

## SENATE BILL No. 308

By Committee on Judiciary

1-19

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1 AN ACT concerning crimes and punishment; creating the crimes of armed  
2 criminal action and endangerment; relating to further amendments to  
3 the Kansas criminal code; amending K.S.A. 2011 Supp. 21-5109, 21-  
4 5302, 21-5402, 21-5426, 21-5504, 21-5507, 21-5604, 21-5806, 21-  
5 5807, 21-5904, 21-5905, 21-5907, 21-5911, 21-6001, 21-6110, 21-  
6 6112, 21-6312, 21-6412, 21-6413 and 21-6819 and repealing the  
7 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  
11 attempting to commit any felony under the laws of this state by use of a  
12 firearm.

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

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

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

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

1 immediately prior to or immediately after the commission of a felony,  
2 regardless of whether such firearm was discharged, actively employed or  
3 displayed.

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

6 New Sec. 2. (a) Endangerment is recklessly exposing another  
7 person to a danger of great bodily harm or death.

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

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

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

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

20 (1) A lesser degree of the same crime;  
21 (2) a crime where all elements of the lesser crime are identical to  
22 some of the elements of the crime charged;

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

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

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

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

43 (1) May not be convicted of the two crimes based upon the same

1 conduct; and

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

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

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

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

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

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

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

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

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

37 (C) illegal use of weapons of mass destruction as defined in K.S.A.  
38 2011 Supp. 21-5422, and amendments thereto;

39 (D) rape, as defined in subsection (a)(3) of K.S.A. 2011 Supp. 21-  
40 5503, and amendments thereto, if the offender is 18 years of age or older;

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

1 (F) aggravated criminal sodomy, as defined in subsection (b)(1) or (b)  
2 (2) of K.S.A. 2011 Supp. 21-5504, and amendments thereto, if the offender  
3 is 18 years of age or older;

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

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

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

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

16 Sec. 5. K.S.A. 2011 Supp. 21-5402 is hereby amended to read as  
17 follows: 21-5402. (a) Murder in the first degree is the killing of a human  
18 being committed:

19 (1) Intentionally, and with premeditation; or

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

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

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

24 (1) Any of the following felonies, whether such felony is so distinct  
25 from the homicide alleged to be a violation of subsection (a)(2) as not to  
26 be an ingredient of the homicide alleged to be a violation of subsection (a)  
27 (2):

28 (A) Kidnapping, as defined in subsection (a) of K.S.A. 2011 Supp.  
29 21-5408, and amendments thereto;

30 (B) aggravated kidnapping, as defined in subsection (b) of K.S.A.  
31 2011 Supp. 21-5408, and amendments thereto;

32 (C) robbery, as defined in subsection (a) of K.S.A. 2011 Supp. 21-  
33 5420, and amendments thereto;

