

Approved: 2-23-94  
Date

## MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on February 7, 1994 in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Mary Galligan, Legislative Research Department  
Lynne Holt, Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes  
June Evans, Committee Secretary

Conferees appearing before the committee:

The Chairperson announced the purpose of this meeting was to consider bringing from the Table HB 2578 and according to House Rules it was placed on the Agenda so every member of the Committee has been on notice and it was also printed in the House Calendar.

Representative Cox moved and Representative Cornfield seconded to bring HB 2578 off the Table. The motion carried.

The Chairperson stated that HB 2578 is now back on the Table.

Representative Rock moved and Representative Benlon seconded to amend HB 2578.

Representative Rock explained what this amendment does (1) narrows the scope and (2) cleans up the loopholes. To be eligible for the death penalty it would have to be a premeditated first degree murder and included along with that a murder that occurs during a sexually violent crime as defined in the Statutes or the murder of a law enforcement officer, probation parole officer, warrant officer, court services officer, prosecutors or a judge either while performing their duties or a murder that occurs as a result of them performing their duties, a murder that occurs during a kidnapping. Would like to raise the age to be eligible for the death penalty to 18 from 16 as they are legal adults. Would like to change mentally retarded developmentally disabled to mentally retarded. Would like to eliminate the organ donor language out of the New Section 13. If convict is pregnant the execution shall be postponed. Would like to make the hard 40 discretionary not mandatory, regarding notice even under the present hard 40 sentencing there is a problem, or at least a potential problem of notice in the statute saying the notice has to be given from the prosecutor to the defendant at arraignment - would like to broaden that a little bit to on/or before arraignment. Those are the basic changes in the amendment. (See Attachment #1)

Representative Sebelius moved and Representative Wiard seconded a substitute motion to amend HB 2578 which strikes the death penalty provisions and substitutes the so called death by imprisonment for defendants convicted of first degree murder, premeditated murder and treason. (See Attachment #2)

Representative Sebelius further explained her amendment stating the defendant is not eligible for parole, it converts the hard 40 statute into a death by imprisonment statute. Defendants who are charged would never be allowed to leave prison.

Representative Rock stated he opposed this amendment which provides for death by imprisonment because we need to have a death penalty. Life has some value even in prison, it is better than death. If someone decides to end another person's life there should be consequences and we in the Legislature should have enough courage to say there are consequences. Killing someone is a very serious offense and we have a very serious punishment for that crime.

Representative Empson stated she opposed Representative Sebelius' amendment and agreed with Representative Rock's amendment. Representative Empson stated the average statewide fiscal cost for an inmate is \$20,300.97 and this cost times 20, 30, 40 or 50 years is very costly to the state. It is difficult to justify this cost. There is no incentive for a person to be a role model if they are in for life.

Representative Sebelius stated this is their home for life and they are role models. There is certainly a class who are psychologically deranged.

Representative Empson asked if many states had the hard 40 or would we be forging new ground?

It was answered that other states already does have the hard 40.

Representative Wiard stated he supported Representative Sebelius' amendment for many reasons. Several years ago it was debated on the Floor and was a "No" vote at that time and still am. The hard 40 sentence is the way this should be imposed. Am opposed to the state carrying out an execution. The state should not be involved in the area of revenge. It does not deter crime. Legislative Research showed the cost of the hard 40 was \$1.2M and the death penalty was \$2.3M. The criminal is in prison 7-15 years before the death penalty is implemented. Representative Wiard stated it made him sick and tired to see these criminals that are to be in prison for life then coming out 7-10 years for good behavior after committing the crime; this amendment leaves the criminal in prison for life. The only way they come out is to die and bury them. That ensures the public of safety. People do make mistakes and an innocent person could be killed; the hard 40 life death penalty is the key as it leaves the criminal in prison forever. The death penalty does not solve society's problems. Hard life death by imprisonment does that.

Representative Rock stated in the amendment it was inadvertently left out if a prisoner was murdered then the person that murdered would be eligible for the death penalty. There should be a bottom line. If a person thinks they have nothing to lose and if a police officer stops them they could shoot the police officer and flee as there would not be any worse sentencing for them even if they committed murder. There are statistics on both sides and there are religious arguments on both sides, emotional arguments on both sides, victims arguments on both sides and it is felt there needs to be a vote on the death penalty. The lives of judges, courts prosecutors, probation officers or police officers are not anymore valuable than anybody else's lives, the reason among other things, those are included in this is because those are the people that are in the business of carrying out seeing that justice is done.

Representative Gilbert stated she favored life by imprisonment as she believes an innocent person will die.

Representative Weinhold stated it was mentioned that prison has a quality of life and she takes issue with that after seeing Lansing. It was very bleak, there was no quality of life. Imprisonment is a harsh penalty, you lose your privacy, individuality and it does protect our law-abiding citizens.

Representative Krehbiel stated he supported the substitute motion. Reno County, where a murder occurred is looking beyond emotion. The Reno County Sheriff and Judge was asked if the death penalty was in place, would have the Reno County murder happened and the answer was "yes, it would not have prevented this murder".

Representative Sebelius stated this is not new ground. Other states have the hard 40 with no possibility of parole. There is no evidence that the death penalty deters crime. It is three times as cheap to keep a criminal in prison for life than implementing the death penalty.

The Chairperson asked for a vote on the substitute motion. The Chair called for a show of hands - Ayes - 11; Nays - 11. The Chairperson voted No and the motion failed.

The Chairperson stated we are back on Representative Rock's amendment.

Representative Smith asked who was included in this list?

Representative Rock stated the original list was all felony murders; this would apply capital punishment to those felons who killed during the commission of a violent sex crime, a law enforcement officer, parole or probation officer or prison employee while he or she was engaged in performing their duties, a justice or judge during the performance of his or her duties, or another inmate in prison.

Representative Rock stated he wanted this only in the performance of their duty or because of their duty that they are murdered.

Staff will add this language to the bill.

Representative Sebelius stated the inherently dangerous category was a broad range of offenses that are not sexually motivated, not police officers, parole officers, isn't this another large group of crimes?

Representative Rock stated he was not interested in inherently dangerous felony language, if it is not necessary for the purpose of what my intention in this amendment. That is a good question.

Staff explained there was a list handed out earlier that included all these groups, what types of felonies included in first degree murder. It could be any felony murder.

Representative Rock stated his intent was to narrow it; those areas previously mentioned. Do not intend to have felony murders or inherently dangerous murders.

The Chairperson stated, you listed those that capital punishment would apply to, you are not bringing in those crimes that are considered under statute inherently dangerous felony?

Representative Kline stated the bill is limited as it relates to the type of killing as a part of an inherently dangerous felony and the original explanation you were talking about the killing of a law enforcement officer in the performance of his duties. The bill, as currently written, provides for the death penalty if a law enforcement officer came upon a burglary and shot and killed the suspect in that burglary. Removing the inherently dangerous felony provision would not necessarily include some of these actions; it might jeopardize a law enforcement officers life. Inherently dangerous felonies are included but they are limited to specific types of individuals within the types of inherently dangerous felonies.

Representative Rock reiterated the types of crimes he wished included again. Other changes are, it broadens up to and during arraignment, raises the age to 18 so they are a legal adult, says "mentally retarded" not eligible instead of "developmentally disabled".

Representative Rock stated he also wanted to include "jailer" which would take care of the counties and the state.

Representative Sebelius stated she had considerable concern as this is incredibly important as this is a very serious topic and possibly the most serious of the Session, and don't believe this Committee understands this amendment. Hope somebody takes a very careful look at this.

Chairperson Graeber stated, we understand your concern and with Representative Rock's input we will make sure when it comes to the Floor that it is clear.

Representative Smith stated this bill needs more time, would like to have it do exactly what we want it to do. Need to make sure the judges know what they are doing.

Representative Krehbiel asked, what has happened to the "hard 40"?

Staff stated the "hard 40" could be imposed for any crimes that capital punishment can be imposed for but at the discretion of the judge. It doesn't require any court proceedings. It does away with the mandatory "hard 40". It is in the bill currently for anyone not given the death sentence.

Representative Cornfield stated that Representative Rock's amendment was clear and it was redefined. We have been going over what the bill does and what it doesn't do. We have all had the bill and plenty of time to read it or not read it. Representative's Rock amendment is very clear and believe we should vote on the bill.

Representative Lahti stated, you are wrong - this is serious, too serious to figure out and put together over a weekend.

Representative Krehbiel moved and Representative Standifer seconded a substitute motion to table HB 2578.

