

As Amended by Senate Committee

Session of 2012

SENATE BILL No. 308

By Committee on Judiciary

1-19

1 AN ACT concerning crimes and punishment; creating the ~~crimes of armed~~
2 ~~criminal action and~~ *crime of* endangerment; relating to further
3 amendments to the Kansas criminal code; amending K.S.A. 2011 Supp.
4 21-5109, 21-5302, 21-5402, 21-5426, 21-5504, 21-5507, 21-5604, 21-
5 5806, 21-5807, 21-5904, 21-5905, 21-5907, 21-5911, 21-6001, 21-
6 6110, 21-6112, 21-6312, 21-6412, 21-6413 and 21-6819 and repealing
7 the existing sections.

8
9 *Be it enacted by the Legislature of the State of Kansas:*

10 ~~New Section 1—(a) Armed criminal action is committing or attempting~~
11 ~~to commit any felony under the laws of this state by use of a firearm.~~

12 ~~(b) Armed criminal action is a nonperson felony. Upon conviction, a~~
13 ~~person shall be sentenced to a term of 12 months imprisonment. The~~
14 ~~person convicted shall not be eligible for release on probation, suspension~~
15 ~~or reduction of sentence or parole until the person has served the~~
16 ~~mandatory 12 months imprisonment, unless application of such a~~
17 ~~mandatory sentence would result in a manifest injustice.~~

18 ~~(c) The crime of armed criminal action shall be treated as a separate~~
19 ~~and distinct offense from the crime or crimes committed, and the sentence~~
20 ~~imposed under this section shall be consecutive to any other sentence~~
21 ~~imposed.~~

22 ~~(d) This section shall not apply when the felony committed is:~~
23 ~~Criminal possession of a firearm by a juvenile, as described in subsection~~
24 ~~(a)(14) of K.S.A. 2011 Supp. 21-6301, and amendments thereto; criminal~~
25 ~~distribution of firearms to a felon, as defined in K.S.A. 2011 Supp. 21-~~
26 ~~6303, and amendments thereto; criminal possession of a firearm by a~~
27 ~~convicted felon, as defined in K.S.A. 2011 Supp. 21-6304, and~~
28 ~~amendments thereto; criminal discharge of a firearm, as defined in K.S.A.~~
29 ~~2011 Supp. 21-6308, and amendments thereto; or unlawful possession of~~
30 ~~firearms on certain government property, as described in K.S.A. 2011-~~
31 ~~Supp. 21-6309, and amendments thereto.~~

32 ~~(e) As used in this section, “use of a firearm” includes: (1) The~~
33 ~~discharge, employment or visible display of any part of a firearm during,~~
34 ~~immediately prior to or immediately after the commission of a felony; or~~
35 ~~(2) communication to another indicating the presence of a firearm during,~~
36 ~~immediately prior to or immediately after the commission of a felony;~~

1 regardless of whether such firearm was discharged, actively employed or
2 displayed.

3 ~~(f) This section shall be part of and supplemental to the Kansas~~
4 ~~criminal code.~~

5 ~~New Sec. 2. **New Section 1.**~~ (a) Endangerment is recklessly exposing
6 another person to a danger of great bodily harm or death.

7 (b) Endangerment is a class A person misdemeanor.

8 (c) This section shall be part of and supplemental to the Kansas
9 criminal code.

10 ~~Sec. 3. 2.~~ K.S.A. 2011 Supp. 21-5109 is hereby amended to read as
11 follows: 21-5109.(a) When the same conduct of a defendant may establish
12 the commission of more than one crime under the laws of this state, the
13 defendant may be prosecuted for each of such crimes. Each of such crimes
14 may be alleged as a separate count in a single complaint, information or
15 indictment.

16 (b) Upon prosecution for a crime, the defendant may be convicted of
17 either the crime charged or a lesser included crime, but not both. A lesser
18 included crime is:

19 (1) A lesser degree of the same crime;

20 (2) a crime where all elements of the lesser crime are identical to
21 some of the elements of the crime charged;

22 (3) an attempt to commit the crime charged; or

23 (4) an attempt to commit a crime defined under paragraph (1) or (2).

24 (c) Whenever charges are filed against a person, accusing the person
25 of a crime which includes another crime of which the person has been
26 convicted, the conviction of the lesser included crime shall not bar
27 prosecution or conviction of the crime charged if the crime charged was
28 not consummated at the time of conviction of the lesser included crime,
29 but the conviction of the lesser included crime shall be annulled upon the
30 filing of such charges. Evidence of the person's plea or any admission or
31 statement made by the person in connection therewith in any of the
32 proceedings which resulted in the person's conviction of the lesser
33 included crime shall not be admissible at the trial of the crime charged. If
34 the person is convicted of the crime charged, or of a lesser included crime,
35 the person so convicted shall receive credit against any prison sentence
36 imposed or fine to be paid for the period of confinement actually served or
37 the amount of any fine actually paid under the sentence imposed for the
38 annulled conviction.

39 (d) Unless otherwise provided by law, when crimes differ only in that
40 one is defined to prohibit a designated kind of conduct generally and the
41 other to prohibit a specific instance of such conduct, the defendant:

42 (1) May not be convicted of the two crimes based upon the same
43 conduct; and

1 (2) shall be sentenced according to the terms of the more specific
2 crime.

3 (e) *A defendant may not be convicted of identical offenses based upon*
4 *the same conduct. The prosecution may choose which such offense to*
5 *charge and, upon conviction, the defendant shall be sentenced according*
6 *to the terms of that offense.*

7 Sec.-4. 3. K.S.A. 2011 Supp. 21-5302 is hereby amended to read as
8 follows: 21-5302. (a) A conspiracy is an agreement with another person to
9 commit a crime or to assist in committing a crime. No person may be
10 convicted of a conspiracy unless an overt act in furtherance of such
11 conspiracy is alleged and proved to have been committed by such person
12 or by a co-conspirator.

13 (b) *It is immaterial to the criminal liability of a person charged with*
14 *conspiracy that any other person with whom the defendant conspired*
15 *lacked the actual intent to commit the underlying crime provided that the*
16 *defendant believed the other person did have the actual intent to commit*
17 *the underlying crime.*

18 ~~(b)~~ (c) It shall be a defense to a charge of conspiracy that the accused
19 voluntarily and in good faith withdrew from the conspiracy, and
20 communicated the fact of such withdrawal to one or more of the accused
21 person's co-conspirators, before any overt act in furtherance of the
22 conspiracy was committed by the accused or by a co-conspirator.

23 ~~(c)~~ (d) (1) Conspiracy to commit an off-grid felony shall be ranked at
24 nondrug severity level 2. Conspiracy to commit any other nondrug felony
25 shall be ranked on the nondrug scale at two severity levels below the
26 appropriate level for the underlying or completed crime. The lowest
27 severity level for conspiracy to commit a nondrug felony shall be a
28 severity level 10.

29 (2) The provisions of this subsection shall not apply to a violation of
30 conspiracy to commit the crime of:

31 (A) Aggravated human trafficking, as defined in subsection (b) of
32 K.S.A. 2011 Supp. 21-5426, and amendments thereto, if the offender is 18
33 years of age or older and the victim is less than 14 years of age;

34 (B) terrorism as defined in K.S.A. 2011 Supp. 21-5421, and
35 amendments thereto;

36 (C) illegal use of weapons of mass destruction as defined in K.S.A.
37 2011 Supp. 21-5422, and amendments thereto;

38 (D) rape, as defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-
39 5503, and amendments thereto, if the offender is 18 years of age or older;

40 (E) aggravated indecent liberties with a child, as defined in
41 subsection (b)(3) of K.S.A. 2011 Supp. 21-5506, and amendments thereto,
42 if the offender is 18 years of age or older;

43 (F) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)

1 (2) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, if the offender
2 is 18 years of age or older;

3 (G) promoting prostitution, as defined in K.S.A. 2011 Supp. 21-6420,
4 and amendments thereto, if the offender is 18 years of age or older and the
5 prostitute is less than 14 years of age; or

6 (H) sexual exploitation of a child, as defined in subsection (a)(1) or
7 (a)(4) of K.S.A. 2011 Supp. 21-5510, and amendments thereto, if the
8 offender is 18 years of age or older and the child is less than 14 years of
9 age.

