

SENATE BILL No. 474

By Committee on Judiciary

1-30

9 AN ACT concerning crimes and punishment; relating to an aggravated
10 habitual sex offender; sentencing; amending K.S.A. 21-3503, 21-3504,
11 21-3505, 21-3506, 21-3518 and 21-3603 and K.S.A. 2005 Supp. 21-
12 3502, 21-3510, 21-3511, 21-4704, 21-4706 and 22-3717 and repealing
13 the existing sections.

14

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

16 Section 1. K.S.A. 2005 Supp. 21-3502 is hereby amended to read as
17 follows: 21-3502. (a) Rape is: (1) Sexual intercourse with a person who
18 does not consent to the sexual intercourse, under any of the following
19 circumstances:

20 (A) When the victim is overcome by force or fear;
21 (B) when the victim is unconscious or physically powerless; or
22 (C) when the victim is incapable of giving consent because of mental
23 deficiency or disease, or when the victim is incapable of giving consent
24 because of the effect of any alcoholic liquor, narcotic, drug or other sub-
25 stance, which condition was known by the offender or was reasonably
26 apparent to the offender;

27 (2) sexual intercourse with a child who is under 14 years of age;

28 (3) sexual intercourse with a victim when the victim's consent was
29 obtained through a knowing misrepresentation made by the offender that
30 the sexual intercourse was a medically or therapeutically necessary pro-
31 cedure; or

32 (4) sexual intercourse with a victim when the victim's consent was
33 obtained through a knowing misrepresentation made by the offender that
34 the sexual intercourse was a legally required procedure within the scope
35 of the offender's authority.

36 (b) It shall be a defense to a prosecution of rape under subsection
37 (a)(2) that the child was married to the accused at the time of the offense.

38 (c) Rape as described in subsection (a)(1) or (2) is a severity level 1,
39 person felony. Rape as described in subsection (a)(3) or (4) is a severity
40 level 2, person felony. *A violation of this section by a person meeting the*
41 *definition of an aggravated habitual sex offender pursuant to K.S.A. 21-*
42 *4704, and amendments thereto, is an off-grid person felony.*

43 Sec. 2. K.S.A. 21-3503 is hereby amended to read as follows: 21-

1 3503. (a) Indecent liberties with a child is engaging in any of the following
2 acts with a child who is 14 or more years of age but less than 16 years of
3 age:

4 (1) Any lewd fondling or touching of the person of either the child
5 or the offender, done or submitted to with the intent to arouse or to
6 satisfy the sexual desires of either the child or the offender, or both; or

7 (2) soliciting the child to engage in any lewd fondling or touching of
8 the person of another with the intent to arouse or satisfy the sexual desires
9 of the child, the offender or another.

10 (b) It shall be a defense to a prosecution of indecent liberties with a
11 child as described in subsection (a)(1) that the child was married to the
12 accused at the time of the offense.

13 (c) Indecent liberties with a child is a severity level 5, person felony.
14 *A violation of this section by a person meeting the definition of an aggra-*
15 *vated habitual sex offender pursuant to K.S.A. 21-4704, and amendments*
16 *thereto, is an off-grid person felony.*

17 Sec. 3. K.S.A. 21-3504 is hereby amended to read as follows: 21-
18 3504. (a) Aggravated indecent liberties with a child is:

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

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

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

27 (B) causing the child to engage in any lewd fondling or touching of
28 the person of another with the intent to arouse or satisfy the sexual desires
29 of the child, the offender or another; or

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

32 (A) Any lewd fondling or touching of the person of either the child
33 or the offender, done or submitted to with the intent to arouse or to
34 satisfy the sexual desires of either the child or the offender, or both; or

35 (B) soliciting the child to engage in any lewd fondling or touching of
36 the person of another with the intent to arouse or satisfy the sexual desires
37 of the child, the offender or another.

38 (b) It shall be a defense to a prosecution of aggravated indecent lib-
39 erties with a child as provided in subsection (a)(1), (a)(2)(A) and (a)(3)(A)
40 that the child was married to the accused at the time of the offense.

41 (c) Aggravated indecent liberties with a child as described in subsec-
42 tions (a)(1) and (a)(3) is a severity level 3, person felony. Aggravated
43 indecent liberties with a child as described in subsection (a)(2) is a severity

1 level 4, person felony. *A violation of this section by a person meeting the*
2 *definition of an aggravated habitual sex offender pursuant to K.S.A. 21-*
3 *4704, and amendments thereto, is an off-grid person felony.*

4 Sec. 4. K.S.A. 21-3505 is hereby amended to read as follows: 21-
5 3505. (a) Criminal sodomy is:

6 (1) Sodomy between persons who are 16 or more years of age and
7 members of the same sex or between a person and an animal;

8 (2) sodomy with a child who is 14 or more years of age but less than
9 16 years of age; or

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

12 (b) It shall be a defense to a prosecution of criminal sodomy as pro-
13 vided in subsection (a)(2) that the child was married to the accused at the
14 time of the offense.

