I. General Orders:

Kansas – Tolling of Speedy Trial as Late as May of 2023

-Wyandotte County - Week before Covid hit – 95 trials set (3-1-2020) – As of 9-7-2021 – Only 65 set – Getting rid of backlog – Court operating as if normal – limited seating in courtrooms – Judges' discretion for Zoom hearings through backlog

-Johnson County – Administrative Order 21-19: Jury trials to begin "on a limited basis" beginning the week of October 4, 2021.

Federal Courts:

-District of Kansas – Tolling December 20, 2021 – Every 90 days new admin order

-Western District of Missouri – Tolled to December 16, 2021 – Every 90 days new admin order

II. Speedy Trial?

Constitutional vs. Statutory Speedy trial – Good Article – by Joseph Hollander & Co.

State v. Queen; No. 120,643, 3-19-21

State vs. Owen; No. 115,441, 11-1-19

III. Legislative Updates of Interest - https://legiscan.com/KS/legislation?page=2

HB 2224: Passed on 5-21-21: Expanding the definition of "infectious disease" in certain statutes related to crimes in which bodily fluids may have been transmitted from one person to another

Legislation started with regards to the Measles or Aids. Statute has been broadened.

K.S.A. 65-6009:

(1) At Appearance b/f Magistrate

(2) If it appears from the nature of the charge that the transmission of bodily fluids from one person to another may have been involved

-Statute does not define "transmission" or "bodily fluids"
-Can this be through a cough, contact transmission
-"nature of charge" – seems to have originated through sex offenses; however, broad definitions could expand to other offenses
-All "Battery" offenses require "rude or offensive touching"
-"Touching" can be any intentional or reckless touch
-Spitting? Contact with someone bleeding? Coughing in face "recklessly" disregarding suspicion of disease??? ETC. Covid???

(2) Inform arrested AND charged person of availability of infectious disease tests; AND

(3) and SHALL cause Alleged Victim to be notified that tests and counseling are available
-The magistrate shall cause the victim to be notified - will only occur if suspect is charged - court not responsible if suspect not charged

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(4) **IF Victim OR DA requests** the court order infectious disease test of alleged offender **OR if the person arrested AND charged** made a statement to the arresting officer that the arrested person has an infectious disease (or used similar words) the Court SHALL order arrested person to submit to infectious disease tests

-Q-Different here - if Victim or DA requests the court order the "alleged offender" to submit to test - court SHALL order test of "arrested person" - Does not require person to be charged
-Statement made by an "arrested person" is not enough if that person is not charged - must be charged for that statement to mandate court to order testing
-No rights of "arrested person" or even "arrested and charged" person to have order for victim to be tested

(5) Test must happen no later than 48 hours after appearance before magistrate
-Q: If arrested and not charged - person will most likely never appear b/f magistrate?
-No timeline for testing if not charged?
-Court shall still order testing if requested by victim OR DA

(6) Results of test – inadmissible in criminal or civil proceeding
-What if person transmits disease to another – evidence of such reckless behavior (or purposeful – can't use
-Sure does open the door to police using the test result to investigate other witnesses or doctor visits, etc. to see if person had knowledge and recklessly disregarded

(7) Court SHALL order arrested person to submit to follow-up tests for infectious diseases as may ben medically appropriate
-specifies "arrested person" Not "arrested or charged person" - HOW can court mandate follow-up testing by someone not charged or convicted of crime?????

(8) Results of Test Disclosed to:
(a) Officer making arrest
(b) Arrested Person
(c) Victim or Parent/Guardian of Victim
(d) Any other person as the court determines has a legitimate need to know to provide for their protection

-REAL PROBLEM HERE - No requirement of hearing – No Due Process – No argument or fact finding by "arrested person" – WHO is "any other person court determines"??? – Is this everyone "exposed" or "coming within 6 feet" of someone with a "contagious disease"??
-Seems to be discretionary but can their be civil liability
-Does the court actually ever consider this

(9) The results of any infectious disease test ordered shall be disclosed to:
(a) the court which ordered the test

(b) the arrested person
(c) by the victim or victims of the crime or by the parent or legal guardian of a victim if the victim is a minor.
(d) If test results in a positive reaction, the results shall be reported to the secretary of health and environment and to the secretary of corrections.

???Now positive results are reported to the secretary of health
-Arrested person now in database / privacy or public database???

(10) The court shall order the *arrested or convicted* person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

HB 2224: Passed 5-21-2021:

Amends K.S.A. 6001 et seq.

(m) "Infectious Disease" means ~~Aids~~ *those diseases designated by the secretary through rules and regulations adopted pursuant to K.S.A. 65-128, and amendments thereto, as "infectious or contagious in their nature"*
Crossed out "Aids" – made very broad definition including "contagious in nature"

Changed K.S.A. 65-6009 - If the victim of the crime or the county or district attorney requests the court to order infectious disease tests of the alleged offender or if the person arrested and charged with a crime stated to the law enforcement officer making such arrest that the *such arrested* person ~~arrested and charged with the crime~~ has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the arrested person to submit to infectious disease tests.

-It appears the amendment was trying to address my concerns regarding an "arrested" person vs. "arrested and charged" – However – language is still there that the statement must be made by an "arrested and charged" person
-Clear reading of statute (and House Bill) does not trigger mandatory testing (or ordering of testing) if the suspect is only arrested and not charged
BUT if arrested and not charged, IF DA or Victim request – Court SHALL still order testing -Is this fair???

K.S.A. 65-128:

(1) For protection of public Secretary of Heath and Environment can designate diseases that are "infectious or contagious" in their nature

(2) Authorized to issue orders to prevent spread of such diseases
-including but not limited to providing for the testing of such diseases
-and the isolation and quarantine of those persons affected OR exposed

K.S.A. 65-129:

(1) Anyone who violates an order of the Secretary of Health or who leaves quarantine or isolation when ordered
(2) Guilty of Class C Misdemeanor

K.S.A. 65-129b:

(1) In investigating "actual" or "potential" EXPOSURES to POTENTIALLY life threatening infectious or contagious diseases – MAY ORDER:

(a) person suspected to seek evaluation and treatment
(b) If determines medically necessary to prevent spread – May require PERSON or GROUP of PERSONS to "Remain in Isolation" or "Quarantine" until determined safe
(c) If someone refuses "examination, treatment, testing, OR vaccination – Can order they be quarantined or placed in isolation until determined they don't pose a threat of spreading
(d) May order Sheriff to assist in execution of these orders

K.S.A. 129c:

Rules related to order mandating quarantine:

(1) Order must specify:
-Who it affects
-Where it applies
-Date and time starts
-What "infectious or contagious" disease is the reason
-Why quarantine is necessary
-That person or group of people have right to a hearing
-Must be in writing and served upon person, or if group posted

(2) People may request a hearing contesting quarantine or isolation
-Request for hearing does not stay or enjoin the order
-Hearing to take place within 72 hours (3 days – Really about 6 after exposure?)
-Court can extend deadline for hearing if there are extraordinary circumstances
-IN OTHER WORDS – Could be weeks before you have a hearing
-Court will consider risks and safety and best interests of all parties/people
(3) Supreme Court can adopt rules to circumvent or help with this provision

K.S.A. 129d:

Cannot be discharged from employment if you are ordered to be isolated or quarantined
Employer is in violation of C Misdemeanor if violates this rule

SB315: 2021-05-26 - Senate Referred to Committee on Public Health and Welfare: Creating the Kansas medical marijuana regulation act to regulate the production, distribution, sale and possession of medical marijuana

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SB60: Passed on May 26 2021 :

Creating the crime of sexual extortion and requiring an offender to register under the Kansas offender registration act

Prohibiting a court from requiring psychiatric or psychological examinations of an alleged victim of any crime

*****Increasing criminal penalties for fleeing or attempting to elude a police officer when operating a stolen vehicle, committing certain driving violations or causing a collision involving another driver

-Changes language *willfully* to *knowingly*
-Felony list adds "Is operating a stolen vehicle"
-Level 9 Felony added language – "knowingly drives into oncoming traffic, etc.
-Increases punishments if defendant has prior offenses on record and makes a third offense (even if misdemeanor) a felony

Defining proximate result for purposes of determining when a crime is committed partly within this state

Removing the spousal exception from the crime of sexual battery

Making fleeing or attempting to elude a police officer evidence of intent to commit theft of a vehicle.

HB2026: Passed on May 26 2021

Creating a drug abuse treatment program for people on diversion and allowing county and district attorneys to enter into agreements with chief judges and community corrections for supervision, clarifying jurisdiction and supervision of offenders in a certified drug abuse treatment program

Authorizing the Kansas sentencing commission to change risk assessment cut-off levels for participation in the certified drug abuse treatment program

**Modifying the criminal penalties for tampering with electronic monitoring equipment
-Reduces offense level from Level 6 to Level 8 felony for tampering with electronic monitoring / house arrest
-Only a felony IF defendant being supervised for felony offense – if supervised for misdemeanor – then tampering is an A misdemeanor

Increasing the criminal penalties for riot and incitement to riot in a correctional facility.

HB2121: Passed on 5-26-21:

Increasing the criminal penalty for mistreatment of a dependent adult or elder person when the victim is a resident of an adult care home

Adding definitions related to defendants who abscond from supervision in the criminal procedure code and for parole and clarifying that bond agents seeking discharge as a surety are required to return the person released on bond to the court in the county where the complaint subject to the bond was filed

Requiring the department of corrections to develop guidance to be used by parole officers when responding to violations of parole and post-release supervision and that incentivize compliant behavior

Authorizing court services officers and community corrections officers to provide a certification of identification to offenders for use to obtain a new driver's license.

HB2058 – Passed 5-3-21

Providing reciprocity for licenses to carry concealed handguns

Creating a new class of concealed carry license for individuals 18 to 20 years of age

Creating the Kansas protection of firearm rights act to restore the right to possess a firearm upon expungement of certain convictions.

HB2071 – Passed 5-3-21

Increasing the criminal penalties for stalking a minor.

HB2366 – Recessed – Senate Referred to Committee on Judiciary

Requiring prosecutors to disclose their intent to introduce testimony from a jailhouse witness and to forward information to the Kansas bureau of investigation.

IV. REGISTERED OFFENDERS

-Ongoing Debate – Article
-Supreme Court Ruling – Registration Requirement NOT Punishment

V. APPELLATE UPDATE

• In a case where the defendant pled no contest to charges connected to a high risk investment scheme, the Kansas Supreme Court held that that acceptance of responsibility by itself was not a substantial and compelling reason for a dispositional departure because the defendant pled no contest in exchange for the dismissal of 10 other counts, minimized his involvement, and was reluctant to pay restitution for the victims' entire loss. See State v. Morley, 479 P.3d 928, 936 (Kan. January 29, 2021).

• In a case where the defendant was sentenced to two consecutive hard 50 sentences, the Kansas Supreme Court ruled that the district court did not abuse its discretion when

it found the defendant's mitigating evidence, including evidence of remorse and good character, were not substantial and compelling reasons to depart from the presumptive sentence because the sentencing judge listened to all of the evidence and considered it when denying the departure. See State v. McNabb, 478 P.3d 769, 772 (Kan. January 8, 2021).

• Where the evidence was insufficient to show that a defendant possessed drugs, his conviction for distribution of controlled substances was reversed because the Kansas Supreme Court found that possession is an element of the crime of distribution of a controlled substance under K.S.A. 2019 Supp. 21-5705(a). See State v. Crosby, 479 P.3d 167, 174 (Kan. January 15, 2021).

• Where a judge departed an off-grid, indeterminate life sentence to an on-grid, determinate sentence, the Kansas Supreme Court recently reversed and remanded for the district court to impose a legal sentence because the judge departed more than 50% of the standard grid sentence which is allowed for convictions of a crime of extreme sexual violence. See State v. Dunn, No. 119,866, 2021 WL 1045457 (Kan. March 19, 2021).

• Where Special Rule 10 (defendant commits a new felony while on felony bond) applied, the Court of Appeals recently remanded the case back to the district court for the judge to use his discretion in deciding whether to send a defendant to prison or probation because the special rule allows for a court to use its discretion when granting probation or prison. See State v. Parker, No. 122,300, 2021 WL 219885 at *3(Kan. App. January 22, 2021) (unpublished opinion).

• In a case where the defendant's probation was revoked, the Court of Appeals found that the defendant's assaultive behavior constituted a danger to public safety and her attitude and behavioral problems amounted to a threat to her own welfare, thereby allowing the court to impose defendant's prison sentence without the intermediate sanction. See State v. Nelson, No. 122,029, 2021 WL 137400 at *2 (Kan. App. January 15, 2021) (unpublished opinion).

• The Court of Appeals recently held that Kansas statutes do not require a district court to include jail credit time in a probation violation journal entry unless the district court revokes probation and orders confinement. See State v. Moss-Barrett, No. 122,360, 2021 WL 401955 at *2 (Kan. App. February 5, 2021) (unpublished opinion).

• In a recent decision the Court of Appeals found that a defendant's prior criminal threat conviction was properly scored as a person felony because when the defendant's sentence became final, both intentional and reckless criminal threat were constitutional. See State v. McCullough, No. 122,167, 2021 WL 646111 at *4 (Kan. App. February 19, 2021) (unpublished opinion). The Court also applied Keel and found that the defendant's prior second marijuana conviction should be scored as a nonperson misdemeanor as this was the classification of the offense at the time of the defendant's current crime. See id. at *5.

• Where a defendant was convicted of criminal threat, among other crimes, the Court of Appeals reversed the criminal threat conviction because the district court instructed the jury on both intentional and reckless criminal threat, neither the jury instructions nor the state's argument steered the jury towards one mental state or the other, the jury was not instructed that it had to unanimously agree on the mental state, the verdict form did not require the jury make a specific finding, and based on the evidence presented at trial it was reasonable that the defendant acted with reckless disregard for whether his statements caused the victim fear. See State v. Cardillo, No. 120,606, 2021 WL 1149145 at *5 (March 26, 2021) (unpublished opinion). Additionally, the

Court of Appeals vacated the defendant's controlling sentence for his drug conviction to determine if a criminal threat conviction was properly included in his criminal history because the PSI did not state which subsection for his prior criminal threat conviction. See id. at *3.

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From: Messages for the Bar <JOCOCOURTS-MESSAGE@LISTSERV.JOCOGOV.ORG> on behalf of DCA-Posting <DCA-Posting@JOCOGOV.ORG>
Sent: Friday, September 10, 2021 4:40 PM
To: JOCOCOURTS-MESSAGE@LISTSERV.JOCOGOV.ORG
Subject: Listserv Notice 21-19 -- RE-STARTING LIMITED JURY TRIALS IN OCTOBER

Listserv Notice 21-19
September 10, 2021

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

RE-STARTING LIMITED JURY TRIALS IN OCTOBER

Upon further consideration of our ongoing consultation with the Johnson County Health Department Medical Officer, reviewing community information regarding the COVID pandemic response in our area, receiving feedback from parties and other information available to the Court, and after discussions with the Pandemic Response Team, the Chief Judge for the 10th Judicial District ordered that we will re-start jury trials on a limited basis beginning with the week of October 4, 2021.

Hearings other than jury trials will continue to be by video conferencing unless there is an extraordinary need for an in-person proceeding as determined by the assigned Judge.

In order to move forward, there will be several restrictions in place. Knowing that there are several cases set and ready to go during the month of October, we will be conducting the jury trials on a limited basis, coordinated to keep the foot traffic and congregation of persons in areas of the Courthouse limited and controlled. So, **check with your assigned Division** on the status of your cases. You may need to stay in a "ready-state" right up to the last moment as cases ahead of yours, also ready, may go or not go at the final hour. We do not want to lose the opportunity to get cases tried as soon as we can safely do so.

We must comply with COVID mitigation efforts and best practices.

All persons involved in the jury trials must be familiar with and follow the jury trial protocols that have been approved by the Kansas Supreme Court—previously distributed by this listserv and available on the Court's web site—as well as any other special orders from the assigned Judge.

The decision going forward with jury trials and further opening use of the Courthouse for other matters is constantly under review. We will keep you advised as changes become necessary or further opening can be accomplished with sufficient safety for all courthouse users, all staff, and the Judges. This is a subject of daily concern and at least weekly review. We will keep you advised.

Thank you for your cooperation and professionalism.

Be safe. Stay healthy.

FOR THE COURT

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

ORDER

IN RE: COVID-19 PANDEMIC ORDER UPDATE	))	ADMINISTRATIVE ORDER 2021-09

This Administrative Order is a continuation of the Administrative Orders issued by this Court since the start of the COVID-19 pandemic in Kansas in March 2020. This order supersedes all previous Administrative Orders related to the CARES Act. This includes 2020-03, 2020-04, 2020-10, 2020-11, 2020-12, 2020-13, 2021-02, 2021-05, and 2021-07.

The Court continues to monitor general conditions regarding the COVID-19 pandemic in the state. Although 57 percent of Kansans have been fully vaccinated, community spread of the virus remains extensive. The Court recognizes the number of cases and hospitalizations are once again increasing due to emergent variants of COVID-19 and, as a result, believes it is prudent to reauthorize the emergency provisions of the CARES Act.

NOW, THEREFORE, the Court hereby makes the following Order:

This Court finds that emergency conditions continue to exist throughout this district, as found by the President and JCUS under the CARES Act;

1. This Court continues to authorize the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, in the criminal procedures specifically enumerated in section 15002(b)(1) of the CARES Act, to wit:

    a. Detention hearings under section 3142 of title 18, United States Code;
    b. Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;
    c. Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;
    d. Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;
    e. Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;
    f. Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;
    g. Pretrial release revocation proceedings under section 3148 of title 18, United States Code;
    h. Appearances under Rule 40 of the Federal Rules of Criminal Procedure;
    i. Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and

j. Proceedings under chapter 403 of title 18, United States Code (commonly known as the "Federal Juvenile Delinquency Act"), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Under section 15002(b)(4) of the CARES Act, the judge may use this authorization only upon the consent of the defendant, or the juvenile, after consultation with counsel. Such consultation with counsel may be accomplished by remote means, including but not limited to video or telephone conference.

2. This Court also continues to authorize the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, in the criminal procedures specifically enumerated in section 15002(b)(2)(A) of the CARES Act, to wit: felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure. Under section 15002(b)(2)(A) of the CARES Act, the district judge in a particular case must find for specific reasons that the plea or sentencing in that case cannot be further delayed without serious harm to the interests of justice. Further, under section 15002(b)(2) of the CARES Act, the judge may use this authorization only upon the consent of the defendant, or the juvenile, after consultation with counsel. Such consultation with counsel may be accomplished by remote means, including but not limited to video or telephone conference.

3. The Court is mindful that in-person hearings may pose heightened risks to some parties, counsel, or witnesses. Motions for continuance that are based in whole or in part on particularized health conditions of a party, counsel, or witness need not include detailed medical information, but such motions must include sufficient information to allow the presiding judge to determine the length of the continuance, whether the hearing should be conducted in-person with particular protective measures, or whether the hearing should be conducted remotely by video or teleconferencing. To that end, while such motions need not include detailed medical information, they must include a request for the specific accommodation sought. In a criminal case, the period of postponement caused by the motion will be excluded under the Speedy Trial Act as the Court specifically finds that for public safety reasons, the ends of justice served by granting the continuance outweigh the best interest of the public and the defendant in a speedy trial, pursuant to 18 U.S.C. section 3161(h)(7)(A).

4. In consultation with the Clerk of Court, the Chief Judge will continue to monitor and review the relevant data to determine if the Court is adequately preserving the public health and safety in the functioning of the justice system. This Administrative Order may be amended or superseded to reflect the current conditions.

5. Giving due consideration to public health and safety, the nature of the hearing, the interest of those involved, the protective measures in place in the courthouse and courtroom, and the general interests of justice, the presiding judge has the discretion to conduct courtroom hearings in civil and criminal cases.

6. In conducting the courtroom hearings, this Court will take reasonable protective measures to ensure the safety and health of parties, attorneys, Court personnel, and other courtroom participants, including (as appropriate) but not limited to: providing sanitizers and wipes, requiring social distancing, allowing the wearing of masks or face shields when doing so does not impede communication and, when practical, sanitizing of exposed areas between hearings. The presiding judge has the discretion to determine what reasonable measures should be taken, giving due consideration to the health and safety of all persons in the courtroom and the recommendations of the Facility Security Committee and the Court Security Committee.

7. Pursuant to the CARES Act and the Recovery Guidelines, the presiding judge has the discretion and is encouraged to use video and teleconferencing in criminal and civil hearings.

The Chief Judge has reviewed the CARES Act authorizations granted in this and previous Administrative Orders and, pursuant to section 15002(b)(3) of the CARES Act, the aforementioned authorizations are extended until the earlier of: (1) the date the Chief Judge determines the authorization is no longer warranted, (2) the date on which emergency authority granted by the JCUS is terminated, (3) the date authorization has been terminated pursuant to section 15002(b)(5) of the CARES Act, or (4) December 20, 2021. If this authorization has not been terminated before December 20, 2021, this Court will review this authorization and determine whether to extend it, in a frequency not to exceed 90 days.

