

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2040

By Representative Schwab

1-20

10 AN ACT concerning crimes, criminal procedure and punishment; relat-
11 ing to parole; amending K.S.A. 2008 Supp. 22-3717 and repealing the
12 existing section.
13

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

15 Section 1. K.S.A. 2008 Supp. 22-3717 is hereby amended to read as
16 follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A.
17 1993 Supp. 21-4628 prior to its repeal; K.S.A. 21-4635 through 21-4638,
18 and amendments thereto; K.S.A. 8-1567, and amendments thereto;
19 K.S.A. 21-4642, and amendments thereto; and K.S.A. 21-4624, and
20 amendments thereto, an inmate, including an inmate sentenced pursuant
21 to K.S.A. 21-4618, and amendments thereto, shall be eligible for parole
22 after serving the entire minimum sentence imposed by the court, less
23 good time credits.

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

30 (2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993
31 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638,
32 and amendments thereto, an inmate sentenced to imprisonment for an
33 off-grid offense committed on or after July 1, 1993, but prior to July 1,
34 1999, shall be eligible for parole after serving 15 years of confinement,
35 without deduction of any good time credits and an inmate sentenced to
36 imprisonment for an off-grid offense committed on or after July 1, 1999,
37 shall be eligible for parole after serving 20 years of confinement without
38 deduction of any good time credits.

39 (3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its
40 repeal, an inmate sentenced for a class A felony committed before July
41 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, and
42 amendments thereto, shall be eligible for parole after serving 15 years of
43 confinement, without deduction of any good time credits.

- 1 (4) An inmate sentenced to imprisonment for a violation of subsec-
2 tion (a) of K.S.A. 21-3402, and amendments thereto, committed on or
3 after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole
4 after serving 10 years of confinement without deduction of any good time
5 credits.
- 6 (5) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
7 4643, and amendments thereto, committed on or after July 1, 2006, shall
8 be eligible for parole after serving the mandatory term of imprisonment
9 without deduction of any good time credits.
- 10 (c) (1) Except as provided in subsection (e), if an inmate is sentenced
11 to imprisonment for more than one crime and the sentences run consec-
12 utively, the inmate shall be eligible for parole after serving the total of:
- 13 (A) The aggregate minimum sentences, as determined pursuant to
14 K.S.A. 21-4608 and amendments thereto, less good time credits for those
15 crimes which are not class A felonies; and
- 16 (B) an additional 15 years, without deduction of good time credits,
17 for each crime which is a class A felony.
- 18 (2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-
19 4643, and amendments thereto, for crimes committed on or after July 1,
20 2006, the inmate shall be eligible for parole after serving the mandatory
21 term of imprisonment.
- 22 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
23 committed on or after July 1, 1993, or persons subject to subparagraph
24 (G), will not be eligible for parole, but will be released to a mandatory
25 period of postrelease supervision upon completion of the prison portion
26 of their sentence as follows:
- 27 (A) Except as provided in subparagraphs (D) and (E), persons sen-
28 tenced for nondrug severity level 1 through 4 crimes and drug severity
29 levels 1 and 2 crimes must serve 36 months, plus the amount of good
30 time and program credit earned and retained pursuant to K.S.A. 21-4722,
31 and amendments thereto, on postrelease supervision.
- 32 (B) Except as provided in subparagraphs (D) and (E), persons sen-
33 tenced for nondrug severity levels 5 and 6 crimes and drug severity level
34 3 crimes must serve 24 months, plus the amount of good time and pro-
35 gram credit earned and retained pursuant to K.S.A. 21-4722, and amend-
36 ments thereto, on postrelease supervision.
- 37 (C) Except as provided in subparagraphs (D) and (E), persons sen-
38 tenced for nondrug severity level 7 through 10 crimes and drug severity
39 level 4 crimes must serve 12 months, plus the amount of good time and
40 program credit earned and retained pursuant to K.S.A. 21-4722, and
41 amendments thereto, on postrelease supervision.
- 42 (D) (i) The sentencing judge shall impose the postrelease supervi-
43 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),

1 unless the judge finds substantial and compelling reasons to impose a
2 departure based upon a finding that the current crime of conviction was
3 sexually motivated. In that event, departure may be imposed to extend
4 the postrelease supervision to a period of up to 60 months.

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

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

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

14 (b) any evidence received during the proceeding;

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

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

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

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

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

31 (vii) Persons convicted of crimes deemed sexually violent or sexually
32 motivated, shall be registered according to the offender registration act,
33 K.S.A. 22-4901 through 22-4910, and amendments thereto.

34 (viii) Persons convicted of K.S.A. 21-3510 or 21-3511, and amend-
35 ments thereto, shall be required to participate in a treatment program
36 for sex offenders during the postrelease supervision period.

