

## SENATE BILL No. 196

By Senator Haley

2-9

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1 AN ACT concerning criminal procedure; relating to restitution; requiring  
2 support when offense resulted in the incapacitation or death of a victim  
3 who has a minor child or children; amending K.S.A. 2020 Supp. 22-  
4 3424 and repealing the existing section.

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

7 Section 1. K.S.A. 2020 Supp. 22-3424 is hereby amended to read as  
8 follows: 22-3424. (a) The judgment shall be rendered and sentence  
9 imposed in open court.

10 (b) If the verdict or finding is not guilty, judgment shall be rendered  
11 immediately and the defendant shall be discharged from custody and the  
12 obligation of the defendant's appearance bond.

13 (c) If the verdict or finding is guilty, judgment shall be rendered and  
14 sentence pronounced without unreasonable delay, allowing adequate time  
15 for the filing and disposition of post-trial motions and for completion of  
16 such presentence investigation as the court may require.

17 (d) (1) (A) If the verdict or finding is guilty, upon request of the  
18 victim or the victim's family and before imposing sentence, the court shall  
19 hold a hearing to establish restitution. The defendant may waive the right  
20 to the hearing and accept the amount of restitution as established by the  
21 court. If the court orders restitution to be paid to the victim or the victim's  
22 family, the order shall be enforced as a judgment of restitution pursuant to  
23 K.S.A. 60-4301 through 60-4304, and amendments thereto.

24 (B) *If the verdict or finding is guilty and the offense resulted in the*  
25 *incapacitation or death of a victim who has a minor child or children, the*  
26 *court shall order the defendant to pay restitution in an amount and*  
27 *manner determined by the court to the victim or the victim's family for the*  
28 *purpose of supporting such child or children, unless the court finds*  
29 *compelling circumstances that would render a plan of restitution*  
30 *unworkable. The court shall hold a hearing to establish the amount of*  
31 *such restitution before imposing sentence. The defendant may waive the*  
32 *right to the hearing and accept the amount of restitution as established by*  
33 *the court. The court's order shall be enforced as a judgment of restitution*  
34 *pursuant to K.S.A. 60-4301 through 60-4304, and amendments thereto. If*  
35 *the court finds a plan of restitution unworkable, the court shall state in*  
36 *detail on the record the reasons therefor.*

1 (2) (A) The court shall order a person convicted of human trafficking  
2 or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their  
3 repeal, or K.S.A. 2020 Supp. 21-5426, and amendments thereto, or  
4 commercial sexual exploitation of a child, K.S.A. 2020 Supp. 21-6422,  
5 and amendments thereto, to pay restitution to the victim of the offense for:

6 (i) Expenses incurred or reasonably certain to be incurred by the  
7 victim as a result of the offense, including reasonable attorney fees and  
8 costs; and

9 (ii) an amount equal to three times the greatest of the following, with  
10 no reduction for expenses the defendant incurred to maintain the victim:

11 (a) The gross income to the defendant for, or the value to the  
12 defendant of, the victim's labor or services or sexual activity;

13 (b) the amount the defendant contracted to pay the victim; or

14 (c) the value of the victim's labor or services or sexual activity,  
15 calculated under the minimum wage and overtime provisions of the federal  
16 fair labor standards act, 29 U.S.C. § 201 et seq., or under K.S.A. 44-1203,  
17 and amendments thereto, whichever is higher, even if the provisions do not  
18 apply to the victim's labor or services or sexual activity.

19 (B) The court shall order restitution under subsection (d)(2) even if  
20 the victim is unavailable to accept payment of restitution.

21 (C) If the victim does not claim restitution ordered under subsection  
22 (d)(2) for five years after entry of the order, the restitution must be paid to  
23 the human trafficking victim assistance fund created by K.S.A. 75-758,  
24 and amendments thereto, to help victims.

25 (e) Before imposing sentence the court shall:

26 (1) Allow the prosecuting attorney to address the court, if the  
27 prosecuting attorney so requests;

28 (2) afford counsel an opportunity to speak on behalf of the defendant;

29 (3) allow the victim or such members of the victim's family as the  
30 court deems appropriate to address the court, if the victim or the victim's  
31 family so requests; and

32 (4) address the defendant personally and ask the defendant if the  
33 defendant wishes to make a statement on the defendant's own behalf and to  
34 present any evidence in mitigation of punishment.

35 (f) After imposing sentence in a case ~~which~~ *that* has gone to trial on a  
36 plea of not guilty, the court shall advise the defendant of the defendant's  
37 right to appeal and of the right of a person who is unable to pay the costs  
38 of an appeal to appeal in forma pauperis.

39 Sec. 2. K.S.A. 2020 Supp. 22-3424 is hereby repealed.

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