

As Amended by House Committee

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 469

By Senators Schmidt and Hensley

2-6

14 AN ACT *[concerning crimes, punishment and criminal procedure;*
15 ~~*relating to offender registration;*~~ requiring investigation and report
16 of findings regarding investigation into the circumstances of inmate
17 deaths in department of corrections facilities and jails; ~~*amending*~~
18 ***K.S.A. 2003 Supp. 21-3412a, 21-3438, 21-4704, 22-4909 and 74-***
19 ***5602 and repealing the existing section*** sections.

20
21 *Be it enacted by the Legislature of the State of Kansas:*

22 Section 1. Whenever death occurs of an inmate, who is in the cus-
23 tody of the secretary of corrections and who resides in a correctional
24 facility or boot camp operated by or contracted through the secretary ~~*or*~~
25 ***of a juvenile, who is in the custody of the commissioner of juvenile***
26 ***justice and who resides in an institution operated by or contracted***
27 ***through the commissioner***, an investigation regarding the circumstances
28 of the death shall be initiated by the Kansas bureau of investigation. ~~The~~
29 ***A report of the*** findings of the investigation shall be made available to
30 the chairperson of the senate ~~and house judiciary committees~~ **judiciary**
31 **committee and the house corrections and juvenile justice commit-**
32 **tee** of the Kansas legislature and shall be subject to the open records act,
33 K.S.A. 45-215, and amendments thereto.

34 Sec. 2. Whenever the death of a prisoner in the custody of a city or
35 county and residing in jail ~~*or in a facility contracted through the city*~~
36 ***or county, or both***, occurs, an investigation regarding the circumstances
37 of the death shall be initiated by the Kansas bureau of investigation. ~~The~~
38 ***A report of the*** findings of the investigation shall be made available to
39 the chairperson of the senate ~~and house judiciary committees~~ **judiciary**
40 **committee and the house corrections and juvenile justice commit-**
41 **tee** of the Kansas legislature and shall be subject to the open records act,
42 K.S.A. 45-215, and amendments thereto.

43 ~~***Sec. 3. K.S.A. 2003 Supp. 22-4909 is hereby amended to read***~~

1 ~~as follows: 22-4909. (a) The statements or any other information~~
2 ~~required by this the Kansas offender registration act shall be open to~~
3 ~~inspection by the public at the sheriff's office, at the headquarters~~
4 ~~of the Kansas bureau of investigation and on any internet website~~
5 ~~sponsored or created by a sheriff's department or the Kansas bureau~~
6 ~~of investigation that contains such statements or information, and~~
7 ~~specifically are subject to the provisions of the Kansas open records~~
8 ~~act, K.S.A. 45-215 et seq., and amendments thereto, except that the~~
9 ~~name, address, telephone number, or any other information which~~
10 ~~specifically and individually identifies the victim of any offender~~
11 ~~required to register as provided in this act shall not be disclosed~~
12 ~~other than to law enforcement agencies.~~

13 ~~[(b) If an offender resides within 1,000 feet of any licensed child care~~
14 ~~facility or any school property upon which is located a structure used by~~
15 ~~a unified school district or a nonpublic school for student instruction or~~
16 ~~attendance or extracurricular activities of pupils enrolled in kindergarten~~
17 ~~or any of the grades one through 12, the sheriff of the county in which~~
18 ~~the facility or school is located shall communicate in writing or by elec-~~
19 ~~tronic mail to the administrator of such facility or school the following~~
20 ~~information concerning such offender: Name, date of birth, offense or~~
21 ~~offenses committed, date of conviction or convictions obtained, city or~~
22 ~~county of conviction or convictions obtained, sex and age of victim, cur-~~
23 ~~rent address, identifying characteristics such as race, skin tone, sex, age,~~
24 ~~hair and eye color, scars, tattoos and blood type, occupation, name of~~
25 ~~employer and place of employment, drivers license and vehicle informa-~~
26 ~~tion, and a photograph. The sheriff may collect a fee not to exceed \$50~~
27 ~~from the offender to cover the costs of implementing this subsection. If a~~
28 ~~fee is collected, the fee shall be set by the board of county commissioners~~
29 ~~by resolution. Such fee shall be deposited in the county general fund.~~

30 **Sec. 3. K.S.A. 2003 Supp. 21-3412a is hereby amended to read**
31 **as follows: 21-3412a. (a) Domestic battery is:**

32 (1) intentionally or recklessly causing bodily harm by a family
33 or household member against a family or household member; or

34 (2) intentionally causing physical contact with a family or
35 household member by a family or household member when done
36 in a rude, insulting or angry manner.

