

SENATE BILL No. 594

By Senator Adkins

2-13

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. 21-3439, 22-2502, 22-2504, 22-2514, 22-2515, 22-2516 and 22-2518 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, the attempt to commit or conspiracy to commit 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.

New Sec. 2. (a) Terroristic threat is any threat to commit the crime of terrorism causing reasonable expectation or fear of imminent commission of such offense.

(b) (1) Terroristic threat is a severity level 4, nonperson felony.

(2) Terroristic threat when injury or death occurs caused by such threat is a severity level 2, person felony.

New Sec. 3. (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;

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

3 (6) persons under contract with, or working under the direction of,
4 the United States, the state of Kansas or any agency of either government,
5 with respect to any activities lawfully engaged in under their contracts or
6 pursuant to lawful direction;

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

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

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

21 (B) a disease organism; or

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

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

25 (B) is or contains toxic or poisonous chemicals or their immediate
26 precursors; or

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

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

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

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

1 (d) Criminal use of a weapon of mass destruction is a severity level
2 1, person felony.

3 New Sec. 4. (a) Computer terrorism is the use of a computer or
4 computer program against a governmental entity when the purpose of
5 such use is to significantly impair or disrupt a function of that govern-
6 mental entity.

7 (b) Computer terrorism is a severity level 6, nonperson felony.

8 New Sec. 5. (a) Soliciting or providing support for an act of terrorism
9 is soliciting or providing material support or resources in this state with
10 the intent of soliciting or supporting any phase of committing, concealing
11 or escaping from an act of terrorism. The act of terrorism does not have
12 to be committed or intended to be committed in this state for the pro-
13 hibited conduct to be violative of this section.

14 (b) (1) Soliciting or providing support for an act of terrorism is a
15 severity level 4, nonperson felony.

16 (2) Soliciting or providing support for an act of terrorism is a severity
17 level 2, person felony if the act of terrorism results in injury or death.

18 New Sec. 6. (a) Hindering prosecution of terrorism is rendering
19 criminal assistance to a person who has committed an act of terrorism
20 knowing such person has engaged in an act of terrorism.

21 (b) As used in this section, “criminal assistance” means harboring or
22 concealing a person who has committed an act of terrorism, providing a
23 person who has committed an act of terrorism with money, transportation
24 or a weapon or suppressing or concealing physical evidence.

25 (c) (1) Hindering prosecution of terrorism is a severity level 4, non-
26 person felony.

27 (2) Hindering prosecution of terrorism is a severity level 2, person
28 felony if the act of terrorism results in injury or death.

29 New Sec. 7. (a) A false report involving a weapon of mass destruction
30 is communicating by any means of communication to any person or group
31 of persons, a report, knowing or having reason to know the report is false,
32 that causes any person to reasonably believe that there is located at any
33 place or structure whatsoever any nuclear, radiological, biological or
34 chemical weapon of mass destruction.

35 (b) As used in this section: (1) “Report” includes making accessible
36 to another person by computer; and

37 (2) “nuclear, radiological, biological or chemical weapon of mass de-
38 struction” means the same as provided in section 3, and amendments
39 thereto.

40 (c) False report involving a weapon of mass destruction is a severity
41 level 4, nonperson felony. The court may order a person convicted under
42 this section to pay restitution, including costs and consequential damages
43 resulting from disruption of the normal activity that would have otherwise

1 occurred but for the false report.

2 New Sec. 8. (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. 9. (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 4, 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 3,
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 2,
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. 10. 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, 6, 7, 8 and 9, and amendments thereto,* subsection (a)(1) of K.S.A.
10 21-3505, 21-3508, 21-3602, 21-3715, 21-4310, subsections (e)(2), (e)(3)
11 and (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. 11. K.S.A. 2001 Supp. 21-3106 is hereby amended to read as
10 follows: 21-3106. (1) A prosecution for murder *or terrorism* may be com-
11 menced at any time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (10) An offense is committed either when every element occurs, or,

