

## HOUSE BILL No. 2986

By Committee on Judiciary

2-15

---

AN ACT concerning crimes, criminal procedure and punishment; relating to terrorism and terrorist activities; capital murder; search warrants; wire, oral or electronic communications; limitation of actions; inquisitions; DNA testing; amending K.S.A. 21-3301, 21-3302, 21-3303, 21-3439, 22-2502, 22-2504, 22-2514, 22-2515, 22-2516, 22-2518, 22-2527, 22-2528 and 22-2529 and K.S.A. 2001 Supp. 21-2511, 21-3106, 21-4706 and 22-3101 and repealing the existing sections; also repealing K.S.A. 2001 Supp. 65-4142.

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

New Section 1. (a) Terrorism is the commission of any felony with the intent to intimidate or coerce a civilian population, influence the policy of a unit of government or affect the conduct of a unit of government.

(b) Terrorism is an off-grid person felony and the sentence for which shall not be subject to applicable statutory provisions for suspended sentence, community work service or probation.

New Sec. 2. (a) Criminal use of a weapon of mass destruction is to knowingly manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another or acquire a nuclear, radiological, biological or chemical weapon of mass destruction.

(b) The provisions of this section shall not apply to: (1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) law enforcement officers with respect to any activities lawfully engaged in while carrying out their duties;

(3) officers of the state, or of any county, city or town, charged with the execution of the laws of the state, when acting in the discharge of their official duties;

(4) civil and law enforcement officers of the United States while in the discharge of their official duties;

(5) officers and soldiers of the national guard when called into actual service;

(6) persons under contract with, or working under the direction of, the United States, the state of Kansas or any agency of either government,

1 with respect to any activities lawfully engaged in under their contracts or  
2 pursuant to lawful direction;

3 (7) persons lawfully engaged in the development, production, man-  
4 ufacture, assembly, possession, transport, sale, purchase, delivery or ac-  
5 quisition of any biological agent, disease organism, toxic or poisonous  
6 chemical, radioactive substance or their immediate precursors, for pre-  
7 ventive, protective, educational, research or other peaceful purposes; and

8 (8) persons lawfully engaged in accepted agricultural, horticultural or  
9 forestry practices; aquatic weed control; or structural pest and rodent  
10 control, in a manner approved by the federal, state, county or local agency  
11 charged with authority over such activities.

12 (c) As used in this act “nuclear, radiological, biological or chemical  
13 weapon of mass destruction” means any of the following: (1) Any weapon,  
14 device or method that is designed or has the capability to cause death or  
15 serious injury through the release, dissemination or impact of: (A) Radi-  
16 ation or radioactivity;

17 (B) a disease organism; or

18 (C) toxic or poisonous chemicals or their immediate precursors;

19 (2) any substance that is designed or has the capability to cause death  
20 or serious injury and: (A) Contains radiation or radioactivity;

21 (B) is or contains toxic or poisonous chemicals or their immediate  
22 precursors; or

23 (C) is or contains one or more of the following: (i) Any select agent  
24 that is a microorganism, virus, bacterium, fungus, rickettsia or toxin listed  
25 in appendix a of part 72 of title 42 of the code of federal regulations;

26 (ii) any genetically modified microorganisms or genetic elements  
27 from an organism on appendix a of part 72 of title 42 of the code of  
28 federal regulations, shown to produce or encode for a factor associated  
29 with a disease; or

30 (iii) any genetically modified microorganisms or genetic elements that  
31 contain nucleic acid sequences coding for any of the toxins listed on ap-  
32 pendix a of part 72 of title 42 of the code of federal regulations, or their  
33 toxic submits; or

34 (3) the term “nuclear, radiological, biological or chemical weapon of  
35 mass destruction” also includes any combination of parts or substances  
36 either designed or intended for use in converting any device or substance  
37 into any nuclear, biological or chemical weapon of mass destruction or  
38 from which a nuclear, biological or chemical weapon of mass destruction  
39 may be readily assembled or created.

40 (d) Criminal use of a weapon of mass destruction is a severity level  
41 1, person felony.

42 New Sec. 3. (a) Criminal injury of another by use of a weapon of  
43 mass destruction is intentionally injuring another by the use of a nuclear,

1 radiological, biological or chemical weapon of mass destruction.

2 (b) As used in this section, “nuclear, radiological, biological or chem-  
3 ical weapon of mass destruction” means the same as provided in section  
4 2, and amendments thereto.

5 (c) Criminal injury of another by use of a weapon of mass destruction  
6 is an off-grid person felony.

7 New Sec. 4. (a) Criminal deposit for delivery of a weapon of mass  
8 destruction is depositing for delivery a nuclear, radiological, biological or  
9 chemical weapon of mass destruction with or attempting to have delivered  
10 by, the United State post office or other public or private business en-  
11 gaged in the delivery of mail, packages or parcels.

12 (b) As used in this section, “nuclear, radiological, biological or chem-  
13 ical weapon of mass destruction” means the same as provided in section  
14 2, and amendments thereto.

15 (c) Criminal deposit for delivery of a weapon of mass destruction is  
16 a severity level 1, person felony.

17 New Sec. 5. (a) A false report involving a weapon of mass destruc-  
18 tion is communicating by any means of communication to any person or group  
19 of persons, a report, knowing or having reason to know the report is false,  
20 that causes any person to reasonably believe that there is located at any  
21 place or structure whatsoever any nuclear, radiological, biological or  
22 chemical weapon of mass destruction.

23 (b) As used in this section, “nuclear, radiological, biological or chem-  
24 ical weapon of mass destruction” means the same as provided in section  
25 2, and amendments thereto.

26 (c) False report involving a weapon of mass destruction is a severity  
27 level 3, person felony. The court may order a person convicted under this  
28 section to pay restitution, including costs and consequential damages re-  
29 sulting from disruption of the normal activity that would have otherwise  
30 occurred but for the false report.

31 New Sec. 6. (a) Perpetration of a hoax by a weapon of mass destruc-  
32 tion is concealing, placing or displaying any device, object, machine, in-  
33 strument or artifact, with intent to perpetrate a hoax, causing any person  
34 to reasonably believe such device, object, machine, instrument or artifact  
35 to be a nuclear, radiological, biological or chemical weapon of mass  
36 destruction.

37 (b) As used in this section, “nuclear, radiological, biological or chem-  
38 ical weapon of mass destruction” means the same as provided in section  
39 2, and amendments thereto.

40 (c) Perpetration of a hoax by a weapon of mass destruction is a se-  
41 verity level 3, person felony. The court may order a person convicted  
42 under this section to pay restitution, including costs and consequential  
43 damages resulting from disruption of the normal activity that would have

1 otherwise occurred but for the hoax.

2 New Sec. 7. (a) Criminal interception or disclosure of intercepted  
3 information is: (1) Intentionally intercepting, endeavoring to intercept or  
4 procuring any other person to intercept or endeavor to intercept, any  
5 wire, oral or electronic communication;

6 (2) intentionally using, endeavoring to use or procuring any other  
7 person to use or endeavor to use any electronic, mechanical or other  
8 device to intercept any oral communication when: (A) Such device is  
9 affixed to, or otherwise transmits a signal through, a wire, cable or other  
10 like connection used in wire communication; or

11 (B) such device transmits communications by radio, or interferes with  
12 the transmission of such communication; or

13 (3) intentionally disclosing, or endeavoring to disclose, to any other  
14 person the contents of any wire, oral or electronic communication, know-  
15 ing or having reason to know that the information was obtained through  
16 the interception of a wire, oral or electronic communication in violation  
17 of this subsection;

18 (4) intentionally using, or endeavoring to use, the contents of any  
19 wire, oral or electronic communication, knowing or having reason to know  
20 that the information was obtained through the interception of a wire, oral  
21 or electronic communication in violation of this subsection; or

22 (5) intentionally disclosing, or endeavoring to disclose, to any other  
23 person the contents of any wire, oral or electronic communication, inter-  
24 cepted by means authorized by this act and: (A) Knowing or having reason  
25 to know that the information was obtained through the interception of  
26 such a communication in connection with a criminal investigation;

27 (B) having obtained or received the information in connection with  
28 a criminal investigation; and

29 (C) with intent to improperly obstruct, impede or interfere with a  
30 duly authorized criminal investigation.

31 (b) (1) It shall not be a violation of this section for an operator of a  
32 switchboard, or an officer, employee or agent of a provider of wire or  
33 electronic communication service, whose facilities are used in the trans-  
34 mission of a wire or electronic communication, to intercept, disclose or  
35 use that communication in the normal course of employment while en-  
36 gaged in any activity which is a necessary incident to the rendition of  
37 service or to the protection of the rights or property of the provider of  
38 that service, except that a provider of wire communication service to the  
39 public shall not utilize service observing or random monitoring except for  
40 mechanical or service quality control checks.

41 (2) Notwithstanding any other law, providers of wire or electronic  
42 communication service, their officers, employees and agents, landlords,  
43 custodians or other persons, are authorized to provide information, facil-

1 ities or technical assistance to persons authorized by law to intercept wire,  
2 oral or electronic communications or to conduct electronic surveillance,  
3 as defined in section 101 of the foreign intelligence surveillance act of  
4 1978 if such provider, its officers, employees or agents, landlord, custo-  
5 dian or other specified person, has been provided with: (A) A court order  
6 directing such assistance signed by the authorizing judge; or

7 (B) a certification in writing by the attorney general of the state of  
8 Kansas that no warrant or court order is required by law, that all statutory  
9 requirements have been met and that the specified assistance is required,  
10 setting forth the period of time during which the provision of the infor-  
11 mation, facilities or technical assistance is authorized and specifying the  
12 information, facilities or technical assistance required. No provider of  
13 wire or electronic communication service, officer, employee or agent  
14 thereof, or landlord, custodian or other specified person shall disclose the  
15 existence of any interception or surveillance or the device used to accom-  
16 plish the interception or surveillance with respect to which the person  
17 has been furnished a court order or certification under this section, except  
18 as may otherwise be required by legal process and then only after prior  
19 notification to the attorney general or to the principal prosecuting attor-  
20 ney of the county, as may be appropriate. Any such disclosure, shall ren-  
21 der such person liable for the civil damages provided for in this act. No  
22 cause of action shall lie in any court against any provider of wire or elec-  
23 tronic communication service, its officers, employees or agents, landlord,  
24 custodian or other specified person for providing information, facilities  
25 or assistance in accordance with the terms of a court order or certification  
26 under this section.