15 (c) Criminal sodomy as provided in subsection (a)(1) is a class B non-
16 person misdemeanor. Criminal sodomy as provided in subsections (a)(2)
17 and (a)(3) is a severity level 3, person felony. *A violation of subsection*
18 *(a)(2) or (a)(3) by a person meeting the definition of an aggravated ha-*
19 *bitual sex offender pursuant to K.S.A. 21-4704, and amendments thereto,*
20 *is an off-grid person felony.*

21 Sec. 5. K.S.A. 21-3506 is hereby amended to read as follows: 21-
22 3506. (a) Aggravated criminal sodomy is:

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

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

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

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

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

31 (C) when the victim is incapable of giving consent because of mental
32 deficiency or disease, or when the victim is incapable of giving consent
33 because of the effect of any alcoholic liquor, narcotic, drug or other sub-
34 stance, which condition was known by the offender or was reasonably
35 apparent to the offender.

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

39 (c) Aggravated criminal sodomy is a severity level 2, person felony. *A*
40 *violation of this section by a person meeting the definition of an aggra-*
41 *vated habitual sex offender pursuant to K.S.A. 21-4704, and amendments*
42 *thereto, is an off-grid person felony.*

43 Sec. 6. K.S.A. 2005 Supp. 21-3510 is hereby amended to read as

1 follows: 21-3510. (a) Indecent solicitation of a child is:

2 (1) Enticing or soliciting a child 14 or more years of age but less than
3 16 years of age to commit or to submit to an unlawful sexual act; or

4 (2) inviting, persuading or attempting to persuade a child 14 or more
5 years of age but less than 16 years of age to enter any vehicle, building,
6 room or secluded place with intent to commit an unlawful sexual act upon
7 or with the child.

8 (b) Indecent solicitation of a child is a severity level 6, person felony.
9 *A violation of this section by a person meeting the definition of an aggra-*
10 *vated habitual sex offender pursuant to K.S.A. 21-4704, and amendments*
11 *thereto, is an off-grid person felony.*

12 Sec. 7. K.S.A. 2005 Supp. 21-3511 is hereby amended to read as
13 follows: 21-3511. Aggravated indecent solicitation of a child is:

14 (a) Enticing or soliciting a child under the age of 14 years to commit
15 or to submit to an unlawful sexual act; or

16 (b) inviting, persuading or attempting to persuade a child under the
17 age of 14 years to enter any vehicle, building, room or secluded place
18 with intent to commit an unlawful sexual act upon or with the child.

19 Aggravated indecent solicitation of a child is a severity level 5, person
20 felony. *A violation of this section by a person meeting the definition of an*
21 *aggravated habitual sex offender pursuant to K.S.A. 21-4704, and amend-*
22 *ments thereto, is an off-grid person felony.*

23 Sec. 8. K.S.A. 21-3518 is hereby amended to read as follows: 21-
24 3518. (a) Aggravated sexual battery is the intentional touching of the per-
25 son of another who is 16 or more years of age and who does not consent
26 thereto, with the intent to arouse or satisfy the sexual desires of the of-
27 fender or another under any of the following circumstances:

28 (1) When the victim is overcome by force or fear;

29 (2) when the victim is unconscious or physically powerless;

30 (3) when the victim is incapable of giving consent because of mental
31 deficiency or disease, or when the victim is incapable of giving consent
32 because of the effect of any alcoholic liquor, narcotic, drug or other sub-
33 stance, which condition was known by, or was reasonably apparent to, the
34 offender.

35 (b) Aggravated sexual battery is a severity level 5, person felony. *A*
36 *violation of this section by a person meeting the definition of an aggra-*
37 *vated habitual sex offender pursuant to K.S.A. 21-4704, and amendments*
38 *thereto, is an off-grid person felony.*

39 (c) This section shall be part of and supplemental to the Kansas crim-
40 inal code.

41 Sec. 9. K.S.A. 21-3603 is hereby amended to read as follows: 21-
42 3603. (a) Aggravated incest is: (1) Marriage to a person who is under 18
43 years of age and who is known to the offender to be related to the offender

1 as any of the following biological, step or adoptive relatives: Child, grand-
2 child of any degree, brother, sister, half-brother, half-sister, uncle, aunt,
3 nephew or niece; or
4 (2) engaging in: (A) Otherwise lawful sexual intercourse or sodomy
5 as defined by K.S.A. 21-3501 and amendments thereto; or (B) any lewd
6 fondling, as described in subsection (a)(1) of K.S.A. 21-3503 and amend-
7 ments thereto, with a person who is 16 or more years of age but under
8 18 years of age and who is known to the offender to be related to the
9 offender as any of the following biological, step or adoptive relatives:
10 Child, grandchild of any degree, brother, sister, half-brother, half-sister,
11 uncle, aunt, nephew or niece.
12 (b) Aggravated incest as described in subsection (a)(2)(A) is a severity
13 level 5, person felony. Aggravated incest as described in subsections (a)(1)
14 and (a)(2)(B) is a severity level 7, person felony. *A violation of this section*
15 *by a person meeting the definition of an aggravated habitual sex offender*
16 *pursuant to K.S.A. 21-4704, and amendments thereto, is an off-grid per-*
17 *son felony.*
18 Sec. 10. K.S.A. 2005 Supp. 21-4704 is hereby amended to read as
19 follows: 21-4704. (a) For purposes of sentencing, the following sentencing
20 guidelines grid for nondrug crimes shall be applied in felony cases for
21 crimes committed on or after July 1, 1993:

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SENTENCING RANGE - NONDRUG OFFENSES

| Category | A | B | C | D | E | F | G | H | I |
|----------------|--------------------|-------------------|---------------------------------|-------------------|-----------------------|----------------------|--------------------|-------------------|-------------------------|
| Severity Level | 3+ Person Felonies | 2 Person Felonies | 1 Person & 1 Nonperson Felonies | 1 Person Felony | 3+ Nonperson Felonies | 2 Nonperson Felonies | 1 Nonperson Felony | 2+ Misdemeanors | 1 Misdemeanor No Record |
| I | 653 620 592 | 618 586 554 | 285 272 258 | 267 253 240 | 246 234 221 | 226 214 203 | 203 195 184 | 186 176 166 | 165 155 147 |
| II | 493 467 442 | 460 438 416 | 216 205 194 | 200 190 181 | 184 174 165 | 168 160 152 | 154 146 138 | 138 131 123 | 123 117 109 |
| III | 247 233 221 | 228 216 206 | 107 102 96 | 100 94 89 | 92 88 82 | 83 79 74 | 77 72 68 | 71 66 61 | 61 59 55 |
| IV | 172 162 154 | 162 154 144 | 75 71 68 | 69 66 62 | 64 60 57 | 59 56 52 | 52 50 47 | 48 45 42 | 43 41 38 |
| V | 136 130 122 | 128 120 114 | 60 57 53 | 55 52 50 | 51 49 46 | 47 44 41 | 43 41 38 | 38 36 34 | 34 32 31 |
| VI | 46 43 40 | 41 39 37 | 38 36 34 | 36 34 32 | 32 30 28 | 29 27 25 | 26 24 23 | 21 20 19 | 19 18 17 |
| VII | 34 32 30 | 31 29 27 | 29 27 25 | 26 24 22 | 23 21 19 | 19 18 17 | 17 16 15 | 14 13 12 | 13 12 11 |
| VIII | 23 21 19 | 20 19 18 | 19 18 17 | 17 16 15 | 15 14 13 | 13 12 11 | 11 10 9 | 11 10 9 | 9 8 7 |
| IX | 17 16 15 | 15 14 13 | 13 12 11 | 13 12 11 | 11 10 9 | 10 9 8 | 9 8 7 | 8 7 6 | 7 6 5 |
| X | 13 12 11 | 12 11 10 | 11 10 9 | 10 9 8 | 9 8 7 | 8 7 6 | 7 6 5 | 7 6 5 | 6 5 5 |

| LEGEND |
|--------------------------|
| Presumptive Probation |
| Presumptive Imprisonment |

- 1 (b) The provisions of this section shall be applicable to the sentencing
2 guidelines grid for nondrug crimes. Sentences expressed in such grid
3 represent months of imprisonment.
- 4 (c) The sentencing guidelines grid is a two-dimensional crime severity
5 and criminal history classification tool. The grid's vertical axis is the crime
6 severity scale which classifies current crimes of conviction. The grid's
7 horizontal axis is the criminal history scale which classifies criminal
8 histories.
- 9 (d) The sentencing guidelines grid for nondrug crimes as provided in
10 this section defines presumptive punishments for felony convictions, sub-
11 ject to judicial discretion to deviate for substantial and compelling reasons
12 and impose a different sentence in recognition of aggravating and miti-
13 gating factors as provided in this act. The appropriate punishment for a
14 felony conviction should depend on the severity of the crime of conviction
15 when compared to all other crimes and the offender's criminal history.
- 16 (e) (1) The sentencing court has discretion to sentence at any place
17 within the sentencing range. The sentencing judge shall select the center
18 of the range in the usual case and reserve the upper and lower limits for
19 aggravating and mitigating factors insufficient to warrant a departure.
- 20 (2) In presumptive imprisonment cases, the sentencing court shall
21 pronounce the complete sentence which shall include the prison sen-
22 tence, the maximum potential reduction to such sentence as a result of
23 good time and the period of postrelease supervision at the sentencing
24 hearing. Failure to pronounce the period of postrelease supervision shall
25 not negate the existence of such period of postrelease supervision.
- 26 (3) In presumptive nonprison cases, the sentencing court shall pro-
27 nounce the prison sentence as well as the duration of the nonprison sanc-
28 tion at the sentencing hearing.
- 29 (f) Each grid block states the presumptive sentencing range for an
30 offender whose crime of conviction and criminal history place such of-
31 fender in that grid block. If an offense is classified in a grid block below
32 the dispositional line, the presumptive disposition shall be nonimprison-
33 ment. If an offense is classified in a grid block above the dispositional
34 line, the presumptive disposition shall be imprisonment. If an offense is
35 classified in grid blocks 5-H, 5-I or 6-G, the court may impose an optional
36 nonprison sentence upon making the following findings on the record:
- 37 (1) An appropriate treatment program exists which is likely to be
38 more effective than the presumptive prison term in reducing the risk of
39 offender recidivism; and
- 40 (2) the recommended treatment program is available and the of-
41 fender can be admitted to such program within a reasonable period of
42 time; or
- 43 (3) the nonprison sanction will serve community safety interests by

1 promoting offender reformation.