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

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

10 Sec. 12. K.S.A. 21-3439 is hereby amended to read as follows: 21-
11 3439. (a) Capital murder is the:

12 (1) Intentional and premeditated killing of any person in the com-
13 mission of kidnapping, as defined in K.S.A. 21-3420 and amendments
14 thereto, or aggravated kidnapping, as defined in K.S.A. 21-3421 and
15 amendments thereto, when the kidnapping or aggravated kidnapping was
16 committed with the intent to hold such person for ransom;

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

20 (3) intentional and premeditated killing of any person by an inmate
21 or prisoner confined in a state correctional institution, community cor-
22 rectional institution or jail or while in the custody of an officer or em-
23 ployee of a state correctional institution, community correctional insti-
24 tution or jail;

25 (4) intentional and premeditated killing of the victim of one of the
26 following crimes in the commission of, or subsequent to, such crime:
27 Rape, as defined in K.S.A. 21-3502 and amendments thereto, criminal
28 sodomy, as defined in subsections (a)(2) or (a)(3) of K.S.A. 21-3505 and
29 amendments thereto or aggravated criminal sodomy, as defined in K.S.A.
30 21-3506 and amendments thereto, or any attempt thereof, as defined in
31 K.S.A. 21-3301 and amendments thereto;

32 (5) intentional and premeditated killing of a law enforcement officer,
33 as defined in K.S.A. 21-3110 and amendments thereto *or a public safety*
34 *officer, as defined in subsection (b), when the in line of duty;*

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

39 (7) intentional and premeditated killing of a child under the age of
40 14 in the commission of kidnapping, as defined in K.S.A. 21-3420 and
41 amendments thereto, or aggravated kidnapping, as defined in K.S.A. 21-
42 3421 and amendments thereto, when the kidnapping or aggravated kid-
43 napping was committed with intent to commit a sex offense upon or with

1 the child or with intent that the child commit or submit to a sex offense;
2 or

3 (8) *intentional and premeditated killing of any person in furtherance*
4 *of an act of terrorism, as defined in section 1, and amendments thereto.*

5 (b) For purposes of this section; (1) “Sex offense” means rape, as
6 defined in K.S.A. 21-3502 and amendments thereto, aggravated indecent
7 liberties with a child, as defined in K.S.A. 21-3504 and amendments
8 thereto, aggravated criminal sodomy, as defined in K.S.A. 21-3506 and
9 amendments thereto, prostitution, as defined in K.S.A. 21-3512 and
10 amendments thereto, promoting prostitution, as defined in K.S.A. 21-
11 3513 and amendments thereto or sexual exploitation of a child, as defined
12 in K.S.A. 21-3516 and amendments thereto; and

13 (2) “*public safety officer*” means a firefighter, emergency medical
14 technician or a member of the Kansas national guard.

15 (c) Capital murder is an off-grid person felony.

16 (d) This section shall be part of and supplemental to the Kansas crim-
17 inal code.

18 Sec. 13. K.S.A. 2001 Supp. 21-4706 is hereby amended to read as
19 follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the
20 sentences of imprisonment shall represent the time a person shall actually
21 serve, subject to a reduction of up to 15% of the primary sentence for
22 good time as authorized by law.

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

24 (c) Violations of K.S.A. 21-3401, 21-3439 and 21-3801 *and section 1*
25 and amendments thereto are off-grid crimes for the purpose of sentenc-
26 ing. Except as otherwise provided by K.S.A. 21-4622 through 21-4627,
27 and 21-4629 through 21-4631, and amendments thereto, the sentence
28 shall be imprisonment for life.

29 Sec. 14. K.S.A. 22-2502 is hereby amended to read as follows: 22-
30 2502. (a) A search warrant shall be issued only upon the oral or written
31 statement, including those conveyed or received by ~~telefacsimile~~ *elec-*
32 *tronic* communication, of any person under oath or affirmation which
33 states facts sufficient to show probable cause that a crime has been or is
34 being committed and which particularly describes a person, place or
35 means of conveyance to be searched and things to be seized. Any state-
36 ment which is made orally, *either in person or by electronic transmission,*
37 shall be either taken down by a certified shorthand reporter, sworn to
38 under oath and made part of the application for a search warrant, or
39 recorded before the magistrate from whom the search warrant is re-
40 quested and sworn to under oath. Any statement orally made shall be
41 reduced to writing as soon thereafter as possible. If the magistrate is
42 satisfied that grounds for the application exist or that there is probable
43 cause to believe that they exist, the magistrate may issue a search warrant

1 for the seizure of the following:

2 (1) Any things which have been used in the commission of a crime,
3 or any contraband or any property which constitutes or may be considered
4 a part of the evidence, fruits or instrumentalities of a crime under the
5 laws of this state, any other state or of the United States. The term “fruits”
6 as used in this act shall be interpreted to include any property into which
7 the thing or things unlawfully taken or possessed may have been
8 converted.