SO ORDERED this 20th day of September 2021.

s/ Julie A. Robinson
JULIE A. ROBINSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

IN RE:)
CRIMINAL CASE OPERATIONS)
DUE TO COVID-19 RESPONSE)

ORDER

Congress passed and the President signed legislation authorizing the use of video and telephone conferencing for various criminal case events during the COVID-19 emergency. See The CARES Act, H.R. 748. The Judicial Conference of the United States has also found that emergency conditions due to the national emergency declared by the President have affected and will materially affect the functioning of the federal courts generally.

In light of the health concerns recognized by Federal, State and local officials, on March 30, 2020, I exercised my authority under Section 15002(b)(1) of the legislation to authorize the use of video and telephone conferencing for all events listed in that section. The authorization was to remain in effect for 90 days (unless terminated earlier). Pursuant to Section 15002(b)(3), on June 26, 2020, I reviewed the authorization to determine whether it should be extended and thereafter extended the authorization for another 90 days. I reviewed and then extended the authorization again on September 24, 2020, December 23, 2020, March 23, 2021, and June 17, 2021, each time for 90 days.

I have again reviewed the authorization pursuant to Section 15002(b)(3) to determine if it should be extended. The national emergency remains in effect and the Judicial Conference of the United States continues to find that emergency conditions have affected and will materially affect the functioning of the federal courts generally. Further, Federal, State and local health officials continue to advise that gatherings be minimized, and social distancing practiced, particularly with respect to unvaccinated individuals. Accordingly, pursuant to The Cares Act, the March 30, 2020

Order authorizing video and telephone conferencing is extended. This Order authorizes video conferencing (or telephone conferencing if video conferencing is not reasonably available) for all events listed in Section 15002(b)(1) of the legislation; specifically:

a. Detention hearings under section 3142 of title 18, United States Code;

b. Initial appearances under Rule 5 of the Federal Rules of Criminal Procedure;

c. Preliminary hearings under Rule 5.1 of the Federal Rules of Criminal Procedure;

d. Waivers of indictment under Rule 7(b) of the Federal Rules of Criminal Procedure;

e. Arraignments under Rule 10 of the Federal Rules of Criminal Procedure;

f. Probation and supervised release revocation proceedings under Rule 32.1 of the Federal Rules of Criminal Procedure;

g. Pretrial release revocation proceedings under section 3148 of title 18, United States Code;

h. Appearances under Rule 40 of the Federal Rules of Criminal Procedure;

i. Misdemeanor pleas and sentencings as described in Rule 43(b)(2) of the Federal Rules of Criminal Procedure; and

j. Proceedings under chapter 403 of title 18, United States Code (commonly known as the ''Federal Juvenile Delinquency Act''), except for contested transfer hearings and juvenile delinquency adjudication or trial proceedings.

Pursuant to Section 15002(b)(2), I further find that, under certain circumstances, felony pleas under Rule 11 of the Federal Rules of Criminal Procedure and felony sentencings under Rule 32 of the Federal Rules of Criminal Procedure cannot be conducted in person in this district without seriously jeopardizing public health and safety. As a result, if a judge in an individual case finds, for specific reasons, that a felony plea or sentencing in that case cannot be further delayed without

serious harm to the interests of justice, the judge may use video conferencing, or teleconferencing if video conferencing is not reasonably available, for the felony plea or sentencing in that case. Judges may also use this authority for equivalent events in juvenile cases as described in Section 15002(b)(2)(B).

Pursuant to Section 15002(b)(4) of the legislation, no video conferencing or teleconferencing authorized by this Order may be used without the prior consent of the defendant or juvenile after consultation with counsel.

Pursuant to Section 15002(b)(3) of the legislation, this authorization will remain in effect for 90 days unless terminated earlier. If emergency conditions continue to exist 90 days from the entry of this order, I will review this authorization and determine whether to extend it.

IT IS SO ORDERED.

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATE: September 16, 2021

cjonline | THE TOPEKA CAPITAL-JOURNAL

COURTS

Gov. Laura Kelly signs off on plan to suspend speedy trial requirements until 2023 after pandemic backlogs courts

Andrew Bahl Topeka Capital-Journal

Published 12:50 p.m. CT March 31, 2021 | **Updated 12:53 p.m. CT March 31, 2021**

Gov. Laura Kelly signed off Wednesday on suspending statutory requirements dictating when Kansans must be tried, a move designed to help the state's court system clear a backlog of cases that have accumulated over the course of the COVID-19 pandemic.

Kansas is one of at least a dozen states that have provisions in their state law enshrining a defendant's right to a speedy trial. Under current law, a case must be brought to trial within 150 days, or 180 days if someone is out on bail.

Otherwise, those cases must be dismissed and can't be brought again.

More: Advocates, lawyers split on pausing key trial requirement due to pandemic

But those provisions will be suspended until May 2023, a plan agreed to by both prosecutors and defense and one which gained bipartisan approval in the Kansas Legislature.

Jury trials are beginning to resume in many parts of the state, but the process has been a slow one. Meanwhile, there are more than 5,000 cases that have piled up since the pandemic began, and attorneys and judges caution that it will take some time to clear them, especially if COVID-19 protocols slow down the trial process.

"We have serious cases we have to attend to," Sedgwick County District Attorney Marc Bennett told legislators earlier this session. "And I don't want to get to the point where I have to choose which murder case to prosecute."

The bill doesn't alter speedy trial protections given to defendants under the U.S. Constitution. But critics remain concerned about Kansans languishing in jail for a prolonged period of time and worry that the court system will drag its feet in getting back up and running.

"Defendants in Kansas should not be denied their rights because of the incompetency of our judicial system," Rep. Brett Fairchild, R-St. John, said in explaining his opposition to the bill in February.

Speedy Trial Rights and COVID-19 Judicial Shutdown

← (https://josephhollander.com/chris-mchugh-shares-covid-19s-impact-on-the-emerging-medical-marijuana-industry-in-missouri/)

→ (https://josephhollander.com/legal-ethics-malpractice-reporter-vol-1-no-4/)

March 27, 2020

Constitutional Protections Still Apply When the Courts are Closed

On March 17, 2020, the Chief Judge of the United States District Court for the District of Kansas issued

On March 13, 2020, the Chief Judge of the United States District Court for the District of Kansas issued Administrative Order No. 2020-3 in an effort to halt traffic in the courthouse and, thereby, combat the spread of COVID-19. The order postpones all criminal trials in Kansas federal courts. On March 16, 2020, the Chief Justice of the Kansas Supreme Court issued Administrative Order 2020-PR-016 in response to the COVID-19 pandemic. It postpones all criminal jury trials in Kansas state courts.

This has left many criminal defendants wondering: What about my speedy trial?

People accused of crimes in Kansas have two different speedy trial protections—those protections afforded by Kansas and federal statutes ("statutory speedy trial") and those protections afforded by the Kansas and United States Constitutions ("constitutional speedy trial").

Speedy trial statutes work by assigning a specific number of days in which a person charged with a crime must be brought to trial. If the timeline is not met, the charges must be dismissed. However, with the number of exceptions they include, speedy trial statutes can read like complicated board game instructions. The exceptions have the effect of excluding certain periods of time from the speedy trial calculation—making it so that not every day before trial counts.

The administrative orders entered earlier this month in Kansas federal and state courts specifically state that the delay caused by the orders will not count toward any criminal defendant's speedy trial calculation.

The federal order relies on 18 U.S.C.A. 3161(h)(7)(A), the subsection of the federal speedy trial statute that allows a judge to exclude time upon finding that "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial."

The state order relies on new legislation created specifically for this situation. On March 19, 2020, Governor Laura Kelly signed into law Senate Bill Number 102, which amended Kansas's speedy trial statute to permit the Chief Justice of the Kansas Supreme Court to "issue an order to extend or suspend any deadlines or time limitations established by statute when the chief justice determines such action is necessary to secure the health and safety of court users, staff and judicial officers." The new legislation also provides that any such order may remain in effect for an additional 150 days after the "state of disaster emergency" has been terminated. Any matter affected by that suspension would then have to be brought before the court within 150 days after the Chief Justice's order terminates. In addition, "any trial scheduled to occur during the time such order was in effect shall be placed back on the court schedule within 150 days."

The practical effect of these administrative orders is that many defendants have had their cases continued by the court to an undetermined future date.

There are valid reasons for both administrative orders. It would be impossible to engage in trials as they are conducted today and follow the CDC's social distancing guidelines. Trials must be conducted in person, in one courtroom. Trials also require several people to be present: the defendant, his or her attorney, the prosecutor, a court reporter, a judge, a bailiff, a dozen jurors, alternate jurors, and any number of witnesses. In addition, the vast majority of trials begin with a process called voir dire, during which dozens of prospective jurors are questioned and selected for service. Until the situation caused by the pandemic becomes more stabilized, each trial would present a significant risk of spreading the disease. Both federal and state courts have determined that the risk justifies curtailing an individual's statutory speedy trial protections.

In sum, it will be difficult to lodge challenges to these delays on the basis of statutory speedy trial. However, that does not prevent all arguments that the COVID-19 shutdown has violated the rights of the accused. Remember we mentioned that defendants have constitutional speedy trial rights in addition to statutory speedy trial rights? A criminal defendant's constitutional speedy trial rights cannot be changed by administrative orders or new legislation. They may be key to ensuring defendants are not prejudiced by court delays.

not prejudiced by court delays.

To analyze whether a defendant's constitutional right to speedy trial has been violated, courts consider a set of four criteria, known as the Barker factors. Those factors are:

- The length of the delay,
- The reason for the delay,
- The defendant's assertion of their right to a speedy trial, and
- Prejudice to the defendant.

Barker v. Wingo, 407 U.S. 514, 533-34 (1972).

Courts typically focus the most on whether or not the defendant was seriously prejudiced by the delay. While constitutional speedy trial victories are not common, this is the time to pursue them—or, at least, lay the foundation for later challenges.

In the past few weeks, we have heard the expression "unprecedented times" more times than we can count. But this is truly a new situation in the justice system. Undoubtedly, certain individuals will have their cases adversely affected by the delay, but the orders do not stop an argument that their constitutional speedy trial rights were violated.

For now, the best course of action for defense attorneys is to do everything possible to position your cases to make compelling Barker arguments when the courts reopen. And, of course, wash your hands.

Legal Blog (https://josephhollander.com/blog-news/)
Closed (https://josephhollander.com/tag/closed/), Courthouse (https://josephhollander.com/tag/courthouse/), Criminal Case (https://josephhollander.com/tag/criminal-case/), Criminal Defense (https://josephhollander.com/tag/criminal-defense/), Postponed (https://josephhollander.com/tag/postponed/)

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 120,643

STATE OF KANSAS.
Appellee,

v.

DANNY W. QUEEN,
Appellant.

SYLLABUS BY THE COURT

1.

Under the facts here, where a district court judge mistakenly set a trial beyond the speedy trial time set in K.S.A. 2020 Supp. 22-3402, the judge did not cite the need to do so because of a crowded docket, and no party requested nor did the court order a continuance, the crowded docket exception of K.S.A. 2020 Supp. 22-3402(e)(4) does not apply to extend the speedy trial deadline.

2.

Under the facts here, a defendant did not waive speedy trial rights or cause a delay that tolled the running of the speedy trial deadline when defense counsel merely acknowledged availability on the date proposed by the court for trial.

3.

Under the facts here, the State failed to preserve for appellate review whether a delay kept the State from bringing a defendant to trial within the time required by K.S.A. 2020 Supp. 22-3402 and resulted from the application or fault of the defendant. The State failed to raise the issue in the district court and questions of fact remain unresolved.

Review of the judgment of the Court of Appeals in an unpublished opinion filed July 2, 2020. Appeal from Douglas District Court; PEGGY C. KITTEL, judge. Opinion filed March 19, 2021. Judgment of the Court of Appeals reversing the district court is affirmed. Judgment of the district court is reversed, and the case is remanded with directions.

Peter Maharry, of Kansas Appellate Defender Office, argued the cause and was on the briefs for appellant.

Kate Duncan Butler, assistant district attorney, argued the cause, and *Charles E. Branson*, district attorney, and *Derek Schmidt*, attorney general, were with her on the brief for appellee.

The opinion of the court was delivered by

LUCKERT, C.J.: The Kansas speedy trial statute requires a court to "discharge [a criminal defendant] from further liability to be tried for the crime charged" if that person was held in jail solely on the charged crime and was not brought to trial within 150 days after such person's arraignment on the charge. K.S.A. 2020 Supp. 22-3402(a). Danny W. Queen seeks discharge from charges of murder and attempted murder because the State did not bring him to trial until 153 days after his arraignment. In seeking discharge from liability, Queen did not then, nor has he ever, asserted that the trial setting violated his constitutional right to a speedy trial. He relied only on his statutory speedy trial right.

The district court judge denied Queen's request, relying on provisions in the speedy trial statute that allow a judge to extend the 150-day period under certain conditions. Queen appealed, and a Court of Appeals panel reversed the district court, holding that no statutory exceptions applied to extend the speedy trial deadline. The panel also noted that the speedy trial statute unambiguously directs courts to discharge from liability any person not timely brought to trial. The Court of Appeals commented: "The remedy is strong medicine, since it undoes any conviction obtained in a trial

impermissibly held after the statutory deadline and precludes any further prosecution of the defendant on those charges." *State v. Queen*, No. 120,643, 2020 WL 3579872, at *6 (Kan. App. 2020) (unpublished opinion).

The State timely petitioned for review, which this court granted. This court's jurisdiction is proper under K.S.A. 20-3018(b) (petition for review of Court of Appeals decision). On review, we affirm the Court of Appeals holding that no exceptions extended the statutory speedy trial period and, consistent with the Legislature's directive, Queen must be discharged from liability on the charges.

FACTUAL AND PROCEDURAL BACKGROUND

The basic facts of the crime are straightforward: After Queen was kicked out of a Eudora bar, he shot and killed a bouncer, Bo Hopson. He also tried to shoot two other people but failed when his gun jammed.

Queen ended up at the bar after an evening of drinking in celebration of his birthday. Queen became upset when he perceived the female bartender was ignoring him. He shouted profanities and slurs. Bar staff and other patrons, including Hopson, ultimately escorted him outside. Once outside, a scuffle broke out between Queen and others that was quickly broken up. Queen was separated from the group; Hopson remained nearby and asked Queen if he was OK and if he needed a ride. Queen sat by himself, undisturbed, for a few minutes before pulling out a gun and firing, shooting Hopson in the chest. Queen tried to shoot two other patrons, but the gun misfired. Several patrons jumped in and beat Queen into unconsciousness, restraining him until police arrived. Hopson died the next day.

Speedy trial facts

The State charged Queen with premeditated first-degree murder and two counts of attempted first-degree murder. Queen was unable to post bond and remained in custody throughout the proceedings. A Douglas County District Court judge arraigned Queen on October 31, 2017, and he pleaded not guilty to all charges. The Douglas County District Court judge then discussed scheduling the trial with the attorneys. The prosecutor told the court it would be difficult to schedule witnesses and jurors during the week of March 19th because that week coincided with spring break for both the University of Kansas and Lawrence public schools.

The judge then had the following discussion with the attorneys:

"THE COURT: Speedy trial would run April 30th?

"[THE STATE]: Yeah.

"THE COURT: Spring break again is when?

"[THE STATE]: March 19th, which is a Monday.

"THE COURT: Counsel, will you check your availability for April 2nd that week.

"[THE STATE]: That's fine with the State.

"[DEFENSE COUNSEL]: Monday, April 2nd? That works for defense, Your Honor.

"THE COURT: Okay."

After scheduling the trial, the court scheduled a pretrial motion hearing for February 23, with a January 31 deadline for filing motions. The court also scheduled a status conference for March 16. No party requested a continuance between the arraignment and the April 2 trial date.

The court and the prosecutor incorrectly stated that the speedy trial deadline was April 30. The correct deadline was March 30. On the morning of the April 2 trial date—153 days after arraignment—Queen filed a motion to dismiss with prejudice based on a speedy trial violation. Queen noted he had continually been in custody, which meant the State had 150 days after arraignment to bring him to trial or the speedy trial statute required the court to release him from custody.

The judge released the jurors and allowed the State to respond. The State cited K.S.A. 2020 Supp. 22-3402(e)(4), the so-called crowded docket exception, which allows for a one-time, 30-day continuance if "because of other cases pending for trial, the court does not have sufficient time to commence the trial." The State also argued that the defense acquiesced to the speedy trial violation by affirming that counsel was available for an April 2 trial setting.

The district court judge denied Queen's motion to dismiss. In so doing, the judge acknowledged the error in stating that the April 30 date was the speedy trial date. But the judge also faulted defense counsel for failing to correct the error, saying that attorneys have a duty of candor to correct false statements of law or fact. The judge also said that the crowded docket exception allowed the court to extend the speedy trial period. The judge acknowledged there had been no findings made about the crowded docket when the trial was scheduled, but the fact that the judge had scheduling conflicts was implicit because the trial would have been scheduled earlier had the calendar allowed for it. At the

same time, however, the judge said that had the court been aware of the correct speedy trial date, the judge could have rearranged the schedule to accommodate Queen's trial.

The judge rescheduled Queen's trial, and ultimately a jury found Queen guilty of intentional second-degree murder, one count of attempted second-degree murder, and one count of attempted voluntary manslaughter. The district court judge sentenced Queen to 226 months in prison with a postrelease supervision period of 36 months.

ANALYSIS

The right to a speedy trial predates nationhood, and our country's founders enshrined it in the Sixth Amendment to the United States Constitution. Likewise, our state founders adopted the right in § 10 of the Kansas Constitution Bill of Rights. See *In re Trull*, 133 Kan. 165, 167, 298 P. 775 (1931) (speedy trial right part of common law). This court has described the right as that of an accused to be free from living indefinitely under a cloud of suspicion:

> "'This constitutional provision, adopted from the old common law, is intended to prevent the oppression of the citizen by holding criminal prosecutions suspended over him for an indefinite time; and to prevent delays in the administration of justice, by imposing on the judicial tribunals an obligation to proceed with reasonable dispatch in the trial of criminal accusations.'" *In re Trull*, 133 Kan. at 169.

Neither the United States nor the Kansas Constitutions impose specific time requirements for bringing a criminal defendant to trial. Instead, to determine whether a delay violates the speedy trial right granted by both Constitutions, courts consider four nonexclusive factors: (1) the delay's length, (2) the cause of the delay, (3) whether the defendant asserted the right, and (4) any prejudice to the defendant. *State v. Owens*, 310 Kan. 865, 869, 451 P.3d 467 (2019) (citing *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct.

2182, 33 L. Ed. 2d 101 [1972]). Queen has not argued the State violated his constitutional right to a speedy trial or that he could meet his burden to establish any of these factors.

Queen instead exclusively relies on Kansas' speedy trial statute. Unlike the constitutional provisions, it sets specific time requirements for bringing a defendant to trial within 150 days if a defendant remains in jail and 180 days if a defendant makes bond. The State has the burden of meeting the time requirement, and the defendant does not have to assert the right. *State v. Dreher*, 239 Kan. 259, 260, 717 P.2d 1053 (1986).

If the State fails to bring the defendant to trial by the deadline, the defendant is "entitled to be discharged from further liability to be tried for the crime charged." K.S.A. 2020 Supp. 22-3402(a). Stated more colloquially, the defendant receives a get out of jail free card. But the statute contains exceptions that allow for extensions of the time requirements for various reasons. These exceptions apply, for example, if the defendant causes the delay or the court orders a competency evaluation, declares a mistrial, grants a continuance because of a problem in securing evidence, or grants a continuance because of the court's crowded docket.

Here, the parties agree that Queen was in custody and the 150-day speedy trial period in K.S.A. 2020 Supp. 22-3402(a) thus applies. They also agree the State did not bring him to trial until 153 days after his arraignment. This means the court must order Queen's release from prison and his discharge from the charges unless an exception applies. The district court judge determined two exceptions applied. First, the court's crowded docket required the delay and, second, Queen caused the delay by acquiescing in the trial date. On appeal, the State raises a new argument it had not raised in the trial court, asserting the period set aside for the defendant to file motions and the time to consider the defendant's motions should not count in the speedy trial computation.

We consider each of the State's arguments in turn.

1. *Crowded Docket Exception*

Our consideration of the crowded docket exception rests in part on interpretation of the statutory language. We grant no deference to the district court's or the Court of Appeals' interpretation of a statute. But, like those courts, we seek to determine the Legislature's intent by examining the statute's wording. If that wording is plain and unambiguous, we apply it as written. If it is not clear, we can look to legislative history, background considerations, and canons of construction to help determine legislative intent. *Jarvis v. Dept. of Revenue*, 312 Kan. 156, 159, 473 P.3d 869 (2020).

