

Journal of the House

SIXTY-THIRD DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Monday, May 8, 2017, 10:00 a.m.

The House met pursuant to adjournment with Speaker Ryckman in the chair.

The roll was called with 121 members present.

Reps. Barker and Frownfelter were excused on verified illness.

Reps. Johnson and Seiwert were excused on excused absence by the Speaker.

Excused later: Rep. Aurand

Prayer by Chaplain Brubaker:

Dear Lord God,

Thank You for this new week—

this new day which You have given to us.

Use each one to the fullest of their potential today.

May each one be encouraged by Esther in the Old Testament,
who was placed in her royal position for such a time as that.

Each one here has been placed in this particular position
at this particular time for a particular reason.

Help them to prove faithful and diligent to the tasks given to them.

May they recognize that because of the long-term effects of their decisions,
they desperately need to seek Your Words of wisdom and guidance.

This I pray in Your Son's Name,

Amen.

The Pledge of Allegiance was led by Rep. Kuether.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

On emergency motion of Rep. Hoffman, **HR 6031**, by Reps. Hoffman, Corbet, Alford, Becker, Bishop, Blex, Carmichael, Carpenter, Clark, Concannon, Curtis, DeGraaf, Delperdang, Dietrich, Elliott, Ellis, Eplee, Esau, Finch, Francis, Garber, Hibbard, Highland, Houser, Huebert, Jacobs, Jennings, Judd-Jenkins, Kessinger, Landwehr, Lewis, Lusker, Mason, Mastroni, Ohaebosim, Orr, Osterman, Ousley, Phillips, Pittman, Rahjes, Resman, Ruiz, Sawyer, Schreiber, Schroeder, Schwab, Seiwert, Sloan, Smith, Smith, Tarwater, Thimesch, Thompson, Vickrey, Victors, Waymaster, Whitmer, Williams and Wilson, as follows, was introduced and adopted:

HR 6031—A RESOLUTION commemorating the 80th anniversary of the American System of Conservation Funding.

WHEREAS, More than a century ago, hunters, anglers, and trappers were among the first conservationists to realize that America's natural resources were in peril and such resources could not sustain unregulated harvest and habitat destruction; and

WHEREAS, Hunters, anglers, and trappers took it upon themselves to support laws that stopped excessive harvest of fish and wildlife, established game and fish agencies to protect fish, wildlife and their habitats, and supported fishing and hunting license fees to help fund the new agencies' efforts to provide healthy natural resources for future generations; and

WHEREAS, Upon realizing that license fees alone were insufficient to restore and sustain healthy fish and wildlife populations, hunters, anglers, and trappers supported excise taxes on firearms, ammunition, archery equipment, hunting equipment, and fishing equipment to raise additional funds to support restoration and enhance the efforts of state wildlife agencies; and

WHEREAS, This "user-pays, public-benefits" system became known as the Wildlife and Sport Fish Restoration Program, which began with the passage of the Federal Aid in Wildlife Restoration Act in 1937, was bolstered by the passage of the Federal Aid in Sport Fish Restoration Act in 1950, and was further expanded by the Wallop-Breaux amendment to the Sport Fish Restoration Act in 1984; and

WHEREAS, The Wildlife and Sport Fish Restoration Program also permanently linked revenue from hunting and fishing licenses to conservation, which created the American System of Conservation Funding as it exists today; and

WHEREAS, Since 1939, the combined contribution of the American System of Conservation Funding to state fish and wildlife agencies has exceeded \$57 billion – more than any other single conservation effort in United States history; and

WHEREAS, The manufacturers of firearms, ammunition, and hunting, fishing, and boating equipment have collected excise taxes on firearms, ammunition, archery equipment, manufactured fishing tackle, electric trolling motors, marine electronics, and motorboat fuel, and distributed these funds to the states through the United States Fish and Wildlife Service; and

WHEREAS, This cooperative partnership between industry, hunters, anglers, trappers, boaters, recreational shooters, the United States Fish and Wildlife Service, and state natural resource agencies has resulted in the most successful model of fish and wildlife management in the world, restoring species populations from coast to coast and in Alaska and Hawaii: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we recognize America's hunters, anglers, trappers, boaters, recreational shooters, equipment manufacturers, state fish and wildlife agencies, and the United States Fish and Wildlife Service for their role in restoring healthy populations of fish, wildlife, and other natural resources, both game and non-game, to the abundance we see today through the American System of Conservation Funding, on this, the 80th anniversary year of America's greatest conservation story; and

Be it further resolved: That the Chief Clerk of the House of Representatives shall send an enrolled copy of this resolution to the Kansas Department of Wildlife, Parks and Tourism and all Kansas Congressional offices so that all may know and appreciate the foresight and contributions from anglers, hunters, trappers, recreational shooters,

equipment manufacturers, state fish and wildlife agencies, and the United States Fish and Wildlife Service on behalf of our nation's natural resources.

The following remarks of Reps. Hoffman and Corbet are spread upon the Journal.

Today, we celebrate the 80th Anniversary of the American System of Conservation Funding Act, which many of us know as the Pittman-Robertson Act. Kansas has over 530,000 hunters and anglers. Annually we spend upward of \$630 million dollars and we support close to 10,000 jobs in our state. Hunting and fishing dollar's tourism help support Kansas local economies and conservations. I want to thank the Representatives that have joined the Legislative Sportsman Caucus this session and those who also attended the 11th Annual Larry Magill Sportsman Challenge last week. One more thing to mention, this is a quote from the Secretary of Wildlife and Parks "That hunting and fishing is to tourism as Pikes Peak is to Colorado." It's a great thing for Kansas - a lot of dollars come here, so we support the resolution and everybody help support Kansas. Thanks.

REPORTS OF STANDING COMMITTEES

Committee on **Federal and State Affairs** recommends **SB 201** be amended on page 2, following line 19, by inserting:

"Sec. 2. K.S.A. 2016 Supp. 50-670 is hereby amended to read as follows: 50-670. (a) As used in this section and K.S.A. 50-670a, and amendments thereto:

(1) "Consumer telephone call" means a call made by a telephone solicitor to the residence or mobile telephone number of a consumer for the purpose of soliciting a sale of any property or services to the person called, or for the purpose of soliciting an extension of credit for property or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of property or services to the person called or an extension of credit for such purposes.

(2) "Mobile telephone number" means a telephone number associated with a wireless telecommunications service as defined in K.S.A. 2016 Supp. 12-5363, and amendments thereto.

(3) "Unsolicited consumer telephone call" means a consumer telephone call other than a call made:

(A) In response to an express request or with the express written agreement of the person called;

(B) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call; or

(C) to any person with whom the telephone solicitor or the telephone solicitor's predecessor in interest has an established business relationship, unless the consumer has objected to such consumer telephone calls and requested that the telephone solicitor cease making consumer telephone calls. The telephone solicitor shall honor any such request for five years from the date of such request.

(4) "Telephone solicitor" means any natural person, firm, organization, partnership, association or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device.