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

12 (3) Any human fetus or human corpse.

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

15 (b) Before ruling on a request for a search warrant, the magistrate
16 may require the affiant to appear personally and may examine under oath
17 the affiant and any witnesses that the affiant may produce. Such pro-
18 ceeding shall be taken down by a certified shorthand reporter or record-
19 ing equipment and made part of the application for a search warrant.

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

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

29 Sec. 15. K.S.A. 22-2504 is hereby amended to read as follows: 22-
30 2504. All search warrants shall show the time and date of issuance and
31 shall be the warrants of the magistrate issuing the same and not the war-
32 rants of the court in which he is then sitting and such warrants need not
33 bear the seal of the court or clerk thereof. Such warrants may be trans-
34 mitted by ~~telefacsimile~~ *electronic* communication, as defined in K.S.A.
35 22-2502, and amendments thereto. The statement on which the warrant
36 is issued need not be filed with the clerk of the court nor with the court
37 if there is no clerk until the warrant has been executed or has been re-
38 turned “not executed.”

39 Sec. 16. K.S.A. 22-2514 is hereby amended to read as follows: 22-
40 2514. This act shall be a part of and supplemental to the code of criminal
41 procedure. As used in this act:

42 (1) “Wire communication” means any aural transfer made in whole
43 or in part through the use of facilities for the transmission of communi-

1 cations by the aid of wire, cable or other like connection between the
2 point of origin and the point of reception, including the use of such con-
3 nection in a switching station, furnished or operated by any person en-
4 gaged in providing or operating such facilities for the transmission of
5 intrastate, interstate or foreign communications. ~~Wire communication~~
6 ~~shall include any electronic storage of such communication;~~

7 (2) “oral communication” means any oral communication uttered by
8 a person exhibiting an expectation that such communication is not subject
9 to interception under circumstances justifying such expectation, but such
10 term does not include any electronic communication;

11 (3) “intercept” means the aural or other acquisition of the contents
12 of any wire, oral or electronic communication through the use of any
13 electronic, mechanical or other device;

14 (4) “persons” means any individual, partnership, association, joint
15 stock company, trust or corporation, including any official, employee or
16 agent of the United States or any state or any political subdivision thereof;

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

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

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

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

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

37 (a) Any telephone or telegraph instrument, equipment or facility, or
38 any component thereof, (i) furnished to the subscriber or user by a pro-
39 vider of wire or electronic communication service in the ordinary course
40 of its business and being used by the subscriber or user in the ordinary
41 course of its business or furnished by such subscriber or user for con-
42 nection to the facilities of such service and used in the ordinary course
43 of its business or (ii) being used by a provider of wire or electronic com-

1 communication service in the ordinary course of its business, or by an inves-
2 tigative or law enforcement officer in the ordinary course of the officer's
3 duties; or

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

6 (10) "communication common carrier" means common carrier, as
7 defined by section 153(h) of title 47 of the United States code, *as in effect*
8 *on the effective date of this act*;

9 (11) "electronic communication" means any transfer of signs, signals,
10 writing, images, sounds, data or intelligence of any nature transmitted in
11 whole or in part by a wire, radio, electromagnetic, photoelectronic or
12 photo-optical system but does not include:

13 (a) Any wire or oral communication;

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

15 (c) any communication from a tracking device, as defined in section
16 3117, chapter 205 of title 18, United States code;

17 (12) "user" means any person or entity who:

18 (a) Uses an electronic communication service; and

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

21 (13) "electronic communications system" means any wire, radio, elec-
22 tromagnetic, photo-optical or photoelectronic facilities for the transmis-
23 sion of electronic communications, and any computer facilities or related
24 electronic equipment for the electronic storage of such communications;