The Chairperson asked for a vote. Ayes - 11 Nays - 11. The Chair voted "No" and the motion failed.

The Chairperson stated we are back on the amendment.

Representative Wiard stated he wanted to rebut what Representative Cornfield said earlier. He is an opponent of the death penalty and this is new language and we will not deal with a more serious issue this year and don't want it on the Floor until it is cleared up.

The Chairperson stated, when the bill gets to the Floor it will be in final form.

Representative Weinhold asked for clarification of "mentally retarded".

Representative Krehbiel asked for Representative Rock to explain his amendment again and that was done.

Representative Rock again explained his amendment as mentioned earlier.

Representative Krehbiel stated that SB 473 was much clearer and would like to hear that bill.

The Chairperson asked for vote on Representative Rock's amendment.

Ayes - 12 Nays 11.

Representative Benlon moved and Representative Rock seconded to pass HB 2578 out favorably as amended. Ayes 11 - Nays 11. The Chairperson voted "Yes" and the motion carried.

The meeting adjourned at 3:15 PM.

The next meeting will be February 8, 1994.



Date: 2/7/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Donna Schneewes	AI	Topeka KS
James McKenna	KCADP	" "
Laurel Stearns	KCADP	Topeka KS
Sue Locketter	NOW	Wichita
Laurie McVaughn	Pat Observer	Topeka
Amy Smith	Sen. Harris	"
Jeff Brownell	Sen. Karr	Emporia
Jane Wright	Eagle	
Kirk Peters	intern	Lawrence
Jessica Kunen	Attorney - BIDS	Topeka
Jim Adams	KANSAS Association of Criminal Defense Lawyers	Wichita
Ronald E. White	BIDS - 3rd Judicial Dist Public Defender	Topeka
Andrew Harrison	BIDS - Western Kans Reg Defender	Garden City
Mel Cathey	BIDS	Topeka
Pat	Pat	"

Date: 2/7/94

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Bob Lumsden	K. Cath. Conf	Leawood, KS
Rich Blum	KSNT	Topeka
Marilyn Wilson	NAACP	Topeka
Kathryn Davis	interested citizen	Topeka
Hilbert N. Hammond	State NAACP	Junction City, KS
Juan Hamata	K.T.L.A.	LAURENCE
Gloria Keenan	interested	Wesley City, KS
Paul Sewell	"	Topeka
Margie Pressgruen	Intern	Topeka
Bill Miskell	KDOC	TOPEKA
Kathie Spauld	DOB	Topeka
Clare Mann	League of Women Voters of Ks.	Overland Park
Marcia Davis	interested	Wichita
Tom Burgess	Self	Topeka
Jennifer Pierce	Amnesty Int'l	ToCo

Date: 02.07.1994

FEDERAL and STATE AFFAIRS COMMITTEE

[illegible]

## HOUSE BILL No. 2578

By Representatives Packer, Boston, Cornfield, Crabb, Flower, Freeborn, Graeber, Haulmark, Jennison, Kejr, King, Lane, Lawrence, Lloyd, Mason, Mayans, Mays, Mead, Mollenkamp, Morrison, Myers, Neufeld, Powers, Roe, Scott, Shallenburger, Shore, M. Smith, Snowbarger, Vickrey and Wagle

1-10

AN ACT concerning crimes and punishments and procedures relating thereto; providing for a sentence of death for certain crimes under certain circumstances; providing for mandatory terms of imprisonment for certain crimes; amending K.S.A. 22-4003, 22-4004, 22-4005, 22-4009 and 22-4014 and K.S.A. 1993 Supp. ~~21-4608,~~ 21-3401, 21-4622, 21-4623, 21-4624, 21-4627, 21-4629, 21-4631, 21-4706, 22-3717, 22-4001, 22-4002, 22-4006, 22-4011, 22-4012 and 22-4013 and repealing the existing sections; also repealing K.S.A. 22-4007, 22-4008 and 22-4010 and K.S.A. 1993 Supp. 21-4628.

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

Section 1. K.S.A. 1993 Supp. 21-4608 is hereby amended to read as follows: 21-4608. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).

(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.

(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole or on conditional release for a felony shall serve the sentence consecutively to the term or terms under

F+SA  
2-7-94  
Atch #1

F+SA  
2-7-94  
Atch #1



1 which the person was on probation, assigned to a community cor-  
2 rectional services program or on parole or conditional release.

3 (d) Any person who is convicted and sentenced for a crime com-  
4 mitted while on release for a felony pursuant to article 28 of chapter  
5 22 of the Kansas Statutes Annotated shall serve the sentence con-  
6 secutively to the term or terms under which the person was released.

7 (e) (1) Any person who is convicted and sentenced for a crime  
8 committed while such person is incarcerated and serving a sentence  
9 for a felony in any place of incarceration shall serve the sentence  
10 consecutively to the term or terms under which the person was  
11 incarcerated.

12 (2) If a person is sentenced to prison for a crime committed on  
13 or after July 1, 1993, while the person was imprisoned for an offense  
14 committed prior to July 1, 1993, and the person is not eligible for  
15 the retroactive application of the sentencing guidelines act, the new  
16 sentence shall not be aggregated with the old sentence but shall  
17 begin when the person is paroled or reaches the conditional release  
18 date on the old sentence, whichever is earlier. If the offender was  
19 past the offender's conditional release date at the time the new  
20 offense was committed, the new sentence shall not be aggregated  
21 with the old sentence but shall begin when the person is ordered  
22 released by the Kansas parole board or reaches the maximum sen-  
23 tence date on the old sentence, whichever is earlier. The new sen-  
24 tence shall then be served as otherwise provided by law. The period  
25 of postrelease supervision shall be based on the new sentence.

26 (f) The provisions of this subsection relating to parole eligibility  
27 shall be applicable to persons convicted of crimes committed prior  
28 to January 1, 1979, but shall be applicable to persons convicted of  
29 crimes committed on or after that date only to the extent that the  
30 terms of this subsection are not in conflict with the provisions of  
31 K.S.A. 22-3717 and amendments thereto. In calculating the time to  
32 be served on concurrent and consecutive sentences, the following  
33 rules shall apply:

34 (1) When indeterminate terms run concurrently, the shorter min-  
35 imum terms merge in and are satisfied by serving the longest min-  
36 imum term and the shorter maximum terms merge in and are sat-  
37 isfied by conditional release or discharge on the longest maximum  
38 term if the terms are imposed on the same date.

39 (2) When concurrent terms are imposed on different dates, com-  
40 putation will be made to determine which term or terms require  
41 the longest period of imprisonment to reach parole eligibility, con-  
42 ditional release and maximum dates, and that sentence will be con-  
43 sidered the controlling sentence. The parole eligibility date may be

1 computed and projected on one sentence and the conditional release  
2 date and maximum may be computed and projected from another  
3 to determine the controlling sentence.

4 (3) When indeterminate terms imposed on the same date are to  
5 be served consecutively, the minimum terms are added to arrive at  
6 an aggregate minimum to be served equal to the sum of all minimum  
7 terms and the maximum terms are added to arrive at an aggregate  
8 maximum equal to the sum of all maximum terms.

9 (4) When indeterminate sentences are imposed to be served con-  
10 secutively to sentences previously imposed in any other court or the  
11 sentencing court, the aggregated minimums and maximums shall be  
12 computed from the effective date of the subsequent sentences which  
13 have been imposed as consecutive. For the purpose of determining  
14 the sentence begins date and the parole eligibility and conditional  
15 release dates, the inmate shall be given credit on the aggregate  
16 sentence for time spent imprisoned on the previous sentences, but  
17 not exceeding an amount equal to the previous minimum sentence  
18 less the maximum amount of good time credit that could have been  
19 earned on the minimum sentence. For the purpose of computing  
20 the maximum date, the inmate shall be given credit for all time  
21 spent imprisoned on the previous sentence. This method for com-  
22 putation of the maximum sentence shall be utilized for all sentences  
23 computed pursuant to this subsection after July 1, 1983.

24 Nothing in this subsection (f)(4) shall affect the authority of the  
25 Kansas parole board to determine the parole eligibility of inmates  
26 pursuant to subsection (d) ~~of K.S.A. 22-3717 and amendments~~ (e)  
27 thereto.

28 (5) When consecutive sentences are imposed which are to be  
29 served consecutive to sentences for which a prisoner has been on  
30 probation, assigned to a community correctional services program,  
31 on parole or on conditional release, the amount of time served on  
32 probation, on assignment to a community correctional services pro-  
33 gram, on parole or on conditional release shall not be credited as  
34 service on the aggregate sentence in determining the parole eligi-  
35 bility, conditional release and maximum dates, except that credit  
36 shall be given for any amount of time spent in a residential facility  
37 while on probation or assignment to a community correctional res-  
38 idential services program.

