

## SENATE BILL No. 231

By Committee on Judiciary

2-14

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AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 21-3513 and 21-3608 and K.S.A. 2002 Supp. 21-3415, 21-3502, 21-4635, 21-4638 and 21-4706 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 21-3415 is hereby amended to read as follows: 21-3415. (a) Aggravated battery against a law enforcement officer is: (1) An aggravated battery, as defined in subsection (a)(1)(A) of K.S.A. 21-3414 and amendments thereto, committed against a uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty;

(2) an aggravated battery, as defined in subsection (a)(1)(B) or (a)(1)(C) of K.S.A. 21-3414 and amendments thereto, committed against a uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty; ~~or~~

(3) intentionally causing bodily harm to a uniformed or properly identified state, county or city law enforcement officer with a motor vehicle, while the officer is engaged in the performance of the officer's duty; *or*

(4) *an aggravated battery, as defined in subsection (a)(1) of K.S.A. 21-3414, and amendments thereto, committed against a state, county or city law enforcement officer or intentionally causing bodily harm to a state, county or city law enforcement officer with a motor vehicle, and the offender has actual knowledge that such officer is a law enforcement officer.*

(b) (1) Aggravated battery against a law enforcement officer as described in subsection (a)(1) ~~or~~, (a)(3) *or* (a)(4) is a severity level 3, person felony.

(2) Aggravated battery against a law enforcement officer as described in subsection (a)(2) is a severity level 6, person felony.

(3) A person convicted of aggravated battery against a law enforcement officer shall be subject to the provisions of subsection (g) of K.S.A. 21-4704 and amendments thereto.

Sec. 2. K.S.A. 2002 Supp. 21-3502 is hereby amended to read as

1 follows: 21-3502. (a) Rape is: (1) Sexual intercourse with a person who  
2 does not consent to the sexual intercourse, under any of the following  
3 circumstances:

4 (A) When the victim is overcome by force or fear;  
5 (B) when the victim is unconscious or physically powerless; or  
6 (C) when the victim is incapable of giving consent because of mental  
7 deficiency or disease, or when the victim is incapable of giving consent  
8 because of the effect of any alcoholic liquor, narcotic, drug or other sub-  
9 stance, which condition was known by the offender or was reasonably  
10 apparent to the offender;

11 (2) sexual intercourse with a child who is under 14 years of age;

12 (3) sexual intercourse with a victim when the victim's consent was  
13 obtained through a knowing misrepresentation made by the offender that  
14 the sexual intercourse was a medically or therapeutically necessary pro-  
15 cedure; or

16 (4) sexual intercourse with a victim when the victim's consent was  
17 obtained through a knowing misrepresentation made by the offender that  
18 the sexual intercourse was a legally required procedure within the scope  
19 of the offender's authority.

20 (b) It shall be a defense to a prosecution of rape under subsection  
21 (a)(2) that the child was married to the accused at the time of the offense.

22 (c) Rape as described in subsection (a)(1) or (2) is a severity level 1,  
23 person felony. Rape as described in subsection (a)(3) or (4) is a severity  
24 level 2, person felony. *On the second or subsequent conviction of a vio-*  
25 *lation of this section, a person shall be guilty of an off-grid person felony.*

26 Sec. 3. K.S.A. 21-3513 is hereby amended to read as follows: 21-  
27 3513. (a) Promoting prostitution is:

28 (1) Establishing, owning, maintaining or managing a house of pros-  
29 titution, or participating in the establishment, ownership, maintenance,  
30 or management thereof;

31 (2) permitting any place partially or wholly owned or controlled by  
32 the defendant to be used as a house of prostitution;

33 (3) procuring a prostitute for a house of prostitution;

34 (4) inducing another to become a prostitute;

35 (5) soliciting a patron for a prostitute or for a house of prostitution;

36 (6) procuring a prostitute for a patron;

37 (7) procuring transportation for, paying for the transportation of, or  
38 transporting a person within this state with the intention of assisting or  
39 promoting that person's engaging in prostitution; or

40 (8) being employed to perform any act which is prohibited by this  
41 section.