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

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

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

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

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

- 1 (I) burglary, as defined in subsection (a) of K.S.A. 2011 Supp. 21-  
2 5807, and amendments thereto;
- 3 (J) aggravated burglary, as defined in subsection (b) of K.S.A. 2011  
4 Supp. 21-5807, and amendments thereto;
- 5 (K) arson, as defined in subsection (a) of K.S.A. 2011 Supp. 21-  
6 5812, and amendments thereto;
- 7 (L) aggravated arson, as defined in subsection (b) of K.S.A. 2011  
8 Supp. 21-5812, and amendments thereto;
- 9 (M) treason, as defined in K.S.A. 2011 Supp. 21-5901, and  
10 amendments thereto;
- 11 (N) any felony offense as provided in K.S.A. 2011 Supp. 21-5703,  
12 21-5705 or 21-5706, and amendments thereto;
- 13 (O) any felony offense as provided in subsection (a) or (b) of K.S.A.  
14 2011 Supp. 21-6308, and amendments thereto;
- 15 (P) endangering the food supply, as defined in subsection (a) of  
16 K.S.A. 2011 Supp. 21-6317, and amendments thereto;
- 17 (Q) aggravated endangering the food supply, as defined in subsection  
18 (b) of K.S.A. 2011 Supp. 21-6317, and amendments thereto;
- 19 (R) fleeing or attempting to elude a police officer, as defined in  
20 subsection (b) of K.S.A. 8-1568, and amendments thereto; ~~or~~
- 21 (S) aggravated endangering a child, as defined in subsection (b)(1) of  
22 K.S.A. 2011 Supp. 21-5601, and amendments thereto;
- 23 (T) *abandonment of a child, as defined in subsection (a) of K.S.A.*  
24 *2011 Supp. 21-5605, and amendments thereto; or*
- 25 (U) *aggravated abandonment of a child, as defined in subsection (b)*  
26 *of K.S.A. 2011 Supp. 21-5605, and amendments thereto; and*
- 27 (2) any of the following felonies, only when such felony is so distinct  
28 from the homicide alleged to be a violation of subsection (a)(2) as to not  
29 be an ingredient of the homicide alleged to be a violation of subsection (a)  
30 (2):
- 31 (A) Murder in the first degree, as defined in subsection (a)(1);
- 32 (B) murder in the second degree, as defined in subsection (a)(1) of  
33 K.S.A. 2011 Supp. 21-5403, and amendments thereto;
- 34 (C) voluntary manslaughter, as defined in subsection (a)(1) of K.S.A.  
35 2011 Supp. 21-5404, and amendments thereto;
- 36 (D) aggravated assault, as defined in subsection (b) of K.S.A. 2011  
37 Supp. 21-5412, and amendments thereto;
- 38 (E) aggravated assault of a law enforcement officer, as defined in  
39 subsection (d) of K.S.A. 2011 Supp. 21-5412, and amendments thereto;
- 40 (F) aggravated battery, as defined in subsection (b)(1) of K.S.A. 2011  
41 Supp. 21-5413, and amendments thereto; or
- 42 (G) aggravated battery against a law enforcement officer, as defined  
43 in subsection (d) of K.S.A. 2011 Supp. 21-5413, and amendments thereto.

1 Sec. 6. K.S.A. 2011 Supp. 21-5426 is hereby amended to read as  
 2 follows: 21-5426. (a) Human trafficking is:

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

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

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

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

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

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

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

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

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

23 (b) Aggravated human trafficking is:

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

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

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

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

31 ~~(2)~~ (4) involving recruiting, harboring, transporting, providing or  
 32 obtaining, by any means, a person under 18 years of age knowing that the  
 33 person, with or without force, fraud, threat or coercion, will be used to  
 34 engage in forced labor, involuntary servitude or sexual gratification of the  
 35 defendant or another.

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

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

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

43 (d) If the offender is 18 years of age or older and the victim is less

1 than 14 years of age, the provisions of:

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

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

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

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

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

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

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

22 ~~(2) (1) sodomy between a person and an animal;~~

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

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

27 (b) Aggravated criminal sodomy is:

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

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

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

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

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

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

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

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

- 1 (B) subsection ~~(a)(3) or (a)(4)~~ (a)(2) or (a)(3) is a severity level 3,  
 2 person felony.
- 3 (2) Aggravated criminal sodomy as defined in:
- 4 (A) Subsection (b)(3) is a severity level 1, person felony; and
- 5 (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony,  
 6 except as provided in subsection (c)(3).
- 7 (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)  
 8 (2) or attempt, conspiracy or criminal solicitation to commit aggravated  
 9 criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid  
 10 person felony, when the offender is 18 years of age or older.
- 11 (d) If the offender is 18 years of age or older, the provisions of:
- 12 (1) Subsection (c) of K.S.A. 2011 Supp. 21-5301, and amendments  
 13 thereto, shall not apply to a violation of attempting to commit the crime of  
 14 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);
- 15 (2) subsection (c) of K.S.A. 2011 Supp. 21-5302, and amendments  
 16 thereto, shall not apply to a violation of conspiracy to commit the crime of  
 17 aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and
- 18 (3) subsection (d) of K.S.A. 2011 Supp. 21-5303, and amendments  
 19 thereto, shall not apply to a violation of criminal solicitation to commit the  
 20 crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)  
 21 (2).
- 22 (e) It shall be a defense to a prosecution of criminal sodomy, as  
 23 defined in subsection ~~(a)(3)~~ (a)(2), and aggravated criminal sodomy, as  
 24 defined in subsection (b)(1), that the child was married to the accused at  
 25 the time of the offense.
- 26 (f) Except as provided in subsection (b)(3)(C), it shall not be a  
 27 defense that the offender did not know or have reason to know that the  
 28 victim did not consent to the sodomy, that the victim was overcome by  
 29 force or fear, or that the victim was unconscious or physically powerless.
- 30 Sec. 8. K.S.A. 2011 Supp. 21-5507 is hereby amended to read as  
 31 follows: 21-5507. (a) Unlawful voluntary sexual relations is:
- 32 (1) Engaging in any of the following acts with a child who is 14 or  
 33 more years of age but less than 16 years of age:
- 34 (A) Voluntary sexual intercourse;
- 35 (B) voluntary sodomy; or
- 36 (C) voluntary lewd fondling or touching;
- 37 (2) when the offender is less than 19 years of age;
- 38 (3) when the offender is less than four years of age older than the  
 39 child; *and*
- 40 (4) when the child and the offender are the only parties involved; ~~and~~  
 41 ~~(5) when the child and the offender are members of the opposite sex.~~
- 42 (b) Unlawful voluntary sexual relations as defined in:
- 43 (1) Subsection (a)(1)(A) is a severity level 8, person felony;