(5) "Automatic dialing-announcing device" means any user terminal equipment which:

(A) When connected to a telephone line can dial, with or without manual assistance,

telephone numbers which have been stored or programmed in the device or are produced or selected by a random or sequential number generator; or

(B) when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance.

(6) "Negative response" means a statement from a consumer indicating the consumer does not wish to listen to the sales presentation or participate in the solicitation presented in the consumer telephone call.

(7) "Established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and consumer with or without an exchange of consideration, on a basis of an application, purchase or transaction by the consumer, within the 18 months immediately preceding the date of the consumer telephone call, regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.

(b) Any telephone solicitor who makes an unsolicited consumer telephone call shall:

(1) Identify themselves;

(2) identify the business on whose behalf such person is soliciting;

(3) identify the purpose of the call immediately upon making contact by telephone with the person who is the object of the telephone solicitation;

(4) promptly discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call;

(5) hang up the phone, or in the case of an automatic dialing-announcing device operator, disconnect the automatic dialing-announcing device from the telephone line within ~~25~~ 10 seconds of the termination of the call by the person being called; ~~and~~

(6) not use an automatic dialing-announcing device unless: (A) The person being solicited has knowingly or voluntarily requested, consented to, permitted or authorized receipt of the message; or (B) the message is immediately preceded by a live operator who obtains the person's consent before the message is delivered;

(7) not use an automatic dialing-announcing device such that the person being solicited receives a telephone call before 9 a.m. or after 8 p.m.;

(8) not use an automatic dialing-announcing device to make a telephone call to any of the following:

(A) A hospital, as defined in K.S.A. 65-425, and amendments thereto;

(B) an ambulatory surgical center, as defined in K.S.A. 65-425, and amendments thereto;

(C) a recuperation center, as defined in K.S.A. 65-425, and amendments thereto;

(D) an ambulance service, as defined in K.S.A. 65-6112, and amendments thereto;

(E) an emergency medical service facility, as defined in K.S.A. 65-6112, and amendments thereto;

(F) a mental health center, as defined in K.S.A. 65-4432, and amendments thereto;

(G) a psychiatric hospital, as defined in K.S.A. 65-5601, and amendments thereto;

(H) a state institution for people with intellectual disability, as defined in K.S.A. 65-5601, and amendments thereto;

(I) a law enforcement agency; or

(J) a city, county, township or other public or private fire department; and

~~(6)(9)~~ ensure a live operator or an automated dialing-announcing device shall answer the line within five seconds of the beginning of the call. If answered by automated dialing-announcing device, the message provided shall include only the information

required in subsection (b)(1) and (2), but shall not contain any unsolicited advertisement.

(c) A telephone solicitor shall not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes.

(d) A telephone solicitor shall not transmit any written information by facsimile machine or computer to a consumer after the consumer requests orally or in writing that such transmissions cease.

(e) A telephone solicitor shall not obtain by use of any professional delivery, courier or other pickup service receipt or possession of a consumer's payment unless the goods are delivered with the opportunity to inspect before any payment is collected.

(f) Local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section.

(g) Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act.

(h) This section shall be part of and supplemental to the Kansas consumer protection act.";

Also on page 2, in line 20, after "Supp." by inserting "50-670 and"; also in line 20, by striking "is" and inserting "are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "the Kansas"; also in line 1, by striking "act"; also in line 1, after the second "the" by inserting "Kansas consumer protection act"; in line 2, after the semicolon by inserting "relating to the Kansas no-call act, restricting use of automatic dialing-announcing devices;"; also in line 2, after "Supp." by inserting "50-670 and"; in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

On motion of Rep. Hineman, the House recessed until 2:00 p.m.

AFTERNOON SESSION

The House met pursuant to recess with Speaker pro tem Schwab in the chair.

MESSAGES FROM THE SENATE

The Senate not adopts the Conference Committee report on **H Sub for SB 42**, requests a conference and appoints Senators Wilborn, Lynn and Haley as second conferees on the part of the Senate.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Hineman, the House acceded to the request of the Senate for a conference on **H Sub for SB 42**.

Speaker pro tem Schwab thereupon appointed Reps. Jennings, Whitmer and Highberger as second conferees on the part of the House.

INTRODUCTION OF ORIGINAL MOTIONS

On motion of Rep. Hineman, pursuant to subsection (k) of Joint Rule 4 of the Joint Rules of the Senate and House of Representatives, the rules were suspended for the purpose of considering **H Sub for SB 40**.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT and MR. SPEAKER: Your committee on conference on House amendments to **SB 40** submits the following report:

The Senate accedes to all House amendments to the bill, and your committee on conference further agrees to amend the bill as printed as House Substitute for Senate Bill No. 40, as follows:

On page 2, in line 11, by striking the second "or" and inserting a comma; also in line 11, after the comma by inserting "section 3 or 21-6422,";

On page 3, in line 23, before "An" by inserting "On and after July 1, 2018,"; in line 28, by striking "2018" and inserting "2019";

On page 4, following line 6, by inserting:

"Sec. 6. K.S.A. 2016 Supp. 21-5301 is hereby amended to read as follows: 21-5301. (a) An attempt is any overt act toward the perpetration of a crime done by a person who intends to commit such crime but fails in the perpetration thereof or is prevented or intercepted in executing such crime.

(b) It shall not be a defense to a charge of attempt that the circumstances under which the act was performed or the means employed or the act itself were such that the commission of the crime was not possible.

(c) (1) An attempt to commit an off-grid felony shall be ranked at nondrug severity level 1. An attempt to commit any other nondrug felony shall be ranked on the nondrug scale at two severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for an attempt to commit a nondrug felony shall be a severity level 10.

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

(A) Aggravated human trafficking, as defined in ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5426**(b)**, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;

(B) terrorism, as defined in K.S.A. 2016 Supp. 21-5421, and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. 2016 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in ~~subsection (a)(3) of~~ K.S.A. 2016 Supp. 21-5503**(a)(3)**, and amendments thereto, if the offender is 18 years of age or older;

(E) aggravated indecent liberties with a child, as defined in ~~subsection (b)(3) of~~ K.S.A. 2016 Supp. 21-5506**(b)(3)**, and amendments thereto, if the offender is 18 years of age or older;

(F) aggravated criminal sodomy, as defined in ~~subsection (b)(1) or (b)(2) of~~ K.S.A. 2016 Supp. 21-5504**(b)(1) or (2)**, and amendments thereto, if the offender is 18 years of age or older;

(G) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto, if the offender is 18 years of age or older and the victim

is less than 14 years of age;

(H) sexual exploitation of a child, as defined in ~~subsection (a)(1) or (a)(4)~~ of K.S.A. 2016 Supp. 21-5510 (a)(1) or (4), and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; ~~or~~

(I) aggravated internet trading in child pornography, as defined in section 3(b), and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; or

(J) capital murder, as defined in K.S.A. 2016 Supp. 21-5401, and amendments thereto.

