As Amended by House Committee

Session of 2011

HOUSE BILL No. 2321

By Committee on Corrections and Juvenile Justice

2-11

AN ACT concerning crimes and punishment; creating the crime of armed criminal action and endangerment; relating to further amendments to the recodified criminal code; amending K.S.A. 2010 Supp. 21-4010 and 21-4012 and sections 9, 11, 34, 37, 61, 68, 71, 81, 92, 93, 129, 130, 132, 136, 165, 197, 223, 224 and 300 of chapter 136 of the 2010 Session Laws of Kansas and repealing the existing sections; also repealing K.S.A. 2009 Supp. 21-3110, as amended by section 5 of chapter 101 of the 2010 Session Laws of Kansas, and K.S.A. 2010 Supp. 21-3302, 21-3446, 21-3447, 21-3506 and 21-4311.

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

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

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

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

(d) This section shall not apply when the felony committed is criminal distribution of a firearm to a felon, as defined in section 188 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal possession of a firearm by a convicted felon, as defined in section 189 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal possession of a firearm by a juvenile, as defined in section 186 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, criminal discharge of a firearm, as defined in section 193 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, or unauthorized possession of a firearm on the grounds of or within certain state-owned or leased buildings, as defined in section 194 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(e) As used in this section, “use of a firearm” includes: (A) The discharge, employment or visible display of any part of a firearm during,
immediately prior to or immediately after the commission of a felony; or (B) communication to another indicating the presence of a firearm during, immediately prior to or immediately after the commission of a felony, regardless of whether such firearm was discharged, actively employed or displayed.

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

(b) Endangerment is a class A person misdemeanor.

New Sec. 3. Sections 1 and 2 Section 1, and amendments thereto, shall be part of and supplemental to the Kansas criminal code.

Sec. 4. K.S.A. 2010 Supp. 21-4010 is hereby amended to read as follows: 21-4010. (a) No person shall It shall be unlawful, with no requirement of a culpable mental state, to smoke in an enclosed area or at a public meeting including, but not limited to:

(1) Public places;

(2) taxicabs and limousines;

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

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

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

(6) any place of employment.

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

(c) Notwithstanding any other provision of this section, K.S.A. 21-4011 or 21-4012, and amendments thereto, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area.

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

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

(2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments
thereto;
(3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%;
(4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto;
(5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated;
(6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests;
(7) tobacco shops;
(8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and
(9) a private club in designated areas where minors are prohibited.

Sec. 5. K.S.A. 2010 Supp. 21-4012 is hereby amended to read as follows: 21-4012. (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.
(b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person: (1) Has knowledge that smoking is occurring; and (2) acquiesces to the recklessly permits smoking under the totality of the circumstances.
(c) It shall be unlawful for any person, with no requirement of a culpable mental state, to smoke in any area where smoking is prohibited by the provisions of K.S.A. 21-4010, and amendments thereto.
(d) Any person who violates any provision of K.S.A. 21-4009 through 21-4014, and amendments thereto, shall be guilty of a cigarette or tobacco infraction punishable by a fine:
(1) Not exceeding $100 for the first violation;
(2) not exceeding $200 for a second violation within a one-year period
after the first violation; or

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

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

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

(f) No employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because with the intent to retaliate against that employee, applicant or customer reports or attempts for reporting or attempting to prosecute a violation of any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.

Sec. 6. Section 9 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 9. (a) When the same conduct of a defendant may establish the commission of more than one crime under the laws of this state, the defendant may be prosecuted for each of such crimes. Each of such crimes may be alleged as a separate count in a single complaint, information or indictment.

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

(1) A lesser degree of the same crime;
(2) a crime where all elements of the lesser crime are identical to some of the elements of the crime charged;
(3) an attempt to commit the crime charged; or
(4) an attempt to commit a crime defined under paragraph (1) or (2).

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

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

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

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

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

Sec. 7.—Section 34 of chapter 136 of the 2010 Session Laws of Kansas is
hereby amended to read as follows: Sec. 34. (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.

(b) (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.