Kansas' speedy trial statute begins by stating the State must bring a jailed defendant to trial within 150 days of arraignment "unless the delay shall happen as a result of the application or fault of the defendant or a continuance shall be ordered by the court under subsection (e)." K.S.A. 2020 Supp. 22-3402(a). The crowded docket exception is found in subsection (e). Our statutory analysis thus begins with an understanding that an extension of the speedy trial deadline for a reason stated in subsection (e) must stem from a continuance. This legislative intent finds reinforcement in the plain words of subsection (e)(4). It provides that "the time for trial may be extended" if, "because of other cases pending for trial, the court does not have sufficient time to" begin the trial within 150 days. It then echoes subsection (a)'s use of the word "continuance," stating that "[n]ot more than one continuance of not more than 30 days may be ordered upon this ground." K.S.A. 2020 Supp. 22-3402(e)(4).

The word "continuance" has a plain meaning. We commonly understand it to mean deferring from a fixed date to a later date. See Black's Law Dictionary 400 (11th

ed. 2019) (in context of procedure, "continuance" defined as "[t]he adjournment or postponement of a trial or other proceeding to a future date"); cf. *State v. Diaz*, 44 Kan. App. 2d 870, 877, 241 P.3d 1018 (2010) ("a continuance means that a new trial date is set").

Here, the first date the trial court announced was April 3. Once that date was set, neither Queen nor the State asked the court to defer the trial. And during the 150 days following Queen's arraignment, the district court judge entered no order continuing the trial or any other setting or deadline. Given those circumstances, *State v. Cox*, 215 Kan. 803, 803-05, 528 P.2d 1226 (1974), is instructive.

In *Cox*, the district court set the same trial date for four related but separate cases on the dockets of several judges. The court set other cases for trial on the same date before the same judges and designated the other cases as the ones the judges would first hear. Courts commonly stack several cases for trial on the same date to best use time set aside for jury trials on the court's calendar. Many cases will resolve through plea negotiations or otherwise on the eve of or day of trial, so having multiple cases set increases the chances that one will go to trial. In *Cox*, on the date set for the trials, the judges started jury trials on other cases and the four cases were "bumped" to a later date. 215 Kan. at 803. The new date fell past the statutory speedy trial deadline, which in the four cases was 180 days because all four defendants made bond. But the State did not formally ask for a continuance, and the appellate record included no orders formally continuing the trial dates and invoking one of the exceptions that allow an extension of the statutory speedy trial deadline.

On day 181, each of the four defendants asked the court to discharge him or her from liability on the charges because the State had not brought him or her to trial in 180 days. The district court found a speedy trial violation and dismissed the charges. The

State appealed. This court affirmed, stating that "for the continuance exception to be brought into play, the state must show that a continuance was granted by the trial court during the 180-day statutory period for one of the authorized reasons set" by the speedy trial statute. 215 Kan. at 805. See *State v. George*, 9 Kan. App. 2d 479, 681 P.2d 30 (1984) (although record supported crowded docket finding, district court made no order of continuance within statutory speedy trial window; case dismissed).

Likewise, here, the appellate record does not include an order entered during the 150-day statutory period that granted a continuance based on any of the reasons authorized in the speedy trial statute. Even so, the State argues the judge implicitly invoked the crowded docket exception. But the overall structure of the statute supports an interpretation that the exception applies only if the trial court enters an order deferring an initial setting to a future date. See *State v. Keel*, 302 Kan. 560, 573-74, 357 P.3d 251 (2015) (statutes must be construed as a whole, to reconcile and bring the provisions into harmony). Each exception in K.S.A. 2020 Supp. 22-3402 requires overt action on the part of the district court and does not automatically spring into operation.

For example, K.S.A. 2020 Supp. 22-3402(a) and (b) provide an exception when "the delay shall happen as a result of the application or fault of the defendant." Referring to that exception, K.S.A. 2020 Supp. 22-3402(c) says that in such cases, "the trial *shall be rescheduled* within 90 days of the original trial deadline." (Emphasis added.) Subsections (d), (e)(1), and (e)(2) contain similar provisions if a defendant's failure to appear or competency matters delay the trial.

But subsections (e)(3), relating to the unavailability of material evidence, and (e)(4), relating to crowded dockets, are different. Rather than require the district court to reschedule the trial, the statutory language provides grounds under which the court may extend the trial time through "[n]ot more than one continuance." The use of the words

"extended" and "continuance" in these exceptions is significant. See *Keel*, 302 Kan. at 574 (courts presume Legislature does not intend to enact meaningless legislation.) It reveals an intent by the Legislature to require an overt act—the granting of a continuance—for the exceptions to apply. These exceptions do not automatically spring into operation simply because of the existence of the statutory factors.

For the crowded docket exception of K.S.A. 2020 Supp. 22-3402(e)(4) to be applied, the district court must extend or continue the time. We leave for another day a question the Court of Appeals panel discussed: May a district court initially extend or continue the trial time beyond the speedy trial window if it made findings that it had a crowded docket, or must the court set the trial date within the 150 days and then order a continuance? *Queen*, 2020 WL 3579872, at *5. We need not resolve that question here because the judge did not invoke the exception. Instead, the district court judge set Queen's initial trial date 153 days after arraignment and did not cite the need to do so because of a crowded docket. Nor did any party request the court order a continuance. As a result, under the holding of *Cox* and similar cases, the crowded docket exception does not justify an extension of the speedy trial deadline beyond day 150.

We also observe that the record does not support the district court's finding of a crowded docket. An appellate court reviews a district court's factual findings for substantial competent evidence. *State v. Vaughn*, 288 Kan. 140, 143, 200 P.3d 446 (2009). This is defined as "such legal and relevant evidence as a reasonable person might regard as sufficient to support a conclusion." *Hodges v. Johnson*, 288 Kan. 56, 65, 199 P.3d 1251 (2009). An appellate court does not weigh conflicting evidence, evaluate witness credibility, or redetermine questions of fact, and the court presumes the district court found all facts necessary to support its judgment. 288 Kan. at 65. Here, substantial competent evidence establishes that the court was busy and had a structured calendaring system for when jury trials would occur. But the record lacks substantial competent

evidence supporting—either explicitly or implicitly—the statutory requirement that "because of other cases pending for trial, the court [did] not have sufficient time to" begin the trial within 150 days. K.S.A. 2020 Supp. 22-3402(e)(4).

The State suggests otherwise, arguing sufficient facts allow us to conclude the district court implicitly made the findings necessary to invoke the crowded docket exception. In support it cites *State v. Dean*, 42 Kan. App. 2d 32, 208 P.3d 343 (2009), and *State v. Rodriguez-Garcia*, 27 Kan. App. 2d 439, 8 P.3d 3 (1999). These cases support the idea that a judge can implicitly invoke the exception, but the facts of the cases differ significantly from the circumstances leading to Queen's trial setting.

In *Dean*, a series of continuances led to the trial being set on the day the speedy trial deadline would expire. But, on that day, the court continued the trial again. The defendant filed a motion to dismiss because of the speedy trial violation, and a different judge heard the motion. The second judge held the reset trial fell within the 30-day extension allowed by the crowded docket exception and the record showed the first judge had implicitly relied on the exception because the first judge had another trial set that day. 42 Kan. App. 2d at 36-38.

Likewise, in *Rodriguez-Garcia*, the crowded docket exception was applied even though not explicitly invoked by the district court judge. Instead, the district judge had stated on the record, "'I don't have anything open'" until the date the trial was set to begin. That was sufficient, the Court of Appeals held, to invoke the exception. 27 Kan. App. 2d at 441.

But here, the district court judge, when setting the trial, did not say that April 2 was the first opening. Nor does the record show there was another case set on 150th day

after Queen's arraignment. This case is more like that in *State v. Edwards*, 291 Kan. 532, 243 P.3d 683 (2010), than *Dean* or *Rodriguez-Garcia*.

Like *Dean*, *Edwards* arose after a judge considering a motion to dismiss attempted to discern why another judge had set a trial past the speedy trial deadline. The second judge reasoned that the first judge must have been thinking of the crowded docket exception because everyone knew the court was the busiest in the state. The second judge cited *Rodriguez-Garcia* and its holding that the district court did not have to explicitly refer to its crowded docket before continuing the trial.

On appeal, this court acknowledged the holding in *Rodriguez-Garcia* allowing implicit invocation of the crowded docket exception but stopped short of adopting it because the facts did not support even an implicit finding that the court had continued the case because of a crowded docket. Indeed, the State had presented no evidence to show that other pending cases prevented the court from starting Edrick Edwards' trial at an earlier time. Nor did the record of the hearing where the first judge set the trial reflect that the judge considered whether there was an earlier opening for trial. That hearing was scheduled to determine Edwards' competency. But the defense stated it did not object to a finding of competence. The court then moved to scheduling the case for other proceedings, noting it would set the case for preliminary hearing. Counsel corrected the court, suggesting the court needed to set the case for trial. The court responded with a date. No other discussion occurred. On appeal, given that short exchange, this court held the record did not "support the motion judge's speculation that the judge setting the trial date intended to invoke the 'crowded docket' provisions." 291 Kan. at 543.

Queen's record on appeal is like that in *Edwards*. The record does not support a finding Queen's trial setting for April 2 was the first setting available because of other pending cases. Rather, the discussion at the arraignment hearing centered on the difficulty

of securing witnesses during spring break in March—not on conflicts with other trials. Later, during the hearing on Queen's motion to dismiss, the judge stated that "[h]ad this court known, though that we were going outside the 150 days, I would have moved cases to fit it in." Indeed, the district court judge acknowledged that the trial would not have been scheduled for April 2 if not for the mistaken belief that the date was within the statutory speedy trial window.

In sum, the crowded docket exception of K.S.A. 2020 Supp. 22-3402(e)(4) does not apply to extend Queen's trial date beyond 150 days. The record does not disclose substantial competent evidence establishing an order of continuance or a factual basis for concluding the court extended Queen's trial time because of other cases pending for trial.

2. *Acquiescence*

The speedy trial statute, besides extending the deadline for a continuance under subsection (e), extends the deadline for the time attributable to delays that are "a result of the application or fault of the defendant." K.S.A. 2020 Supp. 22-3402(a). The State argues such an extension applies here because Queen acquiesced to a setting outside the speedy trial deadline when the court asked both parties about availability during the week of April 2 and his counsel responded that the date "works for the defense." The district court judge agreed with the State's argument, finding that Queen acquiesced to the date.

But, as the Court of Appeals held, acquiescence within the context of a waiver of statutory speedy trial rights requires more than passive acceptance of a date offered by the court. For example, in *State v. Adams*, 283 Kan. 365, 370, 153 P.3d 512 (2007), this court held: "Although [Charles] Adams' defense counsel accepted the . . . trial setting, his acceptance is neither an acquiescence to a continuance nor the equivalent of a waiver of Adams' statutory right to a speedy trial." In *Adams*, neither side requested a continuance,

but the district court continued the trial on the mistaken expectation that the defendant would not appear. When the defendant did appear, the district court rescheduled the trial after some back and forth between the attorneys about availability. Adams' attorney did not object to the date chosen by the court. But that alone, we held, was not sufficient for the court to charge the time to the defendant. 283 Kan. at 370.

Adams' outcome finds support in a long line of this court's decisions. Kansas does not employ a "use it or lose it" approach to assertion of speedy trial rights, meaning that a defendant need not take affirmative steps to assert the speedy trial right or risk a finding of waiver. And in the speedy trial context, our caselaw has used "acquiescence" in a manner not fully consistent with that word's ordinary meaning. *State v. Hess*, 180 Kan. 472, 475, 304 P.2d 474 (1956), distills the general principles.

Hess discussed the distinction between actions by the defendant that produced a delay—actions that fall within the statutory language of "the delay shall happen as a result of the application or fault of the defendant"—and passive acceptance of a continuance or an untimely trial date:

> "'An accused need not insist upon, nor even ask for a speedy trial, nor need he protest against or object to the delay. Failure to object to continuance is not equivalent either to an application for such continuance or to a consent to the State's request for a continuance. [Citations omitted.] All that a defendant needs to do to retain the protection of the constitutional guaranty is to refrain from any affirmative act, application or agreement, the necessary and direct effect of which will be to delay the trial.'" *Hess*, 180 Kan. at 475.

More recently, in *Vaughn*, 288 Kan. 140, this court explained that the occasional reference to "acquiescence" in our speedy trial caselaw should not be read to include passive acceptance of a continuance. The *Vaughn* court noted the common meaning of

"acquiescence" includes passive acceptance. 288 Kan. at 145 (quoting Black's Law Dictionary 25 [8th ed. 2004]). "In Kansas, however, we have never held that passive acceptance of a continuance waives a defendant's speedy trial rights." 288 Kan. at 145. Citing *Adams*, 283 Kan. at 370, the *Vaughn* court observed that passive acceptance would conflict with our decisions holding that a defendant need not take any affirmative action to protect his or her right to a speedy trial. 288 Kan. at 145.

Instead, "[f]or acquiescence to result in a waiver of speedy trial rights, the State must demonstrate more than mere passive acceptance and must produce some evidence of agreement to the delay by the defendant or defense counsel." *Vaughn*, 288 Kan. at 145. See *State v. Brownlee*, 302 Kan. 491, 507-08, 354 P.3d 525 (2015) (differentiating situations in which counsel's conduct in acquiescing to a continuance did not equate with defendant's acquiescence). There must be an express or implied agreement to the delay, and where acquiescence is at issue "'prosecutors and the district courts are well advised to put consideration of the applicable time limit in the speedy trial statute on the record.'" *Vaughn*, 288 Kan. at 145 (quoting *State v. Arrocha*, 30 Kan. App. 2d 120, 127, 39 P.3d 101 [2002]).

As alluded to in *Vaughn*, this court has repeatedly explained the underlying principle for this rule is that the burden to ensure speedy trial is on the State: "The rule is that the defendant need not take any affirmative action. The duty and responsibility of providing the accused with a speedy trial is on the officers of the state." *In re Trull*, 133 Kan. at 168. See *State v. Dewey*, 73 Kan. 739, 743, 88 P. 881 (1907) ("The weight of authority is that the statute is imperative, and should receive a liberal construction in favor of liberty, having always in mind that its purpose is not to shield the guilty but to protect the innocent."). For these reasons, even if the delay is the fault of the court, and not the State, the delay will not be charged against the defendant. *Adams*, 283 Kan. at 370.

Here, Queen's counsel's statement that the proposed trial date "works for defense" was a passive response to the judge's inquiry into availability and does not rise to the level of acquiescence to a continuance beyond the speedy trial deadline or a waiver of the statutory speedy trial right. Under our caselaw, something more is required than this type of passive response.

Even so, the district court judge held, and the State now contends, that defense counsel had a duty to speak up because Kansas Rule of Professional Conduct (KRPC) 3.3 (2020 Kan. S. Ct. R. 353), imposes on Kansas attorneys a duty of candor toward the court. KRPC 3.3 prohibits an attorney from knowingly misleading the court as to an incorrect statement of law or fact. We first observe that the record fails to establish that defense counsel knowingly misled the court. We also note the tension between the district court judge's expectations of counsel and both our caselaw and defense counsel's role in the adversarial process in a criminal case, tensions the Court of Appeals discusses. *Queen*, 2020 WL 3579872, at *7. We refrain from that discussion because of the guidance in comment 20 to the prefatory scope of the KRPC. Comment 20 instructs that a violation of a KRPC does not create a presumption that a legal duty has been breached, does not necessarily warrant nondisciplinary remedies, should not be used as procedural weapons, and does not provide adversaries with standing to seek enforcement of the rules. Supreme Court Rule 226, Comment 20 (2020 Kan. S. Ct. R. 283). In other words, nothing in the KRPC alters our longstanding caselaw that a criminal defendant has "no obligation to take affirmative action" to protect his or her speedy-trial right. *State v. Sievers*, 299 Kan. 305, 307-08, 323 P.3d 170 (2014).

In short, defense counsel's statement confirming he was available for trial on the specific date offered by the court did not cause a delay that "happen[ed] as a result of the application or fault of the defendant," as that phrase is used in the speedy trial statute.

K.S.A. 2020 Supp. 22-3402(a). Such an agreement was not an affirmative action that prevented a speedy trial. *Hess*, 180 Kan. at 475.

3. *No Time Attributable to Defense Motions*

Finally, in an argument raised for the first time on appeal, the State argues we should hold that Queen delayed the trial during the period between the deadline for filing motions and the date of the hearing on the motions.

The State concedes that it did not raise this argument in the district court. Usually, a party cannot raise new issues on appeal. But there are exceptions, including when (1) the new theory involves only a question of law on proven facts and is determinative; (2) consideration is necessary to serve the ends of justice; or (3) the district court is right for the wrong reasons. *State v. Godfrey*, 301 Kan. 1041, 1043, 350 P.3d 1068 (2015). Citing the first and third exceptions, the State argues it presents a question of law involving undisputed facts that would allow for a finding that the district court was right for the wrong reason.

We disagree that this issue presents a pure question of law. Instead, issues of fact exist that preclude use of the first or third exceptions. Perhaps because it shared this conclusion, the Court of Appeals panel did not address this argument. We often would remand to the Court of Appeals in such a circumstance. But judicial economy suggests a different path here given that the State did not properly preserve the argument for appellate review.

To explain that lack of preservation, we begin by noting that the State must establish that "the delay shall happen as a result of the application or fault of the defendant." K.S.A. 2020 Supp. 22-3402(a). Often the determination of whether this

provision applies depends on the facts. And whether a defendant's actions cause a delay often involves issues of fact. See *Vaughn*, 288 Kan. at 143; *Adams*, 283 Kan. at 369-70. The circumstances surrounding the handling of Queen's motions present such a situation.

Immediately after setting Queen's trial date, the district court judge set the deadline for filing motions and the date of the motions hearing. Some more detail helps explain the exchange. After the judge set the trial date, she asked whether the defense would like to schedule a hearing for pretrial motions. Defense counsel said yes, and the court established a deadline to file motions and scheduled a hearing on the motions. These additional deadlines and settings did not lead to an adjustment of the trial date, and no party requested a continuance because of the motions (or for any other reason). And the judge never conveyed that she chose a trial date after considering the time needed for the filing and consideration of motions.

The State in its petition for review acknowledges that "Queen's pretrial motions did not lead to the district court continuing or rescheduling the trial. In fact, the trial court built the motions deadline and hearing into the schedule at arraignment." These circumstances distinguish Queen's situation from the cases cited by the State. The State recognizes as much when, in its petition for review, it stated it "is unaware of any cases where, as here, the district court scheduled the trial outside the relevant statutory period at arraignment."

The State also argued, however, that the "set period only exists because Queen specifically asked for the time." In its brief before the Court of Appeals, the State added that "it is clear from the record that the district court and Queen contemplated robust pretrial motion practice . . . . The district court, therefore, built in enough time for Queen to research, write, and file those motions—and, just as importantly, time enough to hear them." But that is not clear from the record. In the exchange as the judge set dates for

filing motions, replies to motions, and a hearing on the motions, the judge twice referred to dates for *both* parties' motions. And there was no expectation that Queen must file a motion. Contrary to the State's argument, it is not clear there was a delay, much less a delay attributable to Queen.

The State suggests the lack of delay does not matter because a motion need not lead to a continuation of the trial date before a court can toll the running of the speedy trial deadline. Indeed, the relevant language from K.S.A. 2020 Supp. 22-3402(a) does not use the word continuance as does a different provision in the paragraph or as does the crowded docket exception in (e)(4). Instead, the relevant language states a defendant must be brought to trial within 150 days of arraignment "unless the delay shall happen as a result of the application or fault of the defendant." The plain language refers to a delay. And, here, we do not have a finding from the district court judge that Queen caused a delay. Rather, the transcript suggests the judge set the trial date and then set the deadline for motions in a way that would prevent delaying the trial because of motions. And that is what happened—the parties met the deadlines and no continuances were necessary.

The case cited by the State reinforces that no continuance is necessary before the speedy trial time can be tolled because of the fault of the defendant. See *State v. Martinez*, No. 102,512, 2010 WL 2816816 (Kan. App. 2010) (unpublished opinion). Yet *Martinez* reinforces that a court must engage in a case specific, fact intensive inquiry to determine whether a delay happens because of the application or fault of the defendant.

In *Martinez*, after arraignment but before a trial date had been set, the defendant filed pretrial motions. The district court determined some delay was attributable to the defendant because of the motions. On appeal, the defendant argued the delay could not be attributed to her because a trial date had not yet been set. The Court of Appeals panel disagreed. It first held that the speedy trial statute did not require the scheduling of a trial

before delays could be attributed to the defendant. It then held that under the facts of the case the district court properly charged the various delays to the defendant. 2010 WL 2816816, at *2-3.

But the motion practice and other proceedings in *Martinez* delayed the setting of the trial. The same can be said of the four cases cited in *Martinez*: *Vaughn*, 288 Kan. at 144; *State v. Bean*, 236 Kan. 389, Syl. ¶ 2, 691 P.2d 30 (1984); *State v. Clemence*, 36 Kan. App. 2d 791, 798, 145 P.3d 931 (2006), *rev. denied* 283 Kan. 932 (2007); and *State v. Arrocha*, 30 Kan. App. 2d 120, 123, 39 P.3d 101 (2002). In *Vaughn*, 288 Kan. at 147, the district court continued the trial after the defendant filed a motion on the date of the original trial setting. The other three cases *Martinez* cites involved defense requests for continuances of trial dates or in the filing of motions that led to deferring the trial. *Bean*, 236 Kan. at 391-92, *Clemence*, 36 Kan. App. 2d at 798, and *Arrocha*, 30 Kan. App. 2d at 127. But Queen did not seek to continue his trial. Nor can we conclude on the record before us that his motion definitely caused a delay.