(d) (1) An attempt to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

(2) The provisions of this subsection shall not apply to a violation of attempting to commit a violation of K.S.A. 2016 Supp. 21-5703, and amendments thereto.

(e) An attempt to commit a class A person misdemeanor is a class B person misdemeanor. An attempt to commit a class A nonperson misdemeanor is a class B nonperson misdemeanor.

(f) An attempt to commit a class B or C misdemeanor is a class C misdemeanor.

Sec. 7. K.S.A. 2016 Supp. 21-5302 is hereby amended to read as follows: 21-5302.

(a) A conspiracy is an agreement with another person to commit a crime or to assist in committing a crime. No person may be convicted of a conspiracy unless an overt act in furtherance of such conspiracy is alleged and proved to have been committed by such person or by a co-conspirator.

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

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

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

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

(A) Aggravated human trafficking, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5426 (b), and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;

(B) terrorism, as defined in K.S.A. 2016 Supp. 21-5421, and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. 2016 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in ~~subsection (a)(3)~~ of K.S.A. 2016 Supp. 21-5503 (a)(3), and amendments thereto, if the offender is 18 years of age or older;

(E) aggravated indecent liberties with a child, as defined in ~~subsection (b)(3)~~ of

K.S.A. 2016 Supp. 21-5506**(b)(3)**, and amendments thereto, if the offender is 18 years of age or older;

(F) aggravated criminal sodomy, as defined in ~~subsection (b)(1) or (b)(2)~~ of K.S.A. 2016 Supp. 21-5504**(b)(1) or (2)**, and amendments thereto, if the offender is 18 years of age or older;

(G) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;

(H) sexual exploitation of a child, as defined in ~~subsection (a)(1) or (a)(4)~~ of K.S.A. 2016 Supp. 21-5510**(a)(1) or (4)**, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; ~~or~~

(I) aggravated internet trading in child pornography, as defined in section 3(b), and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; or

(J) violations of the Kansas racketeer influenced and corrupt organization act, as described in K.S.A. 2016 Supp. 21-6329, and amendments thereto.

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

(f) A conspiracy to commit a misdemeanor is a class C misdemeanor.

Sec. 8. K.S.A. 2016 Supp. 21-5303 is hereby amended to read as follows: 21-5303.

(a) Criminal solicitation is commanding, encouraging or requesting another person to commit a felony, attempt to commit a felony or aid and abet in the commission or attempted commission of a felony for the purpose of promoting or facilitating the felony.

(b) It is immaterial under subsection (a) that the actor fails to communicate with the person solicited to commit a felony if the person's conduct was designed to effect a communication.

(c) It is an affirmative defense that the actor, after soliciting another person to commit a felony, persuaded that person not to do so or otherwise prevented the commission of the felony, under circumstances manifesting a complete and voluntary renunciation of the actor's criminal purposes.

(d) (1) Criminal solicitation to commit an off-grid felony shall be ranked at nondrug severity level 3. Criminal solicitation to commit any other nondrug felony shall be ranked on the nondrug scale at three severity levels below the appropriate level for the underlying or completed crime. The lowest severity level for criminal solicitation to commit a nondrug felony shall be a severity level 10.

(2) The provisions of this subsection shall not apply to a violation of criminal solicitation to commit the crime of:

(A) Aggravated human trafficking, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5426**(b)**, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age;

(B) terrorism, as defined in K.S.A. 2016 Supp. 21-5421, and amendments thereto;

(C) illegal use of weapons of mass destruction, as defined in K.S.A. 2016 Supp. 21-5422, and amendments thereto;

(D) rape, as defined in ~~subsection (a)(3)~~ of K.S.A. 2016 Supp. 21-5503**(a)(3)**, and amendments thereto, if the offender is 18 years of age or older;

(E) aggravated indecent liberties with a child, as defined in ~~subsection (b)(3) of~~ K.S.A. 2016 Supp. 21-5506(b)(3)), and amendments thereto, if the offender is 18 years of age or older;

(F) aggravated criminal sodomy, as defined in ~~subsection (b)(1) or (b)(2) of~~ K.S.A. 2016 Supp. 21-5504(b)(1) or (2)), and amendments thereto, if the offender is 18 years of age or older;

(G) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto, if the offender is 18 years of age or older and the victim is less than 14 years of age; ~~or~~

(H) sexual exploitation of a child, as defined in ~~subsection (a)(1) or (a)(4) of~~ K.S.A. 2016 Supp. 21-5510(a)(1) or (4)), and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age; or

(I) aggravated internet trading in child pornography, as defined in section 3(b), and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age.

(e) Criminal solicitation to commit a felony which prescribes a sentence on the drug grid shall reduce the prison term prescribed in the drug grid block for an underlying or completed crime by six months.

Sec. 9. K.S.A. 2016 Supp. 21-5401 is hereby amended to read as follows: 21-5401.

(a) Capital murder is the:

(1) Intentional and premeditated killing of any person in the commission of kidnapping, as defined in ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-5408(a), and amendments thereto, or aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5408(b), and amendments thereto, when the kidnapping or aggravated kidnapping was committed with the intent to hold such person for ransom;

(2) intentional and premeditated killing of any person pursuant to a contract or agreement to kill such person or being a party to the contract or agreement pursuant to which such person is killed;

(3) intentional and premeditated killing of any person by an inmate or prisoner confined in a state correctional institution, community correctional institution or jail or while in the custody of an officer or employee of a state correctional institution, community correctional institution or jail;

(4) intentional and premeditated killing of the victim of one of the following crimes in the commission of, or subsequent to, such crime: Rape, as defined in K.S.A. 2016 Supp. 21-5503, and amendments thereto, criminal sodomy, as defined in ~~subsections (a) (3) or (a)(4) of~~ K.S.A. 2016 Supp. 21-5504(a)(3) or (4)), and amendments thereto, or aggravated criminal sodomy, as defined in ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5504(b), and amendments thereto, or any attempt thereof, as defined in K.S.A. 2016 Supp. 21-5301, and amendments thereto;

(5) intentional and premeditated killing of a law enforcement officer;

(6) intentional and premeditated killing of more than one person as a part of the same act or transaction or in two or more acts or transactions connected together or constituting parts of a common scheme or course of conduct; or

(7) intentional and premeditated killing of a child under the age of 14 in the commission of kidnapping, as defined in ~~subsection (a) of~~ K.S.A. 2016 Supp. 21-5408(a), and amendments thereto, or aggravated kidnapping, as defined in ~~subsection (b) of~~ K.S.A. 2016 Supp. 21-5408(b), and amendments thereto, when the kidnapping or

aggravated kidnapping was committed with intent to commit a sex offense upon or with the child or with intent that the child commit or submit to a sex offense.