(c) (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 trafficking, as defined in subsection (b) of section 61 of
chapter 126 of the 2010 Session Laws of Kansas, 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 pursuant to as defined in section 56 of chapter 136 of the
2010 Session Laws of Kansas, and amendments thereto;

(C) illegal use of weapons of mass destruction pursuant to as defined in
section 57 of chapter 136 of the 2010 Session Laws of Kansas, and
amendments thereto;
(D) rape, as defined in subsection (a)(3) of section 67 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 70 of chapter 136 of the 2010 Session Laws of Kansas, 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 section 68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older;

(G) promoting prostitution, as defined in section 230 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the prostitute is less than 14 years of age; or

(H) sexual exploitation of a child, as defined in subsection (a)(1) or (a)(4) of section 74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, if the offender is 18 years of age or older and the child is less than 14 years of age.

(d) 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.

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

Sec. 6. Section 11 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended as follows: Sec. 11. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

(a) "Act" includes a failure or omission to take action.

(b) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.

(c) "Conduct" means an act or a series of acts, and the accompanying mental state.

(d) "Conviction" includes a judgment of guilt entered upon a plea of guilty.

(e) "Deception" means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not deception.

(f) "Deprive permanently" means to:

(1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;

(2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or
pays a reward or other compensation for its return; or

(3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.

(g) "Distribute" means the actual or constructive transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.

(h) "DNA" means deoxyribonucleic acid.

(i) "Domestic violence" means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:

(1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(2) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. Family or household member also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(j) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence.

(\(i\))\(\(k\)\) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence.

(\(j\))\(\(l\)\) "Expungement" means the sealing of records such that the
records are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701 et seq., and amendments thereto, and except as provided in this act.

(m) "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion., including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive. "Firearm" does not include an antique firearm. "Antique firearm" means:

(1) Any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured in or before 1898;

(2) any replica of any firearm described in subsection (m)(1) if such replica: (A) Is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (B) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(3) any muzzle loading rifle, muzzle loading shotgun or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this paragraph, "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock or any combination thereof.

(n) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony which involves the use or threat of physical force or violence against any person.

(o) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

(p) "Law enforcement officer" means:

(1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(2) any officer of the Kansas department of corrections or, for the purposes of sections section 47 and subsection (d) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, any employee of the Kansas department of corrections; or

(3) any university police officer or campus police officer, as defined in
K.S.A. 22-2401a, and amendments thereto.

(q) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(r) "Obtains or exerts control" over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(s) "Owner" means a person who has any interest in property.

(t) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(u) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

(v) "Possession" means having joint or exclusive control over an item with knowledge of or intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.

(w) "Property" means anything of value, tangible or intangible, real or personal.

(x) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

(y) "Prosecutor" means the same as prosecuting attorney in K.S.A. 22-2202, and amendments thereto.

(z) "Public employee" is a person employed by or acting for the state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(aa) "Public officer" includes the following, whether elected or appointed:

1. An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state;

2. A member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state;

3. A judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy;

4. A hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;

5. A law enforcement officer; and
(6) any other person exercising the functions of a public officer under color of right.

(bb) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

(cc) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit a crime.

(dd) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(ee) "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(ee) "Stolen property" means property over which control has been obtained by theft.

(ff) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

(gg) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Sec. 8. Section 37 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 37. (a) Murder in the first degree is the killing of a human being committed:

(1) Intentionally, and with premeditation; or

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

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

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

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

(A) Kidnapping, as defined in subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(B) aggrandized kidnapping, as defined in subsection (b) of section 43 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(C) robbery, as defined in subsection (a) of section 55 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(D) aggrandized robbery, as defined in subsection (b) of section 55 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(E) rape, as defined in section 67 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(F) aggrandized criminal sodomy, as defined in subsection (b) of section
68 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(G) abuse of a child, as defined in section 79 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(H) felony theft of property as defined in subsection (a)(1) or (a)(3) of section 87 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(I) burglary, as defined in subsection (a) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(J) aggravated burglary, as defined in subsection (b) of section 93 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(K) arson, as defined in subsection (a) of section 98 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(L) aggravated arson, as defined in subsection (b) of section 98 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(M) treason, as defined in section 126 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(N) any felony offense as provided in K.S.A. 2009-2010 Supp. 21-36a03, 21-36a05 or 21-36a06, and amendments thereto;

(O) any felony offense as provided in subsection (a) or (b) of section 193 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(P) endangering the food supply, as defined in subsection (a) of section 202 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(Q) aggravated endangering the food supply, as defined in subsection (b) of section 202 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

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

(S) aggravated endangering a child, as defined in subsection (b)(1) of section 78 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

(T) abandonment of a child, as defined in section 82 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; and