42 (b) (1) Promoting prostitution is a class A person misdemeanor when  
43 the prostitute is 16 or more years of age.

1 (2) Promoting prostitution when the prostitute is 16 or more years of  
2 age is a severity level 7, person felony if committed by a person who has,  
3 prior to the commission of the crime, been convicted of promoting  
4 prostitution.

5 (3) Promoting prostitution is a severity level ~~6~~ 5, person felony when  
6 the prostitute is under 16 years of age.

7 Sec. 4. K.S.A. 21-3608 is hereby amended to read as follows: 21-  
8 3608. (a) Endangering a child is:

9 (1) Intentionally and unreasonably causing or permitting a child un-  
10 der the age of 18 years to be placed in a situation in which the child's  
11 life, body or health may be injured or endangered; or

12 (2) *knowingly and intentionally causing or permitting a child under*  
13 *the age of 18 years to be present where:*

14 (A) *A person is selling, offering for sale or having in such person's*  
15 *possession with intent to sell, deliver or distribute; prescribe; administer;*  
16 *deliver; distribute; dispense; compound; unlawfully manufacturing; or at-*  
17 *tempt to unlawfully manufacture any methamphetamine as defined by*  
18 *subsections (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto;*  
19 *or*

20 (B) *drug paraphernalia or volatile, toxic or flammable chemicals are*  
21 *stored for the purpose of unlawfully manufacturing or attempting to un-*  
22 *lawfully manufacture any methamphetamine as defined by subsections*  
23 *(d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.*

24 (b) Nothing in this section shall be construed to mean a child is en-  
25 dangered for the sole reason the child's parent or guardian, in good faith,  
26 selects and depends upon spiritual means alone through prayer, in ac-  
27 cordance with the tenets and practice of a recognized church or religious  
28 denomination, for the treatment or cure of disease or remedial care of  
29 such child.

30 (c) Endangering a child *as described in subsection (a)(1)* is a class A  
31 person misdemeanor. *Endangering a child as described in subsection*  
32 *(a)(2) is a severity level 9, person felony.*

33 (d) *As used in this section, "manufacture" shall have the meaning*  
34 *ascribed to that term in K.S.A. 65-4101, and amendments thereto, and*  
35 *"drug paraphernalia" shall have the meaning ascribed to that term in*  
36 *K.S.A. 65-4150, and amendments thereto.*

37 Sec. 5. K.S.A. 2002 Supp. 21-4635 is hereby amended to read as  
38 follows: 21-4635. (a) Except as provided in K.S.A. 21-4634 and amend-  
39 ments thereto, if a defendant is convicted of:

40 (1) The crime of capital murder and a sentence of death is not im-  
41 posed, or if a defendant is convicted of murder in the first degree based  
42 upon the finding of premeditated murder, the court shall determine  
43 whether the defendant shall be required to serve a mandatory term of

1 imprisonment of 40 years or for crimes committed on and after July 1,  
2 1999, a mandatory term of imprisonment of 50 years or sentenced as  
3 otherwise provided by law; or

4 (2) *a second or subsequent violation of K.S.A. 21-3502, and amend-*  
5 *ments thereto, if such violation was committed on and after July 1, 2003,*  
6 *the court shall determine whether the defendant shall be required to serve*  
7 *a mandatory term of imprisonment of 40 years or sentenced as otherwise*  
8 *provided by law.*