(b) For purposes of this section, "sex offense" means: Rape, as defined in K.S.A. 2016 Supp. 21-5503, and amendments thereto; aggravated indecent liberties with a child, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5506**(b)**, and amendments thereto; aggravated criminal sodomy, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5504**(b)**, and amendments thereto; selling sexual relations, as defined in K.S.A. 2016 Supp. 21-6419, and amendments thereto; promoting the sale of sexual relations, as defined in K.S.A. 2016 Supp. 21-6420, and amendments thereto; commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto; ~~or~~; sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-5510, and amendments thereto; internet trading in child pornography, as defined in section 3(a), and amendments thereto; aggravated internet trading in child pornography, as defined in section 3(b), and amendments thereto; or aggravated human trafficking, as defined in K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another.

(c) Capital murder or attempt to commit capital murder is an off-grid person felony.

(d) The provisions of ~~subsection (c)~~ of K.S.A. 2016 Supp. 21-5301**(c)**, and amendments thereto, shall not apply to a violation of attempting to commit the crime of capital murder pursuant to this section.";

On page 6, following line 16, by inserting:

"Sec. 11. K.S.A. 2016 Supp. 21-5502 is hereby amended to read as follows: 21-5502. (a) The provisions of this section shall apply only in a prosecution for:

- (1) Rape, as defined in K.S.A. 2016 Supp. 21-5503, and amendments thereto;
- (2) indecent liberties with a child, as defined in ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-5506**(a)**, and amendments thereto;
- (3) aggravated indecent liberties with a child, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5506**(b)**, and amendments thereto;
- (4) criminal sodomy, as defined in ~~subsections (a)(3) and (a)(4)~~ of K.S.A. 2016 Supp. 21-5504**(a)(3) and (4)**, and amendments thereto;
- (5) aggravated criminal sodomy, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5504**(b)**, and amendments thereto;
- (6) aggravated indecent solicitation of a child, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5508**(b)**, and amendments thereto;
- (7) sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-5510, and amendments thereto;
- (8) aggravated sexual battery, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5505**(b)**, and amendments thereto;
- (9) incest, as defined in ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-5604**(a)**, and amendments thereto;
- (10) aggravated incest, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5604**(b)**, and amendments thereto;
- (11) indecent solicitation of a child, as defined in ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-5508**(a)**, and amendments thereto;
- (12) aggravated assault, as defined in ~~subsection (b)~~ of K.S.A. 2016 Supp. 21-5412**(b)**, and amendments thereto, with intent to commit any crime specified above;
- (13) sexual battery, as defined in ~~subsection (a)~~ of K.S.A. 2016 Supp. 21-5505**(a)**,

and amendments thereto;

(14) unlawful voluntary sexual relations, as defined in K.S.A. 2016 Supp. 21-5507, and amendments thereto;

(15) aggravated human trafficking, as defined in ~~subsections (b)(2) and (b)(4) of~~ K.S.A. 2016 Supp. 21-5426**(b)(2), (4) and (5)**, and amendments thereto;

(16) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto;

(17) electronic solicitation, as defined in K.S.A. 2016 Supp. 21-5509, and amendments thereto;~~or~~

(18) internet trading in child pornography, as defined in section 3(a), and amendments thereto;

(19) aggravated internet trading in child pornography, as defined in section 3(b), and amendments thereto; or

(20) attempt, as defined in K.S.A. 2016 Supp. 21-5301, and amendments thereto, or conspiracy, as defined in K.S.A. 2016 Supp. 21-5302, and amendments thereto, to commit any crime specified above.

(b) Except as provided in subsection (c), in any prosecution to which this section applies, evidence of the complaining witness' previous sexual conduct with any person including the defendant shall not be admissible, and no reference shall be made thereto in any proceeding before the court, except under the following conditions: The defendant shall make a written motion to the court to admit evidence or testimony concerning the previous sexual conduct of the complaining witness. The motion shall be made at least seven days before the commencement of the proceeding unless that requirement is waived by the court. The motion shall state the nature of such evidence or testimony and its relevancy and shall be accompanied by an affidavit in which an offer of proof of the previous sexual conduct of the complaining witness is stated. The motion, affidavits and any supporting or responding documents of the motion shall not be made available for examination without a written order of the court except that such motion, affidavits and supporting and responding documents or testimony when requested shall be made available to the defendant or the defendant's counsel and to the prosecutor. The defendant, defendant's counsel and prosecutor shall be prohibited from disclosing any matters relating to the motion, affidavits and any supporting or responding documents of the motion. The court shall conduct a hearing on the motion in camera. At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the previous sexual conduct of the complaining witness is relevant and is not otherwise inadmissible as evidence, the court may make an order stating what evidence may be introduced by the defendant and the nature of the questions to be permitted. The defendant may then offer evidence and question witnesses in accordance with the order of the court.

(c) In any prosecution for a crime designated in subsection (a), the prosecutor may introduce evidence concerning any previous sexual conduct of the complaining witness, and the complaining witness may testify as to any such previous sexual conduct. If such evidence or testimony is introduced, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence or testimony introduced by the prosecutor or given by the complaining witness.

(d) As used in this section, "complaining witness" means the alleged victim of any

crime designated in subsection (a), the prosecution of which is subject to this section.";

On page 10, following line 31, by inserting:

"Sec. 15. K.S.A. 2016 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 2016 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(c) Except as provided in subsections (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2016 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and

amendments thereto, or as prohibited by any law of another state which is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state which is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state which is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1602, 8-1603, prior to its repeal, or 8-1604, and amendments thereto, or required by a law of another state which is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(d) (1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments thereto, including any diversion for such violation.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567 or K.S.A. 2016 Supp. 8-1025, and amendments thereto.

(e) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of the following offenses:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2016 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2016 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2016 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in section 3, and amendments thereto;

(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2016 Supp. 21-5604, and amendments thereto;

~~(8)~~(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2016 Supp. 21-5601, and amendments thereto;

~~(9)~~(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2016 Supp. 21-5602, and amendments thereto;

~~(10)~~(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto;

~~(11)~~(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2016 Supp. 21-5402, and amendments thereto;

~~(12)~~(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2016 Supp. 21-5403, and amendments thereto;

~~(13)~~(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2016 Supp. 21-5404, and amendments thereto;

~~(14)~~(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2016 Supp. 21-5405, and amendments thereto;

~~(15)~~(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2016 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

~~(16)~~(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2016 Supp. 21-5505, and amendments thereto;

~~(17)~~(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

~~(18)~~(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(g) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of \$176. On and after July 1, 2015, through June 30, 2017, the supreme court may impose a charge, not to exceed \$19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; and

(3) the expungement is consistent with the public welfare.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation which shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency which may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2016 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or

certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto;~~or~~

(K) for applications received on and after July 1, 2006, to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2016 Supp. 75-7c01 et seq., and amendments thereto; or

(L) for applications received on and after July 1, 2016, to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 2016 Supp. 75-7e01 through 75-7e09 and K.S.A. 2016 Supp. 50-6,141, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(j) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(k) (1) Subject to the disclosures required pursuant to subsection (i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) Notwithstanding the provisions of subsection (k)(1), and except as provided in K.S.A. 2016 Supp. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony.

