

HOUSE BILL No. 2316

By Committee on Corrections and Juvenile Justice

2-12

AN ACT concerning crimes, punishment and criminal procedure; relating to the definition of sexually violent crimes; amending K.S.A. 2002 Supp. 22-3717 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 22-3717 is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638 and amendments thereto, and K.S.A. 8-1567, and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, but prior to July 1, 1999, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits and an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1999, shall be eligible for parole after serving 20 years of confinement without deduction of any good time credits.

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

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402 and amendments thereto committed on or after

1 July 1, 1996, but prior to July 1, 1999, shall be eligible for parole after
2 serving 10 years of confinement without deduction of any good time
3 credits.

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

7 (1) The aggregate minimum sentences, as determined pursuant to
8 K.S.A. 21-4608 and amendments thereto, less good time credits for those
9 crimes which are not class A felonies; and

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

12 (d) (1) Persons sentenced for crimes, other than off-grid crimes,
13 committed on or after July 1, 1993, will not be eligible for parole, but will
14 be released to a mandatory period of postrelease supervision upon com-
15 pletion of the prison portion of their sentence as follows:

16 (A) Except as provided in subparagraphs (D) and (E), persons sen-
17 tenced for nondrug severity level 1 through 4 crimes and drug severity
18 levels 1 and 2 crimes must serve 36 months, plus the amount of good
19 time earned and retained pursuant to K.S.A. 21-4722 and amendments
20 thereto, on postrelease supervision.

21 (B) Except as provided in subparagraphs (D) and (E), persons sen-
22 tenced for nondrug severity levels 5 and 6 crimes and drug severity level
23 3 crimes must serve 24 months, plus the amount of good time earned
24 and retained pursuant to K.S.A. 21-4722, and amendments thereto, on
25 postrelease supervision.

26 (C) Except as provided in subparagraphs (D) and (E), persons sen-
27 tenced for nondrug severity level 7 through 10 crimes and drug severity
28 level 4 crimes must serve 12 months, plus the amount of good time earned
29 and retained pursuant to K.S.A. 21-4722 and amendments thereto, on
30 postrelease supervision.

31 (D) (i) The sentencing judge shall impose the postrelease supervi-
32 sion period provided in subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C),
33 unless the judge finds substantial and compelling reasons to impose a
34 departure based upon a finding that the current crime of conviction was
35 sexually violent or sexually motivated. In that event, departure may be
36 imposed to extend the postrelease supervision to a period of up to 60
37 months.

38 (ii) If the sentencing judge departs from the presumptive postrelease
39 supervision period, the judge shall state on the record at the time of
40 sentencing the substantial and compelling reasons for the departure. De-
41 partures in this section are subject to appeal pursuant to K.S.A. 21-4721
42 and amendments thereto.

43 (iii) In determining whether substantial and compelling reasons exist,

1 the court shall consider:

2 (a) Written briefs or oral arguments submitted by either the defend-
3 ant or the state;

4 (b) any evidence received during the proceeding;

5 (c) the presentence report, the victim's impact statement and any
6 psychological evaluation as ordered by the court pursuant to subsection
7 (e) of K.S.A. 21-4714 and amendments thereto; and

8 (d) any other evidence the court finds trustworthy and reliable.

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

13 (v) In carrying out the provisions of subparagraph (d)(1)(D), the court
14 shall refer to K.S.A. 21-4718 and amendments thereto.

15 (vi) Upon petition, the parole board may provide for early discharge
16 from the postrelease supervision period upon completion of court or-
17 dered programs and completion of the presumptive postrelease super-
18 vision period, as determined by the crime of conviction, pursuant to sub-
19 subparagraph (d)(1)(A), (d)(1)(B) or (d)(1)(C). Early discharge from
20 postrelease supervision is at the discretion of the parole board.

21 (vii) Persons convicted of crimes deemed sexually violent or sexually
22 motivated, shall be registered according to the ~~habitual sex~~ *Kansas* of-
23 fender registration act, K.S.A. 22-4901 through 22-4910 and amendments
24 thereto.