2 Any decision made by the court regarding the imposition of an optional
3 nonprison sentence if the offense is classified in grid blocks 5-H, 5-I or
4 6-G shall not be considered a departure and shall not be subject to appeal.

5 (g) The sentence for the violation of K.S.A. 21-3411, and amend-
6 ments thereto, aggravated assault against a law enforcement officer or
7 K.S.A. 21-3415, and amendments thereto, aggravated battery against a
8 law enforcement officer and amendments thereto which places the de-
9 fendant's sentence in grid block 6-H or 6-I shall be presumed impris-
10 onment. The court may impose an optional nonprison sentence upon
11 making a finding on the record that the nonprison sanction will serve
12 community safety interests by promoting offender reformation. Any de-
13 cision made by the court regarding the imposition of the optional non-
14 prison sentence, if the offense is classified in grid block 6-H or 6-I, shall
15 not be considered departure and shall not be subject to appeal.

16 (h) When a firearm is used to commit any person felony, the of-
17 fender's sentence shall be presumed imprisonment. The court may im-
18 pose an optional nonprison sentence upon making a finding on the record
19 that the nonprison sanction will serve community safety interests by pro-
20 moting offender reformation. Any decision made by the court regarding
21 the imposition of the optional nonprison sentence shall not be considered
22 a departure and shall not be subject to appeal.

23 (i) The sentence for the violation of the felony provision of K.S.A. 8-
24 1567 and, subsection (b)(3) of K.S.A. 21-3412a, and subsections (b)(3)
25 and (b)(4) of K.S.A. 21-3710, and amendments thereto, shall be as pro-
26 vided by the specific mandatory sentencing requirements of that section
27 and shall not be subject to the provisions of this section or K.S.A. 21-4707
28 and amendments thereto. If because of the offender's criminal history
29 classification the offender is subject to presumptive imprisonment or if
30 the judge departs from a presumptive probation sentence and the of-
31 fender is subject to imprisonment, the provisions of this section and
32 K.S.A. 21-4707, and amendments thereto, shall apply and the offender
33 shall not be subject to the mandatory sentence as provided in K.S.A. 21-
34 3710, and amendments thereto. Notwithstanding the provisions of any
35 other section, the term of imprisonment imposed for the violation of the
36 felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a
37 and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments
38 thereto shall not be served in a state facility in the custody of the secretary
39 of corrections.

40 (j) (1) *The sentence for any aggravated habitual sex offender shall be*
41 *an off-grid person felony with a term of imprisonment of life and such*
42 *offender shall not be eligible for probation or suspension, modification or*
43 *reduction of sentence. An offender sentenced pursuant to this section shall*

1 not be eligible for parole prior to serving 40 years' imprisonment, and
 2 such 40 years' imprisonment shall not be reduced by the application of
 3 good time credits.

4 (2) As used in this subsection, "aggravated habitual sex offender"
 5 means a person who: (A) Has been convicted in this state of rape as
 6 defined in K.S.A. 21-3502, and amendments thereto; indecent liberties
 7 with a child as defined in K.S.A. 21-3503, and amendments thereto; ag-
 8 gravated indecent liberties with a child as defined in K.S.A. 21-3504, and
 9 amendments thereto; criminal sodomy as defined in subsection (a)(2) and
 10 (a)(3) of K.S.A. 21-3505, and amendments thereto; aggravated criminal
 11 sodomy as defined in K.S.A. 21-3506, and amendments thereto; indecent
 12 solicitation of a child as defined in K.S.A. 21-3510, and amendments
 13 thereto; aggravated indecent solicitation of a child as defined in K.S.A.
 14 21-3511, and amendments thereto; aggravated sexual battery as defined
 15 in K.S.A. 21-3518, and amendments thereto; aggravated incest as defined
 16 in K.S.A. 21-3603, and amendments thereto; or an attempt, conspiracy or
 17 criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303,
 18 and amendments thereto, of any offense identified in this subsection; and
 19 (B) at the time of the conviction under paragraph (A) has at least one
 20 conviction for a sexually violent crime, as defined in K.S.A. 22-3717, and
 21 amendments thereto, in this state or comparable felony under the laws of
 22 another state, the federal government or a foreign government.

23 ~~(j)~~ (k) (1) The sentence for any persistent sex offender whose current
 24 convicted crime carries a presumptive term of imprisonment shall be
 25 double the maximum duration of the presumptive imprisonment term.
 26 The sentence for any persistent sex offender whose current conviction
 27 carries a presumptive nonprison term shall be presumed imprisonment
 28 and shall be double the maximum duration of the presumptive impris-
 29 onment term.