In a case not cited by the State, *State v. Southard*, 261 Kan. 744, 933 P.2d 730 (1997), the court attributed to the defendant a delay caused when, at arraignment, the defendant requested a motion hearing. This court held that "defense counsel's request at arraignment for a motion hearing, followed by the district court's accommodation of reserving the 2 hours counsel suggested for motions to suppress, requires the charging of the period between arraignment and the initially scheduled motion hearing to the defendant." 261 Kan. at 748. Similarly, in *Dodge City v. Downing*, 257 Kan. 561, 563, 894 P.2d 206 (1995), this court concluded 30 days were chargeable to the defendant, consisting of the 16 days between the defendant's filing of a motion to suppress and deadline for filing briefs on the motion plus 14 days as a reasonable amount of time for the district court to resolve the motion. The defendant's filing of the motion to suppress fell under the "plain reading of the statute" because the delay arose on the application of

the defendant. 257 Kan. at 563. But see *State v. Roman*, 240 Kan. 611, 613, 731 P.2d 1281 (1987) (recognizing some reasonable delay to rule on defense motion may be charged to defendant, but not the entirety of a 179-day delay). While not entirely clear, it appears the motion practice in these cases delayed the setting of the trial date—something that did not appear to happen because of Queen's motions.

None of these cases support the blanket proposition that courts should automatically charge the time required by all pretrial motion hearings to the defense—the resolution of each case was a fact-specific determination. And none of these cases parallel this one where the court set the trial date and then scheduled the motions and related procedures in a way that would avoid delaying the trial setting. Applying the plain language of K.S.A. 2020 Supp. 22-3402(a), the record does not establish definitively whether a delay occurred "as the result of the application or fault of the defendant." Findings by the district court judge might have supported the State's argument. But the State failed to raise the issue to the judge. It thus also failed to preserve the issue for appellate review.

CONCLUSION

"When a defendant's right to speedy trial has been violated, the 'only possible remedy' is dismissal of the charges." *State v. Wilson*, 227 Kan. 619, 622, 608 P.2d 1344 (1980).

The obligation to bring the defendant to trial within the statutory speedy trial period rests only on the State. *Sievers*, 299 Kan. at 307. A defendant need not take affirmative steps to assert that right, and the defense counsel's passive acceptance of a trial date does not rise to the level of waiver or acquiescence. The State violated the defendant's statutory speedy trial rights. The State asks us to hold that important policy

reasons warrant us reversing the Court of Appeals. But ""questions of public policy are for legislative and not judicial determination, and where the legislature does so declare, and there is no constitutional impediment, the question of the wisdom, justice, or expediency of the legislation is for that body and not for the courts."" *Jarvis*, 312 Kan. at 170.

The plain language of K.S.A. 2020 Supp. 22-3402(a) directs that unless an exception applies that tolls or extends the speedy trial deadline, the case must be dismissed if the State fails to bring a jailed defendant to trial within 150 days of arraignment. Finding that no exceptions or extensions apply, we reverse Queen's convictions, vacate his sentences, and remand the case to the district court with directions to dismiss the charges against him with prejudice. Given this disposition, we need not address Queen's other issues on appeal.

Judgment of the Court of Appeals reversing the district court is affirmed. Judgment of the district court is reversed, and the case is remanded with directions.

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 115,441

STATE OF KANSAS,
Appellee,

v.

KEN'DUM DAN'SHA OWENS,
Appellant.

SYLLABUS BY THE COURT

1.

When a criminal defendant asserts a violation of his or her right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and § 10 of the Kansas Constitution Bill of Rights, Kansas courts weigh four nonexclusive factors: the length of delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant. The court balances the factors, weighing the conduct of both prosecution and accused. Because the test requires a balancing, none of these factors is a necessary or sufficient condition for finding a violation.

2.

The right to a speedy trial guaranteed under the Sixth Amendment to the United States Constitution and § 10 of the Kansas Constitution Bill of Rights applies in juvenile offender proceedings under the Revised Kansas Juvenile Justice Code, K.S.A. 2018 Supp. 38-2301 et seq.

3.

The length-of-delay factor is a triggering mechanism in a speedy trial analysis. Until there is some delay that is presumptively prejudicial, there is no necessity for inquiry into the other factors applied in a speedy trial analysis.

4.

Even if a defendant pushes for delay in order to gain some advantage, the delay itself can be excessive and presumptively prejudicial. Complexity is generally the determinative factor separating a delay that is presumptively prejudicial from one that is not.

5.

Under the facts of this case, the defendant failed to establish a violation of the constitutional right to a speedy trial.

Review of the judgment of the Court of Appeals in an unpublished opinion filed September 15, 2017. Appeal from Sedgwick District Court; WILLIAM S. WOOLLEY, judge. Opinion filed November 1, 2019. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

Clayton J. Perkins, of Kansas Appellate Defender Office, argued the cause and was on the brief for appellant.

Matt J. Maloney, assistant district attorney, argued the cause, and *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, were with him on the brief for appellee.

The opinion of the court was delivered by

LUCKERT, J.: Ken'Dum Dan'Sha Owens appeals a district court order rejecting his argument that a 19-month delay between his arrest and trial violated his constitutional right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and § 10 of the Kansas Constitution Bill of Rights. In part, Owens argues a Court of Appeals panel erred in holding that the six months Owens spent in juvenile detention should not be counted in determining the length of the delay. See *State v. Owens*, No. 115,441, 2017 WL 4082317, at *4 (Kan. App. 2017) (unpublished opinion). He also argues the panel erred in weighing the factors used by courts when analyzing a constitutional speedy trial claim.

We agree Owens' six-month period of juvenile detention should be included in a calculation of how long it took to get to trial. But Owens has not established a violation of his constitutional right to a speedy trial, even considering the full 19-month delay rather than the 13 months considered by the panel. We affirm the district court and the Court of Appeals. See *Owens*, 2017 WL 4082317, at *1

FACTS AND PROCEDURAL BACKGROUND

In the late evening hours of February 16, 2012, two men approached Nathan Davis after he exited his vehicle in the parking lot of his apartment complex. One of the men—later identified as Owens—pointed a gun at Davis and demanded his car keys. Davis handed over his keys, and the two men got into Davis' vehicle and drove away. Davis immediately called 911 and told a dispatcher his car had been stolen at gunpoint. He described the man holding the gun as a black male, 20 to 22 years old, about 6 feet tall with a stocky build, and wearing a black hooded sweatshirt, red or black ball cap, and blue jeans.

A nearby law enforcement officer, Brent Johnson, heard the information relayed by dispatch and saw a vehicle matching the description of Davis' car stopped in the middle of the street a few blocks from Davis' apartment. Officer Johnson activated his patrol car's sirens and emergency lights. The man seated in the driver's seat of Davis' vehicle exited and ran away. Officer Johnson chased the man on foot through the surrounding residential area but lost sight of him a few minutes into the pursuit. Officer Johnson described the suspect as a black male wearing blue jeans, white tennis shoes, a red baseball cap, and a black jacket.

Officer Johnson maintained a perimeter around the area where he believed the suspect was likely hiding while waiting for backup officers to arrive. A K-9 officer soon arrived and began searching the area with his police dog. The officers found a black male—later identified as Owens—wearing a black hooded sweatshirt, white tennis shoes, and brightly colored pajama pants hiding behind a tree in the back yard of a nearby residence. The officers arrested Owens and discovered a red and black baseball cap in the same yard. The officers also located a silver handgun in the yard of another nearby residence. But they did not find any blue jeans.

The officers brought Davis to the location where they held Owens. Davis identified Owens as the man who pointed the gun at him and stole his car. Officers found a cell phone in Davis' car, and they later identified it as belonging to Owens.

The State originally alleged Owens committed juvenile offenses; he was 17 at the time. After about six months, the State dismissed the juvenile case and filed a criminal information, charging Owens with aggravated robbery, criminal use of a weapon, and criminal deprivation of property. After the defense made 10 requests for continuance, Owens filed a pro se motion for new counsel. In part, he complained his attorney had

been seeking continuances without his consent and without ensuring that Owens was present at continuance hearings. But Owens withdrew his request for new counsel when told his case would be given a "hard jury trial setting." The trial began just more than 19 months after Owens' arrest.

At trial, Officer Johnson identified Owens as the man he chased and officers later arrested. Officer Johnson testified Owens was wearing blue jeans when he began chasing him but was wearing brightly colored pajama pants when he was apprehended. A post-arrest photo of Owens was admitted into evidence showing the pajama pants and other clothing he was wearing at the time of his arrest. Davis identified the man in the photograph as the person who stole his car at gunpoint but noted the difference in pants. Davis also identified the gun the officers discovered as the one Owens had used. Owens took the stand and claimed his phone had been stolen while he was playing basketball near where he was arrested. He denied being involved in the aggravated robbery of Davis.

The jury convicted Owens as charged. He appealed his convictions and sentence, raising five issues. The Court of Appeals affirmed, finding no reversible error. See *Owens*, 2017 WL 4082317, at *1.

Owens timely petitioned for our review. We granted review only as to Owens' claim that the delay between his arrest and trial violated his constitutional right to a speedy trial. The State filed a conditional cross-petition for review, arguing in part that the panel erred in one aspect of its speedy trial analysis—specifically, in finding the length of the delay presumptively prejudicial. We granted only that portion of the State's request for review.

This court's jurisdiction is proper. See K.S.A. 20-3018(b) (petition for review of Court of Appeals decision); see also Supreme Court Rule 8.03(b) and (c) (2019 Kan. S. Ct. R. 53) (petition for review and cross-petition for review from Court of Appeals opinion).

CONSTITUTIONAL RIGHT TO SPEEDY TRIAL

Standard of Review

The factual findings underpinning a district court's decision regarding a defendant's constitutional speedy trial right are reviewed for substantial competent evidence, but the ultimate legal conclusion drawn from those facts is reviewed de novo. *In re Care & Treatment of Ellison*, 305 Kan. 519, 533-34, 385 P.3d 15 (2016).

Analysis

Owens argues his right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution and § 10 of the Kansas Constitution Bill of Rights was violated because his jury trial did not occur until more than 19 months after his arrest. The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." This provision applies in state court through the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Klopfer v. North Carolina*, 386 U.S. 213, 222-23, 87 S. Ct. 988, 18 L. Ed. 2d 1 (1967). Owens also cites § 10 of the Kansas Constitution Bill of Rights, which guarantees the right of an accused "[i]n all prosecutions" to "a speedy public trial by an impartial jury."

The United States Supreme Court has identified four nonexclusive factors to be analyzed when a criminal defendant makes a Sixth Amendment speedy trial claim. Those factors, set out in *Barker v. Wingo*, 407 U.S. 514, 530, 92 S. Ct. 2182, 33 L. Ed. 2d 101 (1972), are: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." This court applied these factors in *State v. Otero*, 210 Kan. 530, 532-36, 502 P.2d 763 (1972). In doing so, the *Otero* court noted that "the approach to the problem is a balancing test in which the conduct of both prosecution and accused is to be weighed. This approach suggests an *ad hoc* basis in which various factors are to be taken into account." 210 Kan. at 532. Because the test requires a balancing, none of these factors is a necessary or sufficient condition for finding a violation. Instead, we consider them together along with any other relevant circumstances. See *United States v. Eight Thousand Eight Hundred & Fifty Dollars ($8,850) in U.S. Currency*, 461 U.S. 555, 564-65, 103 S. Ct. 2005, 76 L. Ed. 2d 143 (1983); *State v. Fink*, 217 Kan. 671, 673, 538 P.2d 1390 (1975).

We will examine each of the four *Barker* factors in turn.

1. *Length of the delay*

As to the first factor—length of the delay—the Court of Appeals panel held (1) Owens' constitutional right to a speedy trial attached upon the filing of adult criminal charges and (2) the 13-month delay from that point until Owens' trial was presumptively prejudicial. *Owens*, 2017 WL 4082317, at *4. Owens agrees the delay was presumptively prejudicial, but he argues the delay was 19, not 13, months. He contends his right to a speedy trial attached when he was arrested and thus before adult criminal charges were brought.

In briefing, the State argued the delay was only 13 months. It softened its view at oral argument in light of *State v. Robinson*, 56 Kan. App. 2d 567, 434 P.3d 232 (2018). *Robinson*, filed after the parties had submitted their brief to this court, held a juvenile offender has the same constitutional right to a speedy trial as an adult criminal defendant. 56 Kan. App. 2d at 571. The State also argued that, regardless of whether the delay is 13 or 19 months, the panel went astray in concluding either length of time is presumptively prejudicial. The State further contends the delay here was not presumptively prejudicial because the delay was mainly caused by Owens. And, it argues, this point alone requires us to reject Owens' speedy trial claim.

We first address when Owens' speedy trial right attached. The Court of Appeals, in deciding not to include the six-month period during which Owens was held in juvenile detention, stated that there "seems to be no Kansas caselaw exactly on point." *Owens*, 2017 WL 4082317, at *4. The panel then cited an Arizona decision, *State v. Myers*, 116 Ariz. 453, 569 P.2d 1351 (1977). In *Myers*, as here, the defendant first faced charges as a juvenile offender and then later as an adult. The Arizona court held the speedy trial right did not attach until the adult criminal prosecution began. 116 Ariz. at 454-55. *Myers* dovetails with the decision of this court in *State v. Breedlove*, 295 Kan. 481, 487, 286 P.3d 1123 (2012), which is not cited by the panel or the parties. In *Breedlove*, this court held: "A juvenile has neither a constitutional nor a statutory right to a right to a speedy trial in matters conducted under the Juvenile Justice Code." 295 Kan. at 487.

Owens, however, argues that this court's decision in *In re L.M.*, 286 Kan. 460, 186 P.3d 164 (2008), suggests juvenile offenders have a constitutional speedy trial right. For support of this position, he filed a letter of additional authority under Supreme Court Rule 6.09(b) (2019 Kan. S. Ct. R. 39) and cited *Robinson*, 56 Kan. App. 2d at 571, for its holding that the constitutional right extended to juveniles.

The *Robinson* panel mainly relied on *In re L.M.*, 286 Kan. 460, in which this court considered whether the Sixth Amendment and § 10 granted Kansas juvenile offenders the right to a jury trial. *In re L.M.* recognized that *Findlay v. State*, 235 Kan. 462, 463-64, 681 P.2d 20 (1984), held juveniles charged under the Kansas Juvenile Justice Code (KJJC) have no constitutional right to a trial by jury. But almost 20 years after *Findlay*, the Kansas Legislature repealed the KJJC and replaced it with the Revised Kansas Juvenile Justice Code. See K.S.A. 2018 Supp. 38-2301 et seq.

The *In re L.M.* court noted the significant differences between the KJJC and the revised code and concluded: "Changes to the Kansas Juvenile Justice Code since 1984 have eroded the benevolent, child-cognizant, rehabilitative, and parens patriae character that distinguished it from the adult criminal system." 286 Kan. 460, Syl. ¶ 1. Provisions in the revised code make juvenile offender proceedings "more akin to an adult criminal prosecution." 286 Kan. 460, Syl. ¶ 1. This change led the court to abrogate *Findlay* and to hold "that juveniles henceforth have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments." 286 Kan. 460, Syl. ¶ 1. Addressing § 10 of the Kansas Constitution Bill of Rights, *In re L.M.* held: "The proceedings under the KJJC fit within the meaning of the phrase 'all prosecutions' as set forth in § 10 of the Kansas Constitution Bill of Rights, and juveniles have a right to a jury trial under the Kansas Constitution." 286 Kan. 460, Syl. ¶ 2. The *Robinson* court held the same reasoning applied to the right to a speedy trial guaranteed by the Sixth Amendment and § 10. 56 Kan. App. 2d at 571. *Robinson* reasoned that this court's comments in *Breedlove* addressing the Kansas Juvenile Justice Code should not be read to apply to matters conducted under the *Revised* Kansas Juvenile Justice Code; instead, the analysis in *In re L.M.* applied. 56 Kan. App. 2d at 571.

While the State initially took a position contrary to the *Robinson* holding, at oral argument before us, it recognized the *Robinson* holding and dropped its opposition to the

application of a constitutional speedy trial right in juvenile offender proceedings. Thus, it offers no reason to reject the *Robinson* panel's reasoning or to distinguish *In re L.M.*'s analysis of the effect of the Revised Kansas Juvenile Justice Code on the constitutional right to a jury trial from an analysis of the revised code's impact on the constitutional right to a speedy trial. Nor do we discern any reason to distinguish the application of the two rights granted by the Sixth Amendment and § 10.

We, therefore, hold the right to a speedy trial guaranteed under the Sixth Amendment and § 10 applies in juvenile offender proceedings under the Revised Kansas Juvenile Justice Code. See *Robinson*, 56 Kan. App. 2d at 571. As a result, because the charges against Owens remained the same throughout both the juvenile offender and adult criminal proceedings, his right to a speedy trial attached on his arrest. See *State v. Rivera*, 277 Kan. 109, 112, 83 P.3d 169 (2004) (holding speedy trial right attaches when prosecution begins by arrest). This means the delay in bringing Owens to trial was more than 19 months.

Recognizing the possibility that the entire 19-month period should be considered, the Court of Appeals concluded the delay was presumptively prejudicial no matter if the delay was 19 months or 13 months. See *Owens*, 2017 WL 4082317, at *4. The State disagreed with this conclusion in its cross-petition for review. The significance of such a potential error arises because the United States Supreme Court has explained the delay factor is "to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Barker*, 407 U.S. at 530. And generally a delay of more than 19 months is more likely to be prejudicial than a delay of 13 months.

Even so, this court has held that delays of 13 and 23 months in starting trials for murder were not presumptively prejudicial. See *State v. Hayden*, 281 Kan. 112, 128, 130

P.3d 24 (2006) (13-month delay); *State v. Mathenia*, 262 Kan. 890, 895, 942 P.2d 624 (1997) (23-month delay). But we have rejected the "inflexible" approach of determining presumptive prejudice based on predesignated permissible lengths of time. See *State v. Weaver*, 276 Kan. 504, 510, 78 P.3d 397 (2003); see also *Hayden*, 281 Kan. at 128 ("We have resisted using our previous cases to set a specific time limit."). Instead, the "inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Barker*, 407 U.S. at 530-31.

Here, unlike the complex murder proceedings that led to the 13- and 23-month delays at issue in *Hayden* and *Mathenia*, Owens was charged with classic "street crimes" of aggravated robbery, criminal use of a weapon, and criminal deprivation of property. And there were few witnesses and no complex forensic or other evidence. The difference in complexity makes this case more like *Weaver*. There, this court determined a 14-month delay was presumptively prejudicial. The court reasoned that the "crime was one count of possession of cocaine with intent to sell. The State's case against him was simple and straightforward—police found on Weaver crack cocaine packaged in individual units and $265 cash, including 12 $20 bills." *Weaver*, 276 Kan. at 510-11.

The State argues that more than the fact that street crimes were charged should be considered before determining whether the delay was presumptively prejudicial. Specifically, in its cross-petition, the State argues Owens' "actions in requesting or acquiescing in continuances weigh against a conclusion that a delay is presumptively prejudicial." This circumstance—the reason for the delay—is *Barker*'s second factor. While *Barker* indicates that the second factor is "closely related" to the first factor, it does not support conflating the two. 407 U.S. at 530-31. The State in this case largely blurs the distinction between the first and second *Barker* factors, suggesting this court did so in

State v. Davis, 277 Kan. 309, 85 P.3d 1164 (2004), *State v. Bloom*, 273 Kan. 291, 44 P.3d 305 (2002), and *State v. Smallwood*, 264 Kan. 69, 955 P.2d 1209 (1998).

Indeed, in *Bloom* and *Smallwood* this court considered the factors as a whole rather than separately considering whether the delay was presumptively prejudicial. *Bloom*, 273 Kan. at 310-11; *Smallwood*, 264 Kan. at 75-76. But this approach deviates from the United States Supreme Court's approach of considering the delay as a triggering factor. See *Barker*, 407 U.S. at 530-31. And this court has also held that unless the delay is presumptively prejudicial the other factors need not be considered. E.g., *State v. Mann*, 274 Kan. 670, 701, 56 P.3d 212 (2002). The third case cited by the State, *Davis*, 277 Kan. at 334-35, recognized this language from *Mann*.

Yet, as Owens argues, the *Davis* court mentioned the defense's request for continuances in determining that a delay was not presumptively prejudicial. The *Davis* court, to that extent, conflated the first and second factors. But the court mainly noted much of the delay was caused by competency proceedings that led to the commitment and treatment of the defendant. These complications fall within the classic boundaries established in *Barker* about the complexity of the case. See *Barker*, 407 U.S. at 530-31. But, under *Barker*, the defendant's requests for continuances should have factored in only after a determination of presumptive prejudice. See 407 U.S. at 534-36.