37 (b) (1) Upon a first conviction of a violation of domestic bat-
38 tery, a person shall be guilty of a class B person misdemeanor and
39 sentenced to not less than 48 consecutive hours nor more than six
40 months' imprisonment and fined not less than \$200, nor more than
41 \$500 or in the court's discretion the court may enter an order
42 which requires the person enroll in and successfully complete a
43 domestic violence prevention program.

1 **(2) If, within five years immediately preceding commission of**
2 **the crime, a person is convicted of a violation of domestic battery**
3 **a second time, such person shall be guilty of a class A person mis-**
4 **demeanor and sentenced to not less than 90 days nor more than**
5 **one year's imprisonment and fined not less than \$500 nor more**
6 **than \$1,000. The five days' imprisonment mandated by this sub-**
7 **section may be served in a work release program only after such**
8 **person has served 48 consecutive hours' imprisonment, provided**
9 **such work release program requires such person to return to con-**
10 **finement at the end of each day in the work release program. The**
11 **person convicted must serve at least five consecutive days' impris-**
12 **onment before the person is granted probation, suspension or re-**
13 **duction of sentence or parole or is otherwise released. As a con-**
14 **dition of any grant of probation, suspension of sentence or parole**
15 **or of any other release, the person shall be required to enter into**
16 **and complete a treatment program for domestic violence**
17 **prevention.**

18 **(3) If, within five years immediately preceding commission of**
19 **the crime, a person is convicted of a violation of domestic battery**
20 **a third or subsequent time, such person shall be guilty of a *severity***
21 ***level 10, person felony* and sentenced to not less than 90 days nor more**
22 **than one year's imprisonment and fined not less than \$1,000 nor more**
23 **than \$2,500. The person convicted shall not be eligible for release on**
24 **probation, suspension or reduction of sentence or parole until the person**
25 **has served at least 90 days' imprisonment. The court may also require**
26 **as a condition of parole that such person enter into and complete**
27 **a treatment program for domestic violence. The 90 days' impris-**
28 **onment mandated by this subsection may be served in a work release pro-**
29 **gram only after such person has served 48 consecutive hours' impris-**
30 **onment, provided such work release program requires such person to return**
31 **to confinement at the end of each day in the work release program.**

32 **(c) As used in this section:**

33 **(1) Family or household member means persons 18 years of age**
34 **or older who are spouses, former spouses, parents or stepparents**
35 **and children or stepchildren, and persons who are presently re-**
36 **siding together or who have resided together in the past, and per-**
37 **sons who have a child in common regardless of whether they have**
38 **been married or who have lived together at any time. Family or**
39 **household member also includes a man and woman if the woman**
40 **is pregnant and the man is alleged to be the father, regardless of**
41 **whether they have been married or have lived together at any**
42 **time; and**

43 **(2) for the purpose of determining whether a conviction is a**

1 first, second, third or subsequent conviction in sentencing under
2 this section:

3 (A) “Conviction” includes being convicted of a violation of this
4 section or entering into a diversion or deferred judgment agree-
5 ment in lieu of further criminal proceedings on a complaint alleg-
6 ing a violation of this section;

7 (B) “conviction” includes being convicted of a violation of a law
8 of another state, or an ordinance of any city, or resolution of any
9 county, which prohibits the acts that this section prohibits or en-
10 tering into a diversion or deferred judgment agreement in lieu of
11 further criminal proceedings in a case alleging a violation of such
12 law, ordinance or resolution;

13 (C) only convictions occurring in the immediately preceding
14 five years including prior to the effective date of this act shall be
15 taken into account, but the court may consider other prior convic-
16 tions in determining the sentence to be imposed within the limits
17 provided for a first, second, third or subsequent offender, which-
18 ever is applicable; and

19 (D) it is irrelevant whether an offense occurred before or after
20 conviction for a previous offense.