(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

- (1) The person whose record was expunged;
- (2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;
- (3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;
- (4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;
- (5) a person entitled to such information pursuant to the terms of the expungement order;
- (6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;
- (7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;
- (8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;
- (9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;
- (10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;
- (11) the Kansas sentencing commission;
- (12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;

(16) the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to:

(A) Carry a concealed weapon pursuant to the personal and family protection act;

or

(B) act as a bail enforcement agent pursuant to K.S.A. 2016 Supp. 75-7e01 through 75-7e09 and K.S.A. 2016 Supp. 50-6.141, and amendments thereto; or

(17) the Kansas bureau of investigation for the purposes of:

(A) Completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto; or

(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm.

(m) The provisions of subsection (l)(17) shall apply to records created prior to, on and after July 1, 2011.

Sec. 16. K.S.A. 2016 Supp. 21-6626 is hereby amended to read as follows: 21-6626. (a) An aggravated habitual sex offender shall be sentenced to imprisonment for life without the possibility of parole. Such offender shall spend the remainder of the offender's natural life incarcerated and in the custody of the secretary of corrections. An offender who is sentenced to imprisonment for life without the possibility of parole shall not be eligible for commutation of sentence, parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, functional incapacitation release pursuant to K.S.A. 22-3728, and amendments thereto, or suspension, modification or reduction of sentence.

(b) Upon sentencing a defendant to imprisonment for life without the possibility of parole, the court shall commit the defendant to the custody of the secretary of corrections and the court shall state in the sentencing order of the judgment form or journal entry, whichever is delivered with the defendant to the correctional institution, that the defendant has been sentenced to imprisonment for life without the possibility of parole.

(c) As used in this section:

(1) "Aggravated habitual sex offender" means a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in subsection (c)(2)(A) through (c)(2)(J) or (c)(2)(L); and (B) prior to the conviction of the felony under subparagraph (A), has been convicted of two or more sexually violent crimes;

- (2) "Sexually violent crime" means:
- (A) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto;
- (B) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2016 Supp. 21-5506, and amendments thereto;
- (C) criminal sodomy, as defined in ~~subsection (a)(2) or (a)(3) of K.S.A. 21-3505(a)(2) or (3), prior to its repeal, or subsection (a)(3) or (a)(4) of K.S.A. 2016 Supp. 21-5504(a)(3) or (4), and amendments thereto;~~
- (D) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504, and amendments thereto;
- (E) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2016 Supp. 21-5508, and amendments thereto;
- (F) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;
- (G) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2016 Supp. 21-5505, and amendments thereto;
- (H) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2016 Supp. 21-5604, and amendments thereto;
- (I) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or ~~subsection (b) of K.S.A. 2016 Supp. 21-5426(b)~~, and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;
- (J) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto;
- (K) internet trading in child pornography or aggravated internet trading in child pornography, as defined in section 3, and amendments thereto;
- (L) any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;
- ~~(M)~~ (M) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section; or
- ~~(N)~~ (N) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.
- Sec. 17. K.S.A. 2016 Supp. 21-6627 is hereby amended to read as follows: 21-6627. (a) (1) Except as provided in subsection (b) or (d), a defendant who is 18 years of age or older and is convicted of the following crimes committed on or after July 1, 2006, shall be sentenced to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 25 years unless the court determines that the defendant should be sentenced as determined in subsection (a)(2):
- (A) Aggravated human trafficking, as defined in ~~subsection (b) of K.S.A. 2016 Supp. 21-5426(b)~~, and amendments thereto, if the victim is less than 14 years of age;

(B) rape, as defined in ~~subsection (a)(3)~~ of K.S.A. 2016 Supp. 21-5503(a)(3), and amendments thereto;

(C) aggravated indecent liberties with a child, as defined in ~~subsection (b)(3)~~ of K.S.A. 2016 Supp. 21-5506(b)(3), and amendments thereto;

(D) aggravated criminal sodomy, as defined in ~~subsection (b)(1) or (b)(2)~~ of K.S.A. 2016 Supp. 21-5504(b)(1) or (2), and amendments thereto;

(E) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto, if the victim is less than 14 years of age;

(F) sexual exploitation of a child, as defined in ~~subsection (a)(1) or (a)(4)~~ of K.S.A. 2016 Supp. 21-5510(a)(1) or (4), and amendments thereto, if the child is less than 14 years of age; ~~and~~

(G) aggravated internet trading in child pornography, as defined in section 3(b), and amendments thereto, if the child is less than 14 years of age; and

(H) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of an offense defined in subsections (a)(1)(A) through (a)(1)(F)(G).

(2) The provision of subsection (a)(1) requiring a mandatory minimum term of imprisonment of not less than 25 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 2016 Supp. 21-6626, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 300 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(b) (1) On and after July 1, 2006, if a defendant who is 18 years of age or older is convicted of a crime listed in subsection (a)(1) and such defendant has previously been convicted of a crime listed in subsection (a)(1), a crime in effect at any time prior to July 1, 2011, which is substantially the same as a crime listed in subsection (a)(1) or a crime under a law of another jurisdiction which is substantially the same as a crime listed in subsection (a)(1), the court shall sentence the defendant to a term of imprisonment for life with a mandatory minimum term of imprisonment of not less than 40 years. The provisions of this paragraph shall not apply to a crime committed under K.S.A. 2016 Supp. 21-5507, and amendments thereto, or a crime under a law of another jurisdiction which is substantially the same as K.S.A. 2016 Supp. 21-5507, and amendments thereto.

(2) The provision of subsection (b)(1) requiring a mandatory minimum term of imprisonment of not less than 40 years shall not apply if the court finds:

(A) The defendant is an aggravated habitual sex offender and sentenced pursuant to K.S.A. 2016 Supp. 21-6626, and amendments thereto; or

(B) the defendant, because of the defendant's criminal history classification, is subject to presumptive imprisonment pursuant to the sentencing guidelines grid for nondrug crimes and the sentencing range exceeds 480 months. In such case, the defendant is required to serve a mandatory minimum term equal to the sentence established pursuant to the sentencing range.

(c) When a person is sentenced pursuant to subsection (a) or (b), such person shall be sentenced to a mandatory minimum term of imprisonment of not less than 25 years,

40 years or be sentenced as determined in subsection (a)(2) or subsection (b)(2), whichever is applicable, and shall not be eligible for probation or suspension, modification or reduction of sentence. In addition, a person sentenced pursuant to this section shall not be eligible for parole prior to serving such mandatory term of imprisonment, and such imprisonment shall not be reduced by the application of good time credits.

(d) (1) On or after July 1, 2006, for a first time conviction of an offense listed in subsection (a)(1), the sentencing judge shall impose the mandatory minimum term of imprisonment provided by subsection (a), unless the judge finds substantial and compelling reasons, following a review of mitigating circumstances, to impose a departure. If the sentencing judge departs from such mandatory minimum term of imprisonment, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. The departure sentence shall be the sentence pursuant to the revised Kansas sentencing guidelines act, article 68 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, and, subject to the provisions of K.S.A. 2016 Supp. 21-6818, and amendments thereto, no sentence of a mandatory minimum term of imprisonment shall be imposed hereunder.