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

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

(B) murder in the second degree, as defined in subsection (a)(1) of section 38 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(C) voluntary manslaughter, as defined in subsection (a)(1) of section 39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;
(D) aggravated assault, as defined in subsection (b) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(E) aggravated assault of a law enforcement officer, as defined in subsection (d) of section 47 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

(F) aggravated battery, as defined in subsection (b)(1) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or

(G) aggravated battery against a law enforcement officer, as defined in subsection (d) of section 48 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

Sec. 9. Section 61 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 61. (a) Human trafficking is:

(1) Recruiting, harboring, transporting, providing or obtaining, by any means, another person with knowledge that force, fraud or coercion will be used to cause the person to engage in forced labor or involuntary servitude; or the intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor;

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

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

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

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

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

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

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

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

(b) Aggravated human trafficking is:

(I) human trafficking, as defined in subsection (a):

(A) (1) involving the commission or attempted commission of kidnapping, as defined in subsection (a) of section 43 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto;

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

(C) (3) resulting in a death; or
(2) (4) involving recruiting, harboring, transporting, providing or obtaining, by any means, a person under 18 years of age knowing that the person, with or without force, fraud, threat or coercion, will be used to engage in forced labor, involuntary servitude or sexual gratification of the defendant or another.

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

(2) Aggravated human trafficking is:

(A) severity level 1, person felony, except as provided in subsection (c)

(B) severity level 1, person felony, except as provided in subsection (c)

(D) severity level 1, person felony, except as provided in subsection (c).

(3) Aggravated human trafficking or attempt, conspiracy or criminal solicitation to commit aggravated human trafficking is a severity level 1, person felony, when the offender is 18 years of age or older and the victim is less than 14 years of age.

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

(1) Subsection (c) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated human trafficking pursuant to this section;

(2) subsection (c) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated human trafficking pursuant to this section; and

(3) subsection (d) of section 35 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated human trafficking pursuant to this section.

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

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

Sec. 10. Section 68 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 68. (a) Criminal sodomy is:

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

(2) (1) Sodomy between a person and an animal;

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

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

(b) Aggravated criminal sodomy is:
(1) Sodomy with a child who is under 14 years of age;
(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or
(3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim’s consent, to engage in sodomy with any person or an animal under any of the following circumstances:
(A) When the victim is overcome by force or fear;
(B) when the victim is unconscious or physically powerless; or
(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Criminal sodomy as defined in:
(A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and
(B) subsection (a)(2) or (a)(3) or (a)(4) is a severity level 3, person felony.

(c) (2) Aggravated criminal sodomy as defined in:
(A) Subsection (b)(3) is a severity level 1, person felony; and
(B) subsection (b)(1) or (b)(2) is a:
(i) severity level 1, person felony, except as provided in subsection (c)(2) (B)(ii); and (3).
(ii) off-grid person felony, when the offender is 18 years of age or older.

(d) If the offender is 18 years of age or older, the provisions of:
(1) Subsection (e) of section 33 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);
(2) subsection (e) of section 34 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid person felony, when the offender is 18 years of age or older.

(d)(e) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3) (2), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.
(e)(f) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

Sec. 11. Section 71 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 71. (a) Unlawful voluntary sexual relations is:

(1) Engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:
   (A) Voluntary sexual intercourse;
   (B) voluntary sodomy; or
   (C) voluntary lewd fondling or touching;
   (2) when the offender is less than 19 years of age;
   (3) when the offender is less than four years of age older than the child; and
   (4) when the child and the offender are the only parties involved; and
   (5) when the child and the offender are members of the opposite sex.

(b) Unlawful voluntary sexual relations as defined in:
(1) Subsection (a)(1)(A) is a severity level 8, person felony;
(2) subsection (a)(1)(B) is a severity level 9, person felony; and
(3) subsection (a)(1)(C) is a severity level 10, person felony.

Sec. 12. Section 81 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 81. (a) Incest is marriage to or engaging in otherwise lawful sexual intercourse or sodomy, as defined in section 65, and amendments thereto, with a person who is 18 or more years of age and who is known to the offender to be related to the offender as any of the following biological relatives: Parent, child, grandparent of any degree, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece.