21 Sec. 4. K.S.A. 2003 Supp. 21-3438 is hereby amended to read
22 as follows: 21-3438. (a) Stalking is an intentional, malicious and
23 repeated following or harassment of another person and making
24 a credible threat with the intent to place such person in reasonable
25 fear for such person’s safety.

26 Stalking is a severity level 10, person felony.

27 (b) Any person who violates subsection (a) when there is an
28 order issued pursuant to the protection from stalking act, K.S.A.
29 2003 Supp. 60-31a01 through 60-31a09, and amendments thereto,
30 a temporary restraining order or an injunction in effect prohibit-
31 ing the behavior described in subsection (a) against the same per-
32 son, is guilty of a severity level 9, person felony.

33 (c) *Any person who violates subsection (b) when in the possession of*
34 *any firearm or weapon as described in K.S.A. 21-4201, and amendments*
35 *thereto, is guilty of a severity level 8, person felony.*

36 ~~(c)~~ (d) Any person who has a second or subsequent conviction
37 occurring against such person, within seven years of a prior con-
38 viction under subsection (a) involving the same victim, is guilty of
39 a severity level 8, person felony.

40 ~~(d)~~ (e) For the purposes of this section: (1) “Course of conduct”
41 means a pattern of conduct composed of a series of acts over a
42 period of time, however short, evidencing a continuity of purpose
43 and which would cause a reasonable person to suffer substantial

1 emotional distress, and must actually cause substantial emotional
2 distress to the person. Constitutionally protected activity is not in-
3 cluded within the meaning of “course of conduct.”

4 (2) “Harassment” means a knowing and intentional course of
5 conduct directed at a specific person that seriously alarms, annoys,
6 torments or terrorizes the person, and that serves no legitimate
7 purpose.

8 (3) “Credible threat” means a verbal or written threat, includ-
9 ing that which is communicated via electronic means, or a threat
10 implied by a pattern of conduct or a combination of verbal or writ-
11 ten statements and conduct made with the intent and the apparent
12 ability to carry out the threat so as to cause the person who is the
13 target of the threat to reasonably fear for such person’s safety. The
14 present incarceration of a person making the threat shall not be a
15 bar to prosecution under this section.

16 (4) “Electronic means” includes, but is not limited to, tele-
17 phones, cellular phones, computers, video recorders, fax ma-
18 chines, pagers and computer networks.

19 Sec. 5. K.S.A. 2003 Supp. 21-4704 is hereby amended to read
20 as follows: 21-4704. (a) For purposes of sentencing, the following
21 sentencing guidelines grid for nondrug crimes shall be applied in
22 felony cases for crimes committed on or after July 1, 1993:
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SENTENCING RANGE - NONDRUG OFFENSES

Category	A	B	C	D	E	F	G	H	I
Severity Level	3 + Person Felonies	2 Person Felonies	1 Person & 1 Nonperson Felonies	1 Person Felony	3 + Nonperson Felonies	2 Nonperson Felonies	1 Nonperson Felony	2 + Misdemeanors	1 Misdemeanor No Record
I	653 620 592	618 586 554	285 272 256	257 253 240	346 334 221	226 214 203	293 195 184	186 176 166	165 155 147
II	493 467 442	460 438 416	216 205 194	200 190 181	184 174 165	168 160 152	154 146 138	138 131 121	123 117 109
III	247 233 221	238 216 206	107 102 96	100 94 89	92 88 82	83 79 74	77 72 68	71 66 61	61 59 55
IV	172 162 154	162 154 144	75 71 66	69 66 62	64 60 57	59 56 52	52 50 47	48 45 42	43 41 38
V	136 130 122	128 120 114	60 57 53	55 52 50	51 49 46	47 44 41	43 41 38	38 36 34	36 34 32
VI	46 43 40	41 39 37	38 36 34	36 34 32	32 30 28	29 27 25	27 25 23	25 23 21	23 21 19
VII	34 32 30	31 29 27	29 27 25	26 24 22	23 21 19	19 18 17	17 16 15	14 13 12	13 12 11
VIII	23 21 19	20 19 18	19 18 17	17 16 15	15 14 13	13 12 11	11 10 9	11 10 9	9 8 7
IX	17 16 15	15 14 13	13 12 11	13 12 11	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5
X	13 12 11	12 11 10	11 10 9	10 9 8	9 8 7	8 7 6	7 6 5	7 6 5	6 5 4

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1 (b) The provisions of this section shall be applicable to the sen-
2 tencing guidelines grid for nondrug crimes. Sentences expressed
3 in such grid represent months of imprisonment.