25 (14) "electronic communication service" means any service which
26 provides to users thereof the ability to send or receive wire or electronic
27 communications;

28 (15) "readily accessible to the general public" means, with respect to
29 a radio communication, that such communication is not:

30 (a) Scrambled or encrypted;

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

34 (c) carried on a subcarrier or other signal subsidiary to a radio
35 transmission;

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

39 (e) transmitted on frequencies allocated under part 25, subpart D, E
40 or F of part 74, or part 94 of the rules of the federal communications
41 commission, unless, in the case of a communication transmitted on a
42 frequency allocated under part 74 that is not exclusively allocated to
43 broadcast auxiliary services, the communication is a two-way voice com-

1 munication by radio;

2 (16) “electronic storage” means:

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

5 (b) any storage of such communication by an electronic communi-
6 cation service for purposes of backup protection of such communication;

7 ~~and~~

8 (17) “aural transfer” means a transfer containing the human voice at
9 any point between and including the point of origin and the point of
10 reception;

11 (18) “foreign intelligence information” means:

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

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

16 (ii) sabotage or international terrorism by a foreign power or an agent
17 of a foreign power; or

18 (iii) clandestine intelligence activities by an intelligence service or net-
19 work of a foreign power or by an agent of a foreign power; or

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

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

23 (ii) the conduct of the foreign affairs of the United States;

24 (20) “protected computer” means the same as provided in K.S.A. 21-
25 3755 and amendments thereto; and

26 (21) “computer trespasser” means a person who accesses a protected
27 computer without authorization and thus has no reasonable expectation
28 of privacy in any communication transmitted to, through or from the
29 protected computer. “Computer trespasser” does not include a person
30 known by the owner or operator of the protected computer to have an
31 existing contractual relationship with the owner or operator of the pro-
32 tected computer for access to all or part of the protected computer.

33 Sec. 17. K.S.A. 22-2515 is hereby amended to read as follows: 22-
34 2515. (a) An *ex parte* order authorizing the interception of a wire, oral or
35 electronic communication may be issued by a judge of competent juris-
36 diction. The attorney general, district attorney or county attorney may
37 make an application to any judge of competent jurisdiction for an order
38 authorizing the interception of a wire, oral or electronic communication
39 by an investigative or law enforcement officer and agency having respon-
40 sibility for the investigation of the offense regarding which the application
41 is made, when such interception may provide evidence of the commission
42 of any of the following offenses:

43 (1) Any crime directly and immediately affecting the safety of a hu-

- 1 man life which is a felony;
- 2 (2) murder;
- 3 (3) kidnapping;
- 4 (4) treason;
- 5 (5) sedition;
- 6 (6) racketeering;
- 7 (7) commercial bribery;
- 8 (8) robbery;
- 9 (9) theft, if the offense would constitute a felony;
- 10 (10) bribery;
- 11 (11) any violation of the uniform controlled substances act, if the
- 12 offense would constitute a felony;
- 13 (12) commercial gambling;
- 14 (13) sports bribery;
- 15 (14) tampering with a sports contest;
- 16 (15) aggravated escape;
- 17 (16) aggravated failure to appear;
- 18 (17) arson; ~~or~~
- 19 (18) *terrorism*;
- 20 (19) *criminal use of a weapon of mass destruction*;
- 21 (20) *computer crime*;
- 22 (21) *terroristic threat*;
- 23 (22) *false report involving a weapon of mass destruction*;
- 24 (23) *computer terrorism*;
- 25 (24) *soliciting or providing support for an act of terrorism*;
- 26 (25) *hindering prosecution of terrorism*;
- 27 (26) *criminal interception or disclosure of intercepted information*; or
- 28 (27) any conspiracy to commit any of the foregoing offenses.
- 29 (b) Any investigative or law enforcement officer who, by any means
- 30 authorized by this act or by chapter 119 of title 18 of the United States
- 31 code, has obtained knowledge of the contents of any wire, oral or elec-
- 32 tronic communication, or evidence derived therefrom, may disclose such
- 33 contents to another investigative or law enforcement officer to the extent
- 34 that such disclosure is appropriate to the proper performance of the of-
- 35 ficial duties of the officer making or receiving the disclosure.
- 36 (c) Any investigative or law enforcement officer who, by any means
- 37 authorized by this act or by chapter 119 of title 18 of the United States
- 38 code, has obtained knowledge of the contents of any wire, oral or elec-
- 39 tronic communication, or evidence derived therefrom, may use such con-
- 40 tents to the extent such use is appropriate to the proper performance of
- 41 such officer's official duties.
- 42 (d) Any person who has received, by any means authorized by this
- 43 act or by chapter 119 of title 18 of the United States code or by a like