30 ~~(2) Except as otherwise provided in this subsection,~~ As used in this
 31 subsection, "persistent sex offender" means a person who: (A) ~~(i)~~ Has
 32 been convicted in this state of a sexually violent crime, as defined in K.S.A.
 33 22-3717 and amendments thereto, *other than those crimes identified in*
 34 *subsection (j)(2)(A); and (ii)* (B) at the time of the conviction under par-
 35 agraph (A) ~~(i)~~ has at least one conviction for a sexually violent crime, as
 36 defined in K.S.A. 22-3717 and amendments thereto in this state or com-
 37 parable felony under the laws of another state, the federal government
 38 or a foreign government; ~~or (B) (i) has been convicted of rape, K.S.A. 21-~~
 39 ~~3502, and amendments thereto; and (ii) at the time of the conviction~~
 40 ~~under paragraph (B) (i) has at least one conviction for rape in this state~~
 41 ~~or comparable felony under the laws of another state, the federal gov-~~
 42 ~~ernment or a foreign government.~~

43 ~~(3) Except as provided in paragraph (2) (B), the provisions of this~~

1 ~~subsection shall not apply to any person whose current convicted crime~~
 2 ~~is a severity level 1 or 2 felony.~~

3 ~~(l)~~ (l) If it is shown at sentencing that the offender committed any
 4 felony violation for the benefit of, at the direction of, or in association
 5 with any criminal street gang, with the specific intent to promote, further
 6 or assist in any criminal conduct by gang members, the offender's sen-
 7 tence shall be presumed imprisonment. Any decision made by the court
 8 regarding the imposition of the optional nonprison sentence shall not be
 9 considered a departure and shall not be subject to appeal. As used in this
 10 subsection, "criminal street gang" means any organization, association or
 11 group of three or more persons, whether formal or informal, having as
 12 one of its primary activities the commission of one or more person felonies
 13 or felony violations of the uniform controlled substances act, K.S.A. 65-
 14 4101 *et seq.*, and amendments thereto, which has a common name or
 15 common identifying sign or symbol, whose members, individually or col-
 16 lectively engage in or have engaged in the commission, attempted com-
 17 mission, conspiracy to commit or solicitation of two or more person fel-
 18 onies or felony violations of the uniform controlled substances act, K.S.A.
 19 65-4101 *et seq.*, and amendments thereto, or any substantially similar
 20 offense from another jurisdiction.

21 ~~(m)~~ (m) The sentence for a violation of subsection (a) of K.S.A. 21-
 22 3715 and amendments thereto when such person being sentenced has a
 23 prior conviction for a violation of subsection (a) or (b) of K.S.A. 21-3715
 24 or 21-3716 and amendments thereto shall be presumed imprisonment.

25 Sec. 11. K.S.A. 2005 Supp. 21-4706 is hereby amended to read as
 26 follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the
 27 sentences of imprisonment shall represent the time a person shall actually
 28 serve, subject to a reduction of up to 15% of the primary sentence for
 29 good time as authorized by law.

30 (b) The sentencing court shall pronounce sentence in all felony cases.

31 (c) Violations of K.S.A. 21-3401, 21-3439 and 21-3801 and amend-
 32 ments thereto are off-grid crimes for the purpose of sentencing. Except
 33 as otherwise provided by K.S.A. 21-4622 through 21-4627, and 21-4629
 34 through 21-4631, and amendments thereto, the sentence shall be im-
 35 prisonment for life.

36 (d) *Violations of K.S.A. 21-3502, 21-3503, 21-3504, subsection (a)(2)*
 37 *or (a)(3) of K.S.A. 21-3505, 21-3506, 21-3510, 21-3511, 21-3518, 21-3603,*
 38 *and amendments thereto, or an attempt, conspiracy or criminal sollicita-*
 39 *tion, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, and amendments*
 40 *thereto, of any of such offenses, by an aggravated habitual sex offender*
 41 *as defined in K.S.A. 21-4704, and amendments thereto, is an off-grid crime*
 42 *for the purpose of sentencing and offenders shall be sentenced pursuant*
 43 *to subsection (j) of K.S.A. 21-4704, and amendments thereto.*

1 Sec. 12. K.S.A. 2005 Supp. 22-3717 is hereby amended to read as
2 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
3 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638
4 and amendments thereto; K.S.A. 8-1567, and amendments thereto; and
5 K.S.A. 21-4624, and amendments thereto, an inmate, including an inmate
6 sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be
7 eligible for parole after serving the entire minimum sentence imposed by
8 the court, less good time credits.

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

15 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
16 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,
17 and amendments thereto, an inmate sentenced to imprisonment for an
18 off-grid offense committed on or after July 1, 1993, but prior to July 1,
19 1999, shall be eligible for parole after serving 15 years of confinement,
20 without deduction of any good time credits and an inmate sentenced to
21 imprisonment for an off-grid offense committed on or after July 1, 1999,
22 shall be eligible for parole after serving 20 years of confinement without
23 deduction of any good time credits.

24 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
25 repeal, an inmate sentenced for a class A felony committed before July
26 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and
27 amendments thereto, shall be eligible for parole after serving 15 years of
28 confinement, without deduction of any good time credits.