39 (g) When a definite and an indefinite term run consecutively,  
40 the period of the definite term is added to both the minimum and  
41 maximum of the indeterminate term and both sentences are satisfied  
42 by serving the indeterminate term. The provisions of this subsection  
43 shall not apply to crimes committed on or after July 1, 1993.

(h) When a defendant is sentenced in a state court and is also under sentence from a federal court or other state court or is subject to sentence in a federal court or other state court for an offense committed prior to the defendant's sentence in a Kansas state court, the court may direct that custody of the defendant may be relinquished to federal or other state authorities and that such state sentences as are imposed may run concurrently with any federal or other state sentence imposed.

Insert section 2, attached, and renumber sections 2 through 9 as sections 3 through 10

Sec. 2. K.S.A. 1993 Supp. 21-4622 is hereby amended to read as follows: 21-4622. Upon conviction or adjudication of guilt of a defendant of ~~premeditated murder in the first degree and a finding~~ that the defendant was less than 18 ~~16~~ years of age at the time of the commission thereof, the court shall sentence the defendant as otherwise provided by law, and no ~~mandatory term of imprisonment sentence of death~~ shall be imposed hereunder.

18

Sec. 3. K.S.A. 1993 Supp. 21-4623 is hereby amended to read as follows: 21-4623. (1) (a) Upon conviction or adjudication of guilt of a defendant of the crime of murder in the first degree ~~based upon the finding of premeditated murder~~, the defendant's counsel or the director of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is ~~mentally retarded developmentally disabled~~. If the court determines that there is not sufficient reason to believe that the defendant is ~~mentally retarded developmentally disabled~~, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 1993 Supp. 21-4624 through ~~21-4628~~ 21-4627, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is ~~mentally retarded developmentally disabled~~, the court shall conduct a hearing to determine whether the defendant is ~~mentally retarded developmentally disabled~~.

and a finding that the crime is a crime described in subsection (a)(1), (2), (3) or (4) of K.S.A. 21-3401 and amendments thereto

— mentally retarded

(2) (b) At the hearing, the court shall determine whether the defendant is ~~mentally retarded developmentally disabled~~. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within 10 days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence

Sec. 2. K.S.A. 1993 Supp. 21-3401 is hereby amended to read as follows: 21-3401. (a) Murder in the first degree is:

(1) The killing of a human being committed~~---~~(a) intentionally and with premeditation; or~~---~~(b)

(2) the killing of a victim of the crime of kidnapping, as defined in K.S.A. 21-3420 and amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421 and amendments thereto, committed by a person engaged in the commission of, attempt to commit or flight from such crime;

(3) the killing of a victim of a violent sex crime specified in subsection (f)(2)(A) through (K) of K.S.A. 22-3717 and amendments thereto, committed by a person engaged in the commission of, attempt to commit or flight from such crime; or

(4) the killing of any of the following in the commission of, attempt to commit or flight <sup>ro</sup> from an inherently dangerous felony, as defined in K.S.A. 21-3436 and amendments thereto, by a person engaged in the commission of, attempt to commit or flight from such felony:

(A) A uniformed or properly identified law enforcement officer, while such officer is engaged in performance of duties as such officer;

(B) a corrections officer, parole officer, community corrections officer or district court services officer, while such officer is engaged in performance of duties as such officer;

(C) a justice or judge of any court of this state or a judge of any municipal court in this state, while such justice or judge is engaged in performance of duties as such justice or judge;

(D) a county or district attorney, while such attorney is engaged in performance of duties as such attorney;

(E) a person incarcerated in any correctional institution, as defined in K.S.A. 75-5202 and amendments thereto, or any city, county or regional jail; or



(5) the killing of any human being committed in the commission of, attempt to commit, or flight from an inherently dangerous felony as defined in K.S.A. 1993 Supp. 21-3436 and amendments thereto.

(b) Murder in the first degree is an off-grid person felony.

(c) As used in this section:

(1) "Community corrections officer" means an officer or employee of a community correctional services program under the community corrections act whose duties include the receipt, custody, control, maintenance, discipline, security and apprehension of persons assigned to such program.

(2) "Corrections officer" means an officer or employee of the secretary of corrections whose duties include the receipt, custody, control, maintenance, discipline, security and apprehension of persons in the custody of the secretary of corrections.

(3) "Jailer" means an officer or employee of one or more cities or counties whose duties include the receipt, custody, control, maintenance, discipline, security and apprehension of persons incarcerated in a city, county or regional jail.

(4) "Parole officer" means an officer or employee of the secretary of corrections whose duties include investigation, supervision, arrest and control of persons on parole or postrelease supervision and the enforcement of the conditions of parole or postrelease supervision.

1-6

1 against the defendant in any criminal proceeding.

2 (3) (c) If, at the conclusion of a hearing pursuant to this section,  
3 the court determines that the defendant is not ~~mentally retarded~~  
4 ~~developmentally disabled~~, the defendant shall be sentenced in ac-  
5 cordance with K.S.A. 1993 Supp. 21-4624 through ~~21-4628~~ 21-4627,  
6 and amendments thereto.

7 (4) (d) If, at the conclusion of a hearing pursuant to this section,  
8 the court determines that the defendant is ~~mentally retarded de-~~  
9 ~~velopmentally disabled~~, the court shall sentence the defendant as  
10 otherwise provided by law, and no ~~mandatory term of imprison-~~  
11 ~~ment sentence of death~~ shall be imposed hereunder.

12 (5) (e) As used in this section, "~~mentally retarded~~" "~~develop-~~  
13 ~~mentally disabled~~" means having significantly subaverage general in-  
14 tellectual functioning, as defined by K.S.A. 76-12b01 and amend-  
15 ments thereto, to an extent which substantially impairs one's capacity  
16 to appreciate the criminality of one's conduct or to conform one's  
17 conduct to the requirements of law.

18 Sec. 4. K.S.A. 1993 Supp. 21-4624 is hereby amended to read  
19 as follows: 21-4624. (1) (a) If a defendant is charged with murder  
20 in the first degree, the county or district attorney shall file written  
21 notice if such attorney intends, upon conviction or adjudication of  
22 guilt of the defendant, to request a separate sentencing proceeding  
23 to determine whether the defendant should be ~~required to serve~~  
24 ~~a mandatory term of imprisonment of 40 years sentenced to death.~~  
25 Such notice shall be filed with the court and served on the defendant  
26 or the defendant's attorney at the time of arraignment. If such notice  
27 is not filed and served as required by this subsection, the county  
28 or district attorney may not request such a sentencing proceeding  
29 and the defendant, if convicted of murder in the first degree, shall  
30 be sentenced as otherwise provided by law, and no ~~mandatory term~~  
31 ~~of imprisonment sentence of death~~ shall be imposed hereunder.

32 (2) (b) Except as provided in K.S.A. 1993 Supp. 21-4622 and  
33 21-4623, and amendments thereto, upon conviction or adjudication  
34 of guilt of a defendant of ~~murder in the first degree based upon~~  
35 ~~the finding of premeditated murder~~, the court upon motion of  
36 the county or district attorney, shall conduct a separate sentencing  
37 proceeding to determine whether the defendant shall be ~~required~~  
38 ~~to serve a mandatory term of imprisonment of 40 years sentenced~~  
39 ~~to death.~~ The proceeding shall be conducted by the trial judge before  
40 the trial jury as soon as practicable. If any person who served on  
41 the trial jury is unable to serve on the jury for the sentencing  
42 proceeding, the court shall substitute an alternate juror who has  
43 been impaneled for the trial jury. If there are insufficient alternate

mentally retarded

"mentally retarded"

or before

the crime of

and a finding that the crime is a crime described in subsection  
(a)(1), (2), (3) or (4) of K.S.A. 21-3401 and amendments thereto

jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a ~~mandatory term of imprisonment of 40 years~~ *sentence of death* shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403 and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(3) (c) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 1993 *Supp.* 21-4625 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) (d) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(5) (e) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 1993 *Supp.* 21-4625 and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced ~~pursuant to K.S.A. 21-4628 and amendments thereto~~ *to death*; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation of a sentence of a ~~mandatory term of imprisonment of 40 years~~ *death*, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances

1 which it found beyond a reasonable doubt. If, after a reasonable  
2 time for deliberation, the jury is unable to reach a verdict, the judge  
3 shall dismiss the jury and impose a sentence of imprisonment for  
4 life ~~with eligibility for parole~~ and shall commit the defendant to  
5 the custody of the secretary of corrections. In nonjury cases, the  
6 court shall follow the requirements of this subsection in determining  
7 the sentence to be imposed.