10 ~~(d)~~ (e) Conspiracy to commit a felony which prescribes a sentence on
11 the drug grid shall reduce the prison term prescribed in the drug grid block
12 for an underlying or completed crime by six months.

13 ~~(e)~~ (f) A conspiracy to commit a misdemeanor is a class C
14 misdemeanor.

15 ~~Sec. 4.~~ K.S.A. 2011 Supp. 21-5402 is hereby amended to read as
16 follows: 21-5402. (a) Murder in the first degree is the killing of a human
17 being committed:

18 (1) Intentionally, and with premeditation; or

19 (2) in the commission of, attempt to commit, or flight from any
20 inherently dangerous felony.

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

22 (c) As used in this section, an "inherently dangerous felony" means:

23 (1) Any of the following felonies, whether such felony is so distinct
24 from the homicide alleged to be a violation of subsection (a)(2) as not to
25 be an ingredient of the homicide alleged to be a violation of subsection (a)
26 (2):

27 (A) Kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp.
28 21-5408, and amendments thereto;

29 (B) aggravated kidnapping, as defined in subsection (b) of K.S.A.
30 2011 Supp. 21-5408, and amendments thereto;

31 (C) robbery, as defined in subsection (a) of K.S.A. 2011 Supp. 21-
32 5420, and amendments thereto;

33 (D) aggravated robbery, as defined in subsection (b) of K.S.A. 2011
34 Supp. 21-5420, and amendments thereto;

35 (E) rape, as defined in K.S.A. 2011 Supp. 21-5503, and amendments
36 thereto;

37 (F) aggravated criminal sodomy, as defined in subsection (b) of
38 K.S.A. 2011 Supp. 21-5504, and amendments thereto;

39 (G) abuse of a child, as defined in K.S.A. 2011 Supp. 21-5602, and
40 amendments thereto;

41 (H) felony theft of property as defined in subsection (a)(1) or (a)(3)
42 of K.S.A. 2011 Supp. 21-5801, and amendments thereto;

43 (I) burglary, as defined in subsection (a) of K.S.A. 2011 Supp. 21-

1 5807, and amendments thereto;

2 (J) aggravated burglary, as defined in subsection (b) of K.S.A. 2011
3 Supp. 21-5807, and amendments thereto;

4 (K) arson, as defined in subsection (a) of K.S.A. 2011 Supp. 21-
5 5812, and amendments thereto;

6 (L) aggravated arson, as defined in subsection (b) of K.S.A. 2011
7 Supp. 21-5812, and amendments thereto;

8 (M) treason, as defined in K.S.A. 2011 Supp. 21-5901, and
9 amendments thereto;

10 (N) any felony offense as provided in K.S.A. 2011 Supp. 21-5703,
11 21-5705 or 21-5706, and amendments thereto;

12 (O) any felony offense as provided in subsection (a) or (b) of K.S.A.
13 2011 Supp. 21-6308, and amendments thereto;

14 (P) endangering the food supply, as defined in subsection (a) of
15 K.S.A. 2011 Supp. 21-6317, and amendments thereto;

16 (Q) aggravated endangering the food supply, as defined in subsection
17 (b) of K.S.A. 2011 Supp. 21-6317, and amendments thereto;

18 (R) fleeing or attempting to elude a police officer, as defined in
19 subsection (b) of K.S.A. 8-1568, and amendments thereto; ~~or~~

20 (S) aggravated endangering a child, as defined in subsection (b)(1) of
21 K.S.A. 2011 Supp. 21-5601, and amendments thereto;

22 *(T) abandonment of a child, as defined in subsection (a) of K.S.A.*
23 *2011 Supp. 21-5605, and amendments thereto; or*

24 *(U) aggravated abandonment of a child, as defined in subsection (b)*
25 *of K.S.A. 2011 Supp. 21-5605, and amendments thereto; and*

26 (2) any of the following felonies, only when such felony is so distinct
27 from the homicide alleged to be a violation of subsection (a)(2) as to not
28 be an ingredient of the homicide alleged to be a violation of subsection (a)
29 (2):

30 (A) Murder in the first degree, as defined in subsection (a)(1);

31 (B) murder in the second degree, as defined in subsection (a)(1) of
32 K.S.A. 2011 Supp. 21-5403, and amendments thereto;

33 (C) voluntary manslaughter, as defined in subsection (a)(1) of K.S.A.
34 2011 Supp. 21-5404, and amendments thereto;

35 (D) aggravated assault, as defined in subsection (b) of K.S.A. 2011
36 Supp. 21-5412, and amendments thereto;

37 (E) aggravated assault of a law enforcement officer, as defined in
38 subsection (d) of K.S.A. 2011 Supp. 21-5412, and amendments thereto;

39 (F) aggravated battery, as defined in subsection (b)(1) of K.S.A. 2011
40 Supp. 21-5413, and amendments thereto; or

41 (G) aggravated battery against a law enforcement officer, as defined
42 in subsection (d) of K.S.A. 2011 Supp. 21-5413, and amendments thereto.

43 Sec.-6- 5. K.S.A. 2011 Supp. 21-5426 is hereby amended to read as

1 follows: 21-5426. (a) Human trafficking is:

2 (1) The intentional recruitment, harboring, transportation, provision
3 or obtaining of a person for labor or services, through the use of force,
4 fraud or coercion for the purpose of subjecting the person to involuntary
5 servitude or forced labor;

6 (2) intentionally benefitting financially or by receiving anything of
7 value from participation in a venture that the person has reason to know
8 has engaged in acts set forth in subsection (a)(1);

9 (3) knowingly coercing employment by obtaining or maintaining
10 labor or services that are performed or provided by another person through
11 any of the following:

12 (A) Causing or threatening to cause physical injury to any person;

13 (B) physically restraining or threatening to physically restrain another
14 person;

15 (C) abusing or threatening to abuse the law or legal process;

16 (D) threatening to withhold food, lodging or clothing; or

17 (E) knowingly destroying, concealing, removing, confiscating or
18 possessing any actual or purported government identification document of
19 another person; or

20 (4) knowingly holding another person in a condition of peonage in
21 satisfaction of a debt owed the person who is holding such other person.

22 (b) Aggravated human trafficking is:

23 (1) human trafficking, as defined in subsection (a):

24 ~~(A)~~ (1) Involving the commission or attempted commission of
25 kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp. 21-5408,
26 and amendments thereto;

27 ~~(B)~~ (2) committed in whole or in part for the purpose of the sexual
28 gratification of the defendant or another; or

29 ~~(C)~~ (3) resulting in a death; or

30 ~~(D)~~ (4) involving recruiting, harboring, transporting, providing or
31 obtaining, by any means, a person under 18 years of age knowing that the
32 person, with or without force, fraud, threat or coercion, will be used to
33 engage in forced labor, involuntary servitude or sexual gratification of the
34 defendant or another.

35 (c) (1) Human trafficking is a severity level 2, person felony.

36 (2) Aggravated human trafficking is a severity level 1, person felony,
37 except as provided in subsection (c)(3).

38 (3) Aggravated human trafficking or attempt, conspiracy or criminal
39 solicitation to commit aggravated human trafficking is an off-grid person
40 felony, when the offender is 18 years of age or older and the victim is less
41 than 14 years of age.