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

34 (5) *An inmate sentenced to imprisonment pursuant to subsection (j)*
35 *of K.S.A. 21-4704, and amendments thereto, committed on or after July*
36 *1, 2006, shall be eligible for parole after serving the mandatory term of*
37 *imprisonment without deduction of any good time credits.*

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

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

- 1 ~~(2)~~ (B) an additional 15 years, without deduction of good time credits,
2 for each crime which is a class A felony.
- 3 (2) *If an inmate is sentenced to imprisonment pursuant to subsection*
4 *(j) of K.S.A. 21-4704, and amendments thereto, for crimes committed on*
5 *or after July 1, 2006, the inmate shall be eligible for parole after serving*
6 *the mandatory term of imprisonment.*
- 7 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
8 committed on or after July 1, 1993, will not be eligible for parole, but will
9 be released to a mandatory period of postrelease supervision upon com-
10 pletion of the prison portion of their sentence as follows:
- 11 (A) Except as provided in subparagraphs (D) and (E), persons sen-
12 tenced for nondrug severity level 1 through 4 crimes and drug severity
13 levels 1 and 2 crimes must serve 36 months, plus the amount of good
14 time earned and retained pursuant to K.S.A. 21-4722 and amendments
15 thereto, on postrelease supervision.
- 16 (B) Except as provided in subparagraphs (D) and (E), persons sen-
17 tenced for nondrug severity levels 5 and 6 crimes and drug severity level
18 3 crimes must serve 24 months, plus the amount of good time earned
19 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on
20 postrelease supervision.
- 21 (C) Except as provided in subparagraphs (D) and (E), persons sen-
22 tenced for nondrug severity level 7 through 10 crimes and drug severity
23 level 4 crimes must serve 12 months, plus the amount of good time earned
24 and retained pursuant to K.S.A. 21-4722 and amendments thereto, on
25 postrelease supervision.
- 26 (D) (i) The sentencing judge shall impose the postrelease supervi-
27 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),
28 unless the judge finds substantial and compelling reasons to impose a
29 departure based upon a finding that the current crime of conviction was
30 sexually violent or sexually motivated. In that event, departure may be
31 imposed to extend the postrelease supervision to a period of up to 60
32 months.
- 33 (ii) If the sentencing judge departs from the presumptive postrelease
34 supervision period, the judge shall state on the record at the time of
35 sentencing the substantial and compelling reasons for the departure. De-
36 partures in this section are subject to appeal pursuant to K.S.A. 21-4721
37 and amendments thereto.
- 38 (iii) In determining whether substantial and compelling reasons exist,
39 the court shall consider:
- 40 (a) Written briefs or oral arguments submitted by either the defend-
41 ant or the state;
- 42 (b) any evidence received during the proceeding;
- 43 (c) the presentence report, the victim's impact statement and any

- 1 psychological evaluation as ordered by the court pursuant to subsection
2 (e) of K.S.A. 21-4714 and amendments thereto; and
- 3 (d) any other evidence the court finds trustworthy and reliable.
- 4 (iv) The sentencing judge may order that a psychological evaluation
5 be prepared and the recommended programming be completed by the
6 offender. The department of corrections or the parole board shall ensure
7 that court ordered sex offender treatment be carried out.
- 8 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
9 shall refer to K.S.A. 21-4718 and amendments thereto.
- 10 (vi) Upon petition, the parole board may provide for early discharge
11 from the postrelease supervision period upon completion of court or-
12 dered programs and completion of the presumptive postrelease super-
13 vision period, as determined by the crime of conviction, pursuant to sub-
14 paragraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
15 postrelease supervision is at the discretion of the parole board.
- 16 (vii) Persons convicted of crimes deemed sexually violent or sexually
17 motivated, shall be registered according to the habitual sex offender reg-
18 istration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.
- 19 (E) The period of postrelease supervision provided in subparagraphs
20 (A) and (B) may be reduced by up to 12 months and the period of post-
21 release supervision provided in subparagraph (C) may be reduced by up
22 to six months based on the offender's compliance with conditions of su-
23 pervision and overall performance while on postrelease supervision. The
24 reduction in the supervision period shall be on an earned basis pursuant
25 to rules and regulations adopted by the secretary of corrections.
- 26 (F) In cases where sentences for crimes from more than one severity
27 level have been imposed, the offender shall serve the longest period of
28 postrelease supervision as provided by this section available for any crime
29 upon which sentence was imposed irrespective of the severity level of the
30 crime. Supervision periods will not aggregate.
- 31 (2) As used in this section, "sexually violent crime" means:
- 32 (A) Rape, K.S.A. 21-3502, and amendments thereto;
- 33 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
34 thereto;
- 35 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
36 amendments thereto;
- 37 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505
38 and amendments thereto;
- 39 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
40 thereto;
- 41 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments
42 thereto;
- 43 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and

1 amendments thereto;

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

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

6 (J) any conviction for a felony offense in effect at any time prior to
7 the effective date of this act, that is comparable to a sexually violent crime
8 as defined in subparagraphs (A) through (I), or any federal or other state
9 conviction for a felony offense that under the laws of this state would be
10 a sexually violent crime as defined in this section;

11 (K) an attempt, conspiracy or criminal solicitation, as defined in
12 K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a sexually
13 violent crime as defined in this section; or

14 (L) any act which at the time of sentencing for the offense has been
15 determined beyond a reasonable doubt to have been sexually motivated.
16 As used in this subparagraph, "sexually motivated" means that one of the
17 purposes for which the defendant committed the crime was for the pur-
18 pose of the defendant's sexual gratification.