Barker's analysis conveys that even if a defendant pushes for delay in order to gain some advantage, the delay itself can be excessive and presumptively prejudicial. See 407 U.S. at 534-36. The United States Supreme Court gave only one example of a factor weighing on presumptive prejudice, and that example involved complexity. 407 U.S. at 531. Likewise, this court has cited complexity as the determinative factor separating a delay that is presumptively prejudicial from one that is not. Compare *Mathenia*, 262 Kan. at 894-95 (23-month delay between arrest and trial was not prejudicial in case in which

multiple inmates attacked prison guards; at least 30 inmates were considered viable suspects in the attacks; and indictments were returned against 12 inmates), with *Weaver*, 276 Kan. at 511 (14-month delay presumptively prejudicial in a simple and straightforward case).

Owens' counsel requested 10 continuances. After about eight of these, Owens filed a pro se motion for appointment of new counsel arguing his appointed counsel had requested monthly continuances from October 2012 to May 2013 without his consent or his appearance in court when the continuances were requested. At the hearing on that motion, Owens' counsel explained that Owens faced charges in this case as well as a second case. She then explained that this case had been delayed because of her trial schedule and because "Mr. Owens had asked me to talk to [the prosecutor] about working out a plea to have the cases consolidated. That is something that I have been speaking to [the prosecutor] about." Thus, as the State suggests, the delay may have at least partially been because Owens felt there might be an advantage to seeking consolidation of his cases and a plea agreement. Even so, *Barker* instructs that the length of the delay may be presumptively prejudicial. *Barker*, 407 U.S. at 530-31.

So was the 19-month delay presumptively prejudicial? Again, under *Barker*, the overarching consideration in determining whether the delay is presumptively prejudicial is whether the delay is reasonable given the complexity of the case. See *Barker*, 407 U.S. at 530-31. Here, Owens was charged with "ordinary street crime[s]." 407 U.S. at 531. Thus, referring to *Barker*'s example, "the delay that can be tolerated . . . is considerably less than for a serious, complex conspiracy charge." 407 U.S. at 531. The State's case largely hinged on Davis' and Officer Johnson's identification of Owens and the physical evidence recovered—Owens' hat and phone and the gun. This was a simple and straightforward case, and the nature of the evidence involved does not justify a 19-month delay between Owens' arrest and trial.

Perhaps, the State's arguments could be construed to suggest that this case was complex because Owens was charged in a second case and he sought a plea agreement resolving both cases. But the record does not allow us to determine whether the second case complicated the plea negotiations. Having two cases does not necessarily make plea negotiations more complex or justify a delay. They might. But we simply lack the record to make the determination because the district court's findings do not address that possibility.

We thus agree with the Court of Appeals that the 19-month delay was presumptively prejudicial under the circumstances of this case.

2. *Reasons for the delay*

The Court of Appeals found the reasons for the delay weighed against Owens. See *Owens*, 2017 WL 4082317, at *4-7. *Barker* explained the relevant considerations for this factor:

> "A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay." 407 U.S. at 531.

The Court of Appeals panel noted these considerations and also cited federal courts holding that "'[w]here the defendant's actions "were the primary cause of the delay," the second factor "weighs heavily against him."' *United States v. Larson*, 627 F.3d 1198, 1208 (10th Cir. 2010) (quoting *United States v. Toombs*, 574 F.3d 1262, 1274

[10th Cir. 2009])." 2017 WL 4082317, at *5. The panel noted that Owens' counsel requested 10 continuances, which the court granted, but the State made no requests for a continuance. 2017 WL 4082317, at *5.

The State argues these continuances weigh heavily against Owens' speedy trial claim. Owens disagrees, arguing he did not consent to the continuances and could not object to the continuance because he was not present when his counsel made the requests. Citing *State v. Brownlee*, 302 Kan. 491, 508, 354 P.3d 525 (2015), Owens noted he had a right, under K.S.A. 2012 Supp. 22-3208(7), to be present during a motion hearing on a continuance. He then argued the failure to assure his presence was error and the continuances should not be counted against him. He then implies the delays should be the responsibility of the State because, "[w]hile not a deliberate attempt to delay, it is a negligent delay where the government failed to adequately protect Mr. Owens' speedy trial rights by assuring his presence and consent."

The panel agreed with the State's contentions and concluded that Owens provided no authorities supporting his assertion the State had been negligent. See 2017 WL 4082317, at *5. As to the negligence claim, the panel concluded:

> "Owens' contention that the delay resulted from the State's negligence does not automatically succeed. To begin with, it is unclear how the State would have committed negligence by failing to ensure Owens' presence at the continuance hearings, and outside of making this bald assertion, Owens has provided no additional authority or argument on appeal. It is a well-known rule of this court that failing to support an argument with pertinent authority or explaining why an argument is sound, despite a lack of pertinent authority, is akin to failing to adequately brief an issue. *State v. Murray*, 302 Kan. 478, 486, 353 P.3d 1158 (2015)." *Owens*, 2017 WL 4082317, at *5.

Thus, the panel held Owens had not properly briefed the issue. See *Owens*, 2017 WL 4082317, at *5-6.

Owens does not dispute this conclusion on review. And arguments abandoned before the Court of Appeals generally cannot be raised for the first time in a petition for review. See *Snider v. American Family Mut. Ins. Co.*, 297 Kan. 157, 161, 298 P.3d 1120 (2013). We, thus, decline to charge any of the delay to the State based on a theory it was negligent.

As to Owens' right to be present, before the Court of Appeals panel, he relied only on a statutory right under K.S.A. 2012 Supp. 22-3208(7) by citing the statute and *Brownlee*, 302 Kan. 491. *Brownlee* specifically noted it was not deciding whether a defendant had a constitutional right to be present at a continuance hearing. 302 Kan. at 508. The panel noted this limitation in *Brownlee* and that Owens had not cited authority for a constitutional right to be present at the continuance hearings. In reaching that conclusion, the panel referred to one basis for the constitutional right to be present—an accused's right to be present at all critical stage of the proceeding—and noted that Owens had not made this argument. *Owens*, 2017 WL 4082317, at *5. Owens admits this in his petition for review.

Yet Owens asks us to apply recent caselaw recognizing that a continuance hearing may be a critical stage of criminal proceedings. See, e.g., *State v. Wright*, 305 Kan. 1176, 1178, 390 P.3d 899 (2017). *Wright* was decided after Owens had filed his brief in the Court of Appeals. This explains why he now cites it but failed to do so in the Court of Appeals. But this timing does not explain why Owens did not argue before the Court of Appeals that he had a constitutional right to be present at the continuance hearings. Again, issues not presented to the Court of Appeals cannot be raised on a petition for review. *Snider*, 297 Kan. at 161.

Focusing on Owens' statutory right, the panel found persuasive the State's arguments that Owens caused the delay. The panel pointed to the transcript of the hearing on Owens' pro se request for new counsel and noted that Owens' counsel told the district court that Owens asked her to see if she could get his cases consolidated and could negotiate a plea arrangement disposing of both cases. His counsel explained this had required several continuances. The prosecutor confirmed Owens' counsel's statements. Owens did not dispute these representations at the hearing. In fact, his pro se motion had said the same thing. *Owens*, 2017 WL 4082317, at *6.

Based on these circumstances, the panel concluded that despite Owens' later objection to the continuances, at the time of many of the early continuances "he not only acquiesced to the continuances but also wanted the continuances. As a result, Owens' decision to seek a plea agreement with the State contributed to the delay of his trial." *Owens*, 2017 WL 4082317, at *7.

In his petition for review, Owens repeats his arguments about not being present or agreeing to the continuances. But he does not discuss the hearing on his pro se motion. Along with the points made by the panel, we note that at the hearing, the district court asked Owens if he was willing to withdraw his motion to change counsel if the court set the case for a "hard jury trial" setting. Owens responded, "Yes, sir." While Owens did not explicitly waive his speedy trial right, he acquiesced in another continuance to his case. At that time, plea negotiations were still underway. Eventually, Owens declined the plea offer and asserted his right to trial.

After trial, Owens reasserted his speedy trial argument in a motion for new trial. The district court denied the motion, noting that under the statutory speedy trial statute, a defendant need not be present if counsel makes the continuance request after consultation

with the defendant. K.S.A. 2018 Supp. 22-3402(g). The court found the continuances here complied with the statutory requirement. Implicitly, the findings reveal Owens was aware his counsel was seeking the continuances and agreed to them in the moment, even if several months later he objected. And the arguments of both Owens' counsel and the prosecutor at the hearing support this conclusion.

Both counsel reminded the district judge of the procedural history of the plea negotiations in the two cases. Owens' counsel clarified that the initial negotiations "only pertained to [Owens' other case]." The district court judge stated he was aware of those negotiations and that Owens had been a part of a hearing in the other case at which the court had been informed of the negotiations. Counsel then noted that Owens participated in plea negotiations in his other case right up to the point of trial in July 2013. Owens' counsel said the parties "conduct[ed] further plea negotiations in this case" after Owens' trial in the other case but "[t]hose plea negotiations also failed." The State agreed with Owens' counsel's account of the attempted plea negotiations stating they "were in constant contact . . . about these two cases trying to work on disposing of these cases [in a way] that was reasonable and beneficial for the defendant and that would . . . be a fair disposition for the State and the victims." After the State and Owens' counsel informed the district court of the procedural background underlying the delay, the district court asked Owens: "[W]hat else would you like to tell me?" He responded: "That's pretty much all I have, Your Honor."

The court then rejected Owens' claim. The district court weighed the fact Owens had been in negotiations on both cases, had been in consultation with counsel about the same, and had not been present at all of the continuance hearings. The record supports the conclusion of the district court. It shows Owens was still trying to resolve this case by plea agreement after he withdrew his motion to change counsel, and Owens was aware those negotiations contributed to the delay. While Owens asserted he did not consent to

the continuances, he did not rebut the statements that the continuances were because of plea negotiations, which he had requested and was aware of.

Based on the statutory speedy trial argument presented to the district court about Owens' right to be present, the Court of Appeals correctly determined Owens' counsel's requests for continuances should be weighed against him in considering the reasons for the delay. See *Larson*, 627 F.3d at 1208.

3. *Assertion of the right*

The parties agreed Owens asserted his constitutional speedy trial rights by objecting to continuances in his pro se motion for new counsel and his pro se posttrial motion to dismiss. The Court of Appeals found this factor weighed in favor of Owens. See *Owens*, 2017 WL 4082317, at *7. The parties do not dispute this finding on review. But we note again that while Owens asserted an objection through his pro se motion for new counsel, he withdrew the motion and essentially acquiesced in the continuances.

4. *Prejudice*

Owens argues he was prejudiced by the delay. In analyzing the prejudice factor, *Barker* identified three interests the speedy trial right was designed to protect: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit possible impairment of the defense. 407 U.S. at 532. Owens addressed the first two considerations in his brief to the Court of Appeals. But he did not address either in his petition for review. Rather, Owens only contends the delay was prejudicial to his defense.

Owens points out that the victim, Davis, had to rely on Officer Johnson's report to refresh his recollection at trial. Davis' fading memory was explained to the jury by noting the length of time that had passed between the events and the trial. Owens argues "the faded memory covers up the details used to challenge the identification, and leave only the identification remaining. The lengthy delay in going to trial prevented Owens from effectively questioning Davis on his actual recollection of the robbery."

In fact, however, Owens cross-examined Davis about the discrepancies between Owens' dress and physical appearance and the description of the suspect Davis gave to Officer Johnson. Davis described the suspect as a black male, around 6 feet tall with a stocky build, appearing to be between the ages of 20 to 21 years old. Officer Johnson asked Owens his height and weight during post-arrest booking. Owens responded he was 6 feet, 2 inches tall and weighed about 195 pounds. The biggest discrepancy in Davis' physical description of the suspect is the age. Owens was only 17 years old at the time of the incident. Davis' description pointed to someone three to five years older. Owens did not press this point in cross-examination; he did not ask Davis what caused him to believe the suspect was in his early twenties as opposed to being somewhat older or younger. One other discrepancy was the fact Davis described the suspect as wearing a dark t-shirt and blue jeans. But Owens was wearing a red t-shirt at the time of his arrest and pajama pants.

Davis provided a reasonable explanations for the differing accounts—the fact it was dark out and the encounter was brief. Overall, however, Owens successfully punched holes in Davis' identification and the jury had several points to weigh as credibility considerations. And his lack of memory at the time of trial likely reduced his credibility.

Owens has failed to show his defense was impaired as a result of the delay, and he abandoned any arguments about oppressive pretrial incarceration or anxiety and concern of the accused in his petition for review. Thus, Owens has not shown he was prejudiced by the delay.

CONCLUSION

The length of the delay was excessive given the relative simplicity of the case, so a presumption of prejudice arose from that delay. This factor weighs in Owens' favor and merits consideration of the other factors that go into the balance. But the presumption of prejudice that arose from that delay is offset by the circumstance of the delay being largely attributable to the fact Owens had multiple cases pending in which he was represented by the same attorney and was seeking a favorable plea agreement in both cases. And although Owens was ultimately unsuccessful, he sought to consolidate the cases as part of a plea agreement. The reasons for the delay weigh against Owens. As to the third factor, Owens complained about the delay, which weighs in his favor. But the evidence supports that Owens wanted his attorney to seek consolidation of his cases and that these efforts resulted in some delay, which diminishes his later attempt to complain about the delay. As to the fourth factor, Owens has not shown he was prejudiced by the delay. As a result, the final factor weighs against Owens.

Balancing the four factors together and considering the actions of both the State and Owens, the reasons for the delay and the lack of prejudice counter the presumption of prejudice arising from the 19-month delay. While Owens objected, his objections were partially withdrawn, and overall he has failed to show his constitutional speedy trial rights were violated.

Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

PATRICK J. MCANANY, Senior Judge, assigned.

Session of 2021

HOUSE BILL No. 2224

By Committee on Federal and State Affairs

2-3

AN ACT concerning public health; relating to infectious disease testing; crimes in which bodily fluids may have been transmitted from one person to another; expanding the definition of infectious disease; amending K.S.A. 65-6009 and K.S.A. 2020 Supp. 65-6001 and repealing the existing sections.

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

Section 1. K.S.A. 2020 Supp. 65-6001 is hereby amended to read as follows: 65-6001. As used in K.S.A. 65-6001 through 65-6010, and amendments thereto, unless the context clearly requires otherwise:

(a) "AIDS" means the disease acquired immune deficiency syndrome.

(b) "HIV" means the human immunodeficiency virus.

(c) "Laboratory confirmation of HIV infection" means positive test results from a confirmation test approved by the secretary.

(d) "Secretary" means the secretary of health and environment.

(e) "Physician" means any person licensed to practice medicine and surgery.

(f) "Laboratory director" means the person responsible for the professional, administrative, organizational and educational duties of a laboratory.

(g) "HIV infection" means the presence of HIV in the body.

(h) "Racial/ethnic group" shall be designated as either white, black, Hispanic, Asian/Pacific islander or American Indian/Alaskan Native.

(i) "Corrections officer" means an employee of the department of corrections as described in K.S.A. 75-5202(f) and (g), and amendments thereto.

(j) "Emergency services employee" means an emergency medical service provider as ~~defined under~~ *described in* K.S.A. 65-6112, and amendments thereto, or a firefighter.

(k) "Law enforcement employee" means:

(1) Any police officer or law enforcement officer as defined under K.S.A. 74-5602, and amendments thereto;

(2) any person in the service of a city police department or county sheriff's office who performs law enforcement duties without pay and is considered a reserve officer;

(3) any person employed by a city or county who is in charge of a jail

or section of jail, including jail guards and those who conduct searches of persons taken into custody; or

(4) any person employed by a city, county or the state of Kansas who works as a scientist or technician in a forensic laboratory.

(l) "Employing agency or entity" means the agency or entity employing a corrections officer, emergency services employee, law enforcement employee or jailer.

(m) "Infectious disease" means ~~AIDS~~ *those diseases designated by the secretary through rules and regulations adopted pursuant to K.S.A. 65-128, and amendments thereto, as infectious or contagious in their nature.*

(n) "Infectious disease tests" means tests approved by the secretary for detection of infectious diseases.

(o) "Juvenile correctional facility staff" means an employee of the ~~juvenile justice authority~~ *department of corrections* working in a juvenile correctional facility as defined in K.S.A. 2020 Supp. 38-2302, and amendments thereto.

Sec. 2. K.S.A. 65-6009 is hereby amended to read as follows: 65-6009. (a) At the time of an appearance before a magistrate under K.S.A. 22-2901, and amendments thereto, the magistrate shall inform any person arrested and charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved of the availability of infectious disease tests and shall cause the alleged victim of such a crime, if any, to be notified that infectious disease tests and counseling are available. If the victim of the crime or the county or district attorney requests the court to order infectious disease tests of the alleged offender or if the person arrested and charged with a crime stated to the law enforcement officer making such arrest that ~~the~~ *such arrested* person ~~arrested and charged with the crime~~ has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the arrested person to submit to infectious disease tests. Testing for infectious disease shall occur not later than 48 hours after the alleged offender appears before a magistrate under K.S.A. 22-2901, and amendments thereto. The results of any test obtained under this section shall be inadmissible in any criminal or civil proceeding. The court shall also order the arrested person to submit to follow-up tests for infectious diseases as may be medically appropriate.

(b) Upon conviction of a person for any crime ~~which~~ *that* the court determines from the facts of the case involved or was likely to have involved the transmission of body fluids from one person to another, the court: (1) May order the convicted person to submit to infectious disease tests; or (2) shall order the convicted person to submit to infectious disease tests if the victim of the crime or the parent or legal guardian of the victim, if the victim is a minor, requests the court to issue such order. If infectious

disease tests are ordered under this subsection, the victim of the crime, if any, who is not a minor, shall designate a ~~health care~~ *healthcare* provider or counselor to receive such information on behalf of the victim. If the victim is a minor, the parent or legal guardian of the victim shall designate the ~~health care~~ *healthcare* provider or counselor to receive such information.

(c) The results of any infectious disease test ordered under subsection (a) shall be disclosed to the law enforcement officer making such arrest, the *arrested* person ~~arrested~~, the victim, the parent or legal guardian of the victim and such other persons as the court determines have a legitimate need to know the test result in order to provide for their protection. The results of any infectious disease test ordered under subsection (b) shall be disclosed to the court which ordered the test, the convicted person and to the person designated under subsection (b) by the victim or victims of the crime or by the parent or legal guardian of a victim if the victim is a minor. If an infectious disease test ordered under this section results in a positive reaction, the results shall be reported to the secretary of health and environment and to the secretary of corrections.

~~(d) As used in this section, infectious disease includes HIV and hepatitis B.~~

~~(c)~~ The costs of any counseling and testing provided under this section shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the ~~adjudicated~~ *arrested or convicted* person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

Sec. 3. K.S.A. 65-6009 and K.S.A. 2020 Supp. 65-6001 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

65-6009. Same; persons arrested or convicted; disclosure of test results; costs of counseling and testing. (a) At the time of an appearance before a magistrate under K.S.A. 22-2901, and amendments thereto, the magistrate shall inform any person arrested and charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved of the availability of infectious disease tests and shall cause the alleged victim of such a crime, if any, to be notified that infectious disease tests and counseling are available. If the victim of the crime or the county or district attorney requests the court to order infectious disease tests of the alleged offender or if the person arrested and charged with a crime stated to the law enforcement officer making such arrest that the person arrested and charged with the crime has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the arrested person to submit to infectious disease tests. Testing for infectious disease shall occur not later than 48 hours after the alleged offender appears before a magistrate under K.S.A. 22-2901, and amendments thereto. The results of any test obtained under this section shall be inadmissible in any criminal or civil proceeding. The court shall also order the arrested person to submit to follow-up tests for infectious diseases as may be medically appropriate.

(b) Upon conviction of a person for any crime which the court determines from the facts of the case involved or was likely to have involved the transmission of body fluids from one person to another, the court: (1) May order the convicted person to submit to infectious disease tests; or (2) shall order the convicted person to submit to infectious disease tests if the victim of the crime or the parent or legal guardian of the victim, if the victim is a minor, requests the court to issue such order. If infectious disease tests are ordered under this subsection, the victim of the crime, if any, who is not a minor, shall designate a health care provider or counselor to receive such information on behalf of the victim. If the victim is a minor, the parent or legal guardian of the victim shall designate the health care provider or counselor to receive such information.

(c) The results of any infectious disease test ordered under subsection (a) shall be disclosed to the law enforcement officer making such arrest, the person arrested, the victim, the parent or legal guardian of the victim and such other persons as the court determines have a legitimate need to know the test result in order to provide for their protection. The results of any infectious disease test ordered under subsection (b) shall be disclosed to the court which ordered the test, the convicted person and to the person designated under subsection (b) by the victim or victims of the crime or by the parent or legal guardian of a victim if the victim is a minor. If an infectious disease test ordered under this section results in a positive reaction, the results shall be reported to the secretary of health and environment and to the secretary of corrections.