42 (d) If the offender is 18 years of age or older and the victim is less
43 than 14 years of age, the provisions of:

1 (1) Subsection (c) of K.S.A. 2011 Supp. 21-5301, and amendments
2 thereto, shall not apply to a violation of attempting to commit the crime of
3 aggravated human trafficking pursuant to this section;

4 (2) subsection (c) of K.S.A. 2011 Supp. 21-5302, and amendments
5 thereto, shall not apply to a violation of conspiracy to commit the crime of
6 aggravated human trafficking pursuant to this section; and

7 (3) subsection (d) of K.S.A. 2011 Supp. 21-5303, and amendments
8 thereto, shall not apply to a violation of criminal solicitation to commit the
9 crime of aggravated human trafficking pursuant to this section.

10 (e) The provisions of this section shall not apply to the use of the
11 labor of any person incarcerated in a state or county correctional facility or
12 city jail.

13 (f) As used in this section, "peonage" means a condition of
14 involuntary servitude in which the victim is forced to work for another
15 person by the use or threat of physical restraint or physical injury, or by the
16 use or threat of coercion through law or the legal process.

17 Sec. ~~7~~ 6. K.S.A. 2011 Supp. 21-5504 is hereby amended to read as
18 follows: 21-5504. (a) Criminal sodomy is:

19 ~~(1) Sodomy between persons who are 16 or more years of age and~~
20 ~~members of the same sex;~~

21 ~~(2) (1)~~ sodomy between a person and an animal;

22 ~~(3) (2)~~ sodomy with a child who is 14 or more years of age but less
23 than 16 years of age; or

24 ~~(4) (3)~~ causing a child 14 or more years of age but less than 16 years
25 of age to engage in sodomy with any person or animal.

26 (b) Aggravated criminal sodomy is:

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

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

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

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

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

35 (C) when the victim is incapable of giving consent because of mental
36 deficiency or disease, or when the victim is incapable of giving consent
37 because of the effect of any alcoholic liquor, narcotic, drug or other
38 substance, which condition was known by, or was reasonably apparent to,
39 the offender.

40 (c) (1) Criminal sodomy as defined in:

41 (A) Subsection (a)(1) ~~or (a)(2)~~ is a class B nonperson misdemeanor;
42 and

43 (B) subsection ~~(a)(3) or (a)(4)~~ (a)(2) or (a)(3) is a severity level 3,

1 person felony.

2 (2) Aggravated criminal sodomy as defined in:

3 (A) Subsection (b)(3) is a severity level 1, person felony; and

4 (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony,
5 except as provided in subsection (c)(3).

6 (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)
7 (2) or attempt, conspiracy or criminal solicitation to commit aggravated
8 criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid
9 person felony, when the offender is 18 years of age or older.

10 (d) If the offender is 18 years of age or older, the provisions of:

11 (1) Subsection (c) of K.S.A. 2011 Supp. 21-5301, and amendments
12 thereto, shall not apply to a violation of attempting to commit the crime of
13 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

14 (2) subsection (c) of K.S.A. 2011 Supp. 21-5302, and amendments
15 thereto, shall not apply to a violation of conspiracy to commit the crime of
16 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

17 (3) subsection (d) of K.S.A. 2011 Supp. 21-5303, and amendments
18 thereto, shall not apply to a violation of criminal solicitation to commit the
19 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)
20 (2).

21 (e) It shall be a defense to a prosecution of criminal sodomy, as
22 defined in subsection ~~(a)(3)~~ (a)(2), and aggravated criminal sodomy, as
23 defined in subsection (b)(1), that the child was married to the accused at
24 the time of the offense.

25 (f) Except as provided in subsection (b)(3)(C), it shall not be a
26 defense that the offender did not know or have reason to know that the
27 victim did not consent to the sodomy, that the victim was overcome by
28 force or fear, or that the victim was unconscious or physically powerless.

29 ~~Sec. 8.~~ 7. K.S.A. 2011 Supp. 21-5507 is hereby amended to read as
30 follows: 21-5507. (a) Unlawful voluntary sexual relations is:

31 (1) Engaging in any of the following acts with a child who is 14 or
32 more years of age but less than 16 years of age:

33 (A) Voluntary sexual intercourse;

34 (B) voluntary sodomy; or

35 (C) voluntary lewd fondling or touching;

36 (2) when the offender is less than 19 years of age;

37 (3) when the offender is less than four years of age older than the
38 child; *and*

39 (4) when the child and the offender are the only parties involved; ~~and~~

40 ~~(5) when the child and the offender are members of the opposite sex.~~

41 (b) Unlawful voluntary sexual relations as defined in:

42 (1) Subsection (a)(1)(A) is a severity level 8, person felony;

43 (2) subsection (a)(1)(B) is a severity level 9, person felony; and

1 (3) subsection (a)(1)(C) is a severity level 10, person felony.

2 Sec. ~~9~~. **8**. K.S.A. 2011 Supp. 21-5604 is hereby amended to read as
3 follows: 21-5604. (a) Incest is marriage to or engaging in otherwise lawful
4 sexual intercourse or sodomy, as defined in K.S.A. 2011 Supp. 21-5501,
5 and amendments thereto, with a person who is 18 or more years of age and
6 who is known to the offender to be related to the offender as any of the
7 following biological relatives: Parent, child, grandparent of any degree,
8 grandchild of any degree, brother, sister, half-brother, half-sister, uncle,
9 aunt, nephew or niece.

10 (b) Aggravated incest is:

11 (1) Marriage to a person who is under 18 years of age and who is
12 known to the offender to be related to the offender as any of the following
13 biological, step or adoptive relatives: Child, grandchild of any degree,
14 brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or

15 (2) engaging in the following acts with a person who is 16 or more
16 years of age but under 18 years of age and who is known to the offender to
17 be related to the offender as any of the following biological, step or
18 adoptive relatives: Child, grandchild of any degree, brother, sister, half-
19 brother, half-sister, uncle, aunt, nephew or niece:

20 (A) Otherwise lawful sexual intercourse or sodomy as defined by
21 K.S.A. 2011 Supp. 21-5501, and amendments thereto; or

22 (B) any lewd fondling, as described in subsection (a)(1) of K.S.A.
23 2011 Supp. 21-5506, and amendments thereto.

24 (c) (1) Incest is a severity level 10, person felony.

25 (2) Aggravated incest as defined in:

26 (A) Subsection (b)(2)(A) is a:

27 (i) Severity level 5, person felony, *except as provided in subsection*
28 *(c)(2)(A)(ii)*; and

29 (ii) *severity level 3, person felony if the victim is the offender's*
30 *biological, step or adoptive child; and*

31 (B) subsection (b)(1) or (b)(2)(B) is a severity level 7, person felony.

