

[As Amended by Senate Committee of the Whole]

(Corrected)

As Amended by Senate Committee

Session of 2006

SENATE BILL No. 334

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

1-5

15 AN ACT concerning crimes, punishment and criminal procedure; en-
16 acting a life imprisonment sentence for ~~persistent~~ **aggravated habit-**
17 **ual sex** offenders; lifetime parole for certain offenders; mandatory
18 penalties for ~~rape and aggravated criminal sodomy~~ **certain sex of-**
19 **fenses**; duties of the Kansas sentencing commission **and the criminal**
20 **justice coordinating council**; tampering with an electronic monitor-
21 ing device; amending K.S.A. **21-3504**, 21-3506, **21-3513**, **21-3812**
22 and 74-9101 and K.S.A. 2005 Supp. **21-3447**, 21-3502, ~~21-4635~~, ~~21-~~
23 ~~4638~~ and **21-3516**, **21-4706**, 22-3717, **22-4903** and **74-9501** and
24 repealing the existing sections.
25

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

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

42 (c) As used in this section:

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

- 1 who, on and after July 1, 2006, **as described in paragraphs (3)(A)**
 2 **through 3(J) or (3)(L)**: (A) Has been convicted in this state of a sexually
 3 violent crime; and (B) prior to the conviction of the felony under sub-
 4 paragraph (A), has been convicted on at least two prior conviction events
 5 of any sexually violent crime.
- 6 (2) “Prior conviction event” means ~~crimes committed, on or after July~~
 7 ~~1, 2006~~ of one or more felony convictions of a sexually violent crime
 8 occurring on the same day and within a single count. These convictions
 9 may result from multiple counts within an information or from more than
 10 one information. If a person crosses a county line and commits a felony
 11 as part of the same criminal act or acts, such felony, if such person is
 12 convicted, shall be considered part of the prior conviction event.
- 13 (3) “Sexually violent crime” means:
- 14 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 15 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
 16 thereto;
- 17 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
 18 amendments thereto;
- 19 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505,
 20 and amendments thereto;
- 21 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
 22 thereto;
- 23 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments
 24 thereto;
- 25 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and
 26 amendments thereto;
- 27 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments
 28 thereto;
- 29 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments
 30 thereto;
- 31 **(J) aggravated incest, K.S.A. 21-3603, and amendments thereto;**
- 32 ~~(J)~~ **(K)** any federal or other state conviction for a felony offense that
 33 under the laws of this state would be a sexually violent crime as defined
 34 in this section;
- 35 ~~(K)~~ **(L)** an attempt, conspiracy or criminal solicitation, as defined in
 36 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sex-
 37 ually violent crime as defined in this section; or
- 38 ~~(L)~~ **(M)** any act which at the time of sentencing for the offense has
 39 been determined beyond a reasonable doubt to have been sexually mo-
 40 tivated. As used in this subparagraph, “sexually motivated” means that
 41 one of the purposes for which the defendant committed the crime was
 42 for the purpose of the defendant’s sexual gratification.
- 43 **New Sec. 2. (a) (1) Except as provided in subsection (b) or (d),**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 New Sec. 23. (a) Unlawfully tampering with electronic monitoring
35 equipment is intentionally removing, disabling, altering, tampering with,
36 damaging or destroying any electronic monitoring equipment used pur-
37 suant to court order or as a condition of parole.