(b) Aggravated incest is:
(1) Marriage to a person who is under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece; or
(2) engaging in the following acts with a person who is 16 or more years of age but under 18 years of age and who is known to the offender to be related to the offender as any of the following biological, step or adoptive relatives: Child, grandchild of any degree, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece:
   (A) Otherwise lawful sexual intercourse or sodomy as defined by section 65 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto; or
   (B) any lewd fondling, as described in subsection (a)(1) of section 70 of
chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto.

(c) (1) Incest is a severity level l0, person felony.

(2) Aggravated incest as defined in:

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

(i) severity level 5, person felony, except as provided in subsection (c)(2)

(ii) severity level 3, person felony if the victim is the offender's biological,

step or adoptive child; and

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

Sec. 13. Section 92 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 92. (a) Unlawful use of recordings is:

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

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

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

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

(b) Unlawful use of recordings:

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

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

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

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

(1) Any broadcaster who, in connection with or as part of a radio or television broadcast or cable transmission, or for the purpose of archival preservation, duplicates any such sounds recorded on a sound recording;
(2) any person who duplicates such sounds or such performance for personal use, and without compensation for such duplication; or
(3) any sounds initially fixed in a tangible medium of expression after February 15, 1972.
(d) The provisions of subsections (a)(1) and (a)(3) shall not apply to any computer program or any audio or visual recording that is part of any computer program or to any article or device on which is exclusively recorded any such computer program.
(e) As used in this section:
(1) "Owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles now known or later developed upon which sound is recorded or otherwise stored, and from which the duplicated recorded sounds are directly or indirectly derived, or the person who owns the right to record such live performance; and
(2) "computer program" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.
(f) It shall be the duty of all law enforcement officers, upon discovery, to confiscate all recorded devices that do not conform to the provisions of this section and that are possessed for the purpose of selling or renting such recorded devices, and all equipment and components used or intended to be used to knowingly manufacture recorded devices that do not conform to the provisions of such section for the purpose of selling or renting such recorded devices. The nonconforming recorded devices that are possessed for the purpose of selling or renting such recorded devices are contraband and shall be delivered to the district attorney for the county in which the confiscation was made, by court order, and shall be destroyed or otherwise disposed of, if the court finds that the person claiming title to such recorded devices possessed such recorded devices for the purpose of selling or renting such recorded devices. The equipment and components confiscated shall be delivered to the district attorney for the county in which the confiscation was made, by court order upon conviction, and may be given to a charitable or educational organization.

Sec. 14. Section 93 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 93. (a) Burglary is, without authority, entering into or remaining within any:
(1) Dwelling, with intent to commit a felony, theft or sexual battery; sexually motivated crime therein;
(2) building, manufactured home, mobile home, tent or other structure which is not a dwelling, with intent to commit a felony, theft or sexual battery sexually motivated crime therein; or
(3) vehicle, aircraft, watercraft, railroad car or other means of conveyance of persons or property, with intent to commit a felony, theft or sexual battery sexually motivated crime therein.

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

(c) (1) Burglary as defined in:
   (A) subsection (a)(1) is a severity level 7, person felony;
   (B) subsection (a)(2) is a severity level 7, nonperson felony; and
   (C) subsection (a)(3) is a severity level 9, nonperson felony.

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

(d) As used in this section, “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. 15. 11. Section 129 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 129. (a) Interference with law enforcement is:

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

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

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

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

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

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

(2) Interference with law enforcement as defined in:

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

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

(3) Interference with law enforcement as defined in subsection (a)(2)
Sec. 16. Section 130 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 130. (a) Interference with the judicial process is:

1. Communicating with any judicial officer in relation to any matter which is or may be brought before such judge, magistrate, master or juror with intent improperly to influence such officer;
2. Committing any of the following acts, with intent to influence, impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor:
   - Communicating in any manner a threat of violence to any judicial officer or any prosecutor;
   - Harassing a judicial officer or a prosecutor by repeated vituperative communication;
   - Picketing, parading or demonstrating near such officer’s or prosecutor’s residence or place of abode;
3. Picketing, parading or demonstrating in or near a building housing a judicial officer or a prosecutor with intent to impede or obstruct the finding, decision, ruling, order, judgment or decree of such judicial officer or prosecutor on any matter then pending before the officer or prosecutor;
4. Knowingly accepting or agreeing to accept anything of value as consideration for a promise:
   - Not to initiate or aid in the prosecution of a person who has committed a crime; or
   - To conceal, destroy or materially alter evidence of a crime; or
   - Concealing, destroying or materially altering evidence with the intent to influence, impede or obstruct any proceeding, civil or criminal; or
5. When performed by a person summoned or sworn as a juror in any case:
   - Intentionally soliciting, accepting or agreeing to accept from another any benefit as consideration to wrongfully give a verdict for or against any party in any proceeding, civil or criminal;
   - Intentionally promising or agreeing to wrongfully give a verdict for or against any party in any proceeding, civil or criminal; or
   - Knowingly receiving any evidence or information from anyone in relation to any matter or cause for the trial of which such juror has been or will be sworn, without the authority of the court or officer before whom such juror has been summoned, and without immediately disclosing the same to such
court or officer.