(d) As used in this section, infectious disease includes HIV and hepatitis B.

(e) The costs of any counseling and testing provided under this section shall be paid from amounts appropriated to the department of health and environment for that purpose. The court shall order the adjudicated person to pay restitution to the department of health and environment for the costs of any counseling provided under this section and the costs of any test ordered or otherwise performed under this section.

History: L. 1996, ch. 215, § 4; L. 2001, ch. 102, § 5; L. 2017, ch. 66, § 13; July 1.

65-128. Rules and regulations of secretary to prevent spread and dissemination of diseases; testing and quarantine; protection of providers and recipients of services. (a) For the protection of the public health and for the control of infectious or contagious diseases, the secretary of health and environment by rules and regulations shall designate such diseases as are infectious or contagious in their nature.

(b) The secretary of health and environment is authorized to issue such orders and adopt rules and regulations as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to, providing for the testing for such diseases and the isolation and quarantine of persons afflicted with or exposed to such diseases.

(c) No later than January 1, 2014, the secretary shall develop and adopt rules and regulations providing for the protection of individuals who provide medical or nursing services, clinical or forensic laboratory services, emergency medical services and firefighting, law enforcement and correctional services, or who provide any other service, or individuals who receive any such services or are in any other employment where the individual may encounter occupational exposure to blood and other potentially infectious materials.

History: L. 1917, ch. 205, § 1; R.S. 1923, 65-128; L. 1953, ch. 283, § 6; L. 1965, ch. 506, § 25; L. 1974, ch. 352, § 11; L. 1976, ch. 262, § 7; L. 1988, ch. 232, § 9; L. 2013, ch. 112, § 2; July 1.

65-129. Penalties for unlawful acts. Any person violating, refusing or neglecting to obey any of the rules and regulations adopted by the secretary of health and environment for the prevention, suppression and control of infectious or contagious diseases, or who leaves any isolation area of a hospital or other quarantined area without the consent of the local health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of infectious or contagious disease shall be guilty of a class C misdemeanor.

History: L. 1917, ch. 205, § 2; R.S. 1923, 65-129; L. 1974, ch. 352, § 12; L. 1976, ch. 262, § 8; July 1.

65-129b. Infections or contagious diseases; authority of local health officer or secretary; evaluation or treatment orders, isolation or quarantine orders; enforcement. (a) Notwithstanding the provisions of K.S.A. 65-119, 65-122, 65-123, 65-126 and 65-128, and amendments thereto, and any rules or regulations adopted thereunder, in investigating actual or potential exposures to an infectious or contagious disease that is potentially life-threatening, the local health officer or the secretary:

(1) (A) May issue an order requiring an individual who the local health officer or the secretary has reason to believe has been exposed to an infectious or contagious disease to seek appropriate and necessary evaluation and treatment;

(B) when the local health officer or the secretary determines that it is medically necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease, may order an individual or group of individuals to go to and remain in places of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public;

(C) if a competent individual of 18 years of age or older or an emancipated minor refuses vaccination, medical examination, treatment or testing under this section, may require the individual to go to and remain in a place of isolation or quarantine until the local health officer or the secretary determines that the individual no longer poses a substantial risk of transmitting the disease or condition to the public; and

(D) if, on behalf of a minor child or ward, a parent or guardian refuses vaccination, medical examination, treatment or testing under this section, may require the minor child or ward to go to and remain in a place of isolation or quarantine and must allow the parent or guardian to accompany the minor child or ward until the local health officer or the secretary determines that the minor child or ward no longer poses a substantial risk of transmitting the disease or condition to the public; and

(2) may order any sheriff, deputy sheriff or other law enforcement officer of the state or any subdivision to assist in the execution or enforcement of any order issued under this section.

History: L. 2005, ch. 122, § 2; Apr. 21.

65-129c. Same; orders for isolation or quarantine; form and content; notice; hearing in district court; application and effect; procedure; orders for relief; emergency rules of procedure. (a) If the local health officer or the secretary requires an individual or a group of individuals to go to and remain in places of isolation or quarantine under K.S.A. 65-129b, and amendments thereto, the local health officer or the secretary shall issue an order to the individual or group of individuals.

(b) The order shall specify:

(1) The identity of the individual or group of individuals subject to isolation or quarantine;

(2) the premises subject to isolation or quarantine;

(3) the date and time at which isolation or quarantine commences;

(4) the suspected infectious or contagious disease causing the outbreak or disease, if known;

(5) the basis upon which isolation or quarantine is justified; and

(6) the availability of a hearing to contest the order.

(c) (1) Except as provided in paragraph (2) of subsection (c), the order shall be in writing and given to the individual or group of individuals prior to the individual or group of individuals being required to go to and remain in places of isolation and quarantine.

(2) (A) If the local health officer or the secretary determines that the notice required under paragraph (1) of subsection (c) is impractical because of the number of individuals or geographical areas affected, the local health officer or the secretary shall ensure that the affected individuals are fully informed of the order using the best possible means available.

(B) If the order applies to a group of individuals and it is impractical to provide written individual copies under paragraph (1) of subsection (c), the written order may be posted in a conspicuous place in the isolation or quarantine premises.

(d) (1) An individual or group of individuals isolated or quarantined under this section may request a hearing in district court contesting the isolation or quarantine, as provided in article 15 of chapter 60 of the Kansas Statutes Annotated, but the provisions of this section shall apply to any order issued under K.S.A. 65-129a to 65-129d, inclusive, and amendments thereto, notwithstanding any conflicting provisions contained in that article.

(2) A request for a hearing may not stay or enjoin an isolation or quarantine order.

(3) Upon receipt of a request under this subsection (d), the court shall conduct a hearing within 72 hours after receipt of the request.

(4) (A) In any proceedings brought for relief under this subsection (d), the court may extend the time for a hearing upon a showing by the local health officer or the secretary or other designated official that extraordinary circumstances exist that justify the extension.

(B) In granting or denying an extension, the court shall consider the rights of the affected individual, the protection of the public health, the severity of the health emergency and the availability, if necessary, of witnesses and evidence.

(C) (i) The court shall grant the request for relief unless the court determines that the isolation or quarantine order is necessary and reasonable to prevent or reduce the spread of the disease or outbreak believed to have been caused by the exposure to an infectious or contagious disease.

(ii) If feasible, in making a determination under this paragraph (C), the court may consider the means of transmission, the degree of contagion, and, to the extent possible, the degree of public exposure to the disease.

(5) An order of the court authorizing the isolation or quarantine issued under this section shall:

(A) Identify the isolated or quarantined individual or group of individuals by name or shared characteristics;

(B) specify factual findings warranting isolation or quarantine; and

(C) except as provided in paragraph (2) of subsection (c), be in writing and given to the individual or group of individuals.

(6) If the court determines that the notice required in paragraph (C) of subsection (d)(5) is impractical because of the number of individuals or geographical areas affected, the court shall ensure that the affected individuals are fully informed of the order using the best possible means available.

(7) An order of the court authorizing isolation or quarantine shall be effective for a period not to exceed 30 days. The court shall base its decision on the standards provided under this section.

(8) In the event that an individual cannot personally appear before the court, proceedings may be conducted:

(A) By an individual's authorized representative; and

(B) through any means that allows other individuals to fully participate.

(9) In any proceedings brought under this section, the court may order the consolidation of individual claims into group claims where:

(A) The number of individuals involved or affected is so large as to render individual participation impractical;

(B) there are questions of law or fact common to the individual claims or rights to be determined;

(C) the group claims or rights to be determined are typical of the affected individual's claims or rights; and

(D) the entire group will be adequately represented in the consolidation.

(10) The court shall appoint counsel to represent individuals or a group of individuals who are not otherwise represented by counsel.

(11) The supreme court of Kansas may develop emergency rules of procedure to facilitate the efficient adjudication of any proceedings brought under this section.

65-129d. Same; unlawful discharge from employment. It shall be unlawful for any public or private employer to discharge an employee solely because the employee or an immediate family member of the employee is under an order of isolation or quarantine. The violation of this section is punishable as a violation of K.S.A. 65-129, and amendments thereto.

History: L. 2005, ch. 122, § 4; Apr. 21.

Session of 2021

SENATE BILL No. 315

By Committee on Ways and Means

5-7

AN ACT concerning health and healthcare; relating to medical marijuana; creating the Kansas medical marijuana regulation act; providing for licensure and regulation of the cultivation, distribution, sale and possession of medical marijuana; delegating administrative duties and functions to the secretary of health and environment, secretary of revenue, board of healing arts, board of pharmacy and the director of alcoholic beverage control; imposing fines and penalties for violations of the act; establishing the medical marijuana registration fund and the medical marijuana business regulation fund; creating the crime of unlawful transport of medical marijuana; making exceptions to the crimes of unlawful manufacture and possession of controlled substances; amending K.S.A. 44-1009, 44-1015, 65-28b08, 79-5201 and 79-5210 and K.S.A. 2020 Supp. 19-101a, 21-5703, 21-5705, 21-5706, 21-5707, 21-5709, 21-5710, 23-3201, 38-2269, 44-501, 44-706 and 65-1120 and repealing the existing sections.

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

New Section 1. The provisions of sections 1 through 46, and amendments thereto, shall be known and may be cited as the Kansas medical marijuana regulation act.

New Sec. 2. As used in the Kansas medical marijuana regulation act, section 1 et seq., and amendments thereto:

(a) "Academic medical center" means a medical school and its affiliated teaching hospitals and clinics.

(b) "Board of healing arts" means the state board of healing arts.

(c) "Caregiver" means an individual registered pursuant to section 8, and amendments thereto, who may purchase and possess medical marijuana in accordance with section 11, and amendments thereto.

(d) "Cultivator" means a person issued a license pursuant to section 22, and amendments thereto, who may grow and sell medical marijuana in accordance with section 25, and amendments thereto.

(e) "Director" means the director of alcoholic beverage control.

(f) "Distributor" means a person issued a license pursuant to section 22, and amendments thereto, who may purchase and sell medical marijuana in accordance with section 28, and amendments thereto.

(g) "Electronic cigarette" means the same as defined in K.S.A. 79-

(84 pages)
(Rest Not Here)

SENATE BILL No. 60

AN ACT concerning crimes, punishment and criminal procedure; creating the crime of sexual extortion and requiring registration of offenders; prohibiting a court from requiring psychiatric or psychological examinations of an alleged victim of any crime; relating to fleeing or attempting to elude a police officer; increasing penalties thereof when operating a stolen motor vehicle, committing certain driving violations or causing a collision involving another driver; relating to jurisdictional application; defining proximate result for purposes of determining when a crime is committed partly within this state; removing the spousal exception from the crime of sexual battery; relating to evidence of intent to deprive owner of property for the crime of theft; amending K.S.A. 2020 Supp. 8-1568, 21-5106, 21-5505, 21-5804, 22-4902 and 22-4906 and repealing the existing sections.

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

New Section 1. (a) Sexual extortion is communicating by any means a threat to injure the property or reputation of a person, commit violence against a person, or distribute an image, video or other recording of a person that is of a sexual nature or depicts such person in a state of nudity:

(1) With the intent to coerce such person to: (A) Engage in sexual contact, sexual intercourse or conduct that is of a sexual nature; or (B) produce, provide or distribute an image, video or other recording of a person in a state of nudity or engaging in conduct that is of a sexual nature; or

(2) that causes such person to: (A) Engage in sexual contact, sexual intercourse or conduct that is of a sexual nature; or (B) produce, provide or distribute an image, video or other recording of a person in a state of nudity or engaging in conduct that is of a sexual nature.

(b) Sexual extortion as defined in:

(1) Subsection (a)(1) is a severity level 7, person felony; and

(2) subsection (a)(2) is a severity level 4, person felony.

(c) This section shall be a part of and supplemental to the Kansas criminal code.

New Sec. 2. (a) In any prosecution for a crime, a court shall not require or order a victim of the crime to submit to or undergo either a psychiatric or psychological examination.

(b) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 3. K.S.A. 2020 Supp. 8-1568 is hereby amended to read as follows: 8-1568. (a) (1) *(A)* Any driver of a motor vehicle who ~~willfully~~ *knowingly* fails or refuses to bring such driver's vehicle to a stop for a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c)(1).

~~(2)~~*(B)* Any driver of a motor vehicle who ~~willfully~~ *knowingly* otherwise flees or attempts to elude a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, shall be guilty as provided by subsection (c)(1).

~~(3)~~*(2)* It shall be an affirmative defense to any prosecution under subsection (a)(1) that the driver's conduct in violation of such ~~paragraph~~ *subsection* was caused by such driver's reasonable belief that the vehicle or bicycle pursuing such driver's vehicle is not a police vehicle or police bicycle.

(b) Any driver of a motor vehicle who ~~willfully~~ *knowingly* fails or refuses to bring such driver's vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle or police bicycle, when given visual or audible signal to bring the vehicle to a stop, and who:

(1) Commits any of the following during a police pursuit, *shall be guilty as provided by subsection (c)(2)*:

(A) Fails to stop for a police road block;

(B) drives around tire deflating devices placed by a police officer;

(C) engages in reckless driving as defined by K.S.A. 8-1566, and amendments thereto;

(D) is involved in any motor vehicle accident or intentionally causes damage to property; ~~or~~

(E) commits five or more moving violations; or

(F) is operating a stolen motor vehicle;

(2) is attempting to elude capture for the commission of any felony, shall be guilty as provided ~~in~~ *by* subsection (c)(2)*; or*

(3) knowingly drives the wrong way into an opposing lane of travel on a divided highway as defined in K.S.A. 8-1414, and amendments thereto, knowingly departs the appropriate lane of travel into an opposing lane of travel on any roadway causing an evasive maneuver by another driver, knowingly drives through any intersection causing an evasive maneuver by another driver or causes a collision involving another driver, shall be guilty as provided by subsection (c)(3).

(c) (1) Violation of subsection (a)~~, upon~~ *is* a:

(A) ~~First conviction is a~~ Class B nonperson misdemeanor *when the person being sentenced has no prior convictions for a violation of subsection (a) or (b)*;

(B) ~~second conviction is a~~ class A nonperson misdemeanor *when the person being sentenced has one prior conviction for a violation of subsection (a) or (b)*; or

(C) ~~third or subsequent conviction is a~~ severity level 9, person felony *when the person being sentenced has two or more prior convictions for a violation of subsection (a) or (b).*

(2) Violation of subsection (b)*(1) or (b)(2)* is a severity level 9, person felony.

(3) Violation of subsection (b)(3) is a severity level 7, person felony.

(4) In addition to the penalty described in paragraph (2), the court shall impose a fine of not less than $500 when the driver is operating a stolen motor vehicle during the commission of the offense.

(d) The signal given by the police officer may be by hand, voice, emergency light or siren:

(1) If the officer giving such signal is within or upon an official police vehicle or police bicycle at the time the signal is given, the vehicle or bicycle shall be appropriately marked showing it to be an official police vehicle or police bicycle; or

(2) if the officer giving such signal is not utilizing an official police vehicle or police bicycle at the time the signal is given, the officer shall be in uniform, prominently displaying such officer's badge of office at the time the signal is given.

(e) For the purpose of this section:

(1) "Conviction" means a final conviction without regard to whether sentence was suspended or probation granted after such conviction. Forfeiture of bail, bond or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction. For the purpose of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, it is irrelevant whether an offense occurred before or after conviction for a previous offense.

(2) "Appropriately marked" official police vehicle or police bicycle shall include, but not be limited to, any police vehicle or bicycle equipped with functional emergency lights or siren or both and which the emergency lights or siren or both have been activated for the purpose of signaling a driver to stop a motor vehicle.

(f) The division of vehicles of the department of revenue shall promote public awareness of the provisions of this section when persons apply for or renew such person's driver's license.

Sec. 4. K.S.A. 2020 Supp. 21-5106 is hereby amended to read as

follows: 21-5106. (a) A person is subject to prosecution and punishment under the law of this state if:

(1) The person commits a crime wholly or partly within this state;

(2) being outside the state, the person counsels, aids, abets or conspires with another to commit a crime within this state; or

(3) being outside the state, the person commits an act which constitutes an attempt to commit a crime within this state.

(b) A crime is committed partly within this state if:

(1) An act which is a constituent and material element of the offense;

(2) an act which is a substantial and integral part of an overall continuing criminal plan; or

(3) the proximate result of such act, occurs within the state.

(c) If the body of a homicide victim is found within the state, a person who is charged with committing the homicide is subject to prosecution and punishment under the laws of this state for commission of the homicide.

(d) A crime which is based on an omission to perform a duty imposed by the law of this state, is committed within the state, regardless of the location of the person omitting to perform such duty at the time of the omission.

(e) It is not a defense that the person's conduct is also a crime under the laws of another state or of the United States or of another country.

(f) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

(g) Jurisdiction is a question of law to be determined by the court by the preponderance of the evidence.

(h) As used in this section, "proximate result" means any logical effect or consequence of such act regardless of whether the statute governing the charged offense considers the specific effect or consequence of such act.

Sec. 5. K.S.A. 2020 Supp. 21-5505 is hereby amended to read as follows: 21-5505. (a) Sexual battery is the touching of a victim ~~who is not the spouse of the offender,~~ who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(b) Aggravated sexual battery is ~~the touching of a victim who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender or another~~ ~~and~~ *sexual battery, as defined in subsection (a),* under any of the following circumstances:

(1) When the victim is overcome by force or fear;

(2) when the victim is unconscious or physically powerless; or

(3) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c) (1) Sexual battery is a class A person misdemeanor.

(2) Aggravated sexual battery is a severity level 5, person felony.

(d) Except as provided in subsection (b)(3), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the battery, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

Sec. 6. K.S.A. 2020 Supp. 21-5804 is hereby amended to read as follows: 21-5804. (a) In any prosecution under K.S.A. 2020 Supp. 21-

5801 through 21-5839, and amendments thereto, the following shall be prima facie evidence of intent to permanently deprive the owner or lessor of property of the possession, use or benefit thereof:

(1) The giving of a false identification or fictitious name, address or place of employment at the time of buying, selling, leasing, trading, gathering, collecting, soliciting, procuring, receiving, dealing or otherwise obtaining or exerting control over the property;

(2) the failure of a person who leases or rents personal property to return the same within 10 days after the date set forth in the lease or rental agreement for the return of the property, if notice is given to the person renting or leasing the property to return the property within seven days after receipt of the notice, in which case the subsequent return of the property within the seven-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section;

(3) destroying, breaking or opening a lock, chain, key switch, enclosure or other device used to secure the property in order to obtain control over the property;

(4) destruction of or substantially damaging or altering the property so as to make the property unusable or unrecognizable in order to obtain control over the property;

(5) the failure of a person who leases or rents from a commercial renter a motor vehicle under a written agreement that provides for the return of the motor vehicle to a particular place at a particular time, if notice has been given to the person renting or leasing the motor vehicle to return such vehicle within three calendar days from the date of the receipt or refusal of the demand. In addition, if such vehicle has not been returned after demand, the lessor may notify the local law enforcement agency of the failure of the lessee to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(6) the failure of a person who is provided with a use of a vehicle by the owner of the vehicle to return it to the owner pursuant to a written instruction specifying: (A) The time and place to return the vehicle; and (B) that failure to comply may be prosecuted as theft, and such instructions are delivered to the person by the owner at the time the person is provided with possession of the vehicle. In addition, if such vehicle has not been returned pursuant to the specifications in such instructions, the owner may notify the local law enforcement agency of the failure of the person to return such motor vehicle and the local law enforcement agency shall cause such motor vehicle to be put into any appropriate state and local computer system listing stolen motor vehicles;

(7) removing a theft detection device, without authority, from merchandise or disabling such device prior to purchase; or

(8) under the provisions of K.S.A. 2020 Supp. 21-5801(a)(5), and amendments thereto, the failure to replace or reattach the nozzle and hose of the pump used for the dispensing of motor fuels or placing such nozzle and hose on the ground or pavement.

(b) In any prosecution for a misdemeanor under K.S.A. 2020 Supp. 21-5801, and amendments thereto, in which the object of the alleged theft is a book or other material borrowed from a library, it shall be prima facie evidence of intent to permanently deprive the owner of the possession, use or benefit thereof if the defendant failed to return such book or material within 30 days after receiving notice from the library requesting its return, in which case the subsequent return of the book or material within the 30-day period shall exempt such transaction from consideration as prima facie evidence as provided in this section.

(c) In a prosecution for theft as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, and such theft is of services, the existence of any of the connections of meters, alterations or use of unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service, caused by tampering, shall be prima facie evidence of intent to commit theft of services by the person or persons using or receiving the direct benefits from the use of the electricity, natural gas, water, telephone service or cable television service passing through such connections or meters, or using the electricity, natural gas, water, telephone service or cable television service which has not been authorized or measured.