32 Sec. ~~10~~. **9**. K.S.A. 2011 Supp. 21-5806 is hereby amended to read as
33 follows: 21-5806. (a) Unlawful use of recordings is:

34 (1) Knowingly, and without the consent of the owner, duplicating or
35 causing to be duplicated any sounds recorded on a phonograph record,
36 disc, wire, tape, film or other article on which sounds are recorded, or
37 recording or causing to be recorded any live performance, with the intent
38 to sell, rent or cause to be sold or rented, any such duplicated sounds or
39 any such recorded performance, or to give away such duplicated sounds or
40 recorded performance as part of a promotion for any product or service;

41 (2) distributing or possessing with the intent to distribute, any article
42 produced in violation of subsection (a)(1) knowing or having reasonable
43 grounds to know that such article was produced in violation of law; ~~or~~

1 (3) *possessing any article produced in violation of subsection (a)(1)*
2 *knowing or having reasonable grounds to know that such article was*
3 *produced in violation of law; or*

4 ~~(3)~~ (4) *knowingly selling, renting, offering for sale or rental, or*
5 *possessing, transporting or manufacturing with intent to sell or rent, any*
6 *phonograph record, audio or video disc, wire, audio or video tape, film or*
7 *other article now known or later developed on which sounds, images, or*
8 *both sounds and images are recorded or otherwise stored, unless the*
9 *outside cover, box or jacket clearly and conspicuously discloses the name*
10 *and address of the manufacturer of such recorded article.*

11 (b) *Unlawful use of recordings:*

12 (1) *Is a severity level 9, nonperson felony, except as provided in*
13 *subsections (b)(2) and (b)(3); and*

14 (2) *as defined in subsection (a)(2) or ~~(a)(3)~~ (a)(4), is a class A*
15 *nonperson misdemeanor if the offense involves fewer than seven audio*
16 *visual recordings, or fewer than 100 sound recordings during a 180-day*
17 *period; and*

18 (3) *as defined in subsection (a)(3), is a class B nonperson*
19 *misdemeanor.*

20 (c) *The provisions of subsection (a)(1) shall not apply to:*

21 (1) *Any broadcaster who, in connection with or as part of a radio or*
22 *television broadcast or cable transmission, or for the purpose of archival*
23 *preservation, duplicates any such sounds recorded on a sound recording;*

24 (2) *any person who duplicates such sounds or such performance for*
25 *personal use, and without compensation for such duplication; or*

26 (3) *any sounds initially fixed in a tangible medium of expression after*
27 *February 15, 1972.*

28 (d) *The provisions of subsections (a)(1) and (a)(3) shall not apply to*
29 *any computer program or any audio or visual recording that is part of any*
30 *computer program or to any article or device on which is exclusively*
31 *recorded any such computer program.*

32 (e) *As used in this section:*

33 (1) *"Owner" means the person who owns the original fixation of*
34 *sounds embodied in the master phonograph record, master disc, master*
35 *wire, master tape, master film or other device used for reproducing sounds*
36 *on phonograph records, discs, wires, tapes, films or other articles now*
37 *known or later developed upon which sound is recorded or otherwise*
38 *stored, and from which the duplicated recorded sounds are directly or*
39 *indirectly derived, or the person who owns the right to record such live*
40 *performance; and*

41 (2) *"computer program" means a set of statements or instructions to*
42 *be used directly or indirectly in a computer in order to bring about a*
43 *certain result.*

1 (f) It shall be the duty of all law enforcement officers, upon
 2 discovery, to confiscate all recorded devices that do not conform to the
 3 provisions of this section and that are possessed for the purpose of selling
 4 or renting such recorded devices, and all equipment and components used
 5 or intended to be used to knowingly manufacture recorded devices that do
 6 not conform to the provisions of such section for the purpose of selling or
 7 renting such recorded devices. The nonconforming recorded devices that
 8 are possessed for the purpose of selling or renting such recorded devices
 9 are contraband and shall be delivered to the district attorney for the county
 10 in which the confiscation was made, by court order, and shall be destroyed
 11 or otherwise disposed of, if the court finds that the person claiming title to
 12 such recorded devices possessed such recorded devices for the purpose of
 13 selling or renting such recorded devices. The equipment and components
 14 confiscated shall be delivered to the district attorney for the county in
 15 which the confiscation was made, by court order upon conviction, and may
 16 be given to a charitable or educational organization.

17 Sec. ~~10~~ **10**. K.S.A. 2011 Supp. 21-5807 is hereby amended to read as
 18 follows: 21-5807. (a) Burglary is, without authority, entering into or
 19 remaining within any:

20 (1) Dwelling, with intent to commit a felony, theft or ~~sexual battery~~
 21 *sexually motivated crime* therein;

22 (2) building, manufactured home, mobile home, tent or other
 23 structure which is not a dwelling, with intent to commit a felony, theft or
 24 ~~sexual battery~~ *sexually motivated crime* therein; or

25 (3) vehicle, aircraft, watercraft, railroad car or other means of
 26 conveyance of persons or property, with intent to commit a felony, theft or
 27 ~~sexual battery~~ *sexually motivated crime* therein.

28 (b) Aggravated burglary is, without authority, entering into or
 29 remaining within any building, manufactured home, mobile home, tent or
 30 other structure, or any vehicle, aircraft, watercraft, railroad car or other
 31 means of conveyance of persons or property in which there is a human
 32 being with intent to commit a felony, theft or ~~sexual battery~~ *sexually*
 33 *motivated crime* therein.

34 (c) (1) Burglary as defined in:

35 (A) Subsection (a)(1) is a severity level 7, person felony;

36 (B) subsection (a)(2) is a severity level 7, nonperson felony; and

37 (C) subsection (a)(3) is a severity level 9, nonperson felony.

38 (2) Aggravated burglary is a severity level 5, person felony.

39 (d) *As used in this section, "sexually motivated" means that one of the*
 40 *purposes for which the defendant committed the crime was for the purpose*
 41 *of the defendant's sexual gratification.*

42 Sec. ~~12~~ **11**. K.S.A. 2011 Supp. 21-5904 is hereby amended to read as
 43 follows: 21-5904. (a) Interference with law enforcement is:

1 (1) Falsely reporting to a law enforcement officer or state
 2 investigative agency ~~that a crime has been committed, knowing that such~~
 3 ~~information is false and intending that the officer or agency shall act in~~
 4 ~~reliance upon such information; or:~~

5 (A) *That a particular person has committed a crime, knowing that*
 6 *such information is false and intending that the officer or agency shall act*
 7 *in reliance upon such information; or*

8 (B) *any information, knowing that such information is false and*
 9 *intending to influence, impede or obstruct such officer's or agency's duty;*

10 (2) *concealing, destroying or materially altering evidence with the*
 11 *intent to prevent or hinder the apprehension or prosecution of any person;*
 12 *or*

13 ~~(2)~~ (3) knowingly obstructing, resisting or opposing any person
 14 authorized by law to serve process in the service or execution or in the
 15 attempt to serve or execute any writ, warrant, process or order of a court,
 16 or in the discharge of any official duty.

17 (b) (1) Interference with law enforcement as defined in subsection (a)
 18 (1) or (a)(2) is a class A *nonperson* misdemeanor, *except as provided in*
 19 *subsection (b)(2).*

20 (2) *Interference with law enforcement as defined in:*

21 (A) *Subsection (a)(1)(A) or (a)(2) is a severity level 8, nonperson*
 22 *felony in the case of a felony; and*

23 (B) *subsection (a)(1)(B) is a severity level 9, nonperson felony in the*
 24 *case of a felony.*

25 ~~(2)~~ (3) Interference with law enforcement as defined in subsection ~~(a)~~
 26 ~~(2)~~ (a)(3) is a:

27 (A) Severity level 9, nonperson felony in the case of a felony, or
 28 resulting from parole or any authorized disposition for a felony; and

29 (B) class A nonperson misdemeanor in the case of a misdemeanor, or
 30 resulting from any authorized disposition for a misdemeanor, or a civil
 31 case.