19 (e) If an inmate is sentenced to imprisonment for a crime committed
20 while on parole or conditional release, the inmate shall be eligible for
21 parole as provided by subsection (c), except that the Kansas parole board
22 may postpone the inmate's parole eligibility date by assessing a penalty
23 not exceeding the period of time which could have been assessed if the
24 inmate's parole or conditional release had been violated for reasons other
25 than conviction of a crime.

26 (f) If a person is sentenced to prison for a crime committed on or
27 after July 1, 1993, while on probation, parole, conditional release or in a
28 community corrections program, for a crime committed prior to July 1,
29 1993, and the person is not eligible for retroactive application of the
30 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
31 4724 and amendments thereto, the new sentence shall not be aggregated
32 with the old sentence, but shall begin when the person is paroled or
33 reaches the conditional release date on the old sentence. If the offender
34 was past the offender's conditional release date at the time the new of-
35 fense was committed, the new sentence shall not be aggregated with the
36 old sentence but shall begin when the person is ordered released by the
37 Kansas parole board or reaches the maximum sentence expiration date
38 on the old sentence, whichever is earlier. The new sentence shall then
39 be served as otherwise provided by law. The period of postrelease su-
40 pervision shall be based on the new sentence, except that those offenders
41 whose old sentence is a term of imprisonment for life, imposed pursuant
42 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate
43 sentence with a maximum term of life imprisonment, for which there is

1 no conditional release or maximum sentence expiration date, shall remain
2 on postrelease supervision for life or until discharged from supervision
3 by the Kansas parole board.

4 (g) Subject to the provisions of this section, the Kansas parole board
5 may release on parole those persons confined in institutions who are el-
6 igible for parole when: (1) The board believes that the inmate should be
7 released for hospitalization, for deportation or to answer the warrant or
8 other process of a court and is of the opinion that there is reasonable
9 probability that the inmate can be released without detriment to the com-
10 munity or to the inmate; or (2) the secretary of corrections has reported
11 to the board in writing that the inmate has satisfactorily completed the
12 programs required by any agreement entered under K.S.A. 75-5210a and
13 amendments thereto, or any revision of such agreement, and the board
14 believes that the inmate is able and willing to fulfill the obligations of a
15 law abiding citizen and is of the opinion that there is reasonable proba-
16 bility that the inmate can be released without detriment to the community
17 or to the inmate. Parole shall not be granted as an award of clemency and
18 shall not be considered a reduction of sentence or a pardon.

19 (h) The Kansas parole board shall hold a parole hearing at least the
20 month prior to the month an inmate will be eligible for parole under
21 subsections (a), (b) and (c). At least the month preceding the parole hear-
22 ing, the county or district attorney of the county where the inmate was
23 convicted shall give written notice of the time and place of the public
24 comment sessions for the inmate to any victim of the inmate's crime who
25 is alive and whose address is known to the county or district attorney or,
26 if the victim is deceased, to the victim's family if the family's address is
27 known to the county or district attorney. Except as otherwise provided,
28 failure to notify pursuant to this section shall not be a reason to postpone
29 a parole hearing. In the case of any inmate convicted of an off-grid felony
30 or a class A felony the secretary of corrections shall give written notice
31 of the time and place of the public comment session for such inmate at
32 least one month preceding the public comment session to any victim of
33 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and
34 amendments thereto. If notification is not given to such victim or such
35 victim's family in the case of any inmate convicted of an off-grid felony
36 or a class A felony, the board shall postpone a decision on parole of the
37 inmate to a time at least 30 days after notification is given as provided in
38 this section. Nothing in this section shall create a cause of action against
39 the state or an employee of the state acting within the scope of the em-
40 ployee's employment as a result of the failure to notify pursuant to this
41 section. If granted parole, the inmate may be released on parole on the
42 date specified by the board, but not earlier than the date the inmate is
43 eligible for parole under subsections (a), (b) and (c). At each parole hear-

1 ing and, if parole is not granted, at such intervals thereafter as it deter-
2 mines appropriate, the Kansas parole board shall consider: (1) Whether
3 the inmate has satisfactorily completed the programs required by any
4 agreement entered under K.S.A. 75-5210a and amendments thereto, or
5 any revision of such agreement; and (2) all pertinent information regard-
6 ing such inmate, including, but not limited to, the circumstances of the
7 offense of the inmate; the presentence report; the previous social history
8 and criminal record of the inmate; the conduct, employment, and attitude
9 of the inmate in prison; the reports of such physical and mental exami-
10 nations as have been made; comments of the victim and the victim's
11 family including in person comments, contemporaneous comments and
12 prerecorded comments made by any technological means; comments of
13 the public; official comments; and capacity of state correctional
14 institutions.

15 (i) In those cases involving inmates sentenced for a crime committed
16 after July 1, 1993, the parole board will review the inmates proposed
17 release plan. The board may schedule a hearing if they desire. The board
18 may impose any condition they deem necessary to insure public safety,
19 aid in the reintegration of the inmate into the community, or items not
20 completed under the agreement entered into under K.S.A. 75-5210a and
21 amendments thereto. The board may not advance or delay an inmate's
22 release date. Every inmate while on postrelease supervision shall remain
23 in the legal custody of the secretary of corrections and is subject to the
24 orders of the secretary.