27 (3) It shall not be a violation of this section for an officer, employee  
28 or agent of the federal communications commission, in the normal course  
29 of employment and in discharge of the monitoring responsibilities exer-  
30 cised by the commission in the enforcement of chapter 5 of title 47 of  
31 the United States code, to intercept a wire or electronic communication  
32 or oral communication transmitted by radio, or to disclose or use the  
33 information thereby obtained.

34 (4) It shall not be a violation of this section for a person acting under  
35 color of law to intercept a wire, oral or electronic communication, where  
36 such person is a party to the communication or one of the parties to the  
37 communication has given prior consent to such interception.

38 (5) It shall not be a violation of this section for a person not acting  
39 under color of law to intercept a wire, oral or electronic communication  
40 where such person is a party to the communication or where one of the  
41 parties to the communication has given prior consent to such interception  
42 unless such communication is intercepted for the purpose of committing  
43 any criminal or tortious act in violation of the constitution or laws of the

1 United States or of Kansas.

2 (6) Notwithstanding any other provision of this section or section 705  
3 or 706 of the communications act of 1934, it shall not be a violation of  
4 this section for an officer, employee or agent of the United States in the  
5 normal course of official duty to conduct electronic surveillance, as de-  
6 fined in section 101 of the foreign intelligence surveillance act of 1978,  
7 as authorized by that act.

8 (7) Nothing contained in this section, or section 705 of the commu-  
9 nications act of 1934, shall be deemed to affect the acquisition by the  
10 United States government of foreign intelligence information from inter-  
11 national or foreign communications, or foreign intelligence activities con-  
12 ducted in accordance with otherwise applicable federal law involving a  
13 foreign electronic communications system, utilizing a means other than  
14 electronic surveillance as defined in section 101 of the foreign intelligence  
15 surveillance act of 1978, and procedures in this section and the foreign  
16 intelligence surveillance act of 1978 shall be the exclusive means by which  
17 electronic surveillance, as defined in section 101 of such act, and the  
18 interception of domestic wire, oral and electronic communications may  
19 be conducted.

20 (8) It shall not be a violation of this section for any person: (A) To  
21 intercept or access an electronic communication made through an elec-  
22 tronic communication system that is configured so that such electronic  
23 communication is readily accessible to the general public;

24 (B) to intercept any radio communication which is transmitted: (i) By  
25 any station for the use of the general public, or that relates to ships,  
26 aircraft, vehicles or persons in distress;

27 (ii) by any governmental, law enforcement, civil defense, private land  
28 mobile or public safety communications system, including police and fire,  
29 readily accessible to the general public;

30 (iii) by a station operating on an authorized frequency within the bands  
31 allocated to the amateur, citizens band or general mobile radio services;  
32 or

33 (iv) by any marine or aeronautical communications system;

34 (C) to engage in any conduct which: (i) Is prohibited by section 633  
35 of the communications act of 1934; or

36 (ii) is excepted from the application of section 705(a) of the com-  
37 munications act of 1934 by section 705(b) of that act;

38 (D) to intercept any wire or electronic communication the transmis-  
39 sion of which is causing harmful interference to any lawfully operating  
40 station or consumer electronic equipment, to the extent necessary to  
41 identify the source of such interference; or

42 (E) for other users of the same frequency to intercept any radio com-  
43 munication made through a system that utilizes frequencies monitored

1 by individuals engaged in the provision or the use of such system, if such  
2 communication is not scrambled or encrypted.

3 (9) It shall not be a violation of this section: (A) To use a pen register  
4 or a trap and trace device pursuant to K.S.A. 22- 2525, *et seq.*, and amend-  
5 ments thereto; or

6 (B) for a provider of electronic communication service to record the  
7 fact that a wire or electronic communication was initiated or completed  
8 in order to protect such provider, another provider furnishing service  
9 toward the completion of the wire or electronic communication, or a user  
10 of that service, from fraudulent, unlawful or abusive use of such service.

11 (10) It shall not be a violation of this section for a person acting under  
12 color of law to intercept the wire or electronic communications of a com-  
13 puter trespasser transmitted to, through or from the protected computer,  
14 if: (A) The owner or operator of the protected computer authorizes the  
15 interception of the computer trespasser's communications on the pro-  
16 tected computer;

17 (B) the person acting under color of law is lawfully engaged in an  
18 investigation;

19 (C) the person acting under color of law has reasonable grounds to  
20 believe that the contents of the computer trespasser's communications  
21 will be relevant to the investigation; and

22 (D) such interception does not acquire communications other than  
23 those transmitted to or from the computer trespasser.

24 (c) (1) Except as provided in subsection (c)(2), a person or entity  
25 providing an electronic communication service to the public shall not  
26 intentionally divulge the contents of any communication, other than one  
27 to such person or entity, or an agent thereof, while in transmission on  
28 that service to any person or entity other than an addressee or intended  
29 recipient of such communication or an agent of such addressee or in-  
30 tended recipient.

31 (2) A person or entity providing electronic communication service to  
32 the public may divulge the contents of any such communication: (A) As  
33 otherwise authorized in this act;

34 (B) with the lawful consent of the originator or any addressee or in-  
35 tended recipient of such communication;

36 (C) to a person employed or authorized, or whose facilities are used,  
37 to forward such communication to its destination; or

38 (D) which were inadvertently obtained by the service provider and  
39 which appear to pertain to the commission of a crime, if such divulgence  
40 is made to a law enforcement agency.

41 (d) Criminal interception or disclosure of intercepted information is  
42 a class 7, nonperson felony.

43 New Sec. 8. (a) It is unlawful for any person knowingly or intention-

1 ally to receive or acquire proceeds, or engage in transactions involving  
2 proceeds, known to be derived from the crime of terrorism, section 1,  
3 and amendments thereto, or any violation of the uniform controlled sub-  
4 stances act, K.S.A. 65-4101 *et seq.*, and amendments thereto. The pro-  
5 visions of this subsection do not apply to any transaction between an  
6 individual and that individual's counsel necessary to preserve that indi-  
7 vidual's right to representation, as guaranteed by section 10 of the bill of  
8 rights of the constitution of the state of Kansas and by the sixth amend-  
9 ment to the United States constitution. This exception does not create  
10 any presumption against or prohibition of the right of the state to seek  
11 and obtain forfeiture of any proceeds derived from a violation of the  
12 uniform controlled substances act and amendments thereto.

13 (b) It is unlawful for any person knowingly or intentionally to give,  
14 sell, transfer, trade, invest, conceal, transport or maintain an interest in  
15 or otherwise make available anything of value which that person knows  
16 is intended to be used for the purpose of committing or furthering the  
17 commission of the crime of terrorism, section 1, and amendments thereto,  
18 or any violation of the uniform controlled substances act, and amend-  
19 ments thereto.

20 (c) It is unlawful for any person knowingly or intentionally to direct,  
21 plan, organize, initiate, finance, manage, supervise or facilitate the trans-  
22 portation or transfer of proceeds known to be derived from the crime of  
23 terrorism, section 1, and amendments thereto, or any violation of the  
24 uniform controlled substances act, and amendments thereto.

25 (d) It is unlawful for any person knowingly or intentionally to conduct  
26 a financial transaction involving proceeds derived from the crime of ter-  
27 rorism, section 1, and amendments thereto, or a violation of the uniform  
28 controlled substances act, and amendments thereto when the transaction  
29 is designed in whole or in part to conceal or disguise the nature, location,  
30 source, ownership or control of the proceeds known to be derived from  
31 the crime of terrorism, section 1, and amendments thereto, or a violation  
32 of the uniform controlled substances act, and amendments thereto, or to  
33 avoid a transaction reporting requirement under state or federal law.

34 (e) (1) A person who violates this section, when the value of the pro-  
35 ceeds is less than \$5,000, is guilty of a severity level 7, nonperson felony.

36 (2) A person who violates this section, when the value of the proceeds  
37 is at least \$5,000 but less than \$100,000, is guilty of a severity level 5,  
38 nonperson felony.

39 (3) A person who violates this section, when the value of the proceeds  
40 is at least \$100,000 but less than \$500,000, is guilty of a severity level 3,  
41 nonperson felony.

42 (4) A person who violates this section, when the value of the proceeds  
43 is \$500,000 or more, is guilty of a severity level 1, nonperson felony.



1 (f) This section shall be part of and supplemental to the Kansas crim-  
2 inal code and amendments thereto.