32 Sec. ~~13~~ **12.** K.S.A. 2011 Supp. 21-5905 is hereby amended to read as
 33 follows: 21-5905. (a) Interference with the judicial process is:

34 (1) Communicating with any judicial officer in relation to any matter
 35 which is or may be brought before such judge, magistrate, master or juror
 36 with intent improperly to influence such officer;

37 (2) committing any of the following acts, with intent to influence,
 38 impede or obstruct the finding, decision, ruling, order, judgment or decree
 39 of such judicial officer or prosecutor on any matter then pending before the
 40 officer or prosecutor:

41 (A) Communicating in any manner a threat of violence to any judicial
 42 officer or any prosecutor;

43 (B) harassing a judicial officer or a prosecutor by repeated

1 vituperative communication; or

2 (C) picketing, parading or demonstrating near such officer's or
3 prosecutor's residence or place of abode;

4 (3) picketing, parading or demonstrating in or near a building housing
5 a judicial officer or a prosecutor with intent to impede or obstruct the
6 finding, decision, ruling, order, judgment or decree of such judicial officer
7 or prosecutor on any matter then pending before the officer or prosecutor;

8 (4) knowingly accepting or agreeing to accept anything of value as
9 consideration for a promise:

10 (A) Not to initiate or aid in the prosecution of a person who has
11 committed a crime; or

12 (B) to conceal ~~or~~, destroy *or materially alter* evidence of a crime; ~~or~~

13 (5) *concealing, destroying or materially altering evidence with the*
14 *intent to influence, impede or obstruct any proceeding, civil or criminal;*
15 *or*

16 ~~(5)~~ (6) when performed by a person summoned or sworn as a juror in
17 any case:

18 (A) Intentionally soliciting, accepting or agreeing to accept from
19 another any benefit as consideration to wrongfully give a verdict for or
20 against any party in any proceeding, civil or criminal;

21 (B) intentionally promising or agreeing to wrongfully give a verdict
22 for or against any party in any proceeding, civil or criminal; or

23 (C) knowingly receiving any evidence or information from anyone in
24 relation to any matter or cause for the trial of which such juror has been or
25 will be sworn, without the authority of the court or officer before whom
26 such juror has been summoned, and without immediately disclosing the
27 same to such court or officer.

28 (b) Interference with the judicial process as defined in:

29 (1) Subsection (a)(1) is a severity level 9, nonperson felony;

30 (2) subsection (a)(2) and (a)(3) is a class A nonperson misdemeanor;

31 (3) subsection (a)(4) is a:

32 (A) Severity level 8, nonperson felony if the crime is a felony; ~~or~~ *and*

33 (B) class A nonperson misdemeanor if the crime is a misdemeanor;

34 (4) *subsection (a)(5) is a:*

35 (A) *Severity level 8, nonperson felony if the proceeding is a felony*
36 *prosecution; and*

37 (B) *class A nonperson misdemeanor if the proceeding is any*
38 *proceeding other than a felony prosecution;*

39 ~~(4)~~ (5) subsection ~~(a)(5)(A)~~ (a)(6)(A) is a severity level 7, nonperson
40 felony; and

41 ~~(5)~~ (6) subsection ~~(a)(5)(B) or (a)(5)(C)~~ (a)(6)(B) or (a)(6)(C) is a
42 severity level 9, nonperson felony.

43 (c) Nothing in this section shall limit or prevent the exercise by any

1 court of this state of its power to punish for contempt.

2 Sec. ~~14~~. **13**. K.S.A. 2011 Supp. 21-5907 is hereby amended to read as
3 follows: 21-5907. (a) Simulating legal process is:

4 (1) Distributing to another any document which simulates or purports
5 to be, or is designed to cause others to believe it to be, a summons,
6 petition, complaint or other ~~judicial process, with intent thereby to induce~~
7 ~~payment of a claim~~ *legal process, with the intent to mislead the recipient*
8 *and cause the recipient to take action in reliance thereon*; or

9 (2) printing or distributing any such document, knowing that it shall
10 be so used.

11 (b) Simulating legal process is a class A nonperson misdemeanor.

12 (c) This section shall not apply to the printing or distribution of blank
13 forms of legal documents intended for actual use in judicial proceedings.

14 Sec. ~~15~~. **14**. K.S.A. 2011 Supp. 21-5911 is hereby amended to read as
15 follows: 21-5911. (a) Escape from custody is escaping while held in

16 custody on a: (1) Charge ~~or~~, conviction of *or arrest for* a misdemeanor;

17 (2) charge ~~or~~, adjudication *or arrest* as a juvenile offender where the
18 act, if committed by an adult, would constitute a misdemeanor; or

19 (3) commitment to the state security hospital as provided in K.S.A.
20 22-3428, and amendments thereto, based on a finding that the person
21 committed an act constituting a misdemeanor or by a person 18 years of
22 age or over who is being held in custody on a adjudication of a
23 misdemeanor.

24 (b) Aggravated escape from custody is:

25 (1) Escaping while held in custody:

26 (A) Upon a charge ~~or~~, conviction of *or arrest for* a felony;

27 (B) upon a charge ~~or~~, adjudication *or arrest* as a juvenile offender
28 where the act, if committed by an adult, would constitute a felony;

29 (C) prior to or upon a finding of probable cause for evaluation as a
30 sexually violent predator as provided in K.S.A. 59-29a05, and
31 amendments thereto;

32 (D) upon commitment to a treatment facility as a sexually violent
33 predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;

34 (E) upon a commitment to the state security hospital as provided in
35 K.S.A. 22-3428, and amendments thereto, based on a finding that the
36 person committed an act constituting a felony;

37 (F) by a person 18 years of age or over who is being held on an
38 adjudication of a felony; or

39 (G) upon incarceration at a state correctional institution while in the
40 custody of the secretary of corrections.

41 (2) Escaping effected or facilitated by the use of violence or the threat
42 of violence against any person while held in custody:

43 (A) On a charge or conviction of any crime;

1 (B) on a charge or adjudication as a juvenile offender where the act, if
2 committed by an adult, would constitute a felony;

3 (C) prior to or upon a finding of probable cause for evaluation as a
4 sexually violent predator as provided in K.S.A. 59-29a05, and
5 amendments thereto;

6 (D) upon commitment to a treatment facility as a sexually violent
7 predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;

8 (E) upon a commitment to the state security hospital as provided in
9 K.S.A. 22-3428, and amendments thereto, based on a finding that the
10 person committed an act constituting any crime;

11 (F) by a person 18 years of age or over who is being held on a charge
12 or adjudication of a misdemeanor or felony; or

13 (G) upon incarceration at a state correctional institution while in the
14 custody of the secretary of corrections.

15 (c) (1) Escape from custody is a class A nonperson misdemeanor.

16 (2) Aggravated escape from custody as defined in:

17 (A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F)
18 is a severity level 8, nonperson felony;

19 (B) subsection (b)(1)(B) or (b)(1)(G) is a severity level 5, nonperson
20 felony;

21 (C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F)
22 is a severity level 6, person felony; and

23 (D) subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person
24 felony.

25 (d) As used in this section and K.S.A. 2011 Supp. 21-5912, and
26 amendments thereto:

27 (1) "Custody" means arrest; detention in a facility for holding persons
28 charged with or convicted of crimes or charged or adjudicated as a juvenile
29 offender; detention for extradition or deportation; detention in a hospital or
30 other facility pursuant to court order, imposed as a specific condition of
31 probation or parole or imposed as a specific condition of assignment to a
32 community correctional services program; commitment to the state
33 security hospital as provided in K.S.A. 22-3428, and amendments thereto;
34 or any other detention for law enforcement purposes. "Custody" does not
35 include general supervision of a person on probation or parole or
36 constraint incidental to release on bail;

37 (2) "escape" means departure from custody without lawful authority
38 or failure to return to custody following temporary leave lawfully granted
39 pursuant to express authorization of law or order of a court;

40 (3) "juvenile offender" means the same as in K.S.A. 2011 Supp. 38-
41 2302, and amendments thereto; and

42 (4) "state correctional institution" means the same as in K.S.A. 75-
43 5202, and amendments thereto.