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

(1) Subsection (a)(1) is a severity level 9, nonperson felony;
(2) subsection (a)(2) and (a)(3) is a class A nonperson misdemeanor;
(3) subsection (a)(4) is a:
   (A) Severity level 8, nonperson felony if the crime is a felony; or
   (B) class A nonperson misdemeanor if the crime is a misdemeanor;
(4) subsection (a)(5) is a:
   (A) Severity level 8, nonperson felony if the proceeding is a felony prosecution; and
   (B) class A nonperson misdemeanor if the proceeding is any proceeding other than a felony prosecution;
(5) subsection (a)(5)(A) (a)(6)(A) is a severity level 7, nonperson felony; and
(6) subsection (a)(5)(B) (a)(6)(B) or (a)(5)(C) (a)(6)(C) is a severity level 9, nonperson felony.

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

Sec. 17. Section 132 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 132. (a) Simulating legal process is:

(1) Distributing to another any document which simulates or purports to be, or is designed to cause others to believe it to be, a summons, petition, complaint or other judicial process, with intent thereby to induce payment of a claim; or
(2) printing or distributing any such document, knowing that it shall be so used.

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

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

Sec. 18. Section 136 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 136. (a) Escape from custody is:

(1) Escaping while held in custody on a:
   (A) Charge or conviction of or arrest for a misdemeanor;
   (B) charge or , adjudication or arrest as a juvenile offender where the act, if committed by an adult, would constitute a misdemeanor; or
   (C) commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a misdemeanor or by a person 18 years of age or over who is being held in custody on a adjudication of a misdemeanor.

(b) Aggravated escape from custody is:

(1) Escaping while held in custody:
(A) Upon a charge or conviction of or arrest for a felony;
(B) upon a charge or, adjudication or arrest as a juvenile offender where
the act, if committed by an adult, would constitute a felony;
(C) prior to or upon a finding of probable cause for evaluation as a
sexually violent predator as provided in K.S.A. 59-29a05, and amendments
thereof;
(D) upon commitment to a treatment facility as a sexually violent
predator as provided in K.S.A. 59-29a01 et seq., and amendments thereof;
(E) upon a commitment to the state security hospital as provided in
K.S.A. 22-3428, and amendments thereof, based on a finding that the person
committed an act constituting a felony;
(F) by a person 18 years of age or over who is being held on an
adjudication of a felony; or
(G) upon incarceration at a state correctional institution while in the
custody of the secretary of corrections.

(2) Escaping effected or facilitated by the use of violence or the threat of
violence against any person while held in custody:
(A) On a charge or conviction of any crime;
(B) on a charge or adjudication as a juvenile offender where the act, if
committed by an adult, would constitute a felony;
(C) prior to or upon a finding of probable cause for evaluation as a
sexually violent predator as provided in K.S.A. 59-29a05, and amendments
thereof;
(D) upon commitment to a treatment facility as a sexually violent
predator as provided in K.S.A. 59-29a01 et seq., and amendments thereof;
(E) upon a commitment to the state security hospital as provided in
K.S.A. 22-3428, and amendments thereof, based on a finding that the person
committed an act constituting any crime;
(F) by a person 18 years of age or over who is being held on a charge or
adjudication of a misdemeanor of felony; or
(G) upon incarceration at a state correctional institution while in the
custody of the secretary of corrections:

(e) (1) Escape from custody is a class A nonperson misdemeanor.
(2) Aggravated escape from custody as defined in:
(A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F) is a
severity level 8, nonperson felony;
(B) subsection (b)(1)(B), or (b)(1)(G), (b)(2)(B) or (b)(2)(G) is a severity
level 5, nonperson felony;
(C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F) is a
severity level 6, nonperson person felony; and
(D) subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person felony.
(d) As used in this section and section 137 of chapter 136 of the 2010
Session Laws of Kansas, and amendments thereto:
(1) "Custody" means arrest; detention in a facility for holding persons charged with or convicted of crimes or charged or adjudicated as a juvenile offender; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto; or any other detention for law enforcement purposes. "Custody" does not include general supervision of a person on probation or parole or constraint incidental to release on bail;