3 Sec. 9. K.S.A. 2001 Supp. 21-2511 is hereby amended to read as  
4 follows: 21-2511. (a) Any person convicted as an adult or adjudicated as  
5 a juvenile offender because of the commission of any offense which re-  
6 quires such person to register as an offender pursuant to the Kansas  
7 offender registration act, K.S.A. 22-4901 *et seq.*, any off-grid felony, any  
8 nondrug severity level 1 through 6 felony, or a violation of *sections 1, 2,*  
9 *3, 4, 5 and 6, and amendments thereto*, subsection (a)(1) of K.S.A. 21-  
10 3505, 21-3508, 21-3602, 21-3715, 21-4310, subsections (e)(2), (e)(3) and  
11 (e)(4) of K.S.A. 65-4142 or K.S.A. 65-4159, and amendments thereto,  
12 including an attempt, conspiracy or criminal solicitation, as defined in  
13 K.S.A. 21-3301, 21-3302 or 21-3303 and amendments thereto, of any such  
14 offenses provided in this subsection regardless of the sentence imposed,  
15 shall be required to submit specimens of blood and saliva to the Kansas  
16 bureau of investigation in accordance with the provisions of this act, if  
17 such person is:

18 (1) Convicted as an adult or adjudicated as a juvenile offender be-  
19 cause of the commission of a crime specified in subsection (a) on or after  
20 the effective date of this act;

21 (2) ordered institutionalized as a result of being convicted as an adult  
22 or adjudicated as a juvenile offender because of the commission of a crime  
23 specified in subsection (a) on or after the effective date of this act; or

24 (3) convicted as an adult or adjudicated as a juvenile offender because  
25 of the commission of a crime specified in this subsection before the ef-  
26 fective date of this act and is presently confined as a result of such con-  
27 viction or adjudication in any state correctional facility or county jail or is  
28 presently serving a sentence under K.S.A. 21-4603, 22-3717 or 38-1663,  
29 and amendments thereto.

30 (b) Notwithstanding any other provision of law, the Kansas bureau of  
31 investigation is authorized to obtain fingerprints and other identifiers for  
32 all persons, whether juveniles or adults, covered by this act.

33 (c) Any person required by paragraphs (a)(1) and (a)(2) to provide  
34 specimens of blood and saliva shall be ordered by the court to have spec-  
35 imens of blood and saliva collected within 10 days after sentencing or  
36 adjudication:

37 (1) If placed directly on probation, that person must provide speci-  
38 mens of blood and saliva, at a collection site designated by the Kansas  
39 bureau of investigation. Failure to cooperate with the collection of the  
40 specimens and any deliberate act by that person intended to impede,  
41 delay or stop the collection of the specimens shall be punishable as con-  
42 tempt of court and constitute grounds to revoke probation;

43 (2) if sentenced to the secretary of corrections, the specimens of

1 blood and saliva will be obtained immediately upon arrival at the Topeka  
2 correctional facility; or

3 (3) if a juvenile offender is placed in the custody of the commissioner  
4 of juvenile justice, in a youth residential facility or in a juvenile correc-  
5 tional facility, the specimens of blood and saliva will be obtained imme-  
6 diately upon arrival.

7 (d) Any person required by paragraph (a)(3) to provide specimens of  
8 blood and saliva shall be required to provide such samples prior to final  
9 discharge or conditional release at a collection site designated by the  
10 Kansas bureau of investigation.

11 (e) The Kansas bureau of investigation shall provide all specimen vi-  
12 als, mailing tubes, labels and instructions necessary for the collection of  
13 blood and saliva samples. The collection of samples shall be performed  
14 in a medically approved manner. No person authorized by this section to  
15 withdraw blood and collect saliva, and no person assisting in the collection  
16 of these samples shall be liable in any civil or criminal action when the  
17 act is performed in a reasonable manner according to generally accepted  
18 medical practices. The withdrawal of blood for purposes of this act may  
19 be performed only by: (1) A person licensed to practice medicine and  
20 surgery or a person acting under the supervision of any such licensed  
21 person; (2) a registered nurse or a licensed practical nurse; or (3) any  
22 qualified medical technician including, but not limited to, an emergency  
23 medical technician-intermediate or mobile intensive care technician, as  
24 those terms are defined in K.S.A. 65-6112, and amendments thereto, or  
25 a phlebotomist. The samples shall thereafter be forwarded to the Kansas  
26 bureau of investigation for analysis and categorizing into genetic marker  
27 groupings.

28 (f) The genetic marker groupings shall be maintained by the Kansas  
29 bureau of investigation. The Kansas bureau of investigation shall establish,  
30 implement and maintain a statewide automated personal identification  
31 system capable of, but not limited to, classifying, matching and storing  
32 analysis of DNA (deoxyribonucleic acid) and other biological molecules.  
33 The genetic marker grouping analysis information and identification sys-  
34 tem as established by this act shall be compatible with the procedures  
35 specified by the federal bureau of investigation's combined DNA index  
36 system (CODIS). The Kansas bureau of investigation may participate in  
37 the CODIS program by sharing data and utilizing compatible test pro-  
38 cedures, laboratory equipment, supplies and computer software.

39 (g) The genetic marker grouping analysis information obtained pur-  
40 suant to this act shall be confidential and shall be released only to law  
41 enforcement officers of the United States, of other states or territories,  
42 of the insular possessions of the United States, or foreign countries duly  
43 authorized to receive the same, to all law enforcement officers of the state

1 of Kansas and to all prosecutor's agencies.

2 (h) The Kansas bureau of investigation shall be the state central re-  
3 pository for all genetic marker grouping analysis information obtained  
4 pursuant to this act. The Kansas bureau of investigation may promulgate  
5 rules and regulations for the form and manner of the collection of blood  
6 and saliva samples and other procedures for the operation of this act. The  
7 provisions of the Kansas administrative procedure act shall apply to all  
8 actions taken under the rules and regulations so promulgated.

9 Sec. 10. K.S.A. 2001 Supp. 21-3106 is hereby amended to read as  
10 follows: 21-3106. (1) A prosecution for murder , *terrorism, criminal use*  
11 *of a weapon of mass destruction and criminal injury of another by use of*  
12 *a weapon of mass destruction* may be commenced at any time.

13 (2) Except as provided by subsections (7) and (9), a prosecution for  
14 any of the following crimes must be commenced within five years after  
15 its commission if the victim is less than 16 years of age: (a) Indecent  
16 liberties with a child as defined in K.S.A. 21-3503 and amendments  
17 thereto; (b) aggravated indecent liberties with a child as defined in K.S.A.  
18 21-3504 and amendments thereto; (c) enticement of a child as defined in  
19 K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a  
20 child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggra-  
21 vated indecent solicitation of a child as defined in K.S.A. 21-3511 and  
22 amendments thereto; (f) sexual exploitation of a child as defined in K.S.A.  
23 21-3516 and amendments thereto; or (g) aggravated incest as defined in  
24 K.S.A. 21-3603 and amendments thereto.

25 (3) Except as provided in subsection (9), a prosecution for any crime  
26 must be commenced within 10 years after its commission if the victim is  
27 the Kansas public employees retirement system.

28 (4) Except as provided by subsections (7) and (9), a prosecution for  
29 rape, as defined in K.S.A. 21-3502 and amendments thereto, or aggra-  
30 vated criminal sodomy, as defined in K.S.A. 21-3506 and amendments  
31 thereto, must be commenced within five years after its commission.

32 (5) Except as provided in subsection (9), a prosecution for any crime  
33 found in the Kansas medicaid fraud control act must be commenced  
34 within five years after its commission.

35 (6) Except as provided by subsection (9), a prosecution for the crime  
36 of arson, as defined in K.S.A. 21-3718 and amendments thereto, or ag-  
37 gravated arson, as defined in K.S.A. 21-3719 and amendments thereto,  
38 must be commenced within five years after its commission.

39 (7) (a) Except as provided in subsection (9), a prosecution for any  
40 offense provided in subsection (2) or a sexually violent offense as defined  
41 in K.S.A. 22-3717, and amendments thereto, must be commenced within  
42 the limitation of time provided by the law pertaining to such offense or  
43 one year from the date on which the identity of the suspect is conclusively

1 established by DNA testing, whichever is later.

2 (b) For purposes of this section, “DNA” means deoxyribonucleic  
3 acid.

4 (8) Except as provided by subsection (9), a prosecution for any crime  
5 not governed by subsections (1), (2), (3), (4), (5), (6) and (7) must be  
6 commenced within two years after it is committed.

7 (9) The period within which a prosecution must be commenced shall  
8 not include any period in which:

9 (a) The accused is absent from the state;

10 (b) the accused is concealed within the state so that process cannot  
11 be served upon the accused;

12 (c) the fact of the crime is concealed;

13 (d) a prosecution is pending against the defendant for the same con-  
14 duct, even if the indictment or information which commences the pros-  
15 ecution is quashed or the proceedings thereon are set aside, or are re-  
16 versed on appeal;

17 (e) an administrative agency is restrained by court order from inves-  
18 tigating or otherwise proceeding on a matter before it as to any criminal  
19 conduct defined as a violation of any of the provisions of article 41 of  
20 chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated  
21 which may be discovered as a result thereof regardless of who obtains  
22 the order of restraint; or

23 (f) whether or not the fact of the crime is concealed by the active act  
24 or conduct of the accused, there is substantially competent evidence to  
25 believe two or more of the following factors are present: (i) The victim  
26 was a child under 15 years of age at the time of the crime; (ii) the victim  
27 was of such age or intelligence that the victim was unable to determine  
28 that the acts constituted a crime; (iii) the victim was prevented by a parent  
29 or other legal authority from making known to law enforcement author-  
30 ities the fact of the crime whether or not the parent or other legal au-  
31 thority is the accused; and (iv) there is substantially competent expert  
32 testimony indicating the victim psychologically repressed such witness’  
33 memory of the fact of the crime, and in the expert’s professional opinion  
34 the recall of such memory is accurate and free of undue manipulation,  
35 and substantial corroborating evidence can be produced in support of the  
36 allegations contained in the complaint or information but in no event may  
37 a prosecution be commenced as provided in this section later than the  
38 date the victim turns 28 years of age. Corroborating evidence may in-  
39 clude, but is not limited to, evidence the defendant committed similar  
40 acts against other persons or evidence of contemporaneous physical man-  
41 ifestations of the crime. “Parent or other legal authority” shall include  
42 but not be limited to natural and stepparents, grandparents, aunts, uncles  
43 or siblings.