4 (c) The sentencing guidelines grid is a two-dimensional crime
5 severity and criminal history classification tool. The grid's vertical
6 axis is the crime severity scale which classifies current crimes of
7 conviction. The grid's horizontal axis is the criminal history scale
8 which classifies criminal histories.

9 (d) The sentencing guidelines grid for nondrug crimes as pro-
10 vided in this section defines presumptive punishments for felony
11 convictions, subject to judicial discretion to deviate for substantial
12 and compelling reasons and impose a different sentence in rec-
13 ognition of aggravating and mitigating factors as provided in this
14 act. The appropriate punishment for a felony conviction should
15 depend on the severity of the crime of conviction when compared
16 to all other crimes and the offender's criminal history.

17 (e) (1) The sentencing court has discretion to sentence at any
18 place within the sentencing range. The sentencing judge shall se-
19 lect the center of the range in the usual case and reserve the upper
20 and lower limits for aggravating and mitigating factors insufficient
21 to warrant a departure.

22 (2) In presumptive imprisonment cases, the sentencing court
23 shall pronounce the complete sentence which shall include the
24 prison sentence, the maximum potential reduction to such sen-
25 tence as a result of good time and the period of postrelease su-
26 pervision at the sentencing hearing. Failure to pronounce the pe-
27 riod of postrelease supervision shall not negate the existence of
28 such period of postrelease supervision.

29 (3) In presumptive nonprison cases, the sentencing court shall
30 pronounce the prison sentence as well as the duration of the non-
31 prison sanction at the sentencing hearing.

32 (f) Each grid block states the presumptive sentencing range for
33 an offender whose crime of conviction and criminal history place
34 such offender in that grid block. If an offense is classified in a grid
35 block below the dispositional line, the presumptive disposition
36 shall be nonimprisonment. If an offense is classified in a grid block
37 above the dispositional line, the presumptive disposition shall be
38 imprisonment. If an offense is classified in grid blocks 5-H, 5-I or
39 6-G, the court may impose an optional nonprison sentence upon
40 making the following findings on the record:

41 (1) An appropriate treatment program exists which is likely to
42 be more effective than the presumptive prison term in reducing
43 the risk of offender recidivism; and

1 (2) the recommended treatment program is available and the
2 offender can be admitted to such program within a reasonable
3 period of time; or

4 (3) the nonprison sanction will serve community safety inter-
5 ests by promoting offender reformation.

6 Any decision made by the court regarding the imposition of an
7 optional nonprison sentence if the offense is classified in grid
8 blocks 5-H, 5-I or 6-G shall not be considered a departure and
9 shall not be subject to appeal.

10 (g) The sentence for the violation of K.S.A. 21-3411, and
11 amendments thereto, aggravated assault against a law enforce-
12 ment officer or K.S.A. 21-3415, and amendments thereto, aggra-
13 vated battery against a law enforcement officer and amendments
14 thereto which places the defendant's sentence in grid block 6-H
15 or 6-I shall be presumed imprisonment. The court may impose an
16 optional nonprison sentence upon making a finding on the record
17 that the nonprison sanction will serve community safety interests
18 by promoting offender reformation. Any decision made by the
19 court regarding the imposition of the optional nonprison sentence,
20 if the offense is classified in grid block 6-H or 6-I, shall not be
21 considered departure and shall not be subject to appeal.

22 (h) When a firearm is used to commit any person felony, the
23 offender's sentence shall be presumed imprisonment. The court
24 may impose an optional nonprison sentence upon making a finding
25 on the record that the nonprison sanction will serve community
26 safety interests by promoting offender reformation. Any decision
27 made by the court regarding the imposition of the optional non-
28 prison sentence shall not be considered a departure and shall not
29 be subject to appeal.