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

(3) "juvenile offender" means the same as in K.S.A. 2009 2010 Supp. 38-2302, and amendments thereto; and

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

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

Sec. 19. 14. Section 165 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 165. (a) Bribery is:

(1) Offering, giving or promising to give, directly or indirectly, to any person who is a public officer, candidate for public office or public employee any benefit, reward or consideration to which the person is not legally entitled with intent thereby to influence the person with respect to the performance of the person's powers or duties as a public officer or employee with the intent to improperly influence a public official, offering, giving or promising to give, directly or indirectly, to any public official any benefit, reward or consideration which the public official is not permitted by law to accept, in exchange for the performance or omission of performance of the public official's powers or duties or a promise to perform or omit performance of such powers or duties; or

(2) the act of a person who is a public officer, candidate for public office or public employee, in requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration given with intent that the person will be so influenced the act of a public official, intentionally requesting, receiving or agreeing to receive, directly or indirectly, any benefit, reward or consideration, which the public official is not permitted by law to accept, with the intent to improperly influence such public official and in exchange for the performance or omission of performance of the public official's powers or duties or a promise to perform or omit performance of
such powers or duties.

(b) Bribery is a severity level 7, nonperson felony. Upon conviction of bribery, a public officer or public employee official shall forfeit the person's office or employment. Notwithstanding an expungement of the conviction pursuant to section 254 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, any person convicted of bribery under the provisions of this section shall be forever disqualified from holding public office or public employment in this state.

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

Sec.-20. 15. Section 197 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 197. (a) Criminal possession of explosives is the possession of any explosive or detonating substance by a person who, within five years preceding such possession, has been convicted of a felony under the laws of this or any other jurisdiction or has been released from imprisonment for a felony.

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

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

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

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

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

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

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

(3) Carrying concealed explosives is a class C person misdemeanor.

(e) As used in subsections (a) and (b), "explosives" means any chemical compound, mixture or device, of which the primary purpose is to function by explosion, and includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord and igniters.

Sec.-24. 16. Section 223 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 223. (a) Cruelty to animals is:

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

(2) knowingly abandoning any animal in any place without making provisions for its proper care;
(3) having physical custody of any animal and knowingly failing to provide such food, potable water, protection from the elements, opportunity for exercise and other care as is needed for the health or well-being of such kind of animal;
(4) intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment;
(5) knowingly but not maliciously killing or injuring any animal; or
(6) administering any poison to any domestic animal.
(b) Cruelty to animals as defined in:
(1) Subsection (a)(1) or (a)(6) is a nonperson felony. Upon conviction of subsection (a)(1) or (a)(6), a person shall be sentenced to not less than 30 days or more than one year's imprisonment and be fined not less than $500 nor more than $5,000. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein. During the mandatory 30 days imprisonment, such offender shall have a psychological evaluation prepared for the court to assist the court in determining conditions of probation. Such conditions shall include, but not be limited to, the completion of an anger management program; and
(2) subsection (a)(2), (a)(3), (a)(4) or (a)(5) are a:
(A) Class A nonperson misdemeanor, except as provided in subsection (b)
(2)(B); and
(B) nonperson felony upon the second or subsequent conviction of cruelty to animals as defined in subsection (a)(2), (a)(3), (a)(4) or (a)(5). Upon such conviction, a person shall be sentenced to not less than five days or more than one year's imprisonment and be fined not less than $500 nor more than $2,500. The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served the minimum mandatory sentence as provided herein.
(c) The provisions of this section shall not apply to:
(1) Normal or accepted veterinary practices;
(2) bona fide experiments carried on by commonly recognized research facilities;
(3) killing, attempting to kill, trapping, catching or taking of any animal in accordance with the provisions of chapter 32 or chapter 47 of the Kansas Statutes Annotated, and amendments thereto;
(4) rodeo practices accepted by the rodeo cowboys' association;
(5) the humane killing of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane killing of animals for population control, by the owner thereof or the agent of such owner residing outside of a city or the owner thereof within a city if no animal shelter, pound or licensed veterinarian is within the city, or by a licensed veterinarian at the
request of the owner thereof, or by any officer or agent of an incorporated
humane society, the operator of an animal shelter or pound, a local or state
health officer or a licensed veterinarian three business days following the
receipt of any such animal at such society, shelter or pound;
(6) with respect to farm animals, normal or accepted practices of animal
husbandry, including the normal and accepted practices for the slaughter of
such animals for food or by-products and the careful or thrifty management of
one's herd or animals, including animal care practices common in the industry
or region;
(7) the killing of any animal by any person at any time which may be
found outside of the owned or rented property of the owner or custodian of
such animal and which is found injuring or posing a threat to any person, farm
animal or property;
(8) an animal control officer trained by a licensed veterinarian in the use
of a tranquilizer gun, using such gun with the appropriate dosage for the size
of the animal, when such animal is vicious or could not be captured after
reasonable attempts using other methods;
(9) laying an equine down for medical or identification purposes;
(10) normal or accepted practices of pest control, as defined in subsection
(x) of K.S.A. 2-2438a, and amendments thereto; or
(11) accepted practices of animal husbandry pursuant to regulations
promulgated by the United States department of agriculture for domestic pet
animals under the animal welfare act, public law 89-544, as amended and in
effect on July 1, 2006.
(d) The provisions of subsection (a)(6) shall not apply to any person
exposing poison upon their premises for the purpose of destroying wolves,
coyotes or other predatory animals.
(e) Any public health officer, law enforcement officer, licensed
veterinarian or officer or agent of any incorporated humane society, animal
shelter or other appropriate facility may take into custody any animal, upon
either private or public property, which clearly shows evidence of cruelty to
animals, as defined in this section. Such officer, agent or veterinarian may
inspect, care for or treat such animal or place such animal in the care of a duly
incorporated humane society or licensed veterinarian for treatment, boarding
or other care or, if an officer of such humane society or such veterinarian
determines that the animal appears to be diseased or disabled beyond recovery
for any useful purpose, for humane killing. If the animal is placed in the care
of an animal shelter, the animal shelter shall notify the owner or custodian, if
known or reasonably ascertainable. If the owner or custodian is charged with a
violation of this section, the board of county commissioners in the county
where the animal was taken into custody shall establish and approve
procedures whereby the animal shelter may petition the district court to be
allowed to place the animal for adoption or euthanize the animal at any time
after 2021 days after the owner or custodian is notified or, if the owner or
custodian is not known or reasonably ascertainable after 2021 days after the
animal is taken into custody, unless the owner or custodian of the animal files
a renewable cash or performance bond with the county clerk of the county
where the animal is being held, in an amount equal to not less than the cost of
care and treatment of the animal for 30 days. Upon receiving such petition, the
court shall determine whether the animal may be placed for adoption or
euthanized. The board of county commissioners in the county where the
animal was taken into custody shall review the cost of care and treatment
being charged by the animal shelter maintaining the animal.

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

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

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

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

(j) (i) As used in this section:

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

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

Sec.-22. 17. Section 224 of chapter 136 of the 2010 Session Laws of
Kansas is hereby amended to read as follows: Sec. 224. (a) Unlawful
disposition of animals is knowingly raffling, or giving as a prize or premium
or using as an advertising device or promotional display living rabbits or
chickens, ducklings or goslings.

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

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

Sec.–23. 18. Section 300 of chapter 136 of the 2010 Session Laws of Kansas is hereby amended to read as follows: Sec. 300. (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of section 246 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, regarding multiple sentences shall apply to the sentencing of offenders pursuant to the sentencing guidelines. The mandatory consecutive sentence requirements contained in subsections (c), (d) and (e) of section 246 of chapter 136 of the 2010 Session Laws of Kansas, and amendments thereto, shall not apply if such application would result in a manifest injustice.

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

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

(2) The sentencing judge shall establish a base sentence for the primary crime. The primary crime is the crime with the highest crime severity ranking. An off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. If sentences for off-grid and on-grid convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and the postrelease supervision term will be based on the off-grid crime. If more than one crime of conviction is classified in the same crime category, the sentencing judge shall designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge shall use the crime which presumes imprisonment as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of either both probation or both imprisonment, the sentencing judge shall use the crime with the longest sentence term as the primary crime.

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

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

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

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

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

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

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

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

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

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

Sec. 25. 20. This act shall take effect and be in force from and after its publication in the statute book.