1 (10) An offense is committed either when every element occurs, or,  
2 if a legislative purpose to prohibit a continuing offense plainly appears,  
3 at the time when the course of conduct or the defendant's complicity  
4 therein is terminated. Time starts to run on the day after the offense is  
5 committed.

6 (11) A prosecution is commenced when a complaint or information  
7 is filed, or an indictment returned, and a warrant thereon is delivered to  
8 the sheriff or other officer for execution. No such prosecution shall be  
9 deemed to have been commenced if the warrant so issued is not executed  
10 without unreasonable delay.

11 Sec. 11. K.S.A. 21-3301 is hereby amended to read as follows: 21-  
12 3301. (a) An attempt is any overt act toward the perpetration of a crime  
13 done by a person who intends to commit such crime but fails in the  
14 perpetration thereof or is prevented or intercepted in executing such  
15 crime.

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

19 (c) An attempt to commit an off-grid felony shall be ranked at  
20 nondrug severity level 1, *except that an attempt to commit a violation of*  
21 *section 1, and amendments thereto, is an off-grid felony.* An attempt to  
22 commit any other nondrug felony shall be ranked on the nondrug scale  
23 at two severity levels below the appropriate level for the underlying or  
24 completed crime. The lowest severity level for an attempt to commit a  
25 nondrug felony shall be level 10.

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

29 (e) An attempt to commit a class A person misdemeanor is a class B  
30 person misdemeanor. An attempt to commit a class A nonperson mis-  
31 demeanor is a class B nonperson misdemeanor.

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

34 Sec. 12. K.S.A. 21-3302 is hereby amended to read as follows: 21-  
35 3302. (a) A conspiracy is an agreement with another person to commit a  
36 crime or to assist in committing a crime. No person may be convicted of  
37 a conspiracy unless an overt act in furtherance of such conspiracy is al-  
38 leged and proved to have been committed by such person or by a co-  
39 conspirator.

40 (b) It shall be a defense to a charge of conspiracy that the accused  
41 voluntarily and in good faith withdrew from the conspiracy, and com-  
42 municated the fact of such withdrawal to one or more of the accused  
43 person's co-conspirators, before any overt act in furtherance of the con-

1 spiracy was committed by the accused or by a co-conspirator.

2 (c) Conspiracy to commit an off-grid felony shall be ranked at non-  
3 drug severity level 2, *except that conspiracy to commit a violation of sec-*  
4 *tion 1, and amendments thereto, is an off-grid felony and conspiracy to*  
5 *commit a violation of section 3, and amendments thereto, shall be ranked*  
6 *at nondrug severity level 1.* Conspiracy to commit any other nondrug  
7 felony shall be ranked on the nondrug scale at two severity levels below  
8 the appropriate level for the underlying or completed crime. The lowest  
9 severity level for conspiracy to commit a nondrug felony shall be level 10.

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

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

14 Sec. 13. K.S.A. 21-3303 is hereby amended to read as follows: 21-  
15 3303. (a) Criminal solicitation is commanding, encouraging or requesting  
16 another person to commit a felony, attempt to commit a felony or aid and  
17 abet in the commission or attempted commission of a felony for the pur-  
18 pose of promoting or facilitating the felony.

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

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

27 (d) Criminal solicitation to commit an off-grid felony shall be ranked  
28 at nondrug severity level 3, *except that criminal solicitation to commit a*  
29 *violation of section 3, and amendments thereto, shall be ranked at nondrug*  
30 *severity 1.* Criminal solicitation to commit any other nondrug felony shall  
31 be ranked on the nondrug scale at three severity levels below the appro-  
32 priate level for the underlying or completed crime. The lowest severity  
33 level for criminal solicitation to commit a nondrug felony shall be level  
34 10.

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

38 Sec. 14. K.S.A. 21-3439 is hereby amended to read as follows: 21-  
39 3439. (a) Capital murder is the:

40 (1) Intentional and premeditated killing of any person in the com-  
41 mission of kidnapping, as defined in K.S.A. 21-3420 and amendments  
42 thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421 and  
43 amendments thereto, when the kidnapping or aggravated kidnapping was

- 1 committed with the intent to hold such person for ransom;
- 2 (2) intentional and premeditated killing of any person pursuant to a  
3 contract or agreement to kill such person or being a party to the contract  
4 or agreement pursuant to which such person is killed;
- 5 (3) intentional and premeditated killing of any person by an inmate  
6 or prisoner confined in a state correctional institution, community cor-  
7 rectional institution or jail or while in the custody of an officer or em-  
8 ployee of a state correctional institution, community correctional insti-  
9 tution or jail;
- 10 (4) intentional and premeditated killing of the victim of one of the  
11 following crimes in the commission of, or subsequent to, such crime:  
12 Rape, as defined in K.S.A. 21-3502 and amendments thereto, criminal  
13 sodomy, as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505 and  
14 amendments thereto or aggravated criminal sodomy, as defined in K.S.A.  
15 21-3506 and amendments thereto, or any attempt thereof, as defined in  
16 K.S.A. 21-3301 and amendments thereto;
- 17 (5) intentional and premeditated killing of a law enforcement officer,  
18 as defined in K.S.A. 21-3110 and amendments thereto;
- 19 (6) intentional and premeditated killing of more than one person as  
20 a part of the same act or transaction or in two or more acts or transactions  
21 connected together or constituting parts of a common scheme or course  
22 of conduct; ~~or~~
- 23 (7) intentional and premeditated killing of a child under the age of  
24 14 in the commission of kidnapping, as defined in K.S.A. 21-3420 and  
25 amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-  
26 3421 and amendments thereto, when the kidnapping or aggravated kid-  
27 napping was committed with intent to commit a sex offense upon or with  
28 the child or with intent that the child commit or submit to a sex offense;
- 29 (8) *intentional and premeditated killing of any person in furtherance*  
30 *of an act of terrorism, as defined in section 1, and amendments thereto;*  
31 *or*
- 32 (9) *intentional and premeditated killing of any person by use of a*  
33 *weapon of mass destruction as defined in section 2, amendments thereto.*
- 34 (b) For purposes of this section, “sex offense” means rape, as defined  
35 in K.S.A. 21-3502 and amendments thereto, aggravated indecent liberties  
36 with a child, as defined in K.S.A. 21-3504 and amendments thereto, ag-  
37 gravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments  
38 thereto, prostitution, as defined in K.S.A. 21-3512 and amendments  
39 thereto, promoting prostitution, as defined in K.S.A. 21-3513 and amend-  
40 ments thereto or sexual exploitation of a child, as defined in K.S.A. 21-  
41 3516 and amendments thereto.
- 42 (c) Capital murder is an off-grid person felony.
- 43 (d) This section shall be part of and supplemental to the Kansas crim-

1 inal code.

2 Sec. 15. K.S.A. 2001 Supp. 21-4706 is hereby amended to read as  
3 follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the  
4 sentences of imprisonment shall represent the time a person shall actually  
5 serve, subject to a reduction of up to 15% of the primary sentence for  
6 good time as authorized by law.

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

8 (c) Violations of K.S.A. 21-3401, 21-3439 ~~and~~, 21-3801, *section 1, an*  
9 *attempt to commit a violation of section 1, and section 3*, and amendments  
10 thereto are off-grid crimes for the purpose of sentencing. Except as oth-  
11 erwise provided by K.S.A. 21-4622 through 21-4627, and 21-4629 through  
12 21-4631, and amendments thereto, the sentence shall be imprisonment  
13 for life.

14 Sec. 16. K.S.A. 22-2502 is hereby amended to read as follows: 22-  
15 2502. (a) A search warrant shall be issued only upon the oral or written  
16 statement, including those conveyed or received by ~~telefacsimile~~ *elec-*  
17 *tronic* communication, of any person under oath or affirmation which  
18 states facts sufficient to show probable cause that a crime has been or is  
19 being committed and which particularly describes a person, place or  
20 means of conveyance to be searched and things to be seized. Any state-  
21 ment which is made orally, *either in person or by electronic transmission*,  
22 shall be either taken down by a certified shorthand reporter, sworn to  
23 under oath and made part of the application for a search warrant, or  
24 recorded before the magistrate from whom the search warrant is re-  
25 quested and sworn to under oath. Any statement orally made shall be  
26 reduced to writing as soon thereafter as possible. If the magistrate is  
27 satisfied that grounds for the application exist or that there is probable  
28 cause to believe that they exist, the magistrate may issue a search warrant  
29 for the seizure of the following:

30 (1) Any things which have been used in the commission of a crime,  
31 or any contraband or any property which constitutes or may be considered  
32 a part of the evidence, fruits or instrumentalities of a crime under the  
33 laws of this state, any other state or of the United States. The term "fruits"  
34 as used in this act shall be interpreted to include any property into which  
35 the thing or things unlawfully taken or possessed may have been  
36 converted.

37 (2) Any person who has been kidnapped in violation of the laws of  
38 this state or who has been kidnapped in another jurisdiction and is now  
39 concealed within this state.

40 (3) Any human fetus or human corpse.

41 (4) Any person for whom a valid felony arrest warrant has been issued  
42 in this state or in another jurisdiction.

43 (b) Before ruling on a request for a search warrant, the magistrate



1 may require the affiant to appear personally and may examine under oath  
2 the affiant and any witnesses that the affiant may produce. Such pro-  
3 ceeding shall be taken down by a certified shorthand reporter or record-  
4 ing equipment and made part of the application for a search warrant.

5 (c) Affidavits or sworn testimony in support of the probable cause  
6 requirement of this section shall not be made available for examination  
7 without a written order of the court, except that such affidavits or testi-  
8 mony when requested shall be made available to the defendant or the  
9 defendant's counsel for such disposition as either may desire.