(2) As used in this subsection, "mitigating circumstances" shall include, but are not limited to, the following:

- (A) The defendant has no significant history of prior criminal activity;
- (B) the crime was committed while the defendant was under the influence of extreme mental or emotional disturbances;
- (C) the victim was an accomplice in the crime committed by another person, and the defendant's participation was relatively minor;
- (D) the defendant acted under extreme distress or under the substantial domination of another person;
- (E) the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired; and
- (F) the age of the defendant at the time of the crime.

(e) The provisions of K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, shall not apply to any defendant sentenced pursuant to this section.

Sec. 18. K.S.A. 2016 Supp. 21-6806 is hereby amended to read as follows: 21-6806. (a) Sentences of imprisonment shall represent the time a person shall actually serve, subject to a reduction of the primary sentence for good time as authorized by K.S.A. 2016 Supp. 21-6821, and amendments thereto.

- (b) The sentencing court shall pronounce sentence in all felony cases.
- (c) Violations of K.S.A. 2016 Supp. 21-5401, 21-5402, 21-5421, 21-5422 and 21-5901, and amendments thereto, are off-grid crimes for the purpose of sentencing. Except as otherwise provided by K.S.A. 2016 Supp. 21-6617, 21-6618, 21-6619, 21-6622, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto, the sentence shall be imprisonment for life and shall not be subject to statutory provisions for suspended sentence, community service or probation.

(d) As identified in K.S.A. 2016 Supp. 21-5426, 21-5503, 21-5504, 21-5506, 21-5510, section 3 and 21-6422, and amendments thereto, if the offender is 18 years of age or older and the victim is under 14 years of age, such violations are off-grid crimes for

the purposes of sentencing. Except as provided in K.S.A. 2016 Supp. 21-6626, and amendments thereto, the sentence shall be imprisonment for life pursuant to K.S.A. 2016 Supp. 21-6627, and amendments thereto.

Sec. 19. K.S.A. 2016 Supp. 22-3601 is hereby amended to read as follows: 22-3601. (a) Any appeal permitted to be taken from a district court's final judgment in a criminal case shall be taken to the court of appeals, except in those cases reviewable by law in the district court or in which a direct appeal to the supreme court is required. Whenever an interlocutory appeal is permitted in a criminal case in the district court, such appeal shall be taken to the court of appeals.

(b) Any appeal permitted to be taken from a district court's final judgment in a criminal case shall be taken directly to the supreme court in the following cases:

(1) Any case in which a statute of this state or of the United States has been held unconstitutional;

(2) any case in which the defendant has been convicted of a class A felony;

(3) any case in which a maximum sentence of life imprisonment has been imposed, unless the maximum sentence has been imposed pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments thereto; and

(4) except as provided further, any case in which the crime was committed on or after July 1, 1993, and the defendant has been convicted of an off-grid crime. The provisions of this paragraph shall not apply to any case in which the off-grid crime was:

(A) Aggravated human trafficking, ~~subsection (c)(2)(B)~~ of K.S.A. 2016 Supp. 21-5426(c)(3), and amendments thereto;

(B) rape, ~~subsection (b)(2)(B)~~ of K.S.A. 2016 Supp. 21-5503(b)(2)(B), and amendments thereto;

(C) aggravated criminal sodomy, ~~subsection (c)(2)(B)(ii)~~ of K.S.A. 2016 Supp. 21-5504(c)(2)(B)(ii), and amendments thereto;

(D) aggravated indecent liberties with a child, ~~subsection (c)(2)(C)(ii)~~ of K.S.A. 2016 Supp. 21-5506(c)(2)(C)(ii), and amendments thereto;

(E) sexual exploitation of a child, ~~subsection (b)(2)(B)~~ of K.S.A. 2016 Supp. 21-5510(b)(2)(B), and amendments thereto;

(F) aggravated internet trading in child pornography, section 3(c)(3), and amendments thereto;

(G) commercial sexual exploitation of a child, subsection (b)(2) of K.S.A. 2016 Supp. 21-6422(b)(2), and amendments thereto; or

~~(G)~~ (H) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 2016 Supp. 21-5301, 21-5302 or ~~21-3503~~ 21-5303, and amendments thereto, of any such felony.

Sec. 20. K.S.A. 2016 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section; K.S.A. 1993 Supp. 21-4628, prior to its repeal; K.S.A. 21-4624, 21-4635 through 21-4638 and 21-4642, prior to their repeal; K.S.A. 2016 Supp. 21-6617, 21-6620, 21-6623, 21-6624, 21-6625 and 21-6626, and amendments thereto; and K.S.A. 8-1567, and amendments thereto; an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2016 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) An inmate sentenced to imprisonment for life without the possibility of parole pursuant to K.S.A. 2016 Supp. 21-6617, and amendments thereto, shall not be

eligible for parole.

(2) Except as provided by K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for the crime of: (A) Capital murder committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits; (B) murder in the first degree based upon a finding of premeditated murder committed on or after July 1, 1994, but prior to July 1, 2014, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits; and (C) murder in the first degree as described in K.S.A. 2016 Supp. 21-5402(a)(2), and amendments thereto, committed on or after July 1, 2014, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(3) Except as provided by subsections (b)(1), (b)(2) and (b)(5), K.S.A. 1993 Supp. 21-4628, prior to its repeal, K.S.A. 21-4635 through 21-4638, prior to their repeal, and K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

(4) Except as provided by K.S.A. 1993 Supp. 21-4628, prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618, prior to its repeal, or K.S.A. 2016 Supp. 21-6707, and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(5) An inmate sentenced to imprisonment for a violation of K.S.A. 21-3402(a), prior to its repeal, committed on or after July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(6) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments thereto, committed on or after July 1, 2006, shall be eligible for parole after serving the mandatory term of imprisonment without deduction of any good time credits.

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

(A) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608, prior to its repeal, or K.S.A. 2016 Supp. 21-6606, and amendments thereto, less good time credits for those crimes which are not class A felonies; and

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

(2) If an inmate is sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, the inmate shall be eligible for parole after serving the mandatory term of imprisonment.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or

after July 1, 1993, or persons subject to subparagraph (G), will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 1 through 4 crimes, drug severity levels 1 and 2 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity levels 1, 2 and 3 crimes committed on or after July 1, 2012, must serve 36 months on postrelease supervision.

(B) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 5 and 6 crimes, drug severity level 3 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 4 crimes committed on or after July 1, 2012, must serve 24 months on postrelease supervision.

(C) Except as provided in subparagraphs (D) and (E), persons sentenced for nondrug severity levels 7 through 10 crimes, drug severity level 4 crimes committed on or after July 1, 1993, but prior to July 1, 2012, and drug severity level 5 crimes committed on or after July 1, 2012, must serve 12 months on postrelease supervision.