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

- 1 (F) In cases where sentences for crimes from more than one severity
2 level have been imposed, the offender shall serve the longest period of
3 postrelease supervision as provided by this section available for any crime
4 upon which sentence was imposed irrespective of the severity level of the
5 crime. Supervision periods will not aggregate.
- 6 (G) Except as provided in subsection (u), persons convicted of a sex-
7 ually violent crime committed on or after July 1, 2006, and who are re-
8 leased from prison, shall be released to a mandatory period of postrelease
9 supervision for the duration of the person's natural life.
- 10 (2) As used in this section, "sexually violent crime" means:
- 11 (A) Rape, K.S.A. 21-3502, and 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, K.S.A. 21-3506, and amendments
19 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) aggravated incest, K.S.A. 21-3603, and amendments thereto; or
- 29 (K) an attempt, conspiracy or criminal solicitation, as defined in
30 K.S.A. 21-3301, 21-3302 or 21-3303, and amendments thereto, of a sex-
31 ually violent crime as defined in this section.
- 32 "Sexually motivated" means that one of the purposes for which the
33 defendant committed the crime was for the purpose of the defendant's
34 sexual gratification.
- 35 (e) If an inmate is sentenced to imprisonment for a crime committed
36 while on parole or conditional release, the inmate shall be eligible for
37 parole as provided by subsection (c), except that the Kansas parole board
38 may postpone the inmate's parole eligibility date by assessing a penalty
39 not exceeding the period of time which could have been assessed if the
40 inmate's parole or conditional release had been violated for reasons other
41 than conviction of a crime.
- 42 (f) If a person is sentenced to prison for a crime committed on or
43 after July 1, 1993, while on probation, parole, conditional release or in a

1 community corrections program, for a crime committed prior to July 1,
2 1993, and the person is not eligible for retroactive application of the
3 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
4 4724, and amendments thereto, the new sentence shall not be aggregated
5 with the old sentence, but shall begin when the person is paroled or
6 reaches the conditional release date on the old sentence. If the offender
7 was past the offender's conditional release date at the time the new of-
8 fense was committed, the new sentence shall not be aggregated with the
9 old sentence but shall begin when the person is ordered released by the
10 Kansas parole board or reaches the maximum sentence expiration date
11 on the old sentence, whichever is earlier. The new sentence shall then
12 be served as otherwise provided by law. The period of postrelease su-
13 pervision shall be based on the new sentence, except that those offenders
14 whose old sentence is a term of imprisonment for life, imposed pursuant
15 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate
16 sentence with a maximum term of life imprisonment, for which there is
17 no conditional release or maximum sentence expiration date, shall remain
18 on postrelease supervision for life or until discharged from supervision
19 by the Kansas parole board.

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

35 (h) The Kansas parole board shall hold a parole hearing at least the
36 month prior to the month an inmate will be eligible for parole under
37 subsections (a), (b) and (c). At least the month preceding the parole hear-
38 ing, the county or district attorney of the county where the inmate was
39 convicted shall give written notice of the time and place of the public
40 comment sessions for the inmate to any victim of the inmate's crime who
41 is alive and whose address is known to the county or district attorney or,
42 if the victim is deceased, to the victim's family if the family's address is
43 known to the county or district attorney. Except as otherwise provided,

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

36 (i) In those cases involving inmates sentenced for a crime committed
37 after July 1, 1993, the parole board will review the inmates proposed
38 release plan. The board may schedule a hearing if they desire. The board
39 may impose any condition they deem necessary to insure public safety,
40 aid in the reintegration of the inmate into the community, or items not
41 completed under the agreement entered into under K.S.A. 75-5210a, and
42 amendments thereto. The board may not advance or delay an inmate's
43 release date. Every inmate while on postrelease supervision shall remain

1 in the legal custody of the secretary of corrections and is subject to the
2 orders of the secretary.

3 (j) Before ordering the parole of any inmate, the Kansas parole board
4 shall have the inmate appear before *the board* either in person or via a
5 video conferencing format and shall interview the inmate unless imprac-
6 tical because of the inmate's physical or mental condition or absence from
7 the institution. Every inmate while on parole shall remain in the legal
8 custody of the secretary of corrections and is subject to the orders of the
9 secretary. Whenever the Kansas parole board formally considers placing
10 an inmate on parole and no agreement has been entered into with the
11 inmate under K.S.A. 75-5210a, and amendments thereto, the board shall
12 notify the inmate in writing of the reasons for not granting parole. If an
13 agreement has been entered under K.S.A. 75-5210a, and amendments
14 thereto, and the inmate has not satisfactorily completed the programs
15 specified in the agreement, or any revision of such agreement, the board
16 shall notify the inmate in writing of the specific programs the inmate must
17 satisfactorily complete before parole will be granted. If parole is not
18 granted only because of a failure to satisfactorily complete such programs,
19 the board shall grant parole upon the secretary's certification that the
20 inmate has successfully completed such programs. If an agreement has
21 been entered under K.S.A. 75-5210a, and amendments thereto, and the
22 secretary of corrections has reported to the board in writing that the
23 inmate has satisfactorily completed the programs required by such agree-
24 ment, or any revision thereof, the board shall not require further program
25 participation. However, if the board determines that other pertinent in-
26 formation regarding the inmate warrants the inmate's not being released
27 on parole, the board shall state in writing the reasons for not granting the
28 parole.