10 (d) As used in this section, ~~telefacsimile~~ *electronic* communication  
11 means the use of ~~electronic telefacsimile, telephonic, radio, satellite or~~  
12 ~~other equipment to send or transfer a copy of an original document via~~  
13 ~~telephone lines~~ *the oral or written information.*

14 Sec. 17. K.S.A. 22-2504 is hereby amended to read as follows: 22-  
15 2504. All search warrants shall show the time and date of issuance and  
16 shall be the warrants of the magistrate issuing the same and not the war-  
17 rants of the court in which he is then sitting and such warrants need not  
18 bear the seal of the court or clerk thereof. Such warrants may be trans-  
19 mitted by ~~telefacsimile~~ *electronic* communication, as defined in K.S.A.  
20 22-2502, and amendments thereto. The statement on which the warrant  
21 is issued need not be filed with the clerk of the court nor with the court  
22 if there is no clerk until the warrant has been executed or has been re-  
23 turned "not executed."

24 Sec. 18. K.S.A. 22-2514 is hereby amended to read as follows: 22-  
25 2514. This act shall be a part of and supplemental to the code of criminal  
26 procedure. As used in this act:

27 (1) "Wire communication" means any aural transfer made in whole  
28 or in part through the use of facilities for the transmission of communi-  
29 cations by the aid of wire, cable or other like connection between the  
30 point of origin and the point of reception, including the use of such con-  
31 nection in a switching station, furnished or operated by any person en-  
32 gaged in providing or operating such facilities for the transmission of  
33 intrastate, interstate or foreign communications. ~~Wire communication~~  
34 ~~shall include any electronic storage of such communication;~~

35 (2) "oral communication" means any oral communication uttered by  
36 a person exhibiting an expectation that such communication is not subject  
37 to interception under circumstances justifying such expectation, but such  
38 term does not include any electronic communication;

39 (3) "intercept" means the aural or other acquisition of the contents  
40 of any wire, oral or electronic communication through the use of any  
41 electronic, mechanical or other device;

42 (4) "persons" means any individual, partnership, association, joint  
43 stock company, trust or corporation, including any official, employee or

1 agent of the United States or any state or any political subdivision thereof;

2 (5) “investigative or law enforcement officer” means any law enforce-  
3 ment officer who is empowered by the law of this state to conduct inves-  
4 tigations of or to make arrests for offenses enumerated in this act, in-  
5 cluding any attorney authorized by law to prosecute or participate in the  
6 prosecution of such offenses and agents of the United States federal bu-  
7 reau of investigation, drug enforcement administration, marshals service,  
8 secret service, treasury department, customs service, justice department  
9 and internal revenue service;

10 (6) “contents” when used with respect to any wire, oral or electronic  
11 communication, includes any information concerning the substance, pur-  
12 port or meaning of such communication;

13 (7) “aggrieved person” means a person who was a party to any inter-  
14 cepted wire, oral or electronic communication or a person against whom  
15 the interception was directed;

16 (8) “judge of competent jurisdiction” means a justice of the supreme  
17 court, a judge of the court of appeals or any district judge but does not  
18 include a district magistrate judge;

19 (9) “electronic, mechanical or other device” means any device or ap-  
20 paratus which can be used to intercept a wire, oral or electronic com-  
21 munication other than:

22 (a) Any telephone or telegraph instrument, equipment or facility, or  
23 any component thereof, (i) furnished to the subscriber or user by a pro-  
24 vider of wire or electronic communication service in the ordinary course  
25 of its business and being used by the subscriber or user in the ordinary  
26 course of its business or furnished by such subscriber or user for con-  
27 nection to the facilities of such service and used in the ordinary course  
28 of its business or (ii) being used by a provider of wire or electronic com-  
29 munication service in the ordinary course of its business, or by an inves-  
30 tigative or law enforcement officer in the ordinary course of the officer’s  
31 duties; or

32 (b) a hearing aid or similar device being used to correct subnormal  
33 hearing to not better than normal;

34 (10) “communication common carrier” means common carrier, as  
35 defined by section 153(h) of title 47 of the United States code, *as in effect*  
36 *on the effective date of this act*;

37 (11) “electronic communication” means any transfer of signs, signals,  
38 writing, images, sounds, data or intelligence of any nature transmitted in  
39 whole or in part by a wire, radio, electromagnetic, photoelectronic or  
40 photo-optical system but does not include:

41 (a) Any wire or oral communication;

42 (b) any communication made through a tone-only paging device; or

43 (c) any communication from a tracking device, as defined in section

1 3117, chapter 205 of title 18, United States code;

2 (12) “user” means any person or entity who:

3 (a) Uses an electronic communication service; and

4 (b) is duly authorized by the provider of such service to engage in  
5 such use;

6 (13) “electronic communications system” means any wire, radio, elec-  
7 tromagnetic, photo-optical or photoelectronic facilities for the transmis-  
8 sion of electronic communications, and any computer facilities or related  
9 electronic equipment for the electronic storage of such communications;

10 (14) “electronic communication service” means any service which  
11 provides to users thereof the ability to send or receive wire or electronic  
12 communications;

13 (15) “readily accessible to the general public” means, with respect to  
14 a radio communication, that such communication is not:

15 (a) Scrambled or encrypted;

16 (b) transmitted using modulation techniques whose essential para-  
17 meters have been withheld from the public with the intention of pre-  
18 serving the privacy of such communication;

19 (c) carried on a subcarrier or other signal subsidiary to a radio  
20 transmission;

21 (d) transmitted over a communication system provided by a common  
22 carrier, unless the communication is a tone-only paging system commu-  
23 nication; or

24 (e) transmitted on frequencies allocated under part 25, subpart D, E  
25 or F of part 74, or part 94 of the rules of the federal communications  
26 commission, unless, in the case of a communication transmitted on a  
27 frequency allocated under part 74 that is not exclusively allocated to  
28 broadcast auxiliary services, the communication is a two-way voice com-  
29 munication by radio;

30 (16) “electronic storage” means:

31 (a) Any temporary, intermediate storage of a wire or electronic com-  
32 munication incidental to the electronic transmission thereof; and

33 (b) any storage of such communication by an electronic communi-  
34 cation service for purposes of backup protection of such communication;  
35 ~~and~~

36 (17) “aural transfer” means a transfer containing the human voice at  
37 any point between and including the point of origin and the point of  
38 reception;

39 (18) “foreign intelligence information” means:

40 (a) Information, whether or not concerning a United States person,  
41 that relates to the ability of the United States to protect against:

42 (i) Actual or potential attack or other grave hostile acts of a foreign  
43 power or an agent of a foreign power;

1 (ii) *sabotage or international terrorism by a foreign power or an agent*  
2 *of a foreign power; or*

3 (iii) *clandestine intelligence activities by an intelligence service or net-*  
4 *work of a foreign power or by an agent of a foreign power; or*

5 (b) *information, whether or not concerning a United States person,*  
6 *with respect to a foreign power or foreign territory that relates to:*

7 (i) *The national defense or the security of the United States; or*

8 (ii) *the conduct of the foreign affairs of the United States;*

9 (20) *“protected computer” means the same as provided in K.S.A. 2001*  
10 *Supp. 21-3755 and amendments thereto; and*

11 (21) *“computer trespasser” means a person who accesses a protected*  
12 *computer without authorization and thus has no reasonable expectation*  
13 *of privacy in any communication transmitted to, through or from the*  
14 *protected computer. “Computer trespasser” does not include a person*  
15 *known by the owner or operator of the protected computer to have an*  
16 *existing contractual relationship with the owner or operator of the pro-*  
17 *ected computer for access to all or part of the protected computer.*

18 Sec. 19. K.S.A. 22-2515 is hereby amended to read as follows: 22-  
19 2515. (a) An *ex parte* order authorizing the interception of a wire, oral or  
20 electronic communication may be issued by a judge of competent juris-  
21 diction. The attorney general, district attorney or county attorney may  
22 make an application to any judge of competent jurisdiction for an order  
23 authorizing the interception of a wire, oral or electronic communication  
24 by an investigative or law enforcement officer and agency having respon-  
25 sibility for the investigation of the offense regarding which the application  
26 is made, when such interception may provide evidence of the commission  
27 of any of the following offenses:

28 (1) Any crime directly and immediately affecting the safety of a hu-  
29 man life which is a felony;

30 (2) murder;

31 (3) kidnapping;

32 (4) treason;

33 (5) sedition;

34 (6) racketeering;

35 (7) commercial bribery;

36 (8) robbery;

37 (9) theft, if the offense would constitute a felony;

38 (10) bribery;

39 (11) any violation of the uniform controlled substances act, if the  
40 offense would constitute a felony;

41 (12) commercial gambling;

42 (13) sports bribery;

43 (14) tampering with a sports contest;

- 1 (15) aggravated escape;
- 2 (16) aggravated failure to appear;
- 3 (17) arson; ~~or~~
- 4 (18) *terrorism*;
- 5 (19) *criminal use of a weapon of mass destruction*;
- 6 (20) *computer crime*; or
- 7 (21) any conspiracy to commit any of the foregoing offenses.

8 (b) Any investigative or law enforcement officer who, by any means  
9 authorized by this act or by chapter 119 of title 18 of the United States  
10 code, has obtained knowledge of the contents of any wire, oral or elec-  
11 tronic communication, or evidence derived therefrom, may disclose such  
12 contents to another investigative or law enforcement officer to the extent  
13 that such disclosure is appropriate to the proper performance of the of-  
14 ficial duties of the officer making or receiving the disclosure.

15 (c) Any investigative or law enforcement officer who, by any means  
16 authorized by this act or by chapter 119 of title 18 of the United States  
17 code, has obtained knowledge of the contents of any wire, oral or elec-  
18 tronic communication, or evidence derived therefrom, may use such con-  
19 tents to the extent such use is appropriate to the proper performance of  
20 such officer's official duties.