(D) Persons sentenced to a term of imprisonment that includes a sentence for a sexually violent crime as defined in K.S.A. 22-3717, and amendments thereto, a sexually motivated crime in which the offender has been ordered to register pursuant to K.S.A. 22-3717(d)(1)(D)(vii), and amendments thereto, electronic solicitation, K.S.A. 21-3523, prior to its repeal, or K.S.A. 2016 Supp. 21-5509, and amendments thereto, or unlawful sexual relations, K.S.A. 21-3520, prior to its repeal, or K.S.A. 2016 Supp. 21-5512, and amendments thereto, shall serve the period of postrelease supervision as provided in subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C) plus the amount of good time and program credit earned and retained pursuant to K.S.A. 21-4722, prior to its repeal, or K.S.A. 2016 Supp. 21-6821, and amendments thereto, on postrelease supervision.

(i) If the sentencing judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually motivated, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721, prior to its repeal, or K.S.A. 2016 Supp. 21-6820, and amendments thereto.

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

- (a) Written briefs or oral arguments submitted by either the defendant or the state;
- (b) any evidence received during the proceeding;
- (c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to K.S.A. 21-4714(e), prior to its repeal, or K.S.A. 2016 Supp. 21-6813(e), and amendments thereto; and
- (d) any other evidence the court finds trustworthy and reliable.

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

(v) In carrying out the provisions of subsection (d)(1)(D), the court shall refer to K.S.A. 21-4718, prior to its repeal, or K.S.A. 2016 Supp. 21-6817, and amendments thereto.

(vi) Upon petition and payment of any restitution ordered pursuant to K.S.A. 2016 Supp. 21-6604, and amendments thereto, the prisoner review board may provide for early discharge from the postrelease supervision period imposed pursuant to subsection (d)(1)(D)(i) upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subsection (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from postrelease supervision is at the discretion of the board.

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

(viii) Persons convicted of K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2016 Supp. 21-5508, and amendments thereto, shall be required to participate in a treatment program for sex offenders during the postrelease supervision period.

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

(F) In cases where sentences for crimes from more than one severity level have been imposed, the offender shall serve the longest period of postrelease supervision as provided by this section available for any crime upon which sentence was imposed irrespective of the severity level of the crime. Supervision periods will not aggregate.

(G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life.

(2) Persons serving a period of postrelease supervision pursuant to subsections (d)(1)(A), (d)(1)(B) or (d)(1)(C) may petition the prisoner review board for early discharge. Upon payment of restitution, the prisoner review board may provide for early discharge.

(3) Persons serving a period of incarceration for a supervision violation shall not have the period of postrelease supervision modified until such person is released and returned to postrelease supervision.

(4) Offenders whose crime of conviction was committed on or after July 1, 2013, and whose probation, assignment to a community correctional services program, suspension of sentence or nonprison sanction is revoked pursuant to K.S.A. 22-3716(c), and amendments thereto, or whose underlying prison term expires while serving a sanction pursuant to K.S.A. 22-3716(c)(1)(C) or (c)(1)(D), and amendments thereto, shall serve a period of postrelease supervision upon the completion of the underlying prison term.

(5) As used in this subsection, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2016 Supp. 21-5503, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(a), and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, prior to its repeal, or K.S.A. 2016 Supp. 21-5506(b), and amendments thereto;

(D) criminal sodomy, K.S.A. 21-3505(a)(2) and (a)(3), prior to its repeal, or K.S.A. 2016 Supp. 21-5504(a)(3) and (a)(4), and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, prior to its repeal, or K.S.A. 2016 Supp. 21-5504(b), and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(a), and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, prior to its repeal, or K.S.A. 2016 Supp. 21-5508(b), and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, prior to its repeal, or K.S.A. 2016 Supp. 21-5510, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, prior to its repeal, or K.S.A. 2016 Supp. 21-5505(b), and amendments thereto;

(J) aggravated incest, K.S.A. 21-3603, prior to its repeal, or K.S.A. 2016 Supp. 21-5604(b), and amendments thereto;

(K) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2016 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(L) internet trading in child pornography, as defined in section 3(a), and amendments thereto;

(M) aggravated internet trading in child pornography, as defined in section 3(b), and amendments thereto;

(N) commercial sexual exploitation of a child, as defined in K.S.A. 2016 Supp. 21-6422, and amendments thereto; or

~~(M)~~ (O) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2016 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent crime as defined in this section.

(6) As used in this subsection, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

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

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724, prior to its repeal, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time

the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the prisoner review board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628, prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the prisoner review board.

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

(h) The prisoner review board shall hold a parole hearing at least the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least one month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of an off-grid felony or a class A felony, the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338, and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of an off-grid felony or a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a, and amendments thereto, or

any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made, including, but not limited to, risk factors revealed by any risk assessment of the inmate; comments of the victim and the victim's family including in person comments, contemporaneous comments and prerecorded comments made by any technological means; comments of the public; official comments; any recommendation by the staff of the facility where the inmate is incarcerated; proportionality of the time the inmate has served to the sentence a person would receive under the Kansas sentencing guidelines for the conduct that resulted in the inmate's incarceration; and capacity of state correctional institutions.

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

(j) (1) Before ordering the parole of any inmate, the prisoner review board shall have the inmate appear either in person or via a video conferencing format and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a, and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If parole is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a, and amendments thereto, and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to three years but any such deferral by the board shall

require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial unless the board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the board may defer subsequent parole hearings for up to 10 years, but any such deferral shall require the board to state the basis for its findings.

(2) Inmates sentenced for a class A or class B felony who have not had a board hearing in the five years prior to July 1, 2010, shall have such inmates' cases reviewed by the board on or before July 1, 2012. Such review shall begin with the inmates with the oldest deferral date and progress to the most recent. Such review shall be done utilizing existing resources unless the board determines that such resources are insufficient. If the board determines that such resources are insufficient, then the provisions of this paragraph are subject to appropriations therefor.

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

(2) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to searches of the person and the person's effects, vehicle, residence and property by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment.

(3) Parolees and persons on postrelease supervision are, and shall agree in writing to be, subject to searches of the person and the person's effects, vehicle, residence and property by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity. Any law enforcement officer who conducts such a search shall submit a written report to the appropriate parole officer no later than the close of the next business day after such search. The written report shall include the facts leading to such search, the scope of such search and any findings resulting from such search.

(l) The prisoner review board shall promulgate rules and regulations in accordance with K.S.A. 77-415 et seq., and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution, reimbursement of expenditures by the state board of indigents' defense services and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(m) Whenever the prisoner review board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

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

postrelease supervision;

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

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

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

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

(6) shall order that the parolee or person on postrelease supervision agree in writing to be subject to searches of the person and the person's effects, vehicle, residence and property by a parole officer or a department of corrections enforcement, apprehension and investigation officer, at any time of the day or night, with or without a search warrant and with or without cause. Nothing in this subsection shall be construed to authorize such officers to conduct arbitrary or capricious searches or searches for the sole purpose of harassment; and

(7) shall order that the parolee or person on postrelease supervision agree in writing to be subject to searches of the person and the person's effects, vehicle, residence and property by any law enforcement officer based on reasonable suspicion of the person violating conditions of parole or postrelease supervision or reasonable suspicion of criminal activity.