1 statute of any other state, any information concerning a wire, oral or
2 electronic communication, or evidence derived therefrom, intercepted in
3 accordance with the provisions of this act, may disclose the contents of
4 such communication or such derivative evidence while giving testimony
5 under oath or affirmation in any criminal proceeding in any court, or
6 before any grand jury, of this state or of the United States or of any other
7 state.

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

12 (f) When an investigative or law enforcement officer, while engaged
13 in intercepting wire, oral or electronic communications in the manner
14 authorized by this act, intercepts wire, oral or electronic communications
15 relating to offenses other than those specified in the order authorizing
16 the interception of the wire, oral or electronic communication, the con-
17 tents thereof and evidence derived therefrom may be disclosed or used
18 as provided in subsections (b) and (c) of this section. Such contents and
19 evidence derived therefrom may be used under subsection (d) of this
20 section when authorized or approved by a judge of competent jurisdic-
21 tion, where such judge finds on subsequent application, made as soon as
22 practicable, that the contents were otherwise intercepted in accordance
23 with the provisions of this act, or with chapter 119 of title 18 of the United
24 States code.

25 Sec. 18. K.S.A. 22-2516 is hereby amended to read as follows: 22-
26 2516. (1) Each application for an order authorizing the interception of a
27 wire, oral or electronic communication shall be made in writing, upon
28 oath or affirmation, to a judge of competent jurisdiction, and shall state
29 the applicant's authority to make such application. Each application shall
30 include the following information:

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

34 (b) A full and complete statement of the facts and circumstances re-
35 lied upon by the applicant to justify such applicant's belief that an order
36 should be issued, including (i) details as to the particular offense that has
37 been, is being or is about to be committed, (ii) except as provided in
38 ~~subsection~~ *subsections (10) and (12)*, a particular description of the nature
39 and location of the facilities from which or the place where the commu-
40 nication is to be intercepted, (iii) a particular description of the type of
41 communications sought to be intercepted, and (iv) the identity of the
42 person, if known, committing the offense and whose communications are
43 to be intercepted;

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

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

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

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

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

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

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

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

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

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

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

43 (a) Specify the identity of the person, if known, whose communica-

1 tions are to be intercepted;

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

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

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

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

14 (f) upon request of the applicant, direct that a provider of wire or
15 electronic communication service or public utility, landlord, custodian or
16 other person shall furnish the applicant forthwith all information, facilities
17 and technical assistance necessary to accomplish the interception unob-
18 trusively and with a minimum of interference with the services that such
19 service provider, utility, landlord, custodian or person is according the
20 person whose communications are to be intercepted. Any provider of wire
21 or electronic communication service or public utility, landlord, custodian
22 or other person furnishing such facilities or technical assistance shall be
23 compensated therefor by the applicant for reasonable expenses incurred
24 in providing such facilities or technical assistance.