21 (d) Any person who has received, by any means authorized by this  
22 act or by chapter 119 of title 18 of the United States code or by a like  
23 statute of any other state, any information concerning a wire, oral or  
24 electronic communication, or evidence derived therefrom, intercepted in  
25 accordance with the provisions of this act, may disclose the contents of  
26 such communication or such derivative evidence while giving testimony  
27 under oath or affirmation in any criminal proceeding in any court, or  
28 before any grand jury, of this state or of the United States or of any other  
29 state.

30 (e) No otherwise privileged wire, oral or electronic communication  
31 intercepted in accordance with, or in violation of, the provisions of this  
32 act or of chapter 119 of title 18 of the United States code shall lose its  
33 privileged character.

34 (f) When an investigative or law enforcement officer, while engaged  
35 in intercepting wire, oral or electronic communications in the manner  
36 authorized by this act, intercepts wire, oral or electronic communications  
37 relating to offenses other than those specified in the order authorizing  
38 the interception of the wire, oral or electronic communication, the con-  
39 tents thereof and evidence derived therefrom may be disclosed or used  
40 as provided in subsections (b) and (c) of this section. Such contents and  
41 evidence derived therefrom may be used under subsection (d) of this  
42 section when authorized or approved by a judge of competent jurisdic-  
43 tion, where such judge finds on subsequent application, made as soon as

1 practicable, that the contents were otherwise intercepted in accordance  
2 with the provisions of this act, or with chapter 119 of title 18 of the United  
3 States code.

4 Sec. 20. K.S.A. 22-2516 is hereby amended to read as follows: 22-  
5 2516. (1) Each application for an order authorizing the interception of a  
6 wire, oral or electronic communication shall be made in writing, upon  
7 oath or affirmation, to a judge of competent jurisdiction, and shall state  
8 the applicant's authority to make such application. Each application shall  
9 include the following information:

10 (a) The identity of the prosecuting attorney making the application,  
11 and the identity of the investigative or law enforcement officer requesting  
12 such application to be made;

13 (b) A full and complete statement of the facts and circumstances re-  
14 lied upon by the applicant to justify such applicant's belief that an order  
15 should be issued, including (i) details as to the particular offense that has  
16 been, is being or is about to be committed, (ii) except as provided in  
17 ~~subsection~~ *subsections (10) and (12)*, a particular description of the nature  
18 and location of the facilities from which or the place where the commu-  
19 nication is to be intercepted, (iii) a particular description of the type of  
20 communications sought to be intercepted, and (iv) the identity of the  
21 person, if known, committing the offense and whose communications are  
22 to be intercepted;

23 (c) A full and complete statement as to whether or not other inves-  
24 tigative procedures have been tried and failed or why they reasonably  
25 appear to be unlikely to succeed if tried or to be too dangerous;

26 (d) A statement of the period of time for which the interception is  
27 required to be maintained and, if the nature of the investigation is such  
28 that the authorization for interception should not automatically terminate  
29 when the described type of communication first has been obtained, a  
30 particular description of facts establishing probable cause to believe that  
31 additional communications of the same type will occur thereafter;

32 (e) A full and complete statement of the facts known to the applicant  
33 concerning all previous applications made to any judge for authorization  
34 to intercept wire, oral or electronic communications involving any of the  
35 same persons, facilities or places specified in the application, and the  
36 action taken by the judge on each such application; and

37 (f) Where the application is for the extension of an order, a statement  
38 setting forth the results thus far obtained from the interception, or a  
39 reasonable explanation of the failure to obtain such results.

40 (2) The judge may require the applicant to furnish additional testi-  
41 mony or documentary evidence in support of the application. Oral testi-  
42 mony shall be under oath or affirmation, and a record of such testimony  
43 shall be made by a certified shorthand reporter and reduced to writing.

1 (3) Upon such application the judge may enter an *ex parte* order, as  
2 requested or as modified, authorizing the interception of wire, oral or  
3 electronic communications within the ~~territorial jurisdiction of such judge~~  
4 *anywhere within the territorial boundaries of the state of Kansas*, if the  
5 judge determines on the basis of the facts submitted by the applicant that:

6 (a) There is probable cause for belief that a person is committing, has  
7 committed or is about to commit a particular offense enumerated in sub-  
8 section (1) of K.S.A. 22-2515 and amendments thereto;

9 (b) there is probable cause for belief that particular communications  
10 concerning the offense will be obtained through such interception;

11 (c) normal investigative procedures have been tried and have failed,  
12 or reasonably appear to be unlikely to succeed if tried, or to be too dan-  
13 gerous; and

14 (d) except as provided in ~~subsection~~ *subsections (10) and 12*, there is  
15 probable cause for belief that the facilities from which, or the place where,  
16 the wire, oral or electronic communications are to be intercepted are  
17 being used, or are about to be used, in connection with the commission  
18 of such offense, or are leased to, listed in the name of or commonly used  
19 by such person.

20 (4) Each order authorizing the interception of any wire, oral or elec-  
21 tronic communication shall:

22 (a) Specify the identity of the person, if known, whose communica-  
23 tions are to be intercepted;

24 (b) *except as provided in subsection (12)*, specify the nature and lo-  
25 cation of the communications facilities as to which, or the place where,  
26 authority to intercept is granted;

27 (c) specify with particularity a description of the type of communi-  
28 cation sought to be intercepted, and a statement of the particular offense  
29 to which it relates;

30 (d) specify the identity of each agency authorized to intercept the  
31 communications, and of the person authorizing the application;

32 (e) specify the period of time during which such interception is au-  
33 thorized, including a statement as to whether or not the interception shall  
34 automatically terminate when the described communication has been first  
35 obtained; and

36 (f) upon request of the applicant, direct that a provider of wire or  
37 electronic communication service or public utility, landlord, custodian or  
38 other person shall furnish the applicant forthwith all information, facilities  
39 and technical assistance necessary to accomplish the interception unob-  
40 trusively and with a minimum of interference with the services that such  
41 service provider, utility, landlord, custodian or person is according the  
42 person whose communications are to be intercepted. Any provider of wire  
43 or electronic communication service or public utility, landlord, custodian

1 or other person furnishing such facilities or technical assistance shall be  
2 compensated therefor by the applicant for reasonable expenses incurred  
3 in providing such facilities or technical assistance.

4 (5) No order entered under this section may authorize the interception  
5 of any wire, oral or electronic communication for any period longer  
6 than is necessary to achieve the objective of the authorization, nor in any  
7 event longer than 30 days. Such thirty-day period begins on the earlier  
8 of the day on which the investigative or law enforcement officer first  
9 begins to conduct an interception under the order or 10 days after the  
10 order is entered. Extensions of an order may be granted, but only upon  
11 application for an extension made in accordance with subsection (1) of  
12 this section and the court making the findings required by subsection (3)  
13 of this section. The period of any such extension shall be no longer than  
14 the authorizing judge deems necessary to achieve the purposes for which  
15 it was granted and in no event for longer than 30 days. Every order and  
16 extension thereof shall contain a provision that the authorization to in-  
17 tercept shall be executed as soon as practicable, shall be conducted in  
18 such a way as to minimize the interception of communications not oth-  
19 erwise subject to interception under this act, and must terminate upon  
20 attainment of the authorized objective, or in any event in 30 days. In the  
21 event the intercepted communication is in a code or foreign language,  
22 and an expert in that foreign language or code is not reasonably available  
23 during the interception period, minimization may be accomplished as  
24 soon as practicable after such interception. An interception under this  
25 chapter may be conducted in whole or in part by government personnel,  
26 or by an individual operating under a contract with the government, act-  
27 ing under the supervision of an investigative or law enforcement officer  
28 authorized to conduct the interception.

29 (6) Whenever an order authorizing the interception of wire or oral  
30 communications is entered pursuant to this act, the order may require  
31 reports to be made to the judge who issued the order showing what  
32 progress has been made toward achievement of the authorized objective  
33 and the need for continued interception. Such reports shall be made at  
34 such intervals as the judge may require.

35 (7) (a) The contents of any wire, oral or electronic communication  
36 intercepted by any means authorized by this act shall be recorded, if  
37 possible, on tape or wire or other comparable device. The recording of  
38 the contents of any wire, oral or electronic communication under this  
39 subsection shall be done in a manner which will protect the recording  
40 from editing or other alterations. Immediately upon the expiration of the  
41 period of the order, or extensions thereof, such recordings shall be made  
42 available to the judge issuing such order and sealed under such judge's  
43 directions. Custody of the recordings shall be wherever the judge orders,



1 and the recordings shall not be destroyed except upon order of the issuing  
2 or denying judge and, in any event, shall be kept for not less than 10  
3 years. Duplicate recordings may be made for use or disclosure pursuant  
4 to the provisions of subsections (2) and (3) of K.S.A. 22-2515 and amend-  
5 ments thereto for investigations. The presence of the seal provided for  
6 by this subsection, or a satisfactory explanation for the absence thereof,  
7 shall be a prerequisite for the use or disclosure of the contents of any  
8 wire, oral or electronic communication or evidence derived therefrom  
9 under subsection (4) of K.S.A. 22-2515 and amendments thereto.

10 (b) Applications made and orders granted under this act shall be  
11 sealed by the judge. Custody of the applications and orders shall be wher-  
12 ever the judge directs. Such applications and orders shall be disclosed  
13 only upon a showing of good cause before a judge of competent jurisdic-  
14 tion and shall not be destroyed except on order of the issuing or denying  
15 judge, and in any event shall be kept for not less than 10 years.

16 (c) Any violation of the provisions of paragraph (a) or (b) of this sub-  
17 section may be punished as contempt of the issuing or denying judge.