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

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

37 (2) As used in this section, "sexually violent crime" means:

38 (A) Rape, K.S.A. 21-3502, and amendments thereto;

39 (B) indecent liberties with a child, K.S.A. 21-3503, and amendments
40 thereto;

41 (C) aggravated indecent liberties with a child, K.S.A. 21-3504, and
42 amendments thereto;

43 (D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505

1 and amendments thereto;

2 (E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments
3 thereto;

4 (F) indecent solicitation of a child, K.S.A. 21-3510, and amendments
5 thereto;

6 (G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and
7 amendments thereto;

8 (H) sexual exploitation of a child, K.S.A. 21-3516, and amendments
9 thereto;

10 (I) aggravated sexual battery, K.S.A. 21-3518, and amendments
11 thereto;

12 (J) *aggravated incest, K.S.A. 21-3603, and amendments thereto;*

13 (K) any conviction for a felony offense in effect at any time prior to
14 the effective date of this act, that is comparable to a sexually violent crime
15 as defined in subparagraphs (A) through ~~(I)~~ (J), or any federal or other
16 state conviction for a felony offense that under the laws of this state would
17 be a sexually violent crime as defined in this section;

18 ~~(K)~~ (L) an attempt, conspiracy or criminal solicitation, as defined in
19 K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a sexually
20 violent crime as defined in this section; or

21 ~~(L)~~ (M) any act which at the time of sentencing for the offense has
22 been determined beyond a reasonable doubt to have been sexually moti-
23 vated. As used in this subparagraph, “sexually motivated” means that
24 one of the purposes for which the defendant committed the crime was
25 for the purpose of the defendant’s sexual gratification.

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

33 (f) If a person is sentenced to prison for a crime committed on or
34 after July 1, 1993, while on probation, parole, conditional release or in a
35 community corrections program, for a crime committed prior to July 1,
36 1993, and the person is not eligible for retroactive application of the
37 sentencing guidelines and amendments thereto pursuant to K.S.A. 21-
38 4724 and amendments thereto, the new sentence shall not be aggregated
39 with the old sentence, but shall begin when the person is paroled or
40 reaches the conditional release date on the old sentence. If the offender
41 was past the offender’s conditional release date at the time the new of-
42 fense was committed, the new sentence shall not be aggregated with the
43 old sentence but shall begin when the person is ordered released by the

1 Kansas parole board or reaches the maximum sentence expiration date
2 on the old sentence, whichever is earlier. The new sentence shall then
3 be served as otherwise provided by law. The period of postrelease su-
4 pervision shall be based on the new sentence, except that those offenders
5 whose old sentence is a term of imprisonment for life, imposed pursuant
6 to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate
7 sentence with a maximum term of life imprisonment, for which there is
8 no conditional release or maximum sentence expiration date, shall remain
9 on postrelease supervision for life or until discharged from supervision
10 by the Kansas parole board.

11 (g) Subject to the provisions of this section, the Kansas parole board
12 may release on parole those persons confined in institutions who are el-
13 igible for parole when: (1) The board believes that the inmate should be
14 released for hospitalization, for deportation or to answer the warrant or
15 other process of a court and is of the opinion that there is reasonable
16 probability that the inmate can be released without detriment to the com-
17 munity or to the inmate; or (2) the secretary of corrections has reported
18 to the board in writing that the inmate has satisfactorily completed the
19 programs required by any agreement entered under K.S.A. 75-5210a and
20 amendments thereto, or any revision of such agreement, and the board
21 believes that the inmate is able and willing to fulfill the obligations of a
22 law abiding citizen and is of the opinion that there is reasonable proba-
23 bility that the inmate can be released without detriment to the community
24 or to the inmate. Parole shall not be granted as an award of clemency and
25 shall not be considered a reduction of sentence or a pardon.

