,
34 person felony.

35 (3) Medicaid fraud as defined in subsection (a)(1)(H) or (a)(1)(I) is a
36 severity level 9, nonperson felony.

37 (c) In determining what is medically necessary pursuant to subsection
38 (a)(1)(F), the attorney general may contract with or consult with qualified
39 health care providers and other qualified individuals to identify
40 professionally recognized parameters for the diagnosis or treatment of the
41 recipient's condition, illness or injury.

42 (d) In sentencing for medicaid fraud, subsection (c)(3) of K.S.A.
43 2016 Supp. 21-6815, and amendments thereto, shall not apply and an act

1 or omission by the defendant that resulted in any medicaid recipient
2 receiving any service that was of lesser quality or amount than the service
3 to which such recipient was entitled may be considered an aggravating
4 factor in determining whether substantial and compelling reasons for
5 departure exist pursuant to K.S.A. 2016 Supp. 21-6801 through 21-6824,
6 and amendments thereto.

7 (e) A person who violates the provisions of this section may also be
8 prosecuted for, convicted of, and punished for any form of battery or
9 homicide.

10 Sec. 9. K.S.A. 2016 Supp. 21-6002 is hereby amended to read as
11 follows: 21-6002. (a) Official misconduct is any of the following acts
12 committed by a public officer or employee in the officer or employee's
13 public capacity or under color of the officer or employee's office or
14 employment:

15 (1) Knowingly using or authorizing the use of any aircraft, as defined
16 by K.S.A. 3-201, and amendments thereto, vehicle, as defined by K.S.A.
17 8-1485, and amendments thereto, or vessel, as defined by K.S.A. 32-1102,
18 and amendments thereto, under the officer's or employee's control or
19 direction, or in the officer's or employee's custody, exclusively for the
20 private benefit or gain of the officer or employee or another;

21 (2) knowingly failing to serve civil process when required by law;

22 (3) using confidential information acquired in the course of and
23 related to the officer's or employee's office or employment for the private
24 benefit or gain of the officer or employee or another or to intentionally
25 cause harm to another;

26 (4) except as authorized by law, with the intent to reduce or eliminate
27 competition among bidders or prospective bidders on any contract or
28 proposed contract:

29 (A) Disclosing confidential information regarding proposals or
30 communications from bidders or prospective bidders on any contract or
31 proposed contract;

32 (B) accepting any bid or proposal on a contract or proposed contract
33 after the deadline for acceptance of such bid or proposal; or

34 (C) altering any bid or proposal submitted by a bidder on a contract
35 or proposed contract;

36 (5) except as authorized by law, knowingly destroying, tampering
37 with or concealing evidence of a crime; or

38 (6) knowingly submitting to a governmental entity a claim for
39 expenses which is false or duplicates expenses for which a claim is
40 submitted to such governmental entity, another governmental or private
41 entity.

42 (b) (1) Official misconduct as defined in:

43 (A) Subsections (a)(1) through (a)(4) is a class A nonperson

1 misdemeanor;

2 (B) subsection (a)(5) is a:

3 (i) Severity level 8, nonperson felony if the evidence is evidence of a
4 crime which is a felony; and

5 (ii) class A nonperson misdemeanor if the evidence is evidence of a
6 crime which is a misdemeanor; and

7 (C) subsection (a)(6) if the claim is:

8 (i) \$25,000 or more is a severity level 7, nonperson felony;

9 (ii) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9,
10 nonperson felony; and

11 (iii) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

12 (2) Upon conviction of official misconduct a public officer or
13 employee shall forfeit such officer or employee's office or employment.

14 (c) The provisions of subsection (a)(1) shall not apply to any use of
15 persons or property which:

16 (1) At the time of the use, is authorized by law or by formal written
17 policy of the governmental entity; or

18 (2) constitutes misuse of public funds, as defined in K.S.A. 2016
19 Supp. 21-6005, and amendments thereto.

20 (d) As used in this section, "confidential" means any information that
21 is not subject to mandatory disclosure pursuant to K.S.A. 45-221, and
22 amendments thereto.

23 Sec. 10. K.S.A. 2016 Supp. 21-6004 is hereby amended to read as
24 follows: 21-6004. (a) Presenting a false claim is, with the intent to
25 defraud, presenting a claim or demand which is false in whole or in part, to
26 a public officer or body authorized to audit, allow or pay such claim.

27 (b) Permitting a false claim is the auditing, allowing or paying of any
28 claim or demand made upon the state or any subdivision thereof or other
29 governmental instrumentality within the state by a public officer or public
30 employee who knows such claim or demand is false or fraudulent in whole
31 or in part.

32 (c) (1) Presenting a false claim or permitting a false claim for:

33 (A) \$25,000 or more is a severity level 7, nonperson felony;

34 (B) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9,
35 nonperson felony; and

36 (C) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

37 (2) Upon conviction of permitting a false claim, a public officer or
38 public employee shall forfeit the officer or employee's office or
39 employment.

40 Sec. 11. K.S.A. 2016 Supp. 21-6005 is hereby amended to read as
41 follows: 21-6005. (a) Misuse of public funds is knowingly using,
42 lending or permitting another to use public money in a manner not
43 authorized by law, by a custodian or other person having control of public

1 money by virtue of such person's official position.

2 (b) (1) Misuse of public funds where the aggregate amount of money
3 paid or claimed in violation of this section is:

4 (A) \$100,000 or more is a severity level 5, nonperson felony;

5 (B) at least \$25,000 but less than \$100,000 is a severity level 7,
6 nonperson felony;

7 (C) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9,
8 nonperson felony; and

9 (D) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor.

10 (2) Upon conviction of misuse of public funds, the convicted person
11 shall forfeit the person's official position.

12 (c) As used in this section, "public money" means any money or
13 negotiable instrument which belongs to the state of Kansas or any political
14 subdivision thereof.

15 Sec. 12. K.S.A. 2016 Supp. 21-6205 is hereby amended to read as
16 follows: 21-6205. (a) Criminal desecration is:

17 (1) Knowingly obtaining or attempting to obtain unauthorized control
18 of a dead body or remains of any human being or the coffin, urn or other
19 article containing a dead body or remains of any human being; or

20 (2) recklessly, by means other than by fire or explosive:

21 (A) Damaging, defacing or destroying the flag, ensign or other
22 symbol of the United States or this state in which another has a property
23 interest without the consent of such other person;

24 (B) damaging, defacing or destroying any public monument or
25 structure;

26 (C) damaging, defacing or destroying any tomb, monument,
27 memorial, marker, grave, vault, crypt gate, tree, shrub, plant or any other
28 property in a cemetery; or

29 (D) damaging, defacing or destroying any place of worship.

30 (b) Criminal desecration as defined in:

31 (1) Subsections (a)(2)(B), (a)(2)(C) or (a)(2)(D) if the property is
32 damaged to the extent of:

33 (A) \$25,000 or more is a severity level 7, nonperson felony;

34 (B) at least ~~\$1,000~~ \$1,500 but less than \$25,000 is a severity level 9,
35 nonperson felony; and

36 (C) less than ~~\$1,000~~ \$1,500 is a class A nonperson misdemeanor; and

37 (2) subsections (a)(1) or (a)(2)(A) is a class A nonperson
38 misdemeanor.

39 Sec. 13. K.S.A. 2016 Supp. 21-5417, 21-5802, 21-5813, 21-5821, 21-
40 5825, 21-5828, 21-5830, 21-5927, 21-6002, 21-6004, 21-6005 and 21-
41 6205 are hereby repealed.

42 Sec. 14. This act shall take effect and be in force from and after its
43 publication in the statute book.