18 (d) Within a reasonable time but not later than 90 days after the  
19 termination of the period of an order or extensions thereof the issuing or  
20 denying judge shall cause to be served on the persons named in the order  
21 or the application and, in the interest of justice, such other parties to  
22 intercepted communications as the judge may determine, an inventory  
23 which shall include notice of:

- 24 (i) the fact of the entry of the order or the application;
- 25 (ii) the date of the entry and the period of authorized, approved or  
26 disapproved interception, or the denial of the application; and
- 27 (iii) the fact that during the period wire, oral or electronic communi-  
28 cations were or were not intercepted.

29 The judge, upon the filing of a motion in such judge's discretion, may  
30 make available to such person or such person's counsel for inspection,  
31 such portions of the intercepted communications, applications and orders  
32 as the judge determines to be in the interest of justice. On an *ex parte*  
33 showing of good cause to a judge of competent jurisdiction the serving  
34 of the inventory required by this subsection may be postponed.

35 (8) The contents of any intercepted wire, oral or electronic commu-  
36 nication or evidence derived therefrom shall not be received in evidence  
37 or otherwise disclosed in any trial, hearing or other proceeding in any  
38 federal court or court of this state, unless each party, not less than 10  
39 days before the trial, hearing or proceeding, has been furnished with a  
40 copy of the court order, and accompanying application, under which the  
41 interception was authorized. Such ten-day period may be waived by the  
42 judge, if the judge finds that it was not possible to furnish the party with  
43 the above information 10 days before the trial, hearing or proceeding,

1 and that the party will not be prejudiced by the delay in receiving such  
2 information.

3 (9) (a) Any aggrieved person in any trial, hearing or proceeding in or  
4 before any court, department, officer, agency, regulatory body or other  
5 authority of the United States, this state, or a political subdivision thereof,  
6 may move to suppress the contents of any intercepted wire or oral com-  
7 munication, or evidence derived therefrom, on the grounds that:

- 8 (i) The communication was unlawfully intercepted;  
9 (ii) The order of authorization under which it was intercepted is in-  
10 sufficient on its face; or  
11 (iii) The interception was not made in conformity with the order of  
12 authorization.

13 Such motion shall be made before the trial, hearing or proceeding,  
14 unless there was no opportunity to make such motion or the person was  
15 not aware of the grounds of the motion. If the motion is granted, the  
16 contents of the intercepted wire or oral communication, or evidence de-  
17 rived therefrom, shall be treated as having been obtained in violation of  
18 this act. Upon the filing of such motion by the aggrieved person, the judge  
19 in such judge's discretion may make available to the aggrieved person or  
20 such person's counsel for inspection such portions of the intercepted  
21 communication or evidence derived therefrom as the judge determines  
22 to be in the interest of justice.

23 (b) In addition to any other right to appeal, the state shall have the  
24 right to appeal:

25 (i) From an order granting a motion to suppress made under para-  
26 graph (a) of this subsection. Such appeal shall be taken within 10 days  
27 after the order of suppression was entered and shall be diligently prose-  
28 cuted as in the case of other interlocutory appeals or under such rules as  
29 the supreme court may adopt;

30 (ii) From an order denying an application for an order authorizing  
31 the interception of wire or oral communications, and any such appeal  
32 shall be *ex parte* and shall be in camera in preference to all other pending  
33 appeals in accordance with rules promulgated by the supreme court.

34 (10) The requirements of subsections (1)(b)(ii) and (3)(d) of this sec-  
35 tion relating to the specification of the facilities from which, or the place  
36 where, the communication is to be intercepted do not apply if:

37 (a) In the case of an application with respect to the interception of  
38 an oral communication:

39 (i) The application is by a law enforcement officer and is approved  
40 by the attorney general and the county or district attorney where the  
41 application is sought;

42 (ii) the application contains a full and complete statement as to why  
43 such specification is not practical and identifies the person committing

1 the offense and whose communications are to be intercepted; and  
2 (iii) the judge finds that such specification is not practical; and  
3 (b) in the case of an application with respect to a wire or electronic  
4 communication:

5 (i) the application is by a law enforcement officer and is approved by  
6 the attorney general and the county or district attorney where the appli-  
7 cation is sought;

8 (ii) the application identifies the person believed to be committing  
9 the offense and whose communications are to be intercepted and the  
10 applicant makes a showing of a purpose, on the part of that person, to  
11 thwart interception by changing facilities; and

12 (iii) the judge finds that such purpose has been adequately shown.

13 (11) An interception of a communication under an order with respect  
14 to which the requirements of subsections (1)(b)(ii) and (3)(d) of this sec-  
15 tion do not apply by reason of subsection (10) shall not begin until the  
16 facilities from which, or the place where, the communication is to be  
17 intercepted is ascertained by the person implementing the interception  
18 order. A provider of wire or electronic communications service that has  
19 received an order as provided for in subsection (10)(b) may move the  
20 court to modify or quash the order on the ground that its assistance with  
21 respect to the interception cannot be performed in a timely or reasonable  
22 fashion. The court, upon notice to the government, shall decide such a  
23 motion expeditiously.

24 (12) (a) *In the event that the order sought is for the purpose of pre-*  
25 *venting acts of terrorism or any conspiracy to commit acts of terrorism,*  
26 *the court may issue an order that does not specify a particular description*  
27 *of the nature and location of the facilities from which or the place where*  
28 *the communication is to be intercepted.*

29 (b) *In the event an order is granted under the terms of subsection*  
30 *(12)(a) the order shall be interpreted to allow for the interception of any*  
31 *wire, oral or electronic communication communicated by the identified*  
32 *person or communicated to the identified person.*

33 (c) *An order granted under the terms of subsection (12)(a) shall be*  
34 *enforceable anywhere within the territorial boundaries of the state of Kan-*  
35 *sas.*

36 (↔) (13) The remedies and sanctions described in this chapter with  
37 respect to the interception of electronic communications are the only  
38 judicial remedies and sanctions for nonconstitutional violations of this act  
39 involving such communications.

40 Sec. 21. K.S.A. 22-2518 is hereby amended to read as follows: 22-  
41 2518. (1) Any person whose wire, oral or electronic communication is  
42 intercepted, disclosed or used in violation of this act shall have a civil  
43 cause of action against any person who intercepts, discloses or uses, or

1 procures any other person to intercept, disclose or use, such communi-  
2 cations, and shall be entitled to recover from any such person:

3 (a) Actual damages, but not less than liquidated damages computed  
4 at the rate of \$100 a day for each day of violation or \$1,000, whichever is  
5 greater;

6 (b) punitive damages; and

7 (c) reasonable attorneys' fees and other litigation costs reasonably  
8 incurred.

9 (2) A good faith reliance by any person on a court order authorizing  
10 the interception of any wire, oral or electronic communication shall con-  
11 stitute a complete defense in any civil or criminal action brought against  
12 such person based upon such interception.

13 (3) *No cause of action shall lie in any court against any provider of*  
14 *a wire or electronic communication service, landlord, custodian or other*  
15 *person, including, but not limited to, any officer, employee, agent or other*  
16 *specified person thereof, that furnishes in good faith any information,*  
17 *facilities or technical assistance in accordance with a court order or re-*  
18 *quest for emergency assistance.*

19 Sec. 22. K.S.A. 22-2527 is hereby amended to read as follows: 22-  
20 2527. (1) Upon an application made under K.S.A. 22-2526 the court shall  
21 enter an *ex parte* order authorizing the installation and use of a pen reg-  
22 ister or a trap and trace device within the jurisdiction of the court if the  
23 court finds that the attorney for the government or the investigative or  
24 law enforcement officer has certified to the court that the information  
25 likely to be obtained by such installation and use is relevant to an ongoing  
26 criminal investigation.

27 (2) (a) *Where the law enforcement agency implementing an ex parte*  
28 *order under this subsection seeks to do so by installing and using its own*  
29 *pen register or trap and trace device on a packet-switched data network*  
30 *of a provider of electronic communication service to the public, the agency*  
31 *shall ensure that a record will be maintained which will identify: (i) Any*  
32 *officer or officers who installed the device and any officer or officers who*  
33 *accessed the device to obtain information from the network;*

34 (ii) *the date and time the device was installed, the date and time the*  
35 *device was uninstalled and the date, time and duration of each time the*  
36 *device is accessed to obtain information;*

37 (iii) *the configuration of the device at the time of its installation and*  
38 *any subsequent modification of such device; and*

39 (iv) *any information which has been collected by the device.*

40 (b) *To the extent that the pen register or trap and trace device can*  
41 *be set automatically to record this information electronically, the record*  
42 *shall be maintained electronically throughout the installation and use of*  
43 *such device.*

1 (c) *The record maintained under this subsection shall be provided ex*  
2 *parte and under seal to the court which entered the ex parte order au-*  
3 *thorizing the installation and use of the device within 30 days after ter-*  
4 *mination of the order, including any extensions granted by the court.*

5 ~~(2)~~ ~~(a)~~ (3) (a) An order issued under this section shall specify:

6 (i) The identity, if known, of the person to whom is leased or in whose  
7 name is listed the telephone line *or other facility* to which the pen register  
8 or trap and trace device is to be attached;

9 (ii) the identity, if known, of the person who is the subject of the  
10 criminal investigation;

11 ~~(iii) the number and, if known, physical location of the telephone line~~  
12 ~~to which the pen register or trap and trace device is to be attached and,~~  
13 ~~in the case of a trap and trace device, the geographic limits of the trap~~  
14 ~~and trace order~~ *the attributes of the communications to which the order*  
15 *applies, including the number or other identifier and, if known, the lo-*  
16 *cation of the telephone line or other facility to which the pen register or*  
17 *trap and trace device is to be attached or applied, and, in the case of an*  
18 *order authorizing installation and use of a trap and trace device, the*  
19 *geographic limits of the order; and*

20 (iv) a statement of the offense to which the information likely to be  
21 obtained by the pen register or trap and trace device relates; and

22 (b) an order issued under this section shall direct, upon the request  
23 of the applicant, the furnishing of information, facilities and technical  
24 assistance necessary to accomplish the installation of the pen register or  
25 trap and trace device under K.S.A. 22-2526, *and amendments thereto.*

26 ~~(3)~~ ~~(a)~~ (4) (a) An order issued under this section shall authorize the  
27 installation and use of a pen register or a trap and trace device for a period  
28 not to exceed 60 days.