30 (i) The sentence for the violation of the felony provision of
31 K.S.A. 8-1567 and, subsection (b)(3) of K.S.A. 21-3412a, and subsec-
32 tions (b)(3) and (b)(4) of K.S.A. 21-3710, and amendments thereto,
33 shall be as provided by the specific mandatory sentencing require-
34 ments of that section and shall not be subject to the provisions of
35 this section or K.S.A. 21-4707 and amendments thereto. If because
36 of the offender's criminal history classification the offender is sub-
37 ject to presumptive imprisonment or if the judge departs from a
38 presumptive probation sentence and the offender is subject to im-
39 prisonment, the provisions of this section and K.S.A. 21-4707, and
40 amendments thereto, shall apply and the offender shall not be sub-
41 ject to the mandatory sentence as provided in K.S.A. 21-3710, and
42 amendments thereto. Notwithstanding the provisions of any other
43 section, the term of imprisonment imposed for the violation of the

1 **felony provision of K.S.A. 8-1567, subsection (b)(3) of K.S.A. 21-3412a**
2 **and subsections (b)(3) and (b)(4) of K.S.A. 21-3710, and amend-**
3 **ments thereto shall not be served in a state facility in the custody**
4 **of the secretary of corrections.**

5 (j) **The sentence for any persistent sex offender whose current**
6 **convicted crime carries a presumptive term of imprisonment shall**
7 **be double the maximum duration of the presumptive imprison-**
8 **ment term. The sentence for any persistent sex offender whose**
9 **current conviction carries a presumptive nonprison term shall be**
10 **presumed imprisonment and shall be double the maximum dura-**
11 **tion of the presumptive imprisonment term. Except as otherwise**
12 **provided in this subsection, as used in this subsection, “persistent**
13 **sex offender” means a person who: (1) Has been convicted in this**
14 **state of a sexually violent crime, as defined in K.S.A. 22-3717 and**
15 **amendments thereto; and (2) at the time of the conviction under**
16 **subsection (1) has at least one conviction for a sexually violent**
17 **crime, as defined in K.S.A. 22-3717 and amendments thereto in**
18 **this state or comparable felony under the laws of another state,**
19 **the federal government or a foreign government. The provisions**
20 **of this subsection shall not apply to any person whose current con-**
21 **victed crime is a severity level 1 or 2 felony.**

22 (k) **If it is shown at sentencing that the offender committed any**
23 **felony violation for the benefit of, at the direction of, or in asso-**
24 **ciation with any criminal street gang, with the specific intent to**
25 **promote, further or assist in any criminal conduct by gang mem-**
26 **bers, the offender’s sentence shall be presumed imprisonment.**
27 **Any decision made by the court regarding the imposition of the**
28 **optional nonprison sentence shall not be considered a departure**
29 **and shall not be subject to appeal. As used in this subsection, “crim-**
30 **inal street gang” means any organization, association or group of**
31 **three or more persons, whether formal or informal, having as one**
32 **of its primary activities the commission of one or more person**
33 **felonies or felony violations of the uniform controlled substances**
34 **act, K.S.A. 65-4101 *et seq.*, and amendments thereto, which has a**
35 **common name or common identifying sign or symbol, whose mem-**
36 **bers, individually or collectively engage in or have engaged in the**
37 **commission, attempted commission, conspiracy to commit or so-**
38 **licitation of two or more person felonies or felony violations of the**
39 **uniform controlled substances act, K.S.A. 65-4101 *et seq.*, and**
40 **amendments thereto, or any substantially similar offense from an-**
41 **other jurisdiction.**

42 (l) **The sentence for a violation of subsection (a) of K.S.A. 21-**
43 **3715 and amendments thereto when such person being sentenced**

1 has a prior conviction for a violation of subsection (a) or (b) of
2 K.S.A. 21-3715 or 21-3716 and amendments thereto shall be pre-
3 sumed imprisonment.

4 Sec. 6. K.S.A. 2003 Supp. 74-5602 is hereby amended to read
5 as follows: 74-5602. As used in the Kansas law enforcement train-
6 ing act:

7 (a) “Training center” means the law enforcement training cen-
8 ter within the division of continuing education of the university of
9 Kansas, created by K.S.A. 74-5603 and amendments thereto.