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

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

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

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

- 1 severity level 6, nonperson felony.
- 2 (d) This section shall be a part of and supplemental to the Kansas
3 criminal code.
- 4 Sec. ~~3~~ **4**. K.S.A. 2005 Supp. 21-3502 is hereby amended to read as
5 follows: 21-3502. (a) Rape is: (1) Sexual intercourse with a person who
6 does not consent to the sexual intercourse, under any of the following
7 circumstances:
- 8 (A) When the victim is overcome by force or fear;
- 9 (B) when the victim is unconscious or physically powerless; or
- 10 (C) when the victim is incapable of giving consent because of mental
11 deficiency or disease, or when the victim is incapable of giving consent
12 because of the effect of any alcoholic liquor, narcotic, drug or other sub-
13 stance, which condition was known by the offender or was reasonably
14 apparent to the offender;
- 15 (2) sexual intercourse with a child who is under 14 years of age;
- 16 (3) sexual intercourse with a victim when the victim's consent was
17 obtained through a knowing misrepresentation made by the offender that
18 the sexual intercourse was a medically or therapeutically necessary pro-
19 cedure; or
- 20 (4) sexual intercourse with a victim when the victim's consent was
21 obtained through a knowing misrepresentation made by the offender that
22 the sexual intercourse was a legally required procedure within the scope
23 of the offender's authority.
- 24 (b) It shall be a defense to a prosecution of rape under subsection
25 (a)(2) that the child was married to the accused at the time of the offense.
- 26 (c) *Except as provided further*, rape as described in subsection (a)(1)
27 or (2) is a severity level 1, person felony. *Rape as described in subsection*
28 *(a)(2), when the offender is 18 years of age or older, is an off-grid person*
29 *felony*. Rape as described in subsection (a)(3) or (4) is a severity level 2,
30 person felony.
- 31 Sec. **4 5**. K.S.A. 21-3506 is hereby amended to read as follows: 21-
32 3506. (a) Aggravated criminal sodomy is:
- 33 (1) Sodomy with a child who is under 14 years of age;
- 34 (2) causing a child under 14 years of age to engage in sodomy with
35 any person or an animal; or
- 36 (3) sodomy with a person who does not consent to the sodomy or
37 causing a person, without the person's consent, to engage in sodomy with
38 any person or an animal, under any of the following circumstances:
- 39 (A) When the victim is overcome by force or fear;
- 40 (B) when the victim is unconscious or physically powerless; or
- 41 (C) when the victim is incapable of giving consent because of mental
42 deficiency or disease, or when the victim is incapable of giving consent
43 because of the effect of any alcoholic liquor, narcotic, drug or other sub-

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

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

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

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

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

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

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

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

34 ~~—(C) an attempt, conspiracy or criminal solicitation, as defined in~~
35 ~~K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of an of-~~
36 ~~fense defined in paragraph (A) or (B).~~

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

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

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

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

~~5 (c) (d) In order to make such determination, the court may be pre-~~
~~6 sented evidence concerning any matter that the court deems relevant to~~
~~7 the question of sentence and shall include matters relating to any of the~~
~~8 aggravating circumstances enumerated in K.S.A. 21-4636, and amend-~~
~~9 ments thereto, and any mitigating circumstances. Any such evidence~~
~~10 which the court deems to have probative value may be received regardless~~
~~11 of its admissibility under the rules of evidence, provided that the defend-~~
~~12 ant is accorded a fair opportunity to rebut any hearsay statements. Only~~
~~13 such evidence of aggravating circumstances as the state has made known~~
~~14 to the defendant prior to the sentencing shall be admissible and no evi-~~
~~15 dence secured in violation of the constitution of the United States or of~~
~~16 the state of Kansas shall be admissible. No testimony by the defendant~~
~~17 at the time of sentencing shall be admissible against the defendant at any~~
~~18 subsequent criminal proceeding. At the conclusion of the evidentiary~~
~~19 presentation, the court shall allow the parties a reasonable period of time~~
~~20 in which to present oral argument.~~

~~21 (d) (e) (1) If a defendant is convicted of an offense defined in sub-~~
~~22 section (b), if the court finds that one or more of the aggravating circum-~~
~~23 stances enumerated in K.S.A. 21-4636, and amendments thereto, exist~~
~~24 and, further, that the existence of such aggravating circumstances is not~~
~~25 outweighed by outweighs any mitigating circumstances which are found~~
~~26 to exist, the defendant shall be sentenced pursuant to subsection (a) of~~
~~27 K.S.A. 21-4638, and amendments thereto, otherwise, the defendant shall~~
~~28 be sentenced as provided by law.~~

~~29 (2) If a defendant is convicted of an offense defined in subsection (c),~~
~~30 if the court finds that one or more of the aggravating circumstances enu-~~
~~31 merated in K.S.A. 21-4636, and amendments thereto, exist and, further,~~
~~32 that the existence of such aggravating circumstances outweighs any mit-~~
~~33 igating circumstances which are found to exist, the defendant shall be~~
~~34 sentenced to life without the possibility of parole; otherwise, the defendant~~
~~35 shall be sentenced pursuant to subsection (b) of K.S.A. 21-4638, and~~
~~36 amendments thereto.~~

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

~~39 (g) The court may make the findings required by this subsection for~~
~~40 the purpose of determining whether to sentence a defendant pursuant to~~
~~41 subsection (a) of K.S.A. 21-4638, and amendments thereto, notwithstand-~~
~~42 ing contrary findings made by the jury or court pursuant to subsection~~
~~43 (c) of K.S.A. 21-4624, and amendments thereto, for the purpose of de-~~