26 (h) The Kansas parole board shall hold a parole hearing at least the
27 month prior to the month an inmate will be eligible for parole under
28 subsections (a), (b) and (c). At least the month preceding the parole hear-
29 ing, the county or district attorney of the county where the inmate was
30 convicted shall give written notice of the time and place of the public
31 comment sessions for the inmate to any victim of the inmate's crime who
32 is alive and whose address is known to the county or district attorney or,
33 if the victim is deceased, to the victim's family if the family's address is
34 known to the county or district attorney. Except as otherwise provided,
35 failure to notify pursuant to this section shall not be a reason to postpone
36 a parole hearing. In the case of any inmate convicted of an off-grid felony
37 or a class A felony the secretary of corrections shall give written notice
38 of the time and place of the public comment session for such inmate at
39 least one month preceding the public comment session to any victim of
40 such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and
41 amendments thereto. If notification is not given to such victim or such
42 victim's family in the case of any inmate convicted of an off-grid felony
43 or a class A felony, the board shall postpone a decision on parole of the

1 inmate to a time at least 30 days after notification is given as provided in
2 this section. Nothing in this section shall create a cause of action against
3 the state or an employee of the state acting within the scope of the em-
4 ployee's employment as a result of the failure to notify pursuant to this
5 section. If granted parole, the inmate may be released on parole on the
6 date specified by the board, but not earlier than the date the inmate is
7 eligible for parole under subsections (a), (b) and (c). At each parole hear-
8 ing and, if parole is not granted, at such intervals thereafter as it deter-
9 mines appropriate, the Kansas parole board shall consider: (1) Whether
10 the inmate has satisfactorily completed the programs required by any
11 agreement entered under K.S.A. 75-5210a and amendments thereto, or
12 any revision of such agreement; and (2) all pertinent information regard-
13 ing such inmate, including, but not limited to, the circumstances of the
14 offense of the inmate; the presentence report; the previous social history
15 and criminal record of the inmate; the conduct, employment, and attitude
16 of the inmate in prison; the reports of such physical and mental exami-
17 nations as have been made; comments of the victim and the victim's
18 family including in person comments, contemporaneous comments and
19 prerecorded comments made by any technological means; comments of
20 the public; official comments; and capacity of state correctional
21 institutions.

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

32 (j) Before ordering the parole of any inmate, the Kansas parole board
33 shall have the inmate appear before either in person or via a video con-
34 ferencing format and shall interview the inmate unless impractical be-
35 cause of the inmate's physical or mental condition or absence from the
36 institution. Every inmate while on parole shall remain in the legal custody
37 of the secretary of corrections and is subject to the orders of the secretary.
38 Whenever the Kansas parole board formally considers placing an inmate
39 on parole and no agreement has been entered into with the inmate under
40 K.S.A. 75-5210a and amendments thereto, the board shall notify the in-
41 mate in writing of the reasons for not granting parole. If an agreement
42 has been entered under K.S.A. 75-5210a and amendments thereto and
43 the inmate has not satisfactorily completed the programs specified in the

1 agreement, or any revision of such agreement, the board shall notify the
2 inmate in writing of the specific programs the inmate must satisfactorily
3 complete before parole will be granted. If parole is not granted only
4 because of a failure to satisfactorily complete such programs, the board
5 shall grant parole upon the secretary's certification that the inmate has
6 successfully completed such programs. If an agreement has been entered
7 under K.S.A. 75-5210a and amendments thereto and the secretary of
8 corrections has reported to the board in writing that the inmate has sat-
9 isfactorily completed the programs required by such agreement, or any
10 revision thereof, the board shall not require further program participa-
11 tion. However, if the board determines that other pertinent information
12 regarding the inmate warrants the inmate's not being released on parole,
13 the board shall state in writing the reasons for not granting the parole. If
14 parole is denied for an inmate sentenced for a crime other than a class A
15 or class B felony or an off-grid felony, the board shall hold another parole
16 hearing for the inmate not later than one year after the denial unless the
17 parole board finds that it is not reasonable to expect that parole would
18 be granted at a hearing if held in the next three years or during the interim
19 period of a deferral. In such case, the parole board may defer subsequent
20 parole hearings for up to three years but any such deferral by the board
21 shall require the board to state the basis for its findings. If parole is denied
22 for an inmate sentenced for a class A or class B felony or an off-grid
23 felony, the board shall hold another parole hearing for the inmate not
24 later than three years after the denial unless the parole board finds that
25 it is not reasonable to expect that parole would be granted at a hearing if
26 held in the next 10 years or during the interim period of a deferral. In
27 such case, the parole board may defer subsequent parole hearings for up
28 to 10 years but any such deferral shall require the board to state the basis
29 for its findings.