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

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

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

11 (b) Aggravated incest is:

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

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

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

23 (B) any lewd fondling, as described in subsection (a)(1) of K.S.A.  
24 2011 Supp. 21-5506, and amendments thereto.

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

26 (2) Aggravated incest as defined in:

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

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

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

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

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

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

42 (2) distributing or possessing with the intent to distribute, any article  
43 produced in violation of subsection (a)(1) knowing or having reasonable

1 grounds to know that such article was produced in violation of law; ~~or~~

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

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

12 (b) Unlawful use of recordings:

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

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

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

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

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

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

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

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

33 (e) As used in this section:

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

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

1 certain result.

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

18 Sec. 11. K.S.A. 2011 Supp. 21-5807 is hereby amended to read as  
19 follows: 21-5807. (a) Burglary is, without authority, entering into or  
20 remaining within any:

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

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

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

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

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

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

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

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

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

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

43 Sec. 12. K.S.A. 2011 Supp. 21-5904 is hereby amended to read as

1 follows: 21-5904. (a) Interference with law enforcement is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (B) harassing a judicial officer or a prosecutor by repeated  
2 vituperative communication; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) Nothing in this section shall limit or prevent the exercise by any  
2 court of this state of its power to punish for contempt.

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

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

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

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

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

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

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

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

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

25 (b) Aggravated escape from custody is:

26 (1) Escaping while held in custody:

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

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

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

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

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

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

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

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

- 1 (A) On a charge or conviction of any crime;
- 2 (B) on a charge or adjudication as a juvenile offender where the act, if  
3 committed by an adult, would constitute a felony;
- 4 (C) prior to or upon a finding of probable cause for evaluation as a  
5 sexually violent predator as provided in K.S.A. 59-29a05, and  
6 amendments thereto;
- 7 (D) upon commitment to a treatment facility as a sexually violent  
8 predator as provided in K.S.A. 59-29a01 *et seq.*, and amendments thereto;
- 9 (E) upon a commitment to the state security hospital as provided in  
10 K.S.A. 22-3428, and amendments thereto, based on a finding that the  
11 person committed an act constituting any crime;
- 12 (F) by a person 18 years of age or over who is being held on a charge  
13 or adjudication of a misdemeanor or felony; or
- 14 (G) upon incarceration at a state correctional institution while in the  
15 custody of the secretary of corrections.
- 16 (c) (1) Escape from custody is a class A nonperson misdemeanor.
- 17 (2) Aggravated escape from custody as defined in:
- 18 (A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F)  
19 is a severity level 8, nonperson felony;
- 20 (B) subsection (b)(1)(B) or (b)(1)(G) is a severity level 5, nonperson  
21 felony;
- 22 (C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F)  
23 is a severity level 6, person felony; and
- 24 (D) subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person  
25 felony.
- 26 (d) As used in this section and K.S.A. 2011 Supp. 21-5912, and  
27 amendments thereto:
- 28 (1) "Custody" means arrest; detention in a facility for holding persons  
29 charged with or convicted of crimes or charged or adjudicated as a juvenile  
30 offender; detention for extradition or deportation; detention in a hospital or  
31 other facility pursuant to court order, imposed as a specific condition of  
32 probation or parole or imposed as a specific condition of assignment to a  
33 community correctional services program; commitment to the state  
34 security hospital as provided in K.S.A. 22-3428, and amendments thereto;  
35 or any other detention for law enforcement purposes. "Custody" does not  
36 include general supervision of a person on probation or parole or  
37 constraint incidental to release on bail;
- 38 (2) "escape" means departure from custody without lawful authority  
39 or failure to return to custody following temporary leave lawfully granted  
40 pursuant to express authorization of law or order of a court;
- 41 (3) "juvenile offender" means the same as in K.S.A. 2011 Supp. 38-  
42 2302, and amendments thereto; and
- 43 (4) "state correctional institution" means the same as in K.S.A. 75-

1 5202, and amendments thereto.