29 (1) ~~Except as provided in paragraph (3), if~~ **If** parole is denied for an
30 inmate sentenced for a crime other than a class A or class B felony or an
31 off-grid felony, the board shall hold another parole hearing for the inmate
32 not later than one year after the denial unless the parole board finds that
33 it is not reasonable to expect that parole would be granted at a hearing if
34 held in the next three years or during the interim period of a deferral. In
35 such case, the parole board may defer subsequent parole hearings for up
36 to three years, but any such deferral by the board shall require the board
37 to state the basis for its findings.

38 (2) ~~Except as provided in paragraph (3), if~~ **If** parole is denied for an
39 inmate sentenced for a class A or class B felony or an off-grid felony, the
40 board shall hold another parole hearing for the inmate not later than three
41 years after the denial unless the parole board finds that it is not reasonable
42 to expect that parole would be granted at a hearing if held in the next ~~10~~
43 **20** years or during the interim period of a deferral. In such case, the

1 parole board may defer subsequent parole hearings for up to ~~10~~ **20** years,
2 but any such deferral *by the board* shall require the board to state the
3 basis for its findings.

4 ~~(3) If parole is denied for an inmate sentenced for a crime involving~~
5 ~~more than one person as a part of the same act or transaction or in two~~
6 ~~or more acts or transactions connected together or constituting parts of a~~
7 ~~common scheme or course of conduct, or involving a victim who is under~~
8 ~~the age of 18, the board may defer subsequent parole hearings for up to~~
9 ~~20 years, but any such deferral by the board shall require the board to~~
10 ~~state the basis for its findings.~~

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

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

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

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

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

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

42 (4) may order the parolee or person on postrelease supervision to pay
43 the administrative fee imposed pursuant to K.S.A. 22-4529, and amend-

- 1 ments thereto, unless the board finds compelling circumstances which
2 would render payment unworkable; and
- 3 (5) unless it finds compelling circumstances which would render a
4 plan of payment unworkable, shall order that the parolee or person on
5 postrelease supervision reimburse the state for all or part of the expend-
6 itures by the state board of indigents' defense services to provide counsel
7 and other defense services to the person. In determining the amount and
8 method of payment of such sum, the parole board shall take account of
9 the financial resources of the person and the nature of the burden that
10 the payment of such sum will impose. Such amount shall not exceed the
11 amount claimed by appointed counsel on the payment voucher for indi-
12 gents' defense services or the amount prescribed by the board of indi-
13 gents' defense services reimbursement tables as provided in K.S.A. 22-
14 4522, and amendments thereto, whichever is less, minus any previous
15 payments for such services.
- 16 (n) If the court which sentenced an inmate specified at the time of
17 sentencing the amount and the recipient of any restitution ordered as a
18 condition of parole or postrelease supervision, the Kansas parole board
19 shall order as a condition of parole or postrelease supervision that the
20 inmate pay restitution in the amount and manner provided in the journal
21 entry unless the board finds compelling circumstances which would ren-
22 der a plan of restitution unworkable.
- 23 (o) Whenever the Kansas parole board grants the parole of an inmate,
24 the board, within 10 days of the date of the decision to grant parole, shall
25 give written notice of the decision to the county or district attorney of the
26 county where the inmate was sentenced.
- 27 (p) When an inmate is to be released on postrelease supervision, the
28 secretary, within 30 days prior to release, shall provide the county or
29 district attorney of the county where the inmate was sentenced written
30 notice of the release date.
- 31 (q) Inmates shall be released on postrelease supervision upon the
32 termination of the prison portion of their sentence. Time served while
33 on postrelease supervision will vest.
- 34 (r) An inmate who is allocated regular good time credits as provided
35 in K.S.A. 22-3725, and amendments thereto, may receive meritorious
36 good time credits in increments of not more than 90 days per meritorious
37 act. These credits may be awarded by the secretary of corrections when
38 an inmate has acted in a heroic or outstanding manner in coming to the
39 assistance of another person in a life threatening situation, preventing
40 injury or death to a person, preventing the destruction of property or
41 taking actions which result in a financial savings to the state.
- 42 (s) The provisions of subsections (d)(1)(A), (d)(1)(B), (d)(1)(C) and
43 (d)(1)(E) shall be applied retroactively as provided in subsection (t).

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

13 (u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-
14 4643, and amendments thereto, for crimes committed on or after July 1,
15 2006, shall be placed on parole for life and shall not be discharged from
16 supervision by the Kansas parole board. When the board orders the parole
17 of an inmate pursuant to this subsection, the board shall order as a con-
18 dition of parole that the inmate be electronically monitored for the du-
19 ration of the inmate's natural life.

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

26 Sec. 2. K.S.A. 2008 Supp. 22-3717 is hereby repealed.

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