1 (e) *As used in this section, the term "charge" shall not require that*
 2 *the offender was held on a written charge contained in a complaint,*
 3 *information or indictment, if such offender was arrested prior to such*
 4 *offender's escape from custody.*

5 Sec. ~~16~~ **15**. K.S.A. 2011 Supp. 21-6001 is hereby amended to read as
 6 follows: 21-6001. (a) Bribery is:

7 ~~(1) Offering, giving or promising to give, directly or indirectly, to any~~
 8 ~~person who is a public officer, candidate for public office or public~~
 9 ~~employee any benefit, reward or consideration to which the person is not~~
 10 ~~legally entitled with intent thereby to influence the person with respect to~~
 11 ~~the performance of the person's powers or duties as a public officer or~~
 12 ~~employee; or~~

13 ~~(2) the act of a person who is a public officer, candidate for public~~
 14 ~~office or public employee, in requesting, receiving or agreeing to receive,~~
 15 ~~directly or indirectly, any benefit, reward or consideration given with~~
 16 ~~intent that the person will be so influenced.~~

17 (1) *With the intent to improperly influence a public official, offering,*
 18 *giving or promising to give, directly or indirectly, to any public official any*
 19 *benefit, reward or consideration which the public official is not permitted*
 20 *by law to accept, in exchange for the performance or omission of*
 21 *performance of the public official's powers or duties or a promise to*
 22 *perform or omit performance of such powers or duties; or*

23 (2) *the act of a public official intentionally requesting, receiving or*
 24 *agreeing to receive, directly or indirectly, any benefit, reward or*
 25 *consideration, which the public official is not permitted by law to accept,*
 26 *with the intent to improperly influence such public official and in*
 27 *exchange for the performance or omission of performance of the public*
 28 *official's powers or duties or a promise to perform or omit performance of*
 29 *such powers or duties.*

30 (b) Bribery is a severity level 7, nonperson felony. Upon conviction
 31 of bribery, ~~a public officer or public employee~~ *a public official* shall forfeit
 32 the person's office or employment. Notwithstanding an expungement of
 33 the conviction pursuant to K.S.A. 2011 Supp. 21-6614, and amendments
 34 thereto, any person convicted of bribery under the provisions of this
 35 section shall be forever disqualified from holding public office or public
 36 employment in this state.

37 (c) *As used in this section, "public official" means any person who is*
 38 *a public officer, candidate for public office or public employee.*

39 Sec. ~~17~~ **16**. K.S.A. 2011 Supp. 21-6110 is hereby amended to read as
 40 follows: 21-6110. (a) ~~No person shall~~ *It shall be unlawful, with no*
 41 *requirement of a culpable mental state, to smoke in an enclosed area or at*
 42 *a public meeting including, but not limited to:*

43 (1) Public places;

1 (2) taxicabs and limousines;

2 (3) restrooms, lobbies, hallways and other common areas in public
3 and private buildings, condominiums and other multiple-residential
4 facilities;

5 (4) restrooms, lobbies and other common areas in hotels and motels
6 and in at least 80% of the sleeping quarters within a hotel or motel that
7 may be rented to guests;

8 (5) access points of all buildings and facilities not exempted pursuant
9 to subsection (d); and

10 (6) any place of employment.

11 (b) Each employer having a place of employment that is an enclosed
12 area shall provide a smoke-free workplace for all employees. Such
13 employer shall also adopt and maintain a written smoking policy which
14 shall prohibit smoking without exception in all areas of the place of
15 employment. Such policy shall be communicated to all current employees
16 within one week of its adoption and shall be communicated to all new
17 employees upon hiring. Each employer shall provide a written copy of the
18 smoking policy upon request to any current or prospective employee.

19 (c) Notwithstanding any other provision of this section, K.S.A. 2011
20 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other
21 person in charge of an adult care home, as defined in K.S.A. 39-923, and
22 amendments thereto, or a medical care facility, may designate a portion of
23 such adult care home, or the licensed long-term care unit of such medical
24 care facility, as a smoking area, and smoking may be permitted within such
25 designated smoking area.

26 (d) The provisions of this section shall not apply to:

27 (1) The outdoor areas of any building or facility beyond the access
28 points of such building or facility;

29 (2) private homes or residences, except when such home or residence
30 is used as a day care home, as defined in K.S.A. 65-530, and amendments
31 thereto;

32 (3) a hotel or motel room rented to one or more guests if the total
33 percentage of such hotel or motel rooms in such hotel or motel does not
34 exceed 20%;

35 (4) the gaming floor of a lottery gaming facility or racetrack gaming
36 facility, as those terms are defined in K.S.A. 74-8702, and amendments
37 thereto;

38 (5) that portion of an adult care home, as defined in K.S.A. 39-923,
39 and amendments thereto, that is expressly designated as a smoking area by
40 the proprietor or other person in charge of such adult care home pursuant
41 to subsection (c) and that is fully enclosed and ventilated;

42 (6) that portion of a licensed long-term care unit of a medical care
43 facility that is expressly designated as a smoking area by the proprietor or

1 other person in charge of such medical care facility pursuant to subsection
2 (c) and that is fully enclosed and ventilated and to which access is
3 restricted to the residents and their guests;

4 (7) tobacco shops;

5 (8) a class A or class B club defined in K.S.A. 41-2601, and
6 amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606
7 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies
8 the secretary of health and environment in writing, not later than 90 days
9 after the effective date of this act, that it wishes to continue to allow
10 smoking on its premises;

11 (9) a private club in designated areas where minors are prohibited;
12 and

13 (10) any benefit cigar dinner or other cigar dinner of a substantially
14 similar nature that:

15 (A) Is conducted specifically and exclusively for charitable purposes
16 by a nonprofit organization which is exempt from federal income taxation
17 pursuant to section 501(c)(3) of the federal internal revenue code of 1986;

18 (B) is conducted no more than once per calendar year by such
19 organization; and

20 (C) has been held during each of the previous three years prior to
21 January 1, 2011.

22 Sec. ~~18~~ 17. K.S.A. 2011 Supp. 21-6112 is hereby amended to read as
23 follows: 21-6112. (a) It shall be unlawful for any person who owns,
24 manages, operates or otherwise controls the use of any public place, or
25 other area where smoking is prohibited, to fail to comply with all or any of
26 the provisions of K.S.A. 2011 Supp. 21-6109 through 21-6116, and
27 amendments thereto.

28 (b) It shall be unlawful for any person who owns, manages, operates
29 or otherwise controls the use of any public place, or other area where
30 smoking is prohibited, to allow smoking to occur where prohibited by law.
31 Any such person shall be deemed to allow smoking to occur under this
32 subsection if such person: (1) Has knowledge that smoking is occurring;
33 and (2) ~~acquiesces to the~~ *recklessly permits* smoking under the totality of
34 the circumstances.

35 (c) It shall be unlawful for any person, *with no requirement of a*
36 *culpable mental state*, to smoke in any area where smoking is prohibited
37 by the provisions of K.S.A. 2011 Supp. 21-6110, and amendments thereto.

38 (d) Any person who violates any provision of K.S.A. 2011 Supp. 21-
39 6109 through 21-6116, and amendments thereto, shall be guilty of a
40 cigarette or tobacco infraction punishable by a fine:

41 (1) Not exceeding \$100 for the first violation;

42 (2) not exceeding \$200 for a second violation within a one year
43 period after the first violation; or

1 (3) not exceeding \$500 for a third or subsequent violation within a
2 one year period after the first violation.

3 For purposes of this subsection, the number of violations within a year
4 shall be measured by the date the smoking violations occur.

5 (e) Each individual allowed to smoke by a person who owns,
6 manages, operates or otherwise controls the use of any public place, or
7 other area where smoking is prohibited, in violation of subsection (b) shall
8 be considered a separate violation for purposes of determining the number
9 of violations under subsection (d).