(d) In a prosecution for theft as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, and such theft is of regulated scrap metal as defined in K.S.A. 2020 Supp. 50-6,109, and amendments thereto, either in whole or in part, the failure to give information or the giving of false information to a scrap metal dealer pursuant to the requirements of the scrap metal theft reduction act, the transportation of regulated scrap metal outside the county from where it was obtained, the transportation of regulated scrap metal across state lines or the alteration of any regulated scrap metal prior to any transaction with a scrap metal dealer shall be prima facie evidence of intent to permanently deprive the owner of the regulated scrap metal of the possession, use or benefit thereof.

(e) *In a prosecution for theft as defined in K.S.A. 2020 Supp. 21-5801, and amendments thereto, and such theft is of a motor vehicle as defined in K.S.A. 8-126, and amendments thereto, fleeing or attempting to elude a police officer as defined in K.S.A. 8-1568(a)(1)(B) or (b), and amendments thereto, shall be prima facie evidence of intent to permanently deprive the owner of the motor vehicle of the possession, use or benefit thereof.*

(f) As used in this section:

(1) "Notice" means notice in writing and such notice in writing will be presumed to have been given three days following deposit of the notice as registered or certified matter in the United States mail, addressed to such person who has leased or rented the personal property or borrowed the library material at the address as it appears in the information supplied by such person at the time of such leasing, renting or borrowing, or to such person's last known address; and

(2) "tampering" includes, but is not limited to:

(A) Making a connection of any wire, conduit or device, to any service or transmission line owned by a public or municipal utility, or by a cable television service provider;

(B) defacing, puncturing, removing, reversing or altering any meter or any connections, for the purpose of securing unauthorized or unmeasured electricity, natural gas, water, telephone service or cable television service;

(C) preventing any such meters from properly measuring or registering;

(D) knowingly taking, receiving, using or converting to such person's own use, or the use of another;

(i) Any electricity, water or natural gas ~~which~~ *that* has not been measured; or

(ii) any telephone or cable television service ~~which~~ *that* has not been authorized; or

(E) causing, procuring, permitting, aiding or abetting any person to do any of the ~~preceding~~ acts *described in subparagraphs (A) through (D)*.

Sec. 7. K.S.A. 2020 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in the Kansas offender registration act,

unless the context otherwise requires:

(a) "Offender" means:

(1) A sex offender;

(2) a violent offender;

(3) a drug offender;

(4) any person who has been required to register under out-of-state law or is otherwise required to be registered; and

(5) any person required by court order to register for an offense not otherwise required as provided in the Kansas offender registration act.

(b) "Sex offender" includes any person who:

(1) On or after April 14, 1994, is convicted of any sexually violent crime;

(2) on or after July 1, 2002, is adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a sexually violent crime, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;

(3) has been determined to be a sexually violent predator;

(4) on or after July 1, 1997, is convicted of any of the following crimes when one of the parties involved is less than 18 years of age:

(A) Adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2020 Supp. 21-5511, and amendments thereto;

(B) criminal sodomy, as defined in K.S.A. 21-3505(a)(1), prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(1) or (a)(2), and amendments thereto;

(C) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2020 Supp. 21-6420, prior to its amendment by section 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013;

(D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2020 Supp. 21-6421, prior to its amendment by section 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013; or

(E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2020 Supp. 21-5513, and amendments thereto;

(5) is convicted of sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2020 Supp. 21-5505(a), and amendments thereto;

(6) *is convicted of sexual extortion, as defined in section 1, and amendments thereto;*

(7) is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of an offense defined in this subsection; or

~~(7)~~*(8)* has been convicted of an offense that is comparable to any crime defined in this subsection, or any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection.

(c) "Sexually violent crime" means:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2020 Supp. 21-5506(a), and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2020 Supp. 21-5506(b), and

amendments thereto;

(4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2020 Supp. 21-5504(b), and amendments thereto;

(6) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(a), and amendments thereto;

(7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(b), and amendments thereto;

(8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto;

(9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2020 Supp. 21-5505(b), and amendments thereto;

(10) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2020 Supp. 21-5604(b), and amendments thereto;

(11) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, and K.S.A. 2020 Supp. 21-5509, and amendments thereto;

(12) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2020 Supp. 21-5512, and amendments thereto;

(13) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2020 Supp. 21-5426(b), and amendments thereto, if committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(14) commercial sexual exploitation of a child, as defined in K.S.A. 2020 Supp. 21-6422, and amendments thereto;

(15) promoting the sale of sexual relations, as defined in K.S.A. 2020 Supp. 21-6420, and amendments thereto;

(16) any conviction or adjudication for an offense that is comparable to a sexually violent crime as defined in this subsection, or any out-of-state conviction or adjudication for an offense that under the laws of this state would be a sexually violent crime as defined in this subsection;

(17) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302, 21-5303, and amendments thereto, of a sexually violent crime, as defined in this subsection; or

(18) any act which has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim. As used in this paragraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(d) "Sexually violent predator" means any person who, on or after July 1, 2001, is found to be a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto.

(e) "Violent offender" includes any person who:

(1) On or after July 1, 1997, is convicted of any of the following crimes:

(A) Capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2020 Supp. 21-5401, and amendments thereto;

(B) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2020 Supp. 21-5402, and amendments thereto;

(C) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2020 Supp. 21-5403, and amendments thereto;

(D) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2020 Supp. 21-5404, and amendments thereto;

(E) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2020 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and amendments thereto. The provisions of this paragraph shall not apply to violations of K.S.A. 2020 Supp. 21-5405(a)(3), and amendments thereto, which occurred on or after July 1, 2011, through July 1, 2013;

(F) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or K.S.A. 2020 Supp. 21-5408(a), and amendments thereto;

(G) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or K.S.A. 2020 Supp. 21-5408(b), and amendments thereto;

(H) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2020 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age; or

(I) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2020 Supp. 21-5426(b), and amendments thereto, if not committed in whole or in part for the purpose of the sexual gratification of the defendant or another;

(2) on or after July 1, 2006, is convicted of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;

(3) has been convicted of an offense that is comparable to any crime defined in this subsection, any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(4) is convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(f) "Drug offender" includes any person who, on or after July 1, 2007:

(1) Is convicted of any of the following crimes:

(A) Unlawful manufacture or attempting such of any controlled substance or controlled substance analog, as defined in K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2020 Supp. 21-5703, and amendments thereto;

(B) possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance, as defined in K.S.A. 65-7006(a), prior to its repeal, K.S.A. 2010 Supp. 21-36a09(a), prior to its transfer, or K.S.A. 2020 Supp. 21-5709(a), and amendments thereto;

(C) K.S.A. 65-4161, prior to its repeal, K.S.A. 2010 Supp. 21-36a05(a)(1), prior to its transfer, or K.S.A. 2020 Supp. 21-5705(a)(1), and amendments thereto. The provisions of this paragraph shall not apply to violations of K.S.A. 2010 Supp. 21-36a05(a)(2) through (a)(6) or (b) which occurred on or after July 1, 2009, through April 15, 2010;

(2) has been convicted of an offense that is comparable to any crime defined in this subsection, any out-of-state conviction for an offense that under the laws of this state would be an offense defined in this subsection; or

(3) is or has been convicted of an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(g) Convictions or adjudications which result from or are connected with the same act, or result from crimes committed at the same time, shall be counted for the purpose of this section as one conviction or adjudication. Any conviction or adjudication set aside pursuant to law is not a conviction or adjudication for purposes of this section. A conviction or adjudication from any out-of-state court shall constitute a conviction or adjudication for purposes of this section.

(h) "School" means any public or private educational institution, including, but not limited to, postsecondary school, college, university, community college, secondary school, high school, junior high school, middle school, elementary school, trade school, vocational school or professional school providing training or education to an offender for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(i) "Employment" means any full-time, part-time, transient, day-labor employment or volunteer work, with or without compensation, for three or more consecutive days or parts of days, or for 10 or more nonconsecutive days in a period of 30 consecutive days.

(j) "Reside" means to stay, sleep or maintain with regularity or temporarily one's person and property in a particular place other than a location where the offender is incarcerated. It shall be presumed that an offender resides at any and all locations where the offender stays, sleeps or maintains the offender's person for three or more consecutive days or parts of days, or for ten or more nonconsecutive days in a period of 30 consecutive days.

(k) "Residence" means a particular and definable place where an individual resides. Nothing in the Kansas offender registration act shall be construed to state that an offender may only have one residence for the purpose of such act.

(l) "Transient" means having no fixed or identifiable residence.

(m) "Law enforcement agency having initial jurisdiction" means the registering law enforcement agency of the county or location of jurisdiction where the offender expects to most often reside upon the offender's discharge, parole or release.

(n) "Registering law enforcement agency" means the sheriff's office or tribal police department responsible for registering an offender.

(o) "Registering entity" means any person, agency or other governmental unit, correctional facility or registering law enforcement agency responsible for obtaining the required information from, and explaining the required registration procedures to, any person required to register pursuant to the Kansas offender registration act. "Registering entity" shall include, but not be limited to, sheriff's offices, tribal police departments and correctional facilities.

(p) "Treatment facility" means any public or private facility or institution providing inpatient mental health, drug or alcohol treatment or counseling, but does not include a hospital, as defined in K.S.A. 65-425, and amendments thereto.

(q) "Correctional facility" means any public or private correctional facility, juvenile detention facility, prison or jail.

(r) "Out-of-state" means: the District of Columbia; any federal, military or tribal jurisdiction, including those within this state; any foreign jurisdiction; or any state or territory within the United States, other than this state.

(s) "Duration of registration" means the length of time during which an offender is required to register for a specified offense or violation.

(t) (1) Notwithstanding any other provision of this section, "offender" shall not include any person who is:

(A) Convicted of unlawful transmission of a visual depiction of a child, as defined in K.S.A. 2020 Supp. 21-5611(a), and amendments thereto, aggravated unlawful transmission of a visual depiction of a child, as defined in K.S.A. 2020 Supp. 21-5611(b), and amendments thereto, or unlawful possession of a visual depiction of a child, as defined in K.S.A. 2020 Supp. 21-5610, and amendments thereto; ~~or~~

(B) adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of a crime defined in subsection (t)(1)(A); *or*

(C) adjudicated as a juvenile offender for an act which if committed by an adult would constitute the commission of sexual extortion as defined in section 1, and amendments thereto.

(2) Notwithstanding any other provision of law, a court shall not order any person to register under the Kansas offender registration act for the offenses described in subsection (t)(1).

Sec. 8. K.S.A. 2020 Supp. 22-4906 is hereby amended to read as follows: 22-4906. (a) (1) Except as provided in subsection (c), if convicted of any of the following offenses, an offender's duration of registration shall be, if confined, 15 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 15 years from the date of conviction:

(A) Sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2020 Supp. 21-5505(a), and amendments thereto;

(B) adultery, as defined in K.S.A. 21-3507, prior to its repeal, or K.S.A. 2020 Supp. 21-5511, and amendments thereto, when one of the parties involved is less than 18 years of age;

(C) promoting the sale of sexual relations, as defined in K.S.A. 2020 Supp. 21-6420, and amendments thereto;

(D) patronizing a prostitute, as defined in K.S.A. 21-3515, prior to its repeal, or K.S.A. 2020 Supp. 21-6421, prior to its amendment by section 18 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, when one of the parties involved is less than 18 years of age;

(E) lewd and lascivious behavior, as defined in K.S.A. 21-3508, prior to its repeal, or K.S.A. 2020 Supp. 21-5513, and amendments thereto, when one of the parties involved is less than 18 years of age;

(F) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2020 Supp. 21-5401, and amendments thereto;

(G) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2020 Supp. 21-5402, and amendments thereto;

(H) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2020 Supp. 21-5403, and amendments thereto;

(I) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2020 Supp. 21-5404, and amendments thereto;

(J) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2020 Supp. 21-5405(a)(1), (a)(2) or (a)(4), and amendments thereto;

(K) criminal restraint, as defined in K.S.A. 21-3424, prior to its repeal, or K.S.A. 2020 Supp. 21-5411, and amendments thereto, except by a parent, and only when the victim is less than 18 years of age;

(L) *sexual extortion, as defined in section 1, and amendments thereto, when one of the parties involved is less than 18 years of age;*

(M) any act which has been determined beyond a reasonable doubt to have been sexually motivated, unless the court, on the record, finds that the act involved non-forcible sexual conduct, the victim was at least 14 years of age and the offender was not more than four years older than the victim;

~~(M)~~*(N)* conviction of any person required by court order to register for an offense not otherwise required as provided in the Kansas

offender registration act;

~~(N)~~*(O)* conviction of any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such person felony;

~~(O)~~*(P)* unlawful manufacture or attempting such of any controlled substance or controlled substance analog, as defined in K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or K.S.A. 2020 Supp. 21-5703, and amendments thereto;

~~(P)~~*(Q)* possession of ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with intent to use the product to manufacture a controlled substance, as defined by K.S.A. 65-7006(a), prior to its repeal, K.S.A. 2010 Supp. 21-36a09(a), prior to its transfer, or K.S.A. 2020 Supp. 21-5709(a), and amendments thereto;

~~(Q)~~*(R)* K.S.A. 65-4161, prior to its repeal, K.S.A. 2010 Supp. 21-36a05(a)(1), prior to its transfer, or K.S.A. 2020 Supp. 21-5705(a)(1), and amendments thereto; or

~~(R)~~*(S)* any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(2) Except as otherwise provided by the Kansas offender registration act, the duration of registration terminates, if not confined, at the expiration of 15 years from the date of conviction. Any period of time during which any offender is incarcerated in any jail or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration.

(b) (1) Except as provided in subsection (c), if convicted of any of the following offenses, an offender's duration of registration shall be, if confined, 25 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 25 years from the date of conviction:

(A) Criminal sodomy, as defined in K.S.A. 21-3505(a)(1), prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(1) or (a)(2), and amendments thereto, when one of the parties involved is less than 18 years of age;

(B) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(a), and amendments thereto;

(C) electronic solicitation, as defined in K.S.A. 21-3523, prior to its repeal, or K.S.A. 2020 Supp. 21-5509, and amendments thereto;

(D) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2020 Supp. 21-5604(b), and amendments thereto;

(E) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2020 Supp. 21-5506(a), and amendments thereto;

(F) unlawful sexual relations, as defined in K.S.A. 21-3520, prior to its repeal, or K.S.A. 2020 Supp. 21-5512, and amendments thereto;

(G) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto, if the victim is 14 or more years of age but less than 18 years of age;

(H) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2020 Supp. 21-5505(b), and amendments thereto;

(I) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2020 Supp. 21-6420, prior to its amendment by

section 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, if the person selling sexual relations is 14 or more years of age but less than 18 years of age; or

(J) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(2) Except as otherwise provided by the Kansas offender registration act, the duration of registration terminates, if not confined, at the expiration of 25 years from the date of conviction. Any period of time during which any offender is incarcerated in any jail or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration.

(c) Upon a second or subsequent conviction of an offense requiring registration, an offender's duration of registration shall be for such offender's lifetime.

(d) The duration of registration for any offender who has been convicted of any of the following offenses shall be for such offender's lifetime:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and amendments thereto;

(2) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(b), and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2020 Supp. 21-5506(b), and amendments thereto;

(4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2020 Supp. 21-5504(b), and amendments thereto;

(6) aggravated human trafficking, as defined in K.S.A. 21-3447, prior to its repeal, or K.S.A. 2020 Supp. 21-5426(b), and amendments thereto;

(7) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto, if the victim is less than 14 years of age;

(8) promoting prostitution, as defined in K.S.A. 21-3513, prior to its repeal, or K.S.A. 2020 Supp. 21-6420, prior to its amendment by section 17 of chapter 120 of the 2013 Session Laws of Kansas on July 1, 2013, if the person selling sexual relations is less than 14 years of age;

(9) kidnapping, as defined in K.S.A. 21-3420, prior to its repeal, or K.S.A. 2020 Supp. 21-5408(a), and amendments thereto;

(10) aggravated kidnapping, as defined in K.S.A. 21-3421, prior to its repeal, or K.S.A. 2020 Supp. 21-5408(b), and amendments thereto;

(11) commercial sexual exploitation of a child, as defined in K.S.A. 2020 Supp. 21-6422, and amendments thereto; or

(12) any attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302 and 21-5303, and amendments thereto, of an offense defined in this subsection.

(e) Any person who has been declared a sexually violent predator pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall register for such person's lifetime.

(f) Notwithstanding any other provisions of this section, for an

offender less than 14 years of age who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, the court shall:

(1) Require registration until such offender reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

(g) Notwithstanding any other provisions of this section, for an offender 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, and such crime is not an off-grid felony or a felony ranked in severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior to its repeal, or K.S.A. 2020 Supp. 21-6804, and amendments thereto, the court shall:

(1) Require registration until such offender reaches 18 years of age, at the expiration of five years from the date of adjudication or, if confined, from release from confinement, whichever date occurs later. Any period of time during which the offender is incarcerated in any jail, juvenile facility or correctional facility or during which the offender does not comply with any and all requirements of the Kansas offender registration act shall not count toward the duration of registration;

(2) not require registration if the court, on the record, finds substantial and compelling reasons therefor; or

(3) require registration, but such registration information shall not be open to inspection by the public or posted on any internet website, as provided in K.S.A. 22-4909, and amendments thereto. If the court requires registration but such registration is not open to the public, such offender shall provide a copy of such court order to the registering law enforcement agency at the time of registration. The registering law enforcement agency shall forward a copy of such court order to the Kansas bureau of investigation.

If such offender violates a condition of release during the term of the conditional release, the court may require such offender to register pursuant to paragraph (1).

(h) Notwithstanding any other provisions of this section, an offender 14 years of age or more who is adjudicated as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime set forth in K.S.A. 22-4902(c), and amendments thereto, and such crime is an off-grid felony or a felony ranked in

severity level 1 of the nondrug grid as provided in K.S.A. 21-4704, prior to its repeal, or K.S.A. 2020 Supp. 21-6804, and amendments thereto, shall be required to register for such offender's lifetime.

(i) Notwithstanding any other provision of law, if a diversionary agreement or probation order, either adult or juvenile, or a juvenile offender sentencing order, requires registration under the Kansas offender registration act for an offense that would not otherwise require registration as provided in K.S.A. 22-4902(a)(5), and amendments thereto, then all provisions of the Kansas offender registration act shall apply, except that the duration of registration shall be controlled by such diversionary agreement, probation order or juvenile offender sentencing order.

(j) The duration of registration does not terminate if the convicted or adjudicated offender again becomes liable to register as provided by the Kansas offender registration act during the required period of registration.

(k) For any person moving to Kansas who has been convicted or adjudicated in an out-of-state court, or who was required to register under an out-of-state law, the duration of registration shall be the length of time required by the out-of-state jurisdiction or by the Kansas offender registration act, whichever length of time is longer. The provisions of this subsection shall apply to convictions or adjudications prior to June 1, 2006, and to persons who moved to Kansas prior to June 1, 2006, and to convictions or adjudications on or after June 1, 2006, and to persons who moved to Kansas on or after June 1, 2006.

(l) For any person residing, maintaining employment or attending school in this state who has been convicted or adjudicated by an out-of-state court of an offense that is comparable to any crime requiring registration pursuant to the Kansas offender registration act, but who was not required to register in the jurisdiction of conviction or adjudication, the duration of registration shall be the duration required for the comparable offense pursuant to the Kansas offender registration act.

Sec. 9. K.S.A. 2020 Supp. 8-1568, 21-5106, 21-5505, 21-5804, 22-4902 and 22-4906 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

_____

SENATE adopted

Conference Committee Report _____

_____

President of the Senate.

_____

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

_____

Speaker of the House.

_____

Chief Clerk of the House.

APPROVED _____

_____

Governor.

HOUSE BILL No. 2026

AN ACT concerning crimes, punishment and criminal procedure; relating to diversion agreements; creating a certified drug abuse treatment program for people on diversion; providing for supervision by court services or community corrections; clarifying supervision of offenders and authorizing the sentencing commission to determine risk levels for participation in the certified drug abuse treatment program; increasing criminal penalties for riot and incitement to riot in a correctional facility; modifying criminal penalties for unlawfully tampering with electronic monitoring equipment; amending K.S.A. 22-2907, 75-5291 and 75-52,144 and K.S.A. 2020 Supp. 21-6201, 21-6322, 21-6610, 21-6824 and 22-2909 and repealing the existing sections.

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

New Section 1. (a) There is hereby established a certified drug abuse treatment program for certain persons who enter into a diversion agreement in lieu of further criminal proceedings on and after July 1, 2021. Placement of divertees in a certified drug abuse treatment program pursuant to a diversion agreement shall be limited to placement of adults, on a complaint alleging a felony violation of K.S.A. 2020 Supp. 21-5706, and amendments thereto, whose offense is classified in grid blocks 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes who have no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2020 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction.

(b) As part of the consideration of whether or not to allow diversion to the defendant, a divertee who meets the requirements of subsection (a) shall be subject to:

(1) A drug abuse assessment that shall include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the divertee; and

(2) a standardized criminal risk-need assessment specified by the Kansas sentencing commission.