(n) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the prisoner review board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable.

(o) Whenever the prisoner review board grants the parole of an inmate, the board, within 14 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

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

county where the inmate was sentenced written notice of the release date.

(q) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

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

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

(t) For offenders sentenced prior to July 1, 2014, who are eligible for modification of their postrelease supervision obligation, the department of corrections shall modify the period of postrelease supervision as provided for by this section:

(1) On or before September 1, 2013, for offenders convicted of:

(A) Severity levels 9 and 10 crimes on the sentencing guidelines grid for nondrug crimes;

(B) severity level 4 crimes on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012; and

(C) severity level 5 crimes on the sentencing guidelines grid for drug crimes committed on and after July 1, 2012;

(2) on or before November 1, 2013, for offenders convicted of:

(A) Severity levels 6, 7 and 8 crimes on the sentencing guidelines grid for nondrug crimes;

(B) level 3 crimes on the sentencing guidelines grid for drug crimes committed prior to July 1, 2012; and

(C) level 4 crimes on the sentencing guidelines grid for drug crimes committed on or after July 1, 2012; and

(3) on or before January 1, 2014, for offenders convicted of:

(A) Severity levels 1, 2, 3, 4 and 5 crimes on the sentencing guidelines grid for nondrug crimes;

(B) severity levels 1 and 2 crimes on the sentencing guidelines grid for drug crimes committed at any time; and

(C) severity level 3 crimes on the sentencing guidelines grid for drug crimes committed on or after July 1, 2012.

(u) An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 2016 Supp. 21-6627, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the prisoner review board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.

(v) Whenever the prisoner review board orders a person to be electronically monitored pursuant to this section, or the court orders a person to be electronically monitored pursuant to K.S.A. 2016 Supp. 21-6604(r), and amendments thereto, the board shall order the person to reimburse the state for all or part of the cost of such monitoring. In determining the amount and method of payment of such sum, the board

shall take account of the financial resources of the person and the nature of the burden that the payment of such sum will impose.

(w) (1) On and after July 1, 2012, for any inmate who is a sex offender, as defined in K.S.A. 22-4902, and amendments thereto, whenever the prisoner review board orders the parole of such inmate or establishes conditions for such inmate placed on postrelease supervision, such inmate shall agree in writing to not possess pornographic materials.

(A) As used in this subsection, "pornographic materials" means any obscene material or performance depicting sexual conduct, sexual contact or a sexual performance; and any visual depiction of sexually explicit conduct.

(B) As used in this subsection, all other terms have the meanings provided by K.S.A. 2016 Supp. 21-5510, and amendments thereto.

(2) The provisions of this subsection shall be applied retroactively to every sex offender, as defined in K.S.A. 22-4902, and amendments thereto, who is on parole or postrelease supervision on July 1, 2012. The prisoner review board shall obtain the written agreement required by this subsection from such offenders as soon as practicable.";

On page 22, in line 32, after the semicolon by inserting "section 3(a), and amendments thereto, internet trading in child pornography; section 3(b), and amendments thereto, aggravated internet trading in child pornography;"

On page 28, in line 19, after the first comma by inserting "21-5301, 21-5302, 21-5303, 21-5401,"; also in line 19, after the second comma by inserting "21-5502,"; in line 20, after the first comma by inserting "21-6614, 21-6614g, 21-6614h, 21-6626, 21-6627, 21-6806, 22-3601, 22-3717,";

And by renumbering sections accordingly;

On page 1, in the title, in line 8, after the first comma by inserting "21-5301, 21-5302, 21-5303, 21-5401,"; also in line 8, after the second comma by inserting "21-5502,"; in line 9, after the third comma by inserting "21-6614, 21-6626, 21-6627, 21-6806, 22-3601, 22-3717,"; in line 10, after "sections" by inserting "; also repealing K.S.A. 2016 Supp. 21-6614g and 21-6614h";

And your committee on conference recommends the adoption of this report.

BLAINE FINCH
FRED PATTON
JOHN CARMICHAEL

Conferees on part of House

RICHARD E. WILBORN
JULIA LYNN
DAVID HALEY

Conferees on part of Senate

On motion of Rep. Finch, the conference committee report on **H Sub for SB 40** was adopted.

On roll call, the vote was: Yeas 120; Nays 0; Present but not voting: 0; Absent or not voting: 5.

Yeas: Alcala, Alford, Arnberger, Awerkamp, Baker, Ballard, Becker, Bishop, Blex, Brim, Burroughs, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton,

Concannon, Corbet, Cox, Crum, S., Curtis, E. Davis, Deere, DeGraaf, Delperdang, Dierks, Dietrich, Dove, Elliott, Ellis, Eplee, Esau, Finch, Finney, Francis, Gallagher, Garber, Gartner, Good, Hawkins, Helgerson, Henderson, Hibbard, Highberger, Highland, Hineman, Hodge, Hoffman, Holscher, Houser, Huebert, Humphries, Jacobs, Jennings, K. Jones, Judd-Jenkins, Karleskint, Kelly, Kessinger, Koesten, Kuether, Lakin, Landwehr, Lewis, Lusk, Lusker, Markley, Mason, Mastroni, Miller, Murnan, Neighbor, Ohaebosim, Orr, Osterman, Ousley, Parker, F. Patton, Phelps, Phillips, Pittman, R. Powell, Proehl, Rafie, Rahjes, Ralph, Resman, Rooker, Ruiz, Ryckman, Sawyer, Schreiber, Schroeder, Schwab, Sloan, Smith, A., Smith, E., Stogsdill, Sutton, S. Swanson, Tarwater, Terrell, Thimesch, Thompson, Trimmer, Vickrey, Victors, Ward, Waymaster, Weber, C., Weigel, Wheeler, Whipple, Whitmer, K. Williams, Wilson, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: Aurand, Barker, Frownfelter, Johnson, Seiwert.

INTRODUCTION OF ORIGINAL MOTIONS

Pursuant to House Rule 2306, Rep. Hineman moved **H Sub for SB 126** be withdrawn from the Calendar under the heading General Orders and be rereferred to Committee on Children and Seniors. The motion prevailed.

REPORT ON ENGROSSED BILLS

HB 2301 reported correctly engrossed May 5, 2017.

HB 2085 reported correctly reengrossed May 5, 2017.

On motion of Rep. Hineman, the House adjourned until 10:00 a.m., Tuesday, May 9, 2017.

BECKIE HENDRICKS, JENNY HAUGH, JULIA WERNER, *Journal Clerks.*

SUSAN W. KANNARR, *Chief Clerk.*