8 {6} (f) Notwithstanding the verdict of the jury, the trial court  
9 shall review any jury verdict imposing a ~~mandatory term of im-~~  
10 ~~prisonment sentence of death~~ hereunder to ascertain whether the  
11 imposition of such sentence is supported by the evidence. If the  
12 court determines that the imposition of such a sentence is not sup-  
13 ported by the evidence, the court shall modify the sentence and  
14 sentence the defendant as otherwise provided by law, and no ~~man-~~  
15 ~~datory term of imprisonment sentence of death~~ shall be imposed  
16 hereunder. Whenever the court enters a judgment modifying the  
17 sentencing verdict of the jury, the court shall set forth its reasons  
18 for so doing in a written memorandum which shall become part of  
19 the record.

20 Sec. 5. K.S.A. 1993 Supp. 21-4627 is hereby amended to read  
21 as follows: 21-4627. (1) (a) A judgment of conviction resulting in a  
22 ~~mandatory term of imprisonment pursuant to K.S.A. 1990 Supp.~~  
23 ~~21-3401 and 21-3401a, and amendments thereto, sentence of~~  
24 ~~death~~ shall be subject to automatic review by and appeal to the  
25 supreme court of Kansas in the manner provided by the applicable  
26 statutes and rules of the supreme court governing appellate proce-  
27 dure. The review and appeal shall be expedited in every manner  
28 consistent with the proper presentation thereof and given priority  
29 pursuant to the statutes and rules of the supreme court governing  
30 appellate procedure.

31 {2} (b) The supreme court of Kansas shall consider the question  
32 of sentence as well as any errors asserted in the review and appeal  
33 and shall be authorized to notice unassigned errors appearing of  
34 record if the ends of justice would be served thereby.

35 {3} (c) With regard to the sentence, the court shall determine:

36 (a) (1) Whether the ~~mandatory term of imprisonment sentence~~  
37 ~~of death~~ was imposed under the influence of passion, prejudice or  
38 any other arbitrary factor; and

39 (b) (2) whether the evidence supports the findings that an ag-  
40 gravating circumstance or circumstances existed and that any miti-  
41 gating circumstances were insufficient to outweigh the aggravating  
42 circumstances.

43 {4} (d) The court shall be authorized to enter such orders as are



necessary to effect a proper and complete disposition of the review and appeal.

Sec. 6. K.S.A. 1993 Supp. 21-4629 is hereby amended to read as follows: 21-4629. In the event the ~~mandatory term of imprisonment a sentence of death~~ or any provision of this act authorizing such ~~mandatory term sentence~~ is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence ~~to require no mandatory term of imprisonment and shall sentence and resentence~~ the defendant as otherwise provided by law.

Sec. 7. K.S.A. 1993 Supp. 21-4631 is hereby amended to read as follows: 21-4631. (1) (a) K.S.A. ~~1992~~ 1993 Supp. 21-4622 through 21-4630, and amendments thereto, shall be supplemental to and a part of the Kansas criminal code.

(2) (b) *The provisions of K.S.A. ~~1992~~ 1993 Supp. 21-4622 through 21-4630 and amendments thereto, as they existed immediately prior to July 1, 1994, shall be applicable only to persons convicted of crimes committed on or after July 1, 1990, and before July 1, 1994.*

(c) *The provisions of K.S.A. 1993 Supp. 21-4622 through 21-4627, 21-4629 and 21-4630, as amended by this act, shall be applicable only to persons convicted of crimes committed on or after July 1, 1994.*

Sec. 8. K.S.A. 1993 Supp. 21-4706 is hereby amended to read as follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of up to 20% of the primary sentence for good time as authorized by law.

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

(c) Violations of K.S.A. 21-3401 and 21-3801 and amendments thereto are off-grid crimes for the purpose of sentencing. *Except as otherwise provided by K.S.A. 1993 Supp. 21-4622 through 21-46527, 21-4629 and 21-4630, and amendments thereto, the term of imprisonment for a violation of K.S.A. 21-3401 and amendments thereto shall be imprisonment for life. A person sentenced to imprisonment for a violation of K.S.A. 21-3401 and amendments thereto committed on or after July 1, 1994, shall not be eligible for probation or suspension, modification or reduction of sentence. The term of imprisonment for violation of K.S.A. 21-3801 and amendments thereto* shall be imprisonment for life.

— sentence

Sec. 9. K.S.A. 1993 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section and K.S.A. 1993 Supp. 21-4628 and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

~~(b) An inmate sentenced for murder in the first degree committed on or after July 1, 1993, shall be eligible for parole after serving 40 years of confinement, without deduction of any good time credits.~~

~~(c) An inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto but not including an inmate sentenced pursuant to K.S.A. 1993 Supp. 21-4628 and amendments thereto or on or after July 1, 1993, inmate sentenced for an off-grid offense, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.~~

~~(d) Except as otherwise provided by subsection (b) or K.S.A. 1993 Supp. 21-4628, an inmate sentenced for an off-grid offense committed on or after July 1, 1993, shall be eligible for parole after 15 years of confinement, without deduction of any good time credits.~~

~~(e) Except as provided in subsection (e) (g), if an inmate is sentenced to imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:~~

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

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

~~(f) (1) Persons sentenced for crimes, other than off-grid offenses, committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:~~

(A) Except as provided in subparagraph ~~(f)(1)(C)~~, persons sentenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 must serve 24 months, plus the amount of good time earned and retained pursuant to K.S.A. 1993 Supp. 21-4722 and amendments thereto, on postrelease supervision;

(B) except as provided in subparagraph ~~(f)(1)(C)~~, persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 must serve 12 months, plus the amount of good time

(b)

(c)

section 11 or  
crime

(d)

(f)

(e)

crimes

(e) (1) (C)

(e) (1) (C)

earned and retained pursuant to K.S.A. 1993 Supp. 21-4722 *and amendments thereto*, on postrelease supervision;

(C) (i) The sentencing judge shall impose the presumptive post-release supervision period provided in subparagraph ~~(d)(1)(A) or (d)(2)(B) (f)(1)(A) or (f)(2)(B)~~ <sup>(e) (1) (A) or (e) (1) (B)</sup>, unless the judge finds substantial and compelling reasons to impose a departure. A departure may be imposed on the postrelease supervision for a period of up to 60 months based upon a finding that the current crime of conviction was sexually violent or sexually motivated.

(ii) If the sentencing judge departs from the presumptive post-release supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 1993 Supp. 21-4721 *and amendments thereto*.

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

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (c) of K.S.A. 1993 Supp. 21-4714 *and amendments thereto*; and

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

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

(v) In carrying out the provisions of subparagraph ~~(d)(1)(C)~~ <sup>(e) (1) (C)</sup>, the court shall refer to K.S.A. 1993 Supp. 21-4718 *and amendments thereto*.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive post-release supervision period, as determined by the crime of conviction, pursuant to subparagraph ~~(d)(1)(A) or (B) (f)(1)(A) or (f)(1)(B)~~ <sup>(e) (1) (A) or (e) (1) (B)</sup>. Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the habitual sex offender registration act, K.S.A. 1993 Supp. 22-4901 through 22-4910, and amendments thereto; and

(D) in cases where sentences for crimes from more than one severity level have been imposed, the highest severity level offense will dictate the period of postrelease supervision. Supervision periods will not aggregate.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

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

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

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

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

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

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

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

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

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (A) through (I) ~~(J) through (L)~~, or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section; (e) (1) (A) through (e) (1) (I)

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

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

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



(f) ~~(h)~~ If an inmate is sentenced to prison for a crime committed after July 1, 1993, while on parole or conditional release for a crime committed prior to July 1, 1993, the old sentence shall be converted into a determinate sentence and will run consecutive to the new sentence as follows:

(1) Twelve months for class C, D or E felonies or the conditional release date whichever is shorter;

(2) 36 months for class A or B felonies or the conditional release date whichever is shorter.