9 (b) In order to make such determination, the court may be presented  
10 evidence concerning any matter that the court deems relevant to the  
11 question of sentence and shall include matters relating to any of the ag-  
12 gravating circumstances enumerated in K.S.A. 21-4636 and amendments  
13 thereto and any mitigating circumstances. Any such evidence which the  
14 court deems to have probative value may be received regardless of its  
15 admissibility under the rules of evidence, provided that the defendant is  
16 accorded a fair opportunity to rebut any hearsay statements. Only such  
17 evidence of aggravating circumstances as the state has made known to  
18 the defendant prior to the sentencing shall be admissible and no evidence  
19 secured in violation of the constitution of the United States or of the state  
20 of Kansas shall be admissible. No testimony by the defendant at the time  
21 of sentencing shall be admissible against the defendant at any subsequent  
22 criminal proceeding. At the conclusion of the evidentiary presentation,  
23 the court shall allow the parties a reasonable period of time in which to  
24 present oral argument.

25 (c) If the court finds that one or more of the aggravating circum-  
26 stances enumerated in K.S.A. 21-4636 and amendments thereto exist and,  
27 further, that the existence of such aggravating circumstances is not out-  
28 weighed by any mitigating circumstances which are found to exist, the  
29 defendant shall be sentenced pursuant to K.S.A. 21-4638 and amend-  
30 ments thereto; otherwise, the defendant shall be sentenced as provided  
31 by law. The court shall designate, in writing, the statutory aggravating  
32 circumstances which it found. The court may make the findings required  
33 by this subsection for the purpose of determining whether to sentence a  
34 defendant pursuant to K.S.A. 21-4638 and amendments thereto notwith-  
35 standing contrary findings made by the jury or court pursuant to subsec-  
36 tion (e) of K.S.A. 21-4624 and amendments thereto for the purpose of  
37 determining whether to sentence such defendant to death.

38 Sec. 6. K.S.A. 2002 Supp. 21-4638 is hereby amended to read as  
39 follows: 21-4638. When it is provided by law that a person shall be sen-  
40 tenced pursuant to this section, such person shall be sentenced to im-  
41 prisonment for life and shall not be eligible for probation or suspension,  
42 modification or reduction of sentence. Except as otherwise provided, in  
43 addition, a person sentenced pursuant to this section shall not be eligible

1 for parole prior to serving 40 years' imprisonment, and such 40 years'  
2 imprisonment shall not be reduced by the application of good time cred-  
3 its. For crimes committed on and after July 1, 1999, a person sentenced  
4 pursuant to this section shall not be eligible for parole prior to serving 50  
5 years' imprisonment, and such 50 years' imprisonment shall not be re-  
6 duced by the application of good time credits. *For a second or subsequent*  
7 *violation of K.S.A. 21-3502, and amendments thereto, committed on and*  
8 *after July 1, 2003, a person sentenced pursuant to this section shall not*  
9 *be eligible for parole prior to serving 40 years' imprisonment, and such*  
10 *40 years' imprisonment shall not be reduced by the application of good*  
11 *time credits.* Upon sentencing a defendant pursuant to this section, the  
12 court shall commit the defendant to the custody of the secretary of cor-  
13 rections and the court shall state in the sentencing order of the judgment  
14 form or journal entry, whichever is delivered with the defendant to the  
15 correctional institution, that the defendant has been sentenced pursuant  
16 to K.S.A. 21-4638 and amendments thereto.

17 Sec. 7. K.S.A. 2002 Supp. 21-4706 is hereby amended to read as  
18 follows: 21-4706. (a) For crimes committed on or after July 1, 1993, the  
19 sentences of imprisonment shall represent the time a person shall actually  
20 serve, subject to a reduction of up to 15% of the primary sentence for  
21 good time as authorized by law.

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

23 (c) Violations of K.S.A. 21-3401, 21-3439 and 21-3801, and amend-  
24 ments thereto, *and a second or subsequent violation of K.S.A. 21-3502,*  
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. 8. K.S.A. 21-3513 and 21-3608 and K.S.A. 2002 Supp. 21-3415,  
30 21-3502, 21-4635, 21-4638 and 21-4706 are hereby repealed.

31 Sec. 9. This act shall take effect and be in force from and after its  
32 publication in the statute book.

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