25 (5) No order entered under this section may authorize the intercep-
26 tion of any wire, oral or electronic communication for any period longer
27 than is necessary to achieve the objective of the authorization, nor in any
28 event longer than 30 days. Such thirty-day period begins on the earlier
29 of the day on which the investigative or law enforcement officer first
30 begins to conduct an interception under the order or 10 days after the
31 order is entered. Extensions of an order may be granted, but only upon
32 application for an extension made in accordance with subsection (1) of
33 this section and the court making the findings required by subsection (3)
34 of this section. The period of any such extension shall be no longer than
35 the authorizing judge deems necessary to achieve the purposes for which
36 it was granted and in no event for longer than 30 days. Every order and
37 extension thereof shall contain a provision that the authorization to in-
38 tercept shall be executed as soon as practicable, shall be conducted in
39 such a way as to minimize the interception of communications not oth-
40 erwise subject to interception under this act, and must terminate upon
41 attainment of the authorized objective, or in any event in 30 days. In the
42 event the intercepted communication is in a code or foreign language,
43 and an expert in that foreign language or code is not reasonably available

1 during the interception period, minimization may be accomplished as
2 soon as practicable after such interception. An interception under this
3 chapter may be conducted in whole or in part by government personnel,
4 or by an individual operating under a contract with the government, act-
5 ing under the supervision of an investigative or law enforcement officer
6 authorized to conduct the interception.

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

13 (7) (a) The contents of any wire, oral or electronic communication
14 intercepted by any means authorized by this act shall be recorded, if
15 possible, on tape or wire or other comparable device. The recording of
16 the contents of any wire, oral or electronic communication under this
17 subsection shall be done in a manner which will protect the recording
18 from editing or other alterations. Immediately upon the expiration of the
19 period of the order, or extensions thereof, such recordings shall be made
20 available to the judge issuing such order and sealed under such judge's
21 directions. Custody of the recordings shall be wherever the judge orders,
22 and the recordings shall not be destroyed except upon order of the issuing
23 or denying judge and, in any event, shall be kept for not less than 10
24 years. Duplicate recordings may be made for use or disclosure pursuant
25 to the provisions of subsections (2) and (3) of K.S.A. 22-2515 and amend-
26 ments thereto for investigations. The presence of the seal provided for
27 by this subsection, or a satisfactory explanation for the absence thereof,
28 shall be a prerequisite for the use or disclosure of the contents of any
29 wire, oral or electronic communication or evidence derived therefrom
30 under subsection (4) of K.S.A. 22-2515 and amendments thereto.

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

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

39 (d) Within a reasonable time but not later than 90 days after the
40 termination of the period of an order or extensions thereof the issuing or
41 denying judge shall cause to be served on the persons named in the order
42 or the application and, in the interest of justice, such other parties to
43 intercepted communications as the judge may determine, an inventory

1 which shall include notice of:

- 2 (i) the fact of the entry of the order or the application;
3 (ii) the date of the entry and the period of authorized, approved or
4 disapproved interception, or the denial of the application; and
5 (iii) the fact that during the period wire, oral or electronic communi-
6 cations were or were not intercepted.

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

13 (8) The contents of any intercepted wire, oral or electronic commu-
14 nication or evidence derived therefrom shall not be received in evidence
15 or otherwise disclosed in any trial, hearing or other proceeding in any
16 federal court or court of this state, unless each party, not less than 10
17 days before the trial, hearing or proceeding, has been furnished with a
18 copy of the court order, and accompanying application, under which the
19 interception was authorized. Such ten-day period may be waived by the
20 judge, if the judge finds that it was not possible to furnish the party with
21 the above information 10 days before the trial, hearing or proceeding,
22 and that the party will not be prejudiced by the delay in receiving such
23 information.

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

- 29 (i) The communication was unlawfully intercepted;
30 (ii) The order of authorization under which it was intercepted is in-
31 sufficient on its face; or
32 (iii) The interception was not made in conformity with the order of
33 authorization.

34 Such motion shall be made before the trial, hearing or proceeding,
35 unless there was no opportunity to make such motion or the person was
36 not aware of the grounds of the motion. If the motion is granted, the
37 contents of the intercepted wire or oral communication, or evidence de-
38 rived therefrom, shall be treated as having been obtained in violation of
39 this act. Upon the filing of such motion by the aggrieved person, the judge
40 in such judge's discretion may make available to the aggrieved person or
41 such person's counsel for inspection such portions of the intercepted
42 communication or evidence derived therefrom as the judge determines
43 to be in the interest of justice.