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

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

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

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

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

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

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

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

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



- 1 (1) Public places;
- 2 (2) taxicabs and limousines;
- 3 (3) restrooms, lobbies, hallways and other common areas in public
- 4 and private buildings, condominiums and other multiple-residential
- 5 facilities;
- 6 (4) restrooms, lobbies and other common areas in hotels and motels
- 7 and in at least 80% of the sleeping quarters within a hotel or motel that
- 8 may be rented to guests;
- 9 (5) access points of all buildings and facilities not exempted pursuant
- 10 to subsection (d); and
- 11 (6) any place of employment.
- 12 (b) Each employer having a place of employment that is an enclosed
- 13 area shall provide a smoke-free workplace for all employees. Such
- 14 employer shall also adopt and maintain a written smoking policy which
- 15 shall prohibit smoking without exception in all areas of the place of
- 16 employment. Such policy shall be communicated to all current employees
- 17 within one week of its adoption and shall be communicated to all new
- 18 employees upon hiring. Each employer shall provide a written copy of the
- 19 smoking policy upon request to any current or prospective employee.
- 20 (c) Notwithstanding any other provision of this section, K.S.A. 2011
- 21 Supp. 21-6111 or 21-6112, and amendments thereto, the proprietor or other
- 22 person in charge of an adult care home, as defined in K.S.A. 39-923, and
- 23 amendments thereto, or a medical care facility, may designate a portion of
- 24 such adult care home, or the licensed long-term care unit of such medical
- 25 care facility, as a smoking area, and smoking may be permitted within such
- 26 designated smoking area.
- 27 (d) The provisions of this section shall not apply to:
- 28 (1) The outdoor areas of any building or facility beyond the access
- 29 points of such building or facility;
- 30 (2) private homes or residences, except when such home or residence
- 31 is used as a day care home, as defined in K.S.A. 65-530, and amendments
- 32 thereto;
- 33 (3) a hotel or motel room rented to one or more guests if the total
- 34 percentage of such hotel or motel rooms in such hotel or motel does not
- 35 exceed 20%;
- 36 (4) the gaming floor of a lottery gaming facility or racetrack gaming
- 37 facility, as those terms are defined in K.S.A. 74-8702, and amendments
- 38 thereto;
- 39 (5) that portion of an adult care home, as defined in K.S.A. 39-923,
- 40 and amendments thereto, that is expressly designated as a smoking area by
- 41 the proprietor or other person in charge of such adult care home pursuant
- 42 to subsection (c) and that is fully enclosed and ventilated;
- 43 (6) that portion of a licensed long-term care unit of a medical care

1 facility that is expressly designated as a smoking area by the proprietor or  
2 other person in charge of such medical care facility pursuant to subsection  
3 (c) and that is fully enclosed and ventilated and to which access is  
4 restricted to the residents and their guests;

5 (7) tobacco shops;

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

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

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

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

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

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

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

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

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

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

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

43 (2) not exceeding \$200 for a second violation within a one year

1 period after the first violation; or

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

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

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

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

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

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

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

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

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

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

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

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

39 (3) Carrying concealed explosives is a class  $\in$  *A person*  
40 misdemeanor.

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

1 other high explosives, black powder, pellet powder, initiating explosives,  
2 detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

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

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

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

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

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

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

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

19 (b) Cruelty to animals as defined in:

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

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

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

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

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

42 (1) Normal or accepted veterinary practices;

43 (2) bona fide experiments carried on by commonly recognized

1 research facilities;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        ⚡ (i) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 sentences:

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

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

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

14 Sec. 23. K.S.A. 2011 Supp. 21-5109, 21-5302, 21-5402, 21-5426, 21-  
15 5504, 21-5507, 21-5604, 21-5806, 21-5807, 21-5904, 21-5905, 21-5907,  
16 21-5911, 21-6001, 21-6110, 21-6112, 21-6312, 21-6412, 21-6413 and 21-  
17 6819 are hereby repealed.

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

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