25 (j) Before ordering the parole of any inmate, the Kansas parole board
26 shall have the inmate appear before either in person or via a video con-
27 ferencing format and shall interview the inmate unless impractical be-
28 cause of the inmate's physical or mental condition or absence from the
29 institution. Every inmate while on parole shall remain in the legal custody
30 of the secretary of corrections and is subject to the orders of the secretary.
31 Whenever the Kansas parole board formally considers placing an inmate
32 on parole and no agreement has been entered into with the inmate under
33 K.S.A. 75-5210a and amendments thereto, the board shall notify the in-
34 mate in writing of the reasons for not granting parole. If an agreement
35 has been entered under K.S.A. 75-5210a and amendments thereto and
36 the inmate has not satisfactorily completed the programs specified in the
37 agreement, or any revision of such agreement, the board shall notify the
38 inmate in writing of the specific programs the inmate must satisfactorily
39 complete before parole will be granted. If parole is not granted only
40 because of a failure to satisfactorily complete such programs, the board
41 shall grant parole upon the secretary's certification that the inmate has
42 successfully completed such programs. If an agreement has been entered
43 under K.S.A. 75-5210a and amendments thereto and the secretary of

1 corrections has reported to the board in writing that the inmate has sat-
2 isfactorily completed the programs required by such agreement, or any
3 revision thereof, the board shall not require further program participa-
4 tion. However, if the board determines that other pertinent information
5 regarding the inmate warrants the inmate's not being released on parole,
6 the board shall state in writing the reasons for not granting the parole. If
7 parole is denied for an inmate sentenced for a crime other than a class A
8 or class B felony or an off-grid felony, the board shall hold another parole
9 hearing for the inmate not later than one year after the denial unless the
10 parole board finds that it is not reasonable to expect that parole would
11 be granted at a hearing if held in the next three years or during the interim
12 period of a deferral. In such case, the parole board may defer subsequent
13 parole hearings for up to three years but any such deferral by the board
14 shall require the board to state the basis for its findings. If parole is denied
15 for an inmate sentenced for a class A or class B felony or an off-grid
16 felony, the board shall hold another parole hearing for the inmate not
17 later than three years after the denial unless the parole board finds that
18 it is not reasonable to expect that parole would be granted at a hearing if
19 held in the next 10 years or during the interim period of a deferral. In
20 such case, the parole board may defer subsequent parole hearings for up
21 to 10 years but any such deferral shall require the board to state the basis
22 for its findings.

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

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

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

37 (1) Unless it finds compelling circumstances which would render a
38 plan of payment unworkable, shall order as a condition of parole or post-
39 release supervision that the parolee or the person on postrelease super-
40 vision pay any transportation expenses resulting from returning the pa-
41 rolee or the person on postrelease supervision to this state to answer
42 criminal charges or a warrant for a violation of a condition of probation,
43 assignment to a community correctional services program, parole, con-

1 ditional release or postrelease supervision;

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

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

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

15 (5) unless it finds compelling circumstances which would render a
16 plan of payment unworkable, shall order that the parolee or person on
17 postrelease supervision reimburse the state for all or part of the expend-
18 itures by the state board of indigents' defense services to provide counsel
19 and other defense services to the person. In determining the amount and
20 method of payment of such sum, the parole board shall take account of
21 the financial resources of the person and the nature of the burden that
22 the payment of such sum will impose. Such amount shall not exceed the
23 amount claimed by appointed counsel on the payment voucher for indi-
24 gents' defense services or the amount prescribed by the board of indi-
25 gents' defense services reimbursement tables as provided in K.S.A. 22-
26 4522 and amendments thereto, whichever is less, minus any previous
27 payments for such services.

28 (n) If the court which sentenced an inmate specified at the time of
29 sentencing the amount and the recipient of any restitution ordered as a
30 condition of parole or postrelease supervision, the Kansas parole board
31 shall order as a condition of parole or postrelease supervision that the
32 inmate pay restitution in the amount and manner provided in the journal
33 entry unless the board finds compelling circumstances which would ren-
34 der a plan of restitution unworkable.

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

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

43 (q) Inmates shall be released on postrelease supervision upon the

1 termination of the prison portion of their sentence. Time served while
2 on postrelease supervision will vest.

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

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

13 (t) For offenders sentenced prior to the effective date of this act who
14 are eligible for modification of their postrelease supervision obligation,
15 the department of corrections shall modify the period of postrelease su-
16 pervision as provided for by this section for offenders convicted of severity
17 level 9 and 10 crimes on the sentencing guidelines grid for nondrug
18 crimes and severity level 4 crimes on the sentencing guidelines grid for
19 drug crimes on or before September 1, 2000; for offenders convicted of
20 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug
21 crimes on or before November 1, 2000; and for offenders convicted of
22 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug
23 crimes and severity level 3 crimes on the sentencing guidelines grid for
24 drug crimes on or before January 1, 2001.

25 Sec. 13. K.S.A. 21-3503, 21-3504, 21-3505, 21-3506, 21-3518 and 21-
26 3603 and K.S.A. 2005 Supp. 21-3502, 21-3510, 21-3511, 21-4704, 21-4706
27 and 22-3717 are hereby repealed.

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