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

(h) ~~(i)~~ The Kansas parole board shall hold a parole hearing during the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (e), ~~(e), (d) and (e)~~. At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such

(g)

(h)

(i)

, (c) and (d)

1 victim or such victim's family in the case of any inmate convicted  
 2 of a class A felony, the board shall postpone a decision on parole  
 3 of the inmate to a time at least 30 days after notification is given  
 4 as provided in this section. Nothing in this section shall create a  
 5 cause of action against the state or an employee of the state acting  
 6 within the scope of the employee's employment as a result of the  
 7 failure to notify pursuant to this section. If granted parole, the inmate  
 8 may be released on parole on the date specified by the board, but  
 9 not earlier than the date the inmate is eligible for parole under \_\_\_\_\_, (c) and (d)  
 subsections (a), (b) and ~~(e), (c), (d) and (e)~~. At each parole hearing  
 and, if parole is not granted, at such intervals thereafter as it de-  
 12 termines appropriate, the Kansas parole board shall consider: (1)  
 13 Whether the inmate has satisfactorily completed the programs re-  
 14 quired by any agreement entered under K.S.A. 75-5210a and amend-  
 15 ments thereto, or any revision of such agreement; and (2) all per-  
 16 tinent information regarding such inmate, including, but not limited  
 17 to, the circumstances of the offense of the inmate; the presentence  
 18 report; the previous social history and criminal record of the inmate;  
 19 the conduct, employment, and attitude of the inmate in prison; the  
 20 reports of such physical and mental examinations as have been made;  
 21 comments of the victim and the victim's family; comments of the  
 22 public; official comments; and capacity of state correctional institu-  
 23 tions.

24 (i) ~~(h)~~ In those cases involving inmates sentenced for a crime  
 25 committed after July 1, 1993, the parole board will review the in-  
 26 mates proposed release plan. The board may schedule a hearing if  
 27 they desire. The board may impose any condition they deem nec-  
 28 cessary to insure public safety, aid in the reintegration of the inmate  
 29 into the community, or items not completed under the agreement  
 30 entered into under K.S.A. 75-5210a and amendments thereto. The  
 31 board may not advance or delay an inmate's release date. Every  
 32 inmate while on postrelease supervision shall remain in the legal  
 33 custody of the secretary of corrections and is subject to the orders  
 34 of the secretary.

35 (j) ~~(i)~~ Within a reasonable time after an inmate is committed to  
 36 the custody of the secretary of corrections, a member of the Kansas  
 37 parole board, or a designee of the board, shall hold an initial in-  
 38 formational hearing with such inmate and other inmates.

39 (k) ~~(j)~~ Before ordering the parole of any inmate, the Kansas  
 40 parole board shall have the inmate appear before it and shall in-  
 41 terview the inmate unless impractical because of the inmate's physical  
 42 or mental condition or absence from the institution. Every inmate  
 43 while on parole shall remain in the legal custody of the secretary

(j)

(k)

(l)

of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the specific reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in detail the specific reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony, the board shall hold another parole hearing for the inmate not later than one year after the denial. If parole is denied for an inmate sentenced for a class A or class B felony, the board shall hold another parole hearing for the inmate not later than three years after the denial and shall conduct an annual file review for such inmate. Written notice of such annual file review shall be given to the inmate. The provisions of this subsection shall not be applicable to inmates sentenced for crimes committed on or after July 1, 1993.

(1) ~~(m)~~ Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(m) ~~(n)~~ The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(n) ~~(o)~~ Whenever the Kansas parole board orders the parole of

(m)

(n)

(o)

an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision; and

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

(p) ~~(p)~~ If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced before July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole, the parole board shall order as a condition of parole that the parolee make restitution for the damage or loss caused by the parolee's crime in an amount and manner determined by the board unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the parole board shall not order restitution as a condition of parole or postrelease supervision unless the board finds compelling circumstances which justify such an order.

(q) ~~(p)~~ Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(r) ~~(q)~~ When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was

1 sentenced written notice of the release date.

(s)

2 ~~(f) (t)~~ Inmates shall be released on postrelease supervision upon  
3 the termination of the prison portion of their sentence. Time served  
4 while on postrelease supervision will vest.

(t)

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

Insert section 11, attached, and renumber sections 10 through 12 as  
sections 12 through 14

14 Sec. 10. K.S.A. 1993 Supp. 22-4001 is hereby amended to read  
15 as follows: 22-4001. The mode of inflicting the punishment of  
16 death, in all cases in this state, shall be by hanging by the  
17 neck until such convicted person is dead.

18 The warden of the Lansing correctional facility, and in case  
19 of the warden's death, sickness, absence or inability to act,  
20 then the deputy warden, shall be the executioner. The warden  
21 may specially designate and appoint, in writing, a suitable and  
22 competent person to act for the warden, and under the direction  
23 of the warden, as executioner in any particular case. Nothing  
24 contained in the provisions of this section shall apply to a crime  
25 committed at any time before the day when this section shall  
26 take effect.

27 Such crime shall be punished according to the provisions of  
28 law existing when it is committed, in the same manner as if  
29 this section had not been passed; and the provisions of law for  
30 the infliction of the penalty of death upon convicted criminals  
31 in existence on the day prior to the passage of this section are  
32 continued in existence and are applicable to all crimes pun-  
33 ishable by death which have been or may be committed before  
34 the time when this section takes effect.

35 A crime punishable by death committed on or after the taking  
36 effect of this act must be punished according to the provisions  
37 herein made and not otherwise. (a) Subject to the provisions of  
38 this act, the mode of carrying out a sentence of death in this state  
39 shall be by intravenous injection of a substance or substances in a  
quantity sufficient to cause death in a swift and humane manner.

40 (b) The secretary of corrections shall supervise the carrying out  
41 of each sentence of death and shall determine the procedures there-  
42 for, which shall be consistent with this act and the other laws of  
43

New Sec. 11. Upon conviction or adjudication of guilt of a defendant of murder in the first degree and a finding that the crime is a crime described in subsection (a)(1), (2), (3), or (4) of K.S.A. 21-3401 and amendments thereto, if the defendant is not sentenced to death as provided in K.S.A. 21-4622 through 21-4627 and 21-4629 through 21-4631, and amendments thereto, the court may sentence such defendant to imprisonment for life for parole prior to serving 40 years' imprisonment, without eligibility for parole prior to serving 40 years' imprisonment and without deduction of any of good time credits. Upon sentencing a defendant pursuant to this section, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced pursuant to section 11 and amendments thereto.



1 the state. The secretary of corrections shall designate one or more  
2 executioners and other persons necessary to assist in carrying out  
3 the sentence of death as provided in this section.

4 (c) In order to provide the secretary of corrections with assis-  
5 tance in selecting the type of substance or substances to be admin-  
6 istered in carrying out a sentence of death by intravenous injection  
7 in a swift and humane manner, the secretary shall appoint a panel  
8 of three persons to advise the secretary, one of whom shall be a  
9 pharmacologist, one of whom shall be a toxicologist and one of whom  
10 shall be an anesthesiologist. ~~The panel shall also advise the secretary~~  
11 ~~of corrections concerning matters related to section 13.~~ The panel  
12 shall meet upon the call of the secretary and, for the performance  
13 of their official duties, panel members shall be paid compensation,  
14 subsistence allowances, mileage and other expenses as provided in  
15 K.S.A. 75-3223 and amendments thereto.

16 (d) The secretary of corrections may designate in writing a war-  
17 den of one of the correctional institutions under the secretary's su-  
18 pervision to perform the duties imposed upon the secretary by this  
19 section and by K.S.A. 22-4002, 22-4003, 22-4013 and 22-4014, and  
20 amendments thereto.

21 Sec. 11. K.S.A. 1993 Supp. 22-4002 is hereby amended to read  
22 as follows: 22-4002. When any person ~~shall be~~ is sentenced to be  
23 hanged ~~such death, the~~ punishment shall be inflicted ~~within the~~  
24 ~~walls of the Lansing correctional facility, or within the yard or~~  
25 ~~enclosure adjacent thereto at a state correctional facility designated~~  
26 ~~by the secretary of corrections, under the supervision of the warden~~  
27 ~~secretary of corrections or the warden designated by the secretary~~  
28 and in such a manner as to exclude the view of all persons ~~save~~  
29 except those permitted to be present as ~~herein~~ provided in K.S.A.  
30 22-4003 and amendments thereto.