10 (f) No employer shall discharge, refuse to hire or ~~in any manner~~
11 ~~retaliate~~ *take any other adverse action* against an employee, applicant for
12 employment or customer ~~because~~ *with the intent to retaliate against* that
13 employee, applicant or customer ~~reports or attempts for reporting or~~
14 ~~attempting~~ *to prosecute a violation of any of the provisions of K.S.A. 2011*
15 *Supp. 21-6109 through 21-6116, and amendments thereto.*

16 ~~Sec. 19. 18.~~ K.S.A. 2011 Supp. 21-6312 is hereby amended to read as
17 follows: 21-6312. (a) Criminal possession of explosives is the possession
18 of any explosive or detonating substance by a person who, within five
19 years preceding such possession, has been convicted of a felony under the
20 laws of this or any other jurisdiction or has been released from
21 imprisonment for a felony.

22 (b) Criminal disposal of explosives is knowingly *and without lawful*
23 *authority* distributing any explosive or detonating substance to a person:

24 (1) Under 21 years of age, *regardless of whether the seller, donor or*
25 *transferor knows the age of such person;*

26 (2) who is both addicted to and an unlawful user of a controlled
27 substance; or

28 (3) who, within the preceding five years, has been convicted of a
29 felony under the laws of this or any other jurisdiction or has been released
30 from imprisonment for a felony.

31 (c) Carrying concealed explosives is carrying any explosive or
32 detonating substance on the person in a wholly or partly concealed
33 manner.

34 (d) (1) Criminal possession of explosives is a severity level 7, person
35 felony.

36 (2) Criminal disposal of explosives is a severity level 10, person
37 felony.

38 (3) Carrying concealed explosives is a class ϵ *A person*
39 *misdemeanor.*

40 (e) As used in subsections (a) and (b), "explosives" means any
41 chemical compound, mixture or device, of which the primary purpose is to
42 function by explosion, and includes, but is not limited to, dynamite and
43 other high explosives, black powder, pellet powder, initiating explosives,

1 detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

2 Sec. ~~20~~. **19**. K.S.A. 2011 Supp. 21-6412 is hereby amended to read as
3 follows: 21-6412. (a) Cruelty to animals is:

4 (1) Knowingly and maliciously killing, injuring, maiming, torturing,
5 burning or mutilating any animal;

6 (2) knowingly abandoning any animal in any place without making
7 provisions for its proper care;

8 (3) having physical custody of any animal and knowingly failing to
9 provide such food, potable water, protection from the elements,
10 opportunity for exercise and other care as is needed for the health or well-
11 being of such kind of animal;

12 (4) intentionally using a wire, pole, stick, rope or any other object to
13 cause an equine to lose its balance or fall, for the purpose of sport or
14 entertainment;

15 (5) knowingly but not maliciously killing or injuring any animal; or

16 (6) knowingly and maliciously administering any poison to any
17 domestic animal.

18 (b) Cruelty to animals as defined in:

19 (1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon conviction
20 of subsection (a)(1) or (a)(6), a person shall be sentenced to not less than
21 30 days or more than one year's imprisonment and be fined not less than
22 \$500 nor more than \$5,000. The person convicted shall not be eligible for
23 release on probation, suspension or reduction of sentence or parole until
24 the person has served the minimum mandatory sentence as provided
25 herein. During the mandatory 30 days imprisonment, such offender shall
26 have a psychological evaluation prepared for the court to assist the court in
27 determining conditions of probation. Such conditions shall include, but not
28 be limited to, the completion of an anger management program; and

29 (2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) is a:

30 (A) Class A nonperson misdemeanor, except as provided in
31 subsection (b)(2)(B); and

32 (B) nonperson felony upon the second or subsequent conviction of
33 cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5).
34 Upon such conviction, a person shall be sentenced to not less than five
35 days or more than one year's imprisonment and be fined not less than \$500
36 nor more than \$2,500. The person convicted shall not be eligible for
37 release on probation, suspension or reduction of sentence or parole until
38 the person has served the minimum mandatory sentence as provided
39 herein.

40 (c) The provisions of this section shall not apply to:

41 (1) Normal or accepted veterinary practices;

42 (2) bona fide experiments carried on by commonly recognized
43 research facilities;

1 (3) killing, attempting to kill, trapping, catching or taking of any
2 animal in accordance with the provisions of chapter 32 or chapter 47 of the
3 Kansas Statutes Annotated, and amendments thereto;

4 (4) rodeo practices accepted by the rodeo cowboys' association;

5 (5) the humane killing of an animal which is diseased or disabled
6 beyond recovery for any useful purpose, or the humane killing of animals
7 for population control, by the owner thereof or the agent of such owner
8 residing outside of a city or the owner thereof within a city if no animal
9 shelter, pound or licensed veterinarian is within the city, or by a licensed
10 veterinarian at the request of the owner thereof, or by any officer or agent
11 of an incorporated humane society, the operator of an animal shelter or
12 pound, a local or state health officer or a licensed veterinarian three
13 business days following the receipt of any such animal at such society,
14 shelter or pound;

15 (6) with respect to farm animals, normal or accepted practices of
16 animal husbandry, including the normal and accepted practices for the
17 slaughter of such animals for food or by-products and the careful or thrifty
18 management of one's herd or animals, including animal care practices
19 common in the industry or region;

20 (7) the killing of any animal by any person at any time which may be
21 found outside of the owned or rented property of the owner or custodian of
22 such animal and which is found injuring or posing a threat to any person,
23 farm animal or property;

24 (8) an animal control officer trained by a licensed veterinarian in the
25 use of a tranquilizer gun, using such gun with the appropriate dosage for
26 the size of the animal, when such animal is vicious or could not be
27 captured after reasonable attempts using other methods;

28 (9) laying an equine down for medical or identification purposes;

29 (10) normal or accepted practices of pest control, as defined in
30 subsection (x) of K.S.A. 2-2438a, and amendments thereto; or

31 (11) accepted practices of animal husbandry pursuant to regulations
32 promulgated by the United States department of agriculture for domestic
33 pet animals under the animal welfare act, public law 89-544, as amended
34 and in effect on July 1, 2006.

35 (d) The provisions of subsection (a)(6) shall not apply to any person
36 exposing poison upon their premises for the purpose of destroying wolves,
37 coyotes or other predatory animals.

38 (e) Any public health officer, law enforcement officer, licensed
39 veterinarian or officer or agent of any incorporated humane society, animal
40 shelter or other appropriate facility may take into custody any animal,
41 upon either private or public property, which clearly shows evidence of
42 cruelty to animals. Such officer, agent or veterinarian may inspect, care for
43 or treat such animal or place such animal in the care of a duly incorporated

1 humane society or licensed veterinarian for treatment, boarding or other
2 care or, if an officer of such humane society or such veterinarian
3 determines that the animal appears to be diseased or disabled beyond
4 recovery for any useful purpose, for humane killing. If the animal is placed
5 in the care of an animal shelter, the animal shelter shall notify the owner or
6 custodian, if known or reasonably ascertainable. If the owner or custodian
7 is charged with a violation of this section, the board of county
8 commissioners in the county where the animal was taken into custody
9 shall establish and approve procedures whereby the animal shelter may
10 petition the district court to be allowed to place the animal for adoption or
11 euthanize the animal at any time after 21 days after the owner or custodian
12 is notified or, if the owner or custodian is not known or reasonably
13 ascertainable after 21 days after the animal is taken into custody, unless the
14 owner or custodian of the animal files a renewable cash or performance
15 bond with the county clerk of the county where the animal is being held, in
16 an amount equal to not less than the cost of care and treatment of the
17 animal for 30 days. Upon receiving such petition, the court shall determine
18 whether the animal may be placed for adoption or euthanized. The board
19 of county commissioners in the county where the animal was taken into
20 custody shall review the cost of care and treatment being charged by the
21 animal shelter maintaining the animal.