29 (b) Extensions of such an order may be granted but only upon an  
30 application for an order under K.S.A. 22-2526, *and amendments thereto*  
31 and upon the judicial finding required by subsection (1). The period of  
32 extension shall be for a period not to exceed 60 days.

33 ~~(4)~~ (5) An order authorizing or approving the installation and use of  
34 a pen register or a trap and trace device shall direct that:

35 (a) The order be sealed until otherwise ordered by the court; and

36 (b) the person owning or leasing the line *or other facility* to which  
37 the pen register or a trap and trace device is attached, ~~or who has been~~  
38 ~~ordered by the court~~ *or applied, or who is obligated by the order* to  
39 provide assistance to the applicant, not disclose the existence of the pen  
40 register or trap and trace device or the existence of the investigation to  
41 the listed subscriber or to any other person, unless or until otherwise  
42 ordered by the court.

43 Sec. 23. K.S.A. 22-2528 is hereby amended to read as follows: 22-

1 2528. (1) Upon the request of an attorney for the government or an  
2 investigative or law enforcement officer authorized to install and use a  
3 pen register under K.S.A. 22-2525 through 22-2529, *and amendments*  
4 *thereto*, provider, landlord, custodian or other person shall furnish such  
5 attorney for the government or investigative or law enforcement officer  
6 ~~forthwith~~ *immediately* all information, facilities and technical assistance  
7 necessary to accomplish the installation of the pen register unobtrusively  
8 and with a minimum of interference with the services that the person so  
9 ordered by the court accords the party with respect to whom the instal-  
10 lation and use is to take place, if such assistance is directed by a court  
11 order as provided in K.S.A. 22-2527, *and amendments thereto*.

12 (2) Upon the request of an attorney for the government or an inves-  
13 tigative or law enforcement officer authorized to receive the results of a  
14 trap and trace device under K.S.A. 22-2525 through 22-2529, *and amend-*  
15 *ments thereto*, a provider, landlord, custodian or other person shall install  
16 such device ~~forthwith~~ *immediately* on the appropriate line *or other facility*  
17 and shall furnish such attorney for the government or investigative or law  
18 enforcement officer all additional information, facilities and technical as-  
19 sistance, including installation and operation of the device, unobtrusively  
20 and with a minimum of interference with the services that the person so  
21 ordered by the court accords the party with respect to whom the instal-  
22 lation and use is to take place, if such installation and assistance is directed  
23 by a court order as provided in K.S.A. 22-2526, *and amendments thereto*.  
24 Unless otherwise ordered by the court, the results of the trap and trace  
25 device shall be furnished to the attorney for the government or investi-  
26 gative or law enforcement officer, designated in the court order, at rea-  
27 sonable intervals during regular business hours for the duration of the  
28 order.

29 (3) A provider, landlord, custodian or other person who furnishes  
30 facilities or technical assistance pursuant to this section shall be reason-  
31 ably compensated for such reasonable expenses incurred in providing  
32 such facilities and assistance.

33 (4) No cause of action shall lie in any court against any provider, its  
34 officers, employees or agents, or other specified persons for providing  
35 information, facilities or assistance in accordance with ~~the terms of~~ a court  
36 order under K.S.A. 22-2525 through 22-2529, *and amendments thereto*.

37 (5) A good faith reliance on a court order, a legislative authorization  
38 or a statutory authorization shall be a complete defense against any civil  
39 or criminal action brought under K.S.A. 22-2525 through 22-2529, *and*  
40 *amendments thereto*, or any other law.

41 Sec. 24. K.S.A. 22-2529 is hereby amended to read as follows: 22-  
42 2529. As used in ~~K.S.A. 22-2522 through 22-2529~~ *the Kansas code for*  
43 *criminal procedure, and amendments thereto*:

1 (1) “Court of competent jurisdiction” means a district court or ap-  
2 pellate court;

3 (2) “pen register” means a device *or process* which records or de-  
4 codes ~~electronic or other impulses which identify the numbers dialed or~~  
5 ~~otherwise transmitted on the telephone line to which such device is at-~~  
6 ~~tached~~ *dialing, routing, addressing or signaling information transmitted*  
7 *by an instrument or facility from which a wire or electronic communi-*  
8 *cation is transmitted, except that such information shall not include the*  
9 *contents of any communication, but shall not include any device or pro-*  
10 *cess used by a provider or customer of an electronic communication serv-*  
11 *ice for billing, or recording as an incident to billing, for communications*  
12 *services provided by such provider or any device or process used by a*  
13 *provider or customer of an electronic communication service for cost*  
14 *accounting or other like purposes in the ordinary course of its business;*

15 (3) “trap and trace device” means a device *or process* which captures  
16 the incoming electronic or other impulses which identify the originating  
17 number ~~of an instrument or device from which a wire or electronic com-~~  
18 ~~munication was transmitted~~ *or other dialing, routing, addressing and sig-*  
19 *nalizing information reasonably likely to identify the source of a wire or*  
20 *electronic communication, except, that such information shall not include*  
21 *the contents of any communication; and*

22 (4) “attorney for the government” means a county attorney, assistant  
23 county attorney, district attorney, assistant district attorney, attorney gen-  
24 eral or assistant attorney general.

25 New Sec. 25. (a) Notwithstanding any other provision of the Kansas  
26 code of civil procedure, any investigative or law enforcement officer, spe-  
27 cially designated by the attorney general, the deputy attorney general, any  
28 assistant attorney general, any acting assistant attorney general or by the  
29 principal prosecuting attorney of any county, who reasonably determines  
30 that: (1) An emergency situation exists that involves: (A) Immediate dan-  
31 ger of death or serious bodily injury to any person; or

32 (B) conspiratorial activities characteristic of organized crime, that re-  
33 quires the installation and use of a pen register or a trap and trace device  
34 before an order authorizing such installation and use can, with due dili-  
35 gence, be obtained; and

36 (2) there are grounds upon which an order could be entered under  
37 the Kansas code of civil procedure to authorize such installation and use,  
38 may have installed and use a pen register or trap and trace device if,  
39 within 48 hours after the installation has occurred, or begins to occur, an  
40 order approving the installation or use is issued.

41 (b) In the absence of an authorizing order, such use shall immediately  
42 terminate when the information sought is obtained, when the application  
43 for the order is denied or when 48 hours have lapsed since the installation

1 of the pen register or trap and trace device, whichever is earlier.

2 (c) The knowing installation or use by any investigative or law en-  
3 forcement officer of a pen register or trap and trace device pursuant to  
4 subsection (a) without application for the authorizing order within 48  
5 hours of the installation shall constitute a violation of this act.

6 (d) A provider of a wire or electronic service, landlord, custodian or  
7 other person who furnished facilities or technical assistance pursuant to  
8 this section shall be reasonably compensated for such reasonable expenses  
9 incurred in providing such facilities and assistance.

10 Sec. 26. K.S.A. 2001 Supp. 22-3101 is hereby amended to read as  
11 follows: 22-3101. (1) If the attorney general, an assistant attorney general,  
12 the county attorney or the district attorney of any county is informed or  
13 has knowledge of any alleged violation of the laws of Kansas, such person  
14 may apply to a district judge to conduct an inquisition. An application for  
15 an inquisition shall be in writing, verified under oath, setting forth the  
16 alleged violation of law. Upon the filing of the application, the judge with  
17 whom it is filed, on the written praecipe of such attorney, shall issue a  
18 subpoena for the witnesses named in such praecipe commanding them  
19 to appear and testify concerning the matters under investigation. Such  
20 subpoenas shall be served and returned as subpoenas for witnesses in  
21 criminal cases in the district court.

22 (2) If the attorney general, assistant attorney general, county attorney  
23 or district attorney, or in the absence of the county or district attorney a  
24 designated assistant county or district attorney, is informed or has knowl-  
25 edge of any alleged violation in this state pertaining to gambling, intoxi-  
26 cating liquors, criminal syndicalism, racketeering, bribery, tampering with  
27 a sports contest, narcotic or dangerous drugs, *terrorism* or any violation  
28 of any law where the accused is a fugitive from justice *or a computer has*  
29 *been used in the commission of a felony*, such attorney shall be authorized  
30 to issue subpoenas for such persons as such attorney has any reason to  
31 believe or has any information relating thereto or knowledge thereof, to  
32 appear before such attorney at a time and place to be designated in the  
33 subpoena and testify concerning any such violation. For such purposes,  
34 any prosecuting attorney shall be authorized to administer oaths. If an  
35 assistant county or district attorney is designated by the county or district  
36 attorney for the purposes of this subsection, such designation shall be  
37 filed with the chief judge of such judicial district.

38 (3) Each witness shall be sworn to make true answers to all questions  
39 propounded to such witness touching the matters under investigation.  
40 The testimony of each witness shall be reduced to writing and signed by  
41 the witness. Any person who disobeys a subpoena issued for such ap-  
42 pearance or refuses to be sworn as a witness or answer any proper ques-  
43 tion propounded during the inquisition, may be adjudged in contempt of



1 court and punished by fine and imprisonment.

2 Sec. 27. K.S.A. 21-3301, 21-3302, 21-3303, 21-3439, 22-2502, 22-  
3 2504, 22-2514, 22-2515, 22-2516, 22-2518, 22-2527, 22-2528 and 22-2529  
4 and K.S.A. 2001 Supp. 21-2511, 21-3106, 21-4706, 22-3101 and 65-4142  
5 are hereby repealed.

6 Sec. 28. This act shall take effect and be in force from and after its  
7 publication in the statute book.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43