31 Sec. 12. K.S.A. 22-4003 is hereby amended to read as follows:  
32 22-4003. Besides the ~~warden, the deputy warden secretary of~~  
33 ~~corrections or the director designated by the secretary, the execu-~~  
34 ~~tioner (in case one shall have been appointed by the warden)~~  
35 ~~and his assistants and persons designated pursuant to K.S.A. 22-~~  
36 ~~4001 and amendments thereto to assist in the execution, the following~~  
37 ~~persons, and none no others, may be present at the execution: The~~  
38 ~~clergyman in attendance upon the prisoner; such other persons,~~  
39 ~~not exceeding three in number, as the prisoner may designate;~~  
40 ~~and such other persons, not exceeding six in number, as the~~  
41 ~~warden may designate member of the clergy attending the prisoner,~~  
42 ~~not more than three persons designated by the prisoner and not~~  
43 ~~more than six persons designated by the secretary of corrections.~~

~~New Sec. 13. (a) A person sentenced to death may make an anatomical gift in the manner and for the purposes provided by the uniform anatomical gift act. To the extent deemed practicable by the secretary of corrections, in the discretion of the secretary, a person making such gift shall be executed in such a manner that such gift can be carried out.~~

~~(b) The secretary of corrections may adopt procedures in lieu of those provided by K.S.A. 22-4001, 22-4002 and 22-4003, and amendments thereto, to implement the provisions of this section.~~

Sec. 14. K.S.A. 22-4004 is hereby amended to read as follows: 22-4004. ~~Whenever the warden shall deem~~ *If the secretary of corrections considers the presence of a military force necessary to carry into effect the provisions of this chapter, he act, the secretary shall notify the governor of the state, who is hereby authorized to thereof. The governor may call out such of the military force of the state as in his the governor's judgment may be necessary for the purpose.*

Sec. 15. K.S.A. 22-4005 is hereby amended to read as follows: 22-4005. ~~Whenever the warden shall inflict the punishment of death upon a convict, in obedience to the command of the court, he shall make return of his proceedings promptly~~ *When a sentence of death has been carried out, the secretary of corrections shall cause written notice thereof to be given to the clerk of the court where the conviction was had rendered, and the clerk shall subjoin the return of file the notice with the record of conviction and sentence.*

Sec. 16. K.S.A. 1993 Supp. 22-4006 is hereby amended to read as follows: 22-4006. ~~(1) If any (a) At any time prior to execution, a convict under sentence of death shall appear to be insane, the convict's counsel or the warden of the correctional institution or sheriff having custody shall forthwith give notice thereof to of such convict may request a determination of the convict's sanity by a district judge of the judicial district in which such convict was tried and sentenced, and the district judge shall at once make such investigation as shall satisfy the judge as to whether a commission ought to be named to examine such convict. If the district judge shall determine determines that there is not sufficient reason for the appointment of a commission, such to believe that the convict is insane, the judge shall so find and refuse to suspend the execution of such convict. (2) If the district judge shall determine that a commission ought to be appointed to examine such convict, such judge shall make a finding to that effect and cause it to be entered upon the records of the district court in the~~

Renumber sections 14 thorough 23 as sections 15 through 24

county in which such convict was sentenced, and, if necessary, the judge shall suspend the execution and appoint the superintendents of the Topeka state hospital, the Osawatomie state hospital, the Rainbow mental health facility and the Larned state hospital as a commission to examine such convict. The commission shall examine the convict with a view of determining whether the convict is sane or insane and shall report its findings in writing to such judge within 10 days after appointment. If for any reason any of such superintendents cannot serve in such capacity, the district judge shall appoint in such superintendent's place one of the assistant superintendents of the hospital or facility.

(3) If three of the members of such commission shall find such convict insane, the district determines that there is sufficient reason to believe that the convict is insane, the judge shall suspend the execution and conduct a hearing to determine the sanity of the convict.

(b) At the hearing, the district judge shall determine the issue of the convict's sanity. The judge shall order a psychiatric or psychological examination of the convict. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the convict and report their findings in writing to the judge within 10 days after the order of examination is issued. The convict shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the convict in the course of any examination provided for by this section, whether or not the convict consents to the examination, shall be admitted in evidence against the convict in any criminal proceeding.

(c) If, at the conclusion of a hearing pursuant to this section, the judge determines that the convict is sane, the judge shall enter an order setting a date for the convict's execution, which shall be carried into effect in the same manner as provided in the original sentence. A copy of the order shall be sent by mail to the ~~executioner~~ secretary of corrections.

(d) If, at the conclusion of a hearing pursuant to this section, the judge determines that the convict is insane, the judge shall suspend the execution until further order. (4) Any time thereafter, when it shall be made to appear to the district judge that such convict has become sane, such judge shall appoint a commission in the manner aforesaid, which shall make another investigation as to the sanity of such convict, and in case such convict is again declared insane the convict's execution shall be suspended by the judge until further order, and such pro-

1 ~~ceedings may be had when the judge has sufficient reason to believe~~  
2 ~~that the convict has become sane, the judge shall again determine~~  
3 ~~the sanity of the convict as provided by this section. Proceedings~~  
4 ~~pursuant to this section may continue to be held at such times as~~  
5 ~~the district judge shall order orders until it is either determined~~  
6 ~~that such convict is sane or incurably insane.~~

7 Sec. 17. K.S.A. 22-4009 is hereby amended to read as follows:  
8 22-4009. (a) If a female convict under sentence of death ~~shall~~  
9 ~~appear~~ *appears* to be pregnant or *alleges she is pregnant*, the ~~war-~~  
10 ~~den or sheriff shall in like manner notify the district judge of~~  
11 ~~the county in which she was sentenced, who shall in all things~~  
12 ~~proceed as in the case of an insane convict person having custody~~  
13 ~~of the convict shall notify the secretary of corrections. The secretary~~  
14 ~~shall designate one or more licensed physicians to examine the convict~~  
15 ~~to determine if the convict is pregnant. If the convict is pregnant,~~  
16 ~~the secretary of corrections shall notify the administrative judge of~~  
17 ~~the judicial district where the conviction was rendered and the ex-~~  
18 ~~ecution of the sentence of death shall be postponed. If the convict~~  
19 ~~is not pregnant, the execution shall be carried out as previously~~  
20 ~~ordered.~~

21 (b) *When the execution of a sentence of death is postponed be-*  
22 *cause of pregnancy, the judge shall wait until the child is born or*  
23 *the pregnancy is otherwise terminated and then the judge shall fix*  
24 *the date for the execution. At any time during the postponement of*  
25 *the execution, the judge may order an examination as provided in*  
26 *this section to determine whether the convict remains pregnant. The*  
27 *costs of each medical examination conducted pursuant to this section*  
28 *shall be paid by the county where the case originated.*

29 Sec. 18. K.S.A. 1993 Supp. 22-4011 is hereby amended to read  
30 as follows: 22-4011. If any person who has been ~~convicted~~ of a  
31 ~~crime punishable by death and sentenced to be hanged shall~~  
32 ~~escape and shall not be sentenced to death escapes and is not~~  
33 ~~retaken before the time fixed for execution, it shall be lawful for~~  
34 ~~the warden, or any sheriff or other officer or person, to rearrest~~  
35 ~~such person and return the person to the custody of the warden~~  
36 ~~of the Lansing correctional facility, who shall thereupon make~~  
37 ~~return secretary of corrections. Upon such return to custody, the~~  
38 ~~secretary of corrections shall give notice thereof to the governor of~~  
39 ~~the state, and. Upon such notice, the governor shall thereupon~~  
40 ~~issue a warrant fixing and appointing a day for the execution, which~~  
41 ~~shall be carried into effect by the warden in the same manner as~~  
42 ~~herein provided by statute for the execution of an original sentence~~  
43 ~~of death.~~

1     Sec. 19. K.S.A. 1993 Supp. 22-4012 is hereby amended to read  
2 as follows: 22-4012. Whenever any person has been tried and con-  
3 victed before any district court in this state of a crime punish-  
4 able by death, and under the conviction has been sentenced  
5 by the court to suffer *sentenced to* death, it shall be the duty of  
6 the clerk of the court before which the conviction was ~~had rendered~~  
7 to issue a warrant, under the seal of the court, ~~reciting therein~~  
8 *which shall recite* the conviction and sentence, ~~and be~~ directed to  
9 the warden of the Lansing correctional facility, commanding  
10 the warden to proceed at the time named in the sentence to  
11 carry the same into execution by causing the person so con-  
12 victed and sentenced to be hanged by the neck until dead;  
13 *secretary of corrections.* The clerk shall deliver the warrant to the  
14 sheriff of the county in which ~~the~~ conviction was ~~had rendered~~, and  
15 such sheriff shall ~~thereupon forthwith remove such promptly~~  
16 *transport the* convicted person to the Lansing correctional facility,  
17 and there deliver the convicted person, *state correctional insti-*  
18 *tution designated by the secretary of corrections and deliver such*  
19 *convict,* together with the warrant, into the custody of the warden,  
20 who shall receive and safely keep such convict ~~within the Lansing~~  
21 ~~correctional facility~~ until the time of execution, or until otherwise  
22 ordered by *the secretary or other* competent authority. *The warden*  
23 *shall notify the secretary of corrections of the receipt of the convict*  
24 *and warrant.*