10 (b) “Commission” means the Kansas law enforcement training
11 commission, created by K.S.A. 74-5606 and amendments thereto.

12 (c) “Dean” means the dean of the division of continuing edu-
13 cation of the university of Kansas.

14 (d) “Director,” as created in K.S.A. 74-5603 and amendments
15 thereto, means the director of police training at the law enforce-
16 ment training center.

17 (e) “Police officer” or “law enforcement officer” means a full-
18 time or part-time salaried officer or employee of the state, a county
19 or a city, whose duties include the prevention or detection of crime
20 and the enforcement of the criminal or traffic laws of this state or
21 of any municipality thereof. Such terms shall include, but not be
22 limited to, the sheriff, undersheriff and full-time or part-time sal-
23 aried deputies in the sheriff’s office in each county; deputy sheriffs
24 deputized pursuant to K.S.A. 19-2858 and amendments thereto;
25 conservation officers of the Kansas department of wildlife and
26 parks; campus police officers at all state educational institutions or
27 a municipal university; law enforcement agents of the director of
28 alcoholic beverage control; law enforcement agents of the Kansas
29 lottery; law enforcement agents of the Kansas racing commission;
30 deputies and assistants of the state fire marshal having law en-
31 forcement authority; capitol area security guards, existing under
32 the authority of K.S.A. 75-4503 and amendments thereto. Such
33 terms shall also include railroad policemen appointed pursuant to
34 K.S.A. 66-524 and amendments thereto; and school security offi-
35 cers designated as school law enforcement officers pursuant to
36 K.S.A. 72-8222 and amendments thereto. Such terms shall not in-
37 clude any elected official, other than a sheriff, serving in the ca-
38 pacity of a law enforcement or police officer solely by virtue of
39 such official’s elected position; any attorney-at-law having respon-
40 sibility for law enforcement and discharging such responsibility
41 solely in the capacity of an attorney; any employee of the commis-
42 sioner of juvenile justice, the secretary of corrections or the sec-
43 retary of social and rehabilitation services; any deputy conserva-

1 tion officer of the Kansas department of wildlife and parks; or any
2 employee of a city or county who is employed solely to perform
3 correctional duties related to jail inmates and the administration
4 and operation of a jail; or any full-time or part-time salaried officer
5 or employee whose duties include the issuance of a citation or
6 notice to appear provided such officer or employee is not vested
7 by law with the authority to make an arrest for violation of the laws
8 of this state or any municipality thereof, and is not authorized to
9 carry firearms when discharging the duties of such person's office
10 or employment. Such term shall include any officer appointed or
11 elected on a provisional basis.

12 (f) "Full-time" means employment requiring at least 1,000
13 hours of work per year.

14 (g) "Part-time" means employment on a regular schedule or
15 employment which requires a minimum number of hours each
16 payroll period, but in any case requiring less than 1,000 hours of
17 work per year.

18 (h) "Misdemeanor crime of domestic violence" means a viola-
19 tion of domestic battery as provided by *subsection (b)(1) or (b)(2) of*
20 *K.S.A. 2003 Supp. 21-3412a and amendments thereto, or any other*
21 *misdemeanor under federal, municipal or state law that has as an*
22 *element the use or attempted use of physical force, or the threat-*
23 *ened use of a deadly weapon, committed by a current or former*
24 *spouse, parent, or guardian of the victim, by a person with whom*
25 *the victim shares a child in common, by a person who is cohabiting*
26 *with or has cohabited with the victim as a spouse, parent or guard-*
27 *ian, or by a person similarly situated to a spouse, parent or guard-*
28 *ian of the victim.*

29 (i) "Auxiliary personnel" means members of organized nonsa-
30 laried groups which operate as an adjunct to a police or sheriff's
31 department, including reserve officers, posses and search and res-
32 cue groups.

33 [~~Sec. 4~~ 7. *K.S.A. 2003 Supp. 21-3412a, 21-3438, 21-4704, 22-*
34 *4909 is and 74-5602 are hereby repealed.*]

35 Sec. 3 ~~5~~ 8. This act shall take effect and be in force from and after
36 its publication in the statute book.