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

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

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

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

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

17 (i) The application is by a law enforcement officer and is approved
18 by the attorney general and the county or district attorney where the
19 application is sought;

20 (ii) the application contains a full and complete statement as to why
21 such specification is not practical and identifies the person committing
22 the offense and whose communications are to be intercepted; and

23 (iii) the judge finds that such specification is not practical; and

24 (b) in the case of an application with respect to a wire or electronic
25 communication:

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

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

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

34 (11) An interception of a communication under an order with respect
35 to which the requirements of subsections (1)(b)(ii) and (3)(d) of this sec-
36 tion do not apply by reason of subsection (10) shall not begin until the
37 facilities from which, or the place where, the communication is to be
38 intercepted is ascertained by the person implementing the interception
39 order. A provider of wire or electronic communications service that has
40 received an order as provided for in subsection (10)(b) may move the
41 court to modify or quash the order on the ground that its assistance with
42 respect to the interception cannot be performed in a timely or reasonable
43 fashion. The court, upon notice to the government, shall decide such a

1 motion expeditiously.

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

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

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

14 ~~(c)~~ (13) The remedies and sanctions described in this chapter with
15 respect to the interception of electronic communications are the only
16 judicial remedies and sanctions for nonconstitutional violations of this act
17 involving such communications.

18 Sec. 19. K.S.A. 22-2518 is hereby amended to read as follows: 22-
19 2518. (1) Any person whose wire, oral or electronic communication is
20 intercepted, disclosed or used in violation of this act shall have a civil
21 cause of action against any person who intercepts, discloses or uses, or
22 procures any other person to intercept, disclose or use, such communi-
23 cations, and shall be entitled to recover from any such person:

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

27 (b) punitive damages; and

28 (c) reasonable attorneys' fees and other litigation costs reasonably
29 incurred.

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

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

40 Sec. 20. K.S.A. 2001 Supp. 22-3101 is hereby amended to read as
41 follows: 22-3101. (1) If the attorney general, an assistant attorney general,
42 the county attorney or the district attorney of any county is informed or
43 has knowledge of any alleged violation of the laws of Kansas, such person

1 may apply to a district judge to conduct an inquisition. An application for
2 an inquisition shall be in writing, verified under oath, setting forth the
3 alleged violation of law. Upon the filing of the application, the judge with
4 whom it is filed, on the written praecipe of such attorney, shall issue a
5 subpoena for the witnesses named in such praecipe commanding them
6 to appear and testify concerning the matters under investigation. Such
7 subpoenas shall be served and returned as subpoenas for witnesses in
8 criminal cases in the district court.

9 (2) If the attorney general, assistant attorney general, county attorney
10 or district attorney, or in the absence of the county or district attorney a
11 designated assistant county or district attorney, is informed or has knowl-
12 edge of any alleged violation in this state pertaining to gambling, intoxi-
13 cating liquors, criminal syndicalism, racketeering, bribery, tampering with
14 a sports contest, narcotic or dangerous drugs, *terrorism* or any violation
15 of any law where the accused is a fugitive from justice, such attorney shall
16 be authorized to issue subpoenas for such persons as such attorney has
17 any reason to believe or has any information relating thereto or knowledge
18 thereof, to appear before such attorney at a time and place to be desig-
19 nated in the subpoena and testify concerning any such violation. For such
20 purposes, any prosecuting attorney shall be authorized to administer
21 oaths. If an assistant county or district attorney is designated by the county
22 or district attorney for the purposes of this subsection, such designation
23 shall be filed with the chief judge of such judicial district.

24 (3) Each witness shall be sworn to make true answers to all questions
25 propounded to such witness touching the matters under investigation.
26 The testimony of each witness shall be reduced to writing and signed by
27 the witness. Any person who disobeys a subpoena issued for such ap-
28 pearance or refuses to be sworn as a witness or answer any proper ques-
29 tion propounded during the inquisition, may be adjudged in contempt of
30 court and punished by fine and imprisonment.

31 Sec. 21. K.S.A. 21-3439, 22-2502, 22-2504, 22-2514, 22-2515, 22-
32 2516 and 22-2518 and K.S.A. 2001 Supp. 21-2511, 21-3106, 21-4706, 22-
33 3101 and 65-4142 are hereby repealed.

34 Sec. 22. This act shall take effect and be in force from and after its
35 publication in the statute book.

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