(c) The diversion agreement shall require the divertee to comply with and participate in a certified drug abuse treatment program if the divertee meets the assessment criteria set by the Kansas sentencing commission. The term of treatment shall not exceed 18 months.

(d) Divertees who are committed to a certified drug abuse treatment program pursuant to subsection (c) may be supervised by community correctional services or court services pursuant to a memorandum of understanding entered into pursuant to K.S.A. 22-2907, and amendments thereto.

(e) (1) Divertees in a certified drug abuse treatment program shall be discharged from the program if the divertee:

(A) Is convicted of a new felony; or

(B) has a pattern of intentional conduct that demonstrates the divertee's refusal to comply with or participate in the treatment program in the opinion of the county or district attorney.

(2) Divertees who are discharged from such program pursuant to paragraph (1) shall be subject to the revocation provisions of the divertee's diversion agreement.

(f) For the purposes of this section:

(1) "Mental health professional" includes licensed social workers, persons licensed to practice medicine and surgery, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat persons pursuant to K.S.A. 2020 Supp. 75-52,144, and amendments thereto.

(2) "Divertee" means a person who has entered into a diversion agreement pursuant to K.S.A. 22-2909, and amendments thereto.

Sec. 2. K.S.A. 2020 Supp. 21-6201 is hereby amended to read as follows: 21-6201. (a) Riot is five or more persons acting together and without lawful authority engaging in any:

(1) Use of force or violence which produces a breach of the public peace; or

(2) threat to use such force or violence against any person or property if accompanied by power or apparent power of immediate execution.

(b) Incitement to riot is by words or conduct knowingly urging others to engage in riot as defined in subsection (a) under circumstances which produce a clear and present danger of injury to persons or property or a ~~branch~~ *breach* of the public peace.

(c) (1) Riot is a:

(A) Class A person misdemeanor, *except as provided in subsection (c)(1)(B); and*

(B) severity level 8, person felony if the riot occurs in a correctional facility.

(2) Incitement to riot is a:

(A) Severity level 8, person felony, *except as provided in subsection (c)(2)(B); and*

(B) severity level 6, person felony if the incitement to riot occurs in a correctional facility.

(d) As used in this section, "correctional facility" means a "correctional institution" as defined in K.S.A. 75-5202, and amendments thereto, or a jail.

Sec. 3. K.S.A. 2020 Supp. 21-6322 is hereby amended to read as follows: 21-6322. (a) Unlawfully tampering with electronic monitoring equipment is, knowingly and without authorization, removing, disabling, altering, tampering with, damaging or destroying any electronic monitoring equipment used pursuant to court ordered supervision or as a condition of post-release supervision or parole.

(b) Unlawfully tampering with electronic monitoring equipment is a:

(1) Severity level ~~6~~ *8*, nonperson felony *in the case of electronic monitoring equipment used pursuant to court-ordered supervision or as a condition of postrelease supervision or parole for any felony; and*

(2) class A nonperson misdemeanor in the case of electronic monitoring equipment used pursuant to court-ordered supervision or as a condition of postrelease supervision or parole for any misdemeanor or used pursuant to court-ordered supervision in any civil case.

Sec. 4. K.S.A. 2020 Supp. 21-6610 is hereby amended to read as follows: 21-6610. (a) When a defendant is placed on parole by the district court, on probation, assigned to a community correctional services program by a district court or under suspended sentence and such defendant is permitted to go from the judicial district of that court, supervision over the defendant may be transferred from that judicial district to another with the concurrence of the receiving chief court services officer, or if in a community corrections services program, by the concurrence of the director of the receiving program.

(b) The district court from which the defendant is on parole, probation, community correctional services program or suspended sentence may retain jurisdiction of the defendant.

(c) When a defendant described in subsection (a) is sentenced pursuant to K.S.A. 2020 Supp. 21-6824, and amendments thereto, the district court from which the defendant is on parole, on probation, assigned to a community correctional services program or under suspended sentence may transfer jurisdiction of the defendant with the concurrence of the receiving district court and all parties.

Sec. 5. K.S.A. 2020 Supp. 21-6824 is hereby amended to read as follows: 21-6824. (a) There is hereby established a nonprison sanction of certified drug abuse treatment programs for certain offenders who are sentenced on or after November 1, 2003. Placement of offenders in certified drug abuse treatment programs by the court shall be limited to placement of adult offenders, convicted of a felony violation of K.S.A. 2020 Supp. 21-5705 or 21-5706, and amendments thereto, whose offense is classified in grid blocks:

(1) 5-C, 5-D, 5-E, 5-F, 5-G, 5-H or 5-I of the sentencing guidelines grid for drug crimes and such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2020 Supp. 21-5703, 21-5705

or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction; or

(2) 5-A, 5-B, 4-E, 4-F, 4-G, 4-H or 4-I of the sentencing guidelines grid for drug crimes, such offender has no felony conviction of K.S.A. 65-4142, 65-4159, 65-4161, 65-4163 or 65-4164, prior to their repeal, K.S.A. 2010 Supp. 21-36a03, 21-36a05 or 21-36a16, prior to their transfer, or K.S.A. 2020 Supp. 21-5703, 21-5705 or 21-5716, and amendments thereto, or any substantially similar offense from another jurisdiction, if the person felonies in the offender's criminal history were severity level 8, 9 or 10 or nongrid offenses of the sentencing guidelines grid for nondrug crimes, and the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will not be jeopardized by such placement in a drug abuse treatment program.

(b) As a part of the presentence investigation pursuant to K.S.A. 2020 Supp. 21-6813, and amendments thereto, offenders who meet the requirements of subsection (a), unless otherwise specifically ordered by the court, shall be subject to:

(1) A drug abuse assessment which shall include a clinical interview with a mental health professional and a recommendation concerning drug abuse treatment for the offender; and

(2) a criminal risk-need assessment. The criminal risk-need assessment shall assign ~~a high or low~~ risk status to the offender.

(c) If the offender is assigned ~~a high~~ risk status as determined by the drug abuse assessment performed pursuant to subsection (b)(1) and ~~a moderate or high~~ risk status as determined by the criminal risk-need assessment performed pursuant to subsection (b)(2) *that meets the criteria for participation in a drug abuse treatment program as determined by the Kansas sentencing commission*, the sentencing court shall commit the offender to treatment in a drug abuse treatment program until the court determines the offender is suitable for discharge by the court. The term of treatment shall not exceed 18 months. The court may extend the term of probation, pursuant to K.S.A. 2020 Supp. 21-6608(c)(3), and amendments thereto. The term of treatment may not exceed the term of probation.

(d) (1) Offenders who are committed to a drug abuse treatment program pursuant to subsection (c) shall be supervised by community correctional services.

(2) Offenders who are not committed to a drug abuse treatment program pursuant to subsection (c) shall be supervised by community correctional services or court services based on the result of the criminal risk assessment.

(3) If the offender is permitted to go from the judicial district of the sentencing court, the court may, pursuant to K.S.A. 2020 Supp. 21-6610, and amendments thereto:

(A) Transfer supervision of the offender from that judicial district to another; and

(B) either transfer or retain jurisdiction of the offender.

(e) Placement of offenders under subsection (a)(2) shall be subject to the departure sentencing statutes of the revised Kansas sentencing guidelines act.

(f) (1) Offenders in drug abuse treatment programs shall be discharged from such program if the offender:

(A) Is convicted of a new felony; or

(B) has a pattern of intentional conduct that demonstrates the offender's refusal to comply with or participate in the treatment program, as established by judicial finding.

(2) Offenders who are discharged from such program shall be subject to the revocation provisions of K.S.A. 2020 Supp. 21-6604(n), and amendments thereto.

(g) As used in this section, "mental health professional" includes licensed social workers, persons licensed to practice medicine and surgery, licensed psychologists, licensed professional counselors or registered alcohol and other drug abuse counselors licensed or certified as addiction counselors who have been certified by the secretary of corrections to treat offenders pursuant to K.S.A. 75-52,144, and

amendments thereto.

(h) (1) Offenders who meet the requirements of subsection (a) shall not be subject to the provisions of this section and shall be sentenced as otherwise provided by law, if such offenders:

(A) Are residents of another state and are returning to such state pursuant to the interstate corrections compact or the interstate compact for adult offender supervision; or

(B) are not lawfully present in the United States and being detained for deportation; or

(C) do not meet the risk assessment levels provided in subsection (c).

(2) Such sentence shall not be considered a departure and shall not be subject to appeal.

(i) The court may order an offender who otherwise does not meet the requirements of subsection (c) to undergo one additional drug abuse assessment while such offender is on probation. Such offender may be ordered to undergo drug abuse treatment pursuant to subsection (a) if such offender is determined to meet the requirements of subsection (c). The cost of such assessment shall be paid by such offender.

Sec. 6. K.S.A. 22-2907 is hereby amended to read as follows: 22-2907. ~~(1)~~*(a)* After a complaint has been filed charging a defendant with commission of a crime and prior to conviction thereof, and after the district attorney has considered the factors listed in K.S.A. 22-2908, if it appears to the district attorney that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the district attorney may propose a diversion agreement to the defendant. The terms of each diversion agreement shall be established by the district attorney in accordance with K.S.A. 22-2909, *and amendments thereto.*

~~(2)~~*(b)* Each district attorney shall adopt written policies and guidelines for the implementation of a diversion program in accordance with this act. Such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint.

~~(3)~~*(c)* Each defendant shall be informed in writing of the diversion program and the policies and guidelines adopted by the district attorney. The district attorney may require any defendant requesting diversion to provide information regarding prior criminal charges, education, work experience and training, family, residence in the community, medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion program. In all cases, the defendant shall be present and shall have the right to be represented by counsel at the diversion conference with the district attorney.

(d) (1) A county or district attorney may enter into a memorandum of understanding with the chief judge of a judicial district or community correctional services to assist with supervision and monitoring of persons who have entered into a diversion agreement. The county or district attorney shall retain authority over whether a defendant is given the option to enter into a diversion agreement and whether the defendant's diversion agreement will be revoked.

(2) A memorandum of understanding shall include provisions related to:

(A) Determining the level of supervision needed for a defendant;

(B) use of a criminal risk-need assessment;

(C) payment of costs for supervision; and

(D) waiver of the supervision fee established in this subsection.

(3) (A) When a person who has entered into a diversion agreement is supervised pursuant to a memorandum of understanding under this subsection, the person shall pay a supervision fee in the amount established in K.S.A. 2020 Supp. 21-6607(c)(3)(A) for misdemeanor or felony post-conviction supervision, as appropriate for the crime charged.

(B) The diversion supervision fee imposed by this paragraph shall

be charged and collected by the county or district attorney.

(C) All moneys collected pursuant to this section shall be paid into the county general fund and used to fund the costs of diversion supervision performed pursuant to a memorandum of understanding under this subsection.

(D) The diversion supervision fee specified by this paragraph may be reduced or waived by the county or district attorney in accordance with a memorandum of understanding under this subsection.

(4) When a person who has entered into a diversion agreement is supervised pursuant to a memorandum of understanding under this subsection, the person shall pay the actual costs of any urinalysis testing required as a term of supervision. Payments for urinalysis testing shall be remitted to the county treasurer for deposit in the county general fund. The costs of urinalysis testing may be reduced or waived by the county or district attorney.

(5) The office of judicial administration may develop guidelines regarding the content of a memorandum of understanding between a county or district attorney and the chief judge of a judicial district and the administration of a supervision program operating pursuant to such memorandum of understanding.

Sec. 7. K.S.A. 2020 Supp. 22-2909 is hereby amended to read as follows: 22-2909. (a) (1) A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the attorney general or county or district attorney, such attorney shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under the law or the constitution of Kansas or of the United States to a speedy arraignment, preliminary examinations and hearings, and a speedy trial, and in the case of diversion under subsection (c) waiver of the rights to counsel and trial by jury. The diversion agreement may include, but is not limited to, provisions concerning:

(A) Payment of restitution, including court costs and diversion costs~~,~~*;*

(B) residence in a specified facility~~,~~*;*

(C) maintenance of gainful employment~~, and~~*;*

(D) participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services*; and*

(E) supervision by the county or district attorney, or by court services or community correctional services pursuant to a memorandum of understanding entered into by the county or district attorney pursuant to K.S.A. 22-2907, and amendments thereto, including the diversion supervision fee and urinalysis costs described in K.S.A. 22-2907, and amendments thereto, when applicable.

(2) If a county creates a local fund under the property crime restitution and compensation act, a county or district attorney may require in all diversion agreements as a condition of diversion the payment of a diversion fee in an amount not to exceed $100. Such fees shall be deposited into the local fund and disbursed pursuant to recommendations of the local board under the property crime restitution and victims compensation act.

(3) If the attorney general enters into a diversion agreement:

(A) Any diversion costs or fees collected pursuant to such agreement shall be deposited in the fraud and abuse criminal prosecution fund established by K.S.A. 75-765, and amendments thereto; and

(B) the attorney general may enter into agreements with the appropriate county or district attorney or other appropriate parties regarding the supervision of conditions of such diversion agreement.

(b) The diversion agreement shall state:

(1) The defendant's full name;

(2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name;

(3) the defendant's sex, race and date of birth;

(4) the crime with which the defendant is charged;

(5) the date the complaint was filed; and

(6) the district court with which the agreement is filed.

(c) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto, the diversion agreement shall include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

(1) Pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 8-1567, and amendments thereto, for a first offense or, in lieu of payment of the fine, perform community service specified by the agreement, in accordance with K.S.A. 8-1567, and amendments thereto; and

(2) participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.

(d) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a domestic violence offense, as defined in K.S.A. 2020 Supp. 21-5111, and amendments thereto, the diversion agreement shall include a requirement that the defendant undergo a domestic violence offender assessment and follow all recommendations unless otherwise agreed to with the prosecutor in the diversion agreement. The defendant shall be required to pay for such assessment and, unless otherwise agreed to with the prosecutor in the diversion agreement, for completion of all recommendations.

(e) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation other than K.S.A. 8-1567, and amendments thereto, the diversion agreement may include a stipulation, agreed to by the defendant, the defendant's attorney if the defendant is represented by an attorney and the attorney general or county or district attorney, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the terms of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint.

(f) If the person entering into a diversion agreement is a nonresident, the attorney general or county or district attorney shall transmit a copy of the diversion agreement to the division. The division shall forward a copy of the diversion agreement to the motor vehicle administrator of the person's state of residence.

(g) If the attorney general or county or district attorney elects to offer diversion in lieu of further criminal proceedings on the complaint and the defendant agrees to all of the terms of the proposed agreement, the diversion agreement shall be filed with the district court and the district court shall stay further proceedings on the complaint. If the defendant declines to accept diversion, the district court shall resume the criminal proceedings on the complaint.

(h) Except as provided in subsection (i), if a diversion agreement is entered into in lieu of further criminal proceedings alleging commission of a misdemeanor by the defendant, while under 21 years of age, under K.S.A. 2020 Supp. 21-5701 through 21-5717, and amendments thereto, or K.S.A. 41-719, 41-727, 41-804, 41-2719 or 41-2720, and amendments thereto, the agreement shall require the defendant to participate in an alcohol and drug evaluation conducted by a licensed provider pursuant to K.S.A. 8-1008, and amendments thereto, and follow any recommendation made by the provider after such evaluation.

(i) If the defendant is 18 or more years of age but less than 21

years of age and allegedly committed a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (h) are permissive and not mandatory.

(j) If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 2020 Supp. 21-6421, and amendments thereto, the agreement:

(1) Shall include a requirement that the defendant pay a fine specified by the agreement in an amount equal to an amount authorized by K.S.A. 2020 Supp. 21-6421, and amendments thereto; and

(2) may include a requirement that the defendant enter into and complete a suitable educational or treatment program regarding commercial sexual exploitation.

(k) Except diversion agreements reported under subsection (l), the attorney general or county or district attorney shall forward to the Kansas bureau of investigation a copy of the diversion agreement at the time such agreement is filed with the district court. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

(l) At the time of filing the diversion agreement with the district court, the attorney general or county or district attorney shall forward to the division of vehicles of the state department of revenue a copy of any diversion agreement entered into in lieu of further criminal proceedings on a complaint alleging a violation of K.S.A. 8-1567, and amendments thereto. The copy of the agreement shall be made available upon request to the attorney general or any county, district or city attorney or court.

Sec. 8. K.S.A. 75-5291 is hereby amended to read as follows: 75-5291. (a) (1) The secretary of corrections may make grants to counties for the development, implementation, operation and improvement of community correctional services that address the criminogenic needs of felony offenders including, but not limited to, adult intensive supervision, substance abuse and mental health services, employment and residential services, and facilities for the detention or confinement, care or treatment of offenders as provided in this section except that no community corrections funds shall be expended by the secretary for the purpose of establishing or operating a conservation camp as provided by K.S.A. 75-52,127, and amendments thereto.

(2) Except as otherwise provided, placement of offenders in a community correctional services program by the court shall be limited to placement of adult offenders, convicted of a felony offense:

(A) Who, on or after July 1, 2014, are determined to be ~~moderate risk, high risk or very high risk~~ *an appropriate risk level as determined by the Kansas sentencing commission* by use of a statewide, mandatory, standardized risk assessment tool or instrument which shall be specified by the Kansas sentencing commission;

(B) whose severity level and criminal history score designate a presumptive prison sentence on either sentencing guidelines grid but receive a nonprison sentence as a result of departure;

(C) ~~all offenders~~ *who have been* convicted of an offense which satisfies the definition of offender pursuant to K.S.A. 22-4902, and amendments thereto, and which is classified as a severity level 7 or higher offense and who receive a nonprison sentence, regardless of the manner in which the sentence is imposed;

(D) ~~any offender~~ for whom a violation of conditions of release or assignment or a nonprison sanction has been established as provided in K.S.A. 22-3716, and amendments thereto, prior to revocation resulting in the offender being required to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections;

(E) *who have been* placed in a community correctional services program as a condition of supervision following the successful completion of a conservation camp program;

(F) who have been sentenced to community corrections supervision pursuant to K.S.A. 21-4729, prior to its repeal, or K.S.A. 2020 Supp. 21-6824, and amendments thereto; or

(G) who have been placed in a community correctional services

program for supervision by the court pursuant to K.S.A. 8-1567, and amendments thereto.

~~(3) Notwithstanding any law to the contrary and subject to the availability of funding therefor, adult offenders sentenced to community supervision in Johnson county for felony crimes that occurred on or after July 1, 2002, but before July 1, 2013, shall be placed under court services or community corrections supervision based upon court rules issued by the chief judge of the 10th judicial district. The provisions contained in this subsection shall not apply to offenders transferred by the assigned agency to an agency located outside of Johnson county. The provisions of this paragraph shall expire on July 1, 2013.~~

~~(4)~~ Nothing in this act shall prohibit a community correctional services program from providing services to juvenile offenders upon approval by the local community corrections advisory board. Grants from community corrections funds administered by the secretary of corrections shall not be expended for such services.

~~(5)~~*(4) Nothing in this act shall prohibit a community correctional services program from providing services to persons pursuant to a memorandum of understanding entered into by a community correctional services program and a county or district attorney pursuant to K.S.A. 22-2907, and amendments thereto.*

(5) The court may require an offender for whom a violation of conditions of release or assignment or a nonprison sanction has been established, as provided in K.S.A. 22-3716, and amendments thereto, to serve any time for the sentence imposed or which might originally have been imposed in a state facility in the custody of the secretary of corrections without a prior assignment to a community correctional services program if the court finds and sets forth with particularity the reasons for finding that the safety of the members of the public will be jeopardized or that the welfare of the inmate will not be served by such assignment to a community correctional services program.

(b) (1) In order to establish a mechanism for community correctional services to participate in the department of corrections annual budget planning process, the secretary of corrections shall establish a community corrections advisory committee to identify new or enhanced correctional or treatment interventions designed to divert offenders from prison.

(2) The secretary shall appoint one member from the southeast community corrections region, one member from the northeast community corrections region, one member from the central community corrections region and one member from the western community corrections region. The deputy secretary of community and field services shall designate two members from the state at large. The secretary shall have final appointment approval of the members designated by the deputy secretary. The committee shall reflect the diversity of community correctional services with respect to geographical location and average daily population of offenders under supervision.

(3) Each member shall be appointed for a term of three years and such terms shall be staggered as determined by the secretary. Members shall be eligible for reappointment.

(4) The committee, in collaboration with the deputy secretary of community and field services or the deputy secretary's designee, shall routinely examine and report to the secretary on the following issues:

(A) Efficiencies in the delivery of field supervision services;

(B) effectiveness and enhancement of existing interventions;

(C) identification of new interventions; and

(D) statewide performance indicators.

(5) The committee's report concerning enhanced or new interventions shall address:

(A) Goals and measurable objectives;

(B) projected costs;

(C) the impact on public safety; and

(D) the evaluation process.

(6) The committee shall submit its report to the secretary annually

on or before July 15 in order for the enhanced or new interventions to be considered for inclusion within the department of corrections budget request for community correctional services or in the department's enhanced services budget request for the subsequent fiscal year.

Sec. 9. K.S.A. 75-52,144 is hereby amended