30 (k) Parolees and persons on postrelease supervision shall be assigned,
31 upon release, to the appropriate level of supervision pursuant to the cri-
32 teria established by the secretary of corrections.

33 (l) The Kansas parole board shall adopt rules and regulations in ac-
34 cordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not in-
35 consistent with the law and as it may deem proper or necessary, with
36 respect to the conduct of parole hearings, postrelease supervision reviews,
37 revocation hearings, orders of restitution, reimbursement of expenditures
38 by the state board of indigents' defense services and other conditions to
39 be imposed upon parolees or releasees. Whenever an order for parole or
40 postrelease supervision is issued it shall recite the conditions thereof.

41 (m) Whenever the Kansas parole board orders the parole of an in-
42 mate or establishes conditions for an inmate placed on postrelease su-
43 pervision, the board:

1 (1) Unless it finds compelling circumstances which would render a
2 plan of payment unworkable, shall order as a condition of parole or post-
3 release supervision that the parolee or the person on postrelease super-
4 vision pay any transportation expenses resulting from returning the pa-
5 rolee or the person on postrelease supervision to this state to answer
6 criminal charges or a warrant for a violation of a condition of probation,
7 assignment to a community correctional services program, parole, con-
8 ditional release or postrelease supervision;

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

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

18 (4) may order the parolee or person on postrelease supervision to pay
19 the administrative fee imposed pursuant to K.S.A. 2002 Supp. 22-4529,
20 and amendments thereto, unless the board finds compelling circum-
21 stances which would render payment unworkable; and

22 (5) unless it finds compelling circumstances which would render a
23 plan of payment unworkable, shall order that the parolee or person on
24 postrelease supervision reimburse the state for all or part of the expend-
25 itures by the state board of indigents' defense services to provide counsel
26 and other defense services to the person. In determining the amount and
27 method of payment of such sum, the parole board shall take account of
28 the financial resources of the person and the nature of the burden that
29 the payment of such sum will impose. Such amount shall not exceed the
30 amount claimed by appointed counsel on the payment voucher for indi-
31 gents' defense services or the amount prescribed by the board of indi-
32 gents' defense services reimbursement tables as provided in K.S.A. 22-
33 4522 and amendments thereto, whichever is less, minus any previous
34 payments for such services.

35 (n) If the court which sentenced an inmate specified at the time of
36 sentencing the amount and the recipient of any restitution ordered as a
37 condition of parole or postrelease supervision, the Kansas parole board
38 shall order as a condition of parole or postrelease supervision that the
39 inmate pay restitution in the amount and manner provided in the journal
40 entry unless the board finds compelling circumstances which would ren-
41 der a plan of restitution unworkable.

42 (o) Whenever the Kansas parole board grants the parole of an inmate,
43 the board, within 10 days of the date of the decision to grant parole, shall

1 give written notice of the decision to the county or district attorney of the
2 county where the inmate was sentenced.

3 (p) When an inmate is to be released on postrelease supervision, the
4 secretary, within 30 days prior to release, shall provide the county or
5 district attorney of the county where the inmate was sentenced written
6 notice of the release date.

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

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

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

20 (t) For offenders sentenced prior to the effective date of this act who
21 are eligible for modification of their postrelease supervision obligation,
22 the department of corrections shall modify the period of postrelease su-
23 pervision as provided for by this section for offenders convicted of severity
24 level 9 and 10 crimes on the sentencing guidelines grid for nondrug
25 crimes and severity level 4 crimes on the sentencing guidelines grid for
26 drug crimes on or before September 1, 2000; for offenders convicted of
27 severity level 7 and 8 crimes on the sentencing guidelines grid for nondrug
28 crimes on or before November 1, 2000; and for offenders convicted of
29 severity level 5 and 6 crimes on the sentencing guidelines grid for nondrug
30 crimes and severity level 3 crimes on the sentencing guidelines grid for
31 drug crimes on or before January 1, 2001.

32 Sec. 2. K.S.A. 2002 Supp. 22-3717 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the statute book.

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