22 (f) The owner or custodian of an animal placed for adoption or killed
23 pursuant to subsection (e) shall not be entitled to recover damages for the
24 placement or killing of such animal unless the owner proves that such
25 placement or killing was unwarranted.

26 (g) Expenses incurred for the care, treatment or boarding of any
27 animal, taken into custody pursuant to subsection (e), pending prosecution
28 of the owner or custodian of such animal for the crime of cruelty to
29 animals, shall be assessed to the owner or custodian as a cost of the case if
30 the owner or custodian is adjudicated guilty of such crime.

31 ~~(h) Upon the filing of a sworn complaint by any public health officer,
32 law enforcement officer, licensed veterinarian or officer or agent of any
33 incorporated humane society, animal shelter or other appropriate facility
34 alleging the commission of cruelty to animals, the county or district
35 attorney shall determine the validity of the complaint and shall forthwith
36 file charges for the crime if the complaint appears to be valid.~~

37 (†) (h) If a person is adjudicated guilty of the crime of cruelty to
38 animals, and the court having jurisdiction is satisfied that an animal owned
39 or possessed by such person would be in the future subjected to such
40 crime, such animal shall not be returned to or remain with such person.
41 Such animal may be turned over to a duly incorporated humane society or
42 licensed veterinarian for sale or other disposition.

43 (†) (i) As used in this section:

1 (1) "Equine" means a horse, pony, mule, jenny, donkey or hinny; and

2 (2) "maliciously" means a state of mind characterized by actual evil-
3 mindedness or specific intent to do a harmful act without a reasonable
4 justification or excuse.

5 ~~Sec. 21. 20.~~ K.S.A. 2011 Supp. 21-6413 is hereby amended to read as
6 follows: 21-6413 (a) Unlawful disposition of animals is knowingly
7 raffling; *or giving as a prize or premium or using as an advertising device*
8 ~~or promotional display~~ living rabbits or chickens, ducklings or goslings.

9 (b) Unlawful disposition of animals is a class C misdemeanor.

10 (c) The provisions of this section shall not apply to a person giving
11 such animals to minors for use in agricultural projects under the
12 supervision of commonly recognized youth farm organizations.

13 ~~Sec. 22. 21.~~ K.S.A. 2011 Supp. 21-6819 is hereby amended to read as
14 follows: 21-6819. (a) The provisions of subsections (a), (b), (c), (d), (e)
15 and (h) of K.S.A. 2011 Supp. 21-6606, and amendments thereto, regarding
16 multiple sentences shall apply to the sentencing of offenders pursuant to
17 the sentencing guidelines. The mandatory consecutive sentence
18 requirements contained in subsections (c), (d) and (e) of K.S.A. 2011
19 Supp. 21-6606, and amendments thereto, shall not apply if such
20 application would result in a manifest injustice.

21 (b) The sentencing judge shall otherwise have discretion to impose
22 concurrent or consecutive sentences in multiple conviction cases. The
23 sentencing judge *may consider the need to impose an overall sentence that*
24 *is proportionate to the harm and culpability and shall state on the record if*
25 *the sentence is to be served concurrently or consecutively. In cases where*
26 *consecutive sentences may be imposed by the sentencing judge, the*
27 *following shall apply:*

28 (1) When the sentencing judge imposes multiple sentences
29 consecutively, the consecutive sentences shall consist of an imprisonment
30 term which *is may not exceed* the sum of the consecutive imprisonment
31 terms, and a supervision term. *The sentencing judge shall have the*
32 *discretion to impose a consecutive term of imprisonment for a crime other*
33 *than the primary crime of any term of months not to exceed the nonbase*
34 *sentence as determined under subsection (b)(5).* The postrelease
35 supervision term will be based on the longest supervision term imposed for
36 any of the crimes.

37 (2) The sentencing judge shall establish a base sentence for the
38 primary crime. The primary crime is the crime with the highest crime
39 severity ranking. An off-grid crime shall not be used as the primary crime
40 in determining the base sentence when imposing multiple sentences. If
41 sentences for off-grid and on-grid convictions are ordered to run
42 consecutively, the offender shall not begin to serve the on-grid sentence
43 until paroled from the off-grid sentence, and the postrelease supervision

1 term will be based on the off-grid crime. If more than one crime of
2 conviction is classified in the same crime category, the sentencing judge
3 shall designate which crime will serve as the primary crime. In the
4 instance of sentencing with both the drug grid and the nondrug grid and
5 simultaneously having a presumption of imprisonment and probation, the
6 sentencing judge shall use the crime which presumes imprisonment as the
7 primary crime. In the instance of sentencing with both the drug grid and
8 the nondrug grid and simultaneously having a presumption of either both
9 probation or both imprisonment, the sentencing judge shall use the crime
10 with the longest sentence term as the primary crime.

11 (3) The base sentence is set using the total criminal history score
12 assigned.

13 (4) The total prison sentence imposed in a case involving multiple
14 convictions arising from multiple counts within an information, complaint
15 or indictment cannot exceed twice the base sentence. This limit shall apply
16 only to the total sentence, and it shall not be necessary to reduce the
17 duration of any of the nonbase sentences imposed to be served
18 consecutively to the base sentence. The postrelease supervision term will
19 reflect only the longest such term assigned to any of the crimes for which
20 consecutive sentences are imposed. Supervision periods shall not be
21 aggregated.

22 (5) Nonbase sentences shall not have criminal history scores applied,
23 as calculated in the criminal history I column of the grid, but base
24 sentences shall have the full criminal history score assigned. In the event a
25 conviction designated as the primary crime in a multiple conviction case is
26 reversed on appeal, the appellate court shall remand the multiple
27 conviction case for resentencing. Upon resentencing, if the case remains a
28 multiple conviction case the court shall follow all of the provisions of this
29 section concerning the sentencing of multiple conviction cases.

30 (6) If the sentence for the primary crime is a prison term, the entire
31 imprisonment term of the consecutive sentences will be served in prison.

32 (7) If the sentence for the consecutive sentences is a prison term, the
33 postrelease supervision term is a term of postrelease supervision as
34 established for the primary crime.

35 (8) If the sentence for the primary crime is a nonprison sentence, a
36 nonprison term will be imposed for each crime conviction, but the
37 nonprison terms shall not be aggregated or served consecutively even
38 though the underlying prison sentences have been ordered to be served
39 consecutively. Upon revocation of the nonprison sentence, the offender
40 shall serve the prison sentences consecutively as provided in this section.

41 (c) The following shall apply for a departure from the presumptive
42 sentence based on aggravating factors within the context of consecutive
43 sentences:

1 (1) The court may depart from the presumptive limits for consecutive
2 sentences only if the judge finds substantial and compelling reasons to
3 impose a departure sentence for any of the individual crimes being
4 sentenced consecutively.

5 (2) When a departure sentence is imposed for any of the individual
6 crimes sentenced consecutively, the imprisonment term of that departure
7 sentence shall not exceed twice the maximum presumptive imprisonment
8 term that may be imposed for that crime.

9 (3) The total imprisonment term of the consecutive sentences,
10 including the imprisonment term for the departure crime, shall not exceed
11 twice the maximum presumptive imprisonment term of the departure
12 sentence following aggravation.

13 ~~Sec. 23.~~ **22.** K.S.A. 2011 Supp. 21-5109, 21-5302, 21-5402, 21-5426,
14 21-5504, 21-5507, 21-5604, 21-5806, 21-5807, 21-5904, 21-5905, 21-
15 5907, 21-5911, 21-6001, 21-6110, 21-6112, 21-6312, 21-6412, 21-6413
16 and 21-6819 are hereby repealed.

17 ~~Sec. 24.~~ **23.** This act shall take effect and be in force from and after
18 its publication in the statute book.
19