25     Sec. 20. K.S.A. 1993 Supp. 22-4013 is hereby amended to read  
26 as follows: 22-4013. It shall be the duty of the warden of the  
27 Lansing correctional facility, on receipt of such warrant, pro-  
28 vided the sentence has not been suspended as by law provided,  
29 and provided the governor shall not have commuted such sen-  
30 tence, or granted a reprieve or pardon to such convict, *secretary*  
31 *of corrections or the warden designated by the secretary* to proceed  
32 at the time named in the warrant to carry the sentence into  
33 execution in the manner herein provided; and the manner of  
34 executing the warrant, and the doings thereon, the warden shall  
35 forthwith make return to the clerk, who shall cause the warrant  
36 and return to be recorded as a part of the records of the case  
37 *fixed in accordance with law to execute a sentence of death in the*  
38 *manner prescribed by this act.*

1     Sec. 21. K.S.A. 22-4014 is hereby amended to read as follows:  
2 22-4014. ~~In case the supreme court, or any judge thereof, shall~~  
3 ~~order~~ *If the supreme court orders* a suspension of the execution of  
4 a sentence of death, the suspension shall continue until the pro-  
5 ceedings are determined, ~~and. If, after determining the same, if~~

1 the sentence be confirmed, said court shall appoint a day cer-  
2 tain for and order the execution of said sentence; *the sentence*  
3 *is affirmed, the supreme court shall order the execution of the sen-*  
4 *tence of death and shall designate a day therefor.* It shall be the  
5 duty of the clerk of ~~said the supreme court~~ to issue to ~~said warden~~  
6 ~~his the secretary of corrections~~ a warrant under the seal of ~~said~~  
7 ~~court, commanding him the court, commanding the secretary or~~  
8 ~~a warden designated pursuant to K.S.A. 22-4001 and amendments~~  
9 ~~thereto~~ to proceed to carry ~~said the~~ sentence into execution; at the  
10 time so appointed by the court, which time shall be stated in ~~said~~  
11 ~~warrant; and upon receipt of said the warrant.~~ Upon receipt of  
12 ~~the warrant~~ it shall be the duty of ~~said warden~~ to cause ~~said the~~  
13 ~~secretary of corrections to cause the~~ sentence to be executed as  
14 herein provided; at the time so appointed by the court; and to  
15 make due return of said warrant; and of his proceedings there-  
16 under; forthwith to the clerk of the district court before which  
17 the conviction was had; who shall cause the same to be re-  
18 corded as a part of the records of the case provided by this act  
19 at the time designated by the court.

20 Sec. 22. K.S.A. 22-4003, 22-4004, 22-4005, 22-4007 through 22-  
21 4010 and 22-4014 and K.S.A. 1993 Supp. 21-4608, 21-4622, 21-4623,  
22 21-4624, 21-4627, 21-4628, 21-4629, 21-4631, 21-4706, 22-3717, 22-  
23 4001, 22-4002, 22-4006, 22-4011, 22-4012 and 22-4013 are hereby  
24 repealed.

25 Sec. 23. This act shall take effect and be in force from and after  
26 its publication in the statute book.



Ex 3A  
2-7-94  
Atch #2

# HOUSE BILL No. 2578

By Representatives Packer, Boston, Cornfield, Crabb, Flower, Freeborn, Gracber, Haulmark, Jennison, Kejr, King, Lane, Lawrence, Lloyd, Mason, Mayans, Mays, Mead, Mollenkamp, Morrison, Myers, Neufeld, Powers, Roe, Scott, Shallenburger, Shore, M. Smith, Snowbarger, Vickrey and Wagle

1-10

AN ACT concerning crimes and punishments and procedures relating thereto; providing for a sentence of death for certain crimes under certain circumstances; providing for mandatory terms of imprisonment for certain crimes; amending K.S.A. 22-4003, 22-4004, 22-4005, 22-4009 and 22-4014 and K.S.A. 1993 Supp. 21-4608, 21-4622, 21-4623, 21-4624, 21-4627, 21-4629, 21-4631, 21-4706, 22-3717, 22-4001, 22-4002, 22-4006, 22-4011, 22-4012 and 22-4013 and repealing the existing sections, also repealing K.S.A. 22-4007, 22-4008 and 22-4010 and K.S.A. 1993 Supp. 21-4628.

by imprisonment; relating to a separate trial for sentencing;

21-4628,

and

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

~~Section 1. K.S.A. 1993 Supp. 21-4608 is hereby amended to read as follows: 21-4608. (a) When separate sentences of imprisonment for different crimes are imposed on a defendant on the same date, including sentences for crimes for which suspended sentences, probation or assignment to a community correctional services program have been revoked, such sentences shall run concurrently or consecutively as the court directs. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (c), (d) and (e).~~

~~(b) Any person who is convicted and sentenced for a crime committed while on probation, assignment to a community correctional services program, parole or conditional release for a misdemeanor shall serve the sentence concurrently with or consecutively to the term or terms under which the person was on probation, assigned to a community correctional services program or on parole or conditional release, as the court directs.~~

~~(c) Any person who is convicted and sentenced for a crime committed while on probation, assigned to a community correctional services program, on parole or on conditional release for a felony shall serve the sentence consecutively to the term or terms under~~

By striking all on pages 2 through 21

Atch #2

1 the sentence be confirmed, said court shall appoint a day cer-  
2 tain for and order the execution of said sentence; *the sentence*  
3 *is affirmed, the supreme court shall order the execution of the sen-*  
4 *tence of death and shall designate a day therefor.* It shall be the  
5 duty of the clerk of said *the supreme court* to issue to said warden  
6 *his the secretary of corrections* a warrant under the seal of said  
7 court, commanding him *the court, commanding the secretary or*  
8 *a warden designated pursuant to K.S.A. 22-4001 and amendments*  
9 *thereto* to proceed to carry said *the* sentence into execution; at the  
10 time so appointed by the court, which time shall be stated in said  
11 warrant; and upon receipt of said *the* warrant. Upon receipt of  
12 *the* warrant it shall be the duty of said warden to cause said *the*  
13 *secretary of corrections* to cause the sentence to be executed as  
14 herein provided, at the time so appointed by the court, and to  
15 make due return of said warrant, and of his proceedings there-  
16 under, forthwith to the clerk of the district court before which  
17 the conviction was had; who shall cause the same to be re-  
18 corded as a part of the records of the case provided by this act  
19 at the time designated by the court.

20 Sec. 22. K.S.A. 22-4003, 22-4004, 22-4005, 22-4007 through 22-  
21 4010 and 22-4014 and K.S.A. 1993 Supp. 21-4608, 21-4622, 21-4623,  
22 21-4624, 21-4627, 21-4628, 21-4629, 21-4631, 21-4706, 22-3717, 22-  
23 4001, 22-4002, 22-4006, 22-4011, 22-4012 and 22-4013 are hereby  
24 repealed.

25 Sec. 23. This act shall take effect and be in force from and after  
26 its publication in the statute book.

See attached sections

2-2

Sec. 1. K.S.A. 1993 Supp. 21-4623 is hereby amended to read as follows: 21-4623. (1) Upon conviction or adjudication of guilt of a defendant of the crime of murder in the first degree based upon the finding of premeditated murder, the defendant's counsel or the director of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is ~~mentally-retarded~~ developmentally disabled. If the court determines that there is not sufficient reason to believe that the defendant is ~~mentally--retarded~~ developmentally disabled, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 1993 Supp. 21-4624 through 21-4628 and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is ~~mentally--retarded~~ developmentally disabled, the court shall conduct a hearing to determine whether the defendant is ~~mentally-retarded~~ developmentally disabled.

(2) At the hearing, the court shall determine whether the defendant is ~~mentally--retarded~~ developmentally disabled. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within 10 days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(3) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is not ~~mentally retarded~~ developmentally disabled, the defendant shall be sentenced in accordance with K.S.A. 1993 Supp. 21-4624 through 21-4628 and amendments thereto.

(4) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is ~~mentally retarded~~ developmentally disabled, the court shall sentence the defendant as otherwise provided by law, and no mandatory term of imprisonment shall be imposed hereunder.