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

2 ~~—Sec. 6. K.S.A. 2005 Supp. 21-4638 is hereby amended to read as~~
3 ~~follows: 21-4638. (a) When it is provided by law that a person shall be~~
4 ~~sentenced pursuant to this section *subsection*, such person shall be sen-~~
5 ~~tenced to imprisonment for life and shall not be eligible for probation or~~
6 ~~suspension, modification or reduction of sentence. Except as otherwise~~
7 ~~provided, in addition, a person sentenced pursuant to this section shall~~
8 ~~not be eligible for parole prior to serving 40 years' imprisonment, and~~
9 ~~such 40 years' imprisonment shall not be reduced by the application of~~
10 ~~good time credits. For crimes committed on and after July 1, 1999, a~~
11 ~~person sentenced pursuant to this section shall not be eligible for parole~~
12 ~~prior to serving 50 years' imprisonment, and such 50 years' imprisonment~~
13 ~~shall not be reduced by the application of good time credits.~~

14 ~~—(b) When it is provided by law that a person shall be sentenced pur-~~
15 ~~suant to this subsection, such person shall be sentenced to a mandatory~~
16 ~~minimum term of imprisonment of not less than 25 years or be sentenced~~
17 ~~as determined in subsection (c)(2) of K.S.A. 21-4635, and amendments~~
18 ~~thereto, and shall not be eligible for probation or suspension, modification~~
19 ~~or reduction of sentence. In addition, a person sentenced pursuant to this~~
20 ~~section shall not be eligible for parole prior to serving such mandatory~~
21 ~~term of imprisonment, and such imprisonment shall not be reduced by~~
22 ~~the application of good time credits.~~

23 ~~—(c) Upon sentencing a defendant pursuant to this section, the court~~
24 ~~shall commit the defendant to the custody of the secretary of corrections~~
25 ~~and the court shall state in the sentencing order of the judgment form or~~
26 ~~journal entry, whichever is delivered with the defendant to the correc-~~
27 ~~tional institution, that the defendant has been sentenced pursuant to~~
28 ~~K.S.A. 21-4638, and amendments thereto.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 *maintenance, or management thereof;*

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

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

5 (4) *inducing another to become a prostitute;*

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

8 (6) *procuring a prostitute for a patron;*

9 (7) *procuring transportation for, paying for the transportation*
10 *of, or transporting a person within this state with the intention of*
11 *assisting or promoting that person's engaging in prostitution; or*

12 (8) *being employed to perform any act which is prohibited by*
13 *this section.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (A) **For pecuniary profit; or**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **sentence shall be imprisonment for life.**

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

9 Sec. 7 **12.** K.S.A. 2005 Supp. 22-3717 is hereby amended to read as
10 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
11 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638,
12 and amendments thereto; K.S.A. 8-1567, and amendments thereto; *sec-*
13 *tion 1, and amendments thereto;* and K.S.A 21-4624, and amendments
14 thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-
15 4618, and amendments thereto, shall be eligible for parole after serving
16 the entire minimum sentence imposed by the court, less good time
17 credits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 months.

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

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

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

11 (b) any evidence received during the proceeding;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (E) aggravated criminal sodomy, ~~subsection (a)(3) of~~ K.S.A. 21-3506,
 19 and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (j) Before ordering the parole of any inmate, the Kansas parole board
7 shall have the inmate appear before either in person or via a video con-
8 ferencing format and shall interview the inmate unless impractical be-
9 cause of the inmate's physical or mental condition or absence from the
10 institution. Every inmate while on parole shall remain in the legal custody
11 of the secretary of corrections and is subject to the orders of the secretary.
12 Whenever the Kansas parole board formally considers placing an inmate
13 on parole and no agreement has been entered into with the inmate under
14 K.S.A. 75-5210a, and amendments thereto, the board shall notify the
15 inmate in writing of the reasons for not granting parole. If an agreement
16 has been entered under K.S.A. 75-5210a, and amendments thereto, and
17 the inmate has not satisfactorily completed the programs specified in the
18 agreement, or any revision of such agreement, the board shall notify the
19 inmate in writing of the specific programs the inmate must satisfactorily
20 complete before parole will be granted. If parole is not granted only
21 because of a failure to satisfactorily complete such programs, the board
22 shall grant parole upon the secretary's certification that the inmate has
23 successfully completed such programs. If an agreement has been entered
24 under K.S.A. 75-5210a, and amendments thereto, and the secretary of
25 corrections has reported to the board in writing that the inmate has sat-
26 isfactorily completed the programs required by such agreement, or any
27 revision thereof, the board shall not require further program participa-
28 tion. However, if the board determines that other pertinent information
29 regarding the inmate warrants the inmate's not being released on parole,
30 the board shall state in writing the reasons for not granting the parole. If
31 parole is denied for an inmate sentenced for a crime other than a class A
32 or class B felony or an off-grid felony, the board shall hold another parole
33 hearing for the inmate not later than one year after the denial unless the
34 parole board finds that it is not reasonable to expect that parole would
35 be granted at a hearing if held in the next three years or during the interim
36 period of a deferral. In such case, the parole board may defer subsequent
37 parole hearings for up to three years but any such deferral by the board
38 shall require the board to state the basis for its findings. If parole is denied
39 for an inmate sentenced for a class A or class B felony ~~or ; or~~ an off-grid
40 felony ~~or pursuant to subsection (b) of K.S.A. 21-4638, and amendments~~
41 ~~thereto~~, the board shall hold another parole hearing for the inmate not
42 later than three years after the denial unless the parole board finds that
43 it is not reasonable to expect that parole would be granted at a hearing if