(5) As used in this section, "~~mentally---retarded~~" "developmentally disabled" means having significantly subaverage general intellectual functioning, as defined by K.S.A. 76-12b01 and amendments thereto, to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law.

Sec. 2. K.S.A. 1993 Supp. 21-4624 is hereby amended to read as follows: 21-4624. (1) On and after July 1, 1994, if a defendant is charged with ~~murder-in-the-first-degree~~ subsection (a) of K.S.A. 21-3401 or 21-3801, and amendments thereto, the county or district attorney shall file written notice if such attorney intends, upon conviction or adjudication of guilt of the defendant, to request a separate sentencing proceeding to determine whether the defendant should be required to serve a mandatory term of death by imprisonment of-40-years. Such notice shall be filed with the court and served on the defendant or the defendant's attorney at the time of arraignment. If such notice is not filed and served as required by this subsection, the county or district attorney may not request such a sentencing proceeding and the defendant, if convicted of ~~murder-in-the-first degree~~ violating subsection (a) of K.S.A. 21-3401 or 21-3801, and amendments thereto, shall be sentenced as otherwise provided by law, and no mandatory term of imprisonment shall be imposed hereunder.

(2) Except as provided in K.S.A. 1993 Supp. 21-4622 and 21-4623 and amendments thereto, upon conviction or adjudication of guilt of a defendant of ~~murder-in-the-first-degree-based-upon the-finding-of--premeditated--murder~~ subsection (a) of K.S.A. 21-3401 or 21-3801, and amendments thereto, the court upon motion of the county or district attorney, shall conduct a separate

2-4

sentencing proceeding to determine whether the defendant shall be required to serve a mandatory term of death by imprisonment of 40 years. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If any person who served on the trial jury is unable to serve on the jury for the sentencing proceeding, the court shall substitute an alternate juror who has been impaneled for the trial jury. If there are insufficient alternate jurors to replace trial jurors who are unable to serve at the sentencing proceeding, the trial judge may summon a special jury of 12 persons which shall determine the question of whether a mandatory term of death by imprisonment of 40--years shall be imposed. Jury selection procedures, qualifications of jurors and grounds for exemption or challenge of prospective jurors in criminal trials shall be applicable to the selection of such special jury. The jury at the sentencing proceeding may be waived in the manner provided by K.S.A. 22-3403 and amendments thereto for waiver of a trial jury. If the jury at the sentencing proceeding has been waived or the trial jury has been waived, the sentencing proceeding shall be conducted by the court.

(3) In the sentencing proceeding, evidence may be presented concerning any matter that the court deems relevant to the question of sentence and shall include matters relating to any of the aggravating circumstances enumerated in K.S.A. 1993 Supp. 21-4625 and amendments thereto and any mitigating circumstances. Any such evidence which the court deems to have probative value may be received regardless of its admissibility under the rules of evidence, provided that the defendant is accorded a fair opportunity to rebut any hearsay statements. Only such evidence of aggravating circumstances as the state has made known to the defendant prior to the sentencing proceeding shall be admissible, and no evidence secured in violation of the constitution of the United States or of the state of Kansas shall be admissible. No testimony by the defendant at the sentencing proceeding shall be admissible against the defendant at any subsequent criminal

proceeding. At the conclusion of the evidentiary presentation, the court shall allow the parties a reasonable period of time in which to present oral argument.

(4) At the conclusion of the evidentiary portion of the sentencing proceeding, the court shall provide oral and written instructions to the jury to guide its deliberations.

(5) If, by unanimous vote, the jury finds beyond a reasonable doubt that one or more of the aggravating circumstances enumerated in K.S.A. 1993 Supp. 21-4625 and amendments thereto exist and, further, that the existence of such aggravating circumstances is not outweighed by any mitigating circumstances which are found to exist, the defendant shall be sentenced to death by imprisonment, pursuant to K.S.A. 1993 Supp. 21-4628 and amendments thereto; otherwise, the defendant shall be sentenced as provided by law. The jury, if its verdict is a unanimous recommendation of a sentence of a mandatory term of death by imprisonment of-40-years, shall designate in writing, signed by the foreman of the jury, the statutory aggravating circumstances which it found beyond a reasonable doubt. If, after a reasonable time for deliberation, the jury is unable to reach a verdict, the judge shall dismiss the jury and impose a sentence of imprisonment for life with eligibility for parole and shall commit the defendant to the custody of the secretary of corrections. In nonjury cases, the court shall follow the requirements of this subsection in determining the sentence to be imposed.

(6) Notwithstanding the verdict of the jury, the trial court shall review any jury verdict imposing a mandatory term of death by imprisonment hereunder to ascertain whether the imposition of such sentence is supported by the evidence. If the court determines that the imposition of such a sentence is not supported by the evidence, the court shall modify the sentence and sentence the defendant as otherwise provided by law, and no mandatory term of death by imprisonment shall be imposed hereunder. Whenever the court enters a judgment modifying the



sentencing verdict of the jury, the court shall set forth its reasons for so doing in a written memorandum which shall become part of the record.

Sec. 3. K.S.A. 1993 Supp. 21-4627 is hereby amended to read as follows: 21-4627. (1) A judgment of conviction resulting in a mandatory term of death by imprisonment pursuant to subsection (a) of K.S.A. 1993-Supp. 21-3401 and--21-3401a or 21-3801, and amendments thereto, shall be subject to automatic review by and appeal to the supreme court of Kansas in the manner provided by the applicable statutes and rules of the supreme court governing appellate procedure. The review and appeal shall be expedited in every manner consistent with the proper presentation thereof and given priority pursuant to the statutes and rules of the supreme court governing appellate procedure.

(2) The supreme court of Kansas shall consider the question of sentence as well as any errors asserted in the review and appeal and shall be authorized to notice unassigned errors appearing of record if the ends of justice would be served thereby.

(3) With regard to the sentence, the court shall determine:

(a) Whether the mandatory term of death by imprisonment was imposed under the influence of passion, prejudice or any other arbitrary factor; and

(b) whether the evidence supports the findings that an aggravating circumstance or circumstances existed and that any mitigating circumstances were insufficient to outweigh the aggravating circumstances.

(4) The court shall be authorized to enter such orders as are necessary to effect a proper and complete disposition of the review and appeal.

Sec. 4. K.S.A. 1993 Supp. 21-4628 is hereby amended to read as follows: 21-4628. When it is provided by law that a person shall be sentenced pursuant to this section, such person shall be sentenced to death by imprisonment ~~for-life~~ and shall not be eligible for probation or suspension, modification or reduction

of sentence. ~~In--addition,--a-person-sentenced-pursuant-to-this section-shall-not-be-eligible-for--parole--prior--to--serving--40 years--imprisonment,--and--such--40--years--imprisonment-shall-not-be reduced--by-the-application-of-good-time-credits.~~ Upon sentencing a defendant pursuant to this section, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced pursuant to K.S.A. 1993 Supp. 21-4628 and amendments thereto.

Sec. 5. K.S.A. 1993 Supp. 21-4631 is hereby amended to read as follows: 21-4631. (1) K.S.A. 1993 Supp. 21-4622 through 21-4630 and amendments thereto shall be supplemental to and a part of the Kansas criminal code.

(2) The provisions of K.S.A. 1993 Supp. 21-4622 through 21-4630 and amendments thereto as they existed immediately prior to July 1, 1994, shall be applicable only to persons convicted of crimes committed on or after July 1, 1990, and before July 1, 1994.

(3) The provisions of K.S.A. 1993 Supp. 21-4622 through 21-4630, as amended by this act, shall be applicable only to persons convicted on or after July 1, 1994.

Sec. 6. K.S.A. 1993 Supp. 21-4706 is hereby amended to read as follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of up to 20% of the primary sentence for good time as authorized by law.

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

(c) Violations of K.S.A. 21-3401 and 21-3801 and amendments thereto are off-grid crimes for the purpose of sentencing. Except as otherwise provided by K.S.A. 1993 Supp. 21-4622 through 21-4630, and amendments thereto, the term of imprisonment shall be death by imprisonment for-life.

New Sec. 7. In the event the mandatory term of imprisonment

or any provision of this act authorizing such mandatory term is held to be unconstitutional by the supreme court of Kansas or the United States supreme court, the court having jurisdiction over a person previously sentenced shall cause such person to be brought before the court and shall modify the sentence to require no mandatory term of imprisonment and shall sentence the defendant as otherwise provided by law.

New Sec. 8. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Sec. 9. K.S.A. 1993 Supp. 21-4623, 21-4624, 21-4627, 21-4628, 21-4631 and 21-4706 are hereby repealed.