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (b) The commission shall:

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

- 1 tion current sentencing and release practices and correctional resources,
2 including but not limited to the capacities of local and state correctional
3 facilities. In its report, the commission shall make recommendations re-
4 garding whether there is a continued need for and what is the projected
5 role of, if any, the Kansas parole board and whether the policy of allo-
6 cating good time credits for the purpose of determining an inmate's eli-
7 gibility for parole or conditional release should be continued;
- 8 (2) consult with and advise the legislature with reference to the im-
9 plementation, management, monitoring, maintenance and operations of
10 the sentencing guidelines system;
- 11 (3) direct implementation of the sentencing guidelines system;
- 12 (4) assist in the process of training judges, county and district attor-
13 neys, court services officers, state parole officers, correctional officers,
14 law enforcement officials and other criminal justice groups. For these
15 purposes, the sentencing commission shall develop an implementation
16 policy and shall construct an implementation manual for use in its training
17 activities;
- 18 (5) receive presentence reports and journal entries for all persons
19 who are sentenced for crimes committed on or after July 1, 1993, to
20 develop post-implementation monitoring procedures and reporting
21 methods to evaluate guideline sentences. In developing the evaluative
22 criteria, the commission shall take into consideration rational and consis-
23 tent sentencing standards which reduce sentence disparity to include, but
24 not be limited to, racial and regional biases;
- 25 (6) advise and consult with the secretary of corrections and members
26 of the legislature in developing a mechanism to link guidelines sentence
27 practices with correctional resources and policies, including but not lim-
28 ited to the capacities of local and state correctional facilities. Such linkage
29 shall include a review and determination of the impact of the sentencing
30 guidelines on the state's prison population, review of corrections pro-
31 grams and a study of ways to more effectively utilize correction dollars
32 and to reduce prison population;
- 33 (7) make recommendations relating to modification to the sentencing
34 guidelines as provided in K.S.A. 21-4725, and amendments thereto;
- 35 (8) prepare and submit fiscal impact and correctional resource state-
36 ment as provided in K.S.A. 74-9106, and amendments thereto;
- 37 (9) make recommendations to those responsible for developing a
38 working philosophy of sentencing guideline consistency and rationality;
- 39 (10) develop prosecuting standards and guidelines to govern the con-
40 duct of prosecutors when charging persons with crimes and when engag-
41 ing in plea bargaining;
- 42 (11) analyze problems in criminal justice, identify alternative solu-
43 tions and make recommendations for improvements in criminal law, pros-

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

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

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

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

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

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

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

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

3 *(18) determine the effect the mandatory sentencing established in sec-*
4 *tion 1 and ~~K.S.A. 21-4635~~ **section 2**, and amendments thereto, would*
5 *have on the number of offenders civilly committed to a treatment facility*
6 *as a sexually violent predator as provided pursuant to K.S.A. 59-29a01 et*
7 *seq., and amendments thereto.*

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

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

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

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

23 *(e) The council shall:*

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

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

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

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

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

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

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

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

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

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

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

22 New Sec. ~~10~~ **17**. If any provisions of this act or the application
23 thereof to any person or circumstances is held invalid, the invalidity shall
24 not affect other provisions or applications of the act which can be given
25 effect without the invalid provisions or application, and to this end the
26 provisions of this act are severable.

27 Sec. ~~11~~ **18**. K.S.A. ~~21-3504~~, 21-3506, ~~21-3513~~, ~~21-3812~~ and 74-
28 9101 and K.S.A. 2005 Supp. ~~21-3447~~, 21-3502, ~~21-4635~~, ~~21-4638~~ and
29 ~~21-3516~~, ~~21-4706~~, 22-3717, ~~22-4903~~ and ~~74-9501~~ are hereby
30 repealed.

31 Sec. ~~12~~ **19**. This act shall take effect and be in force from and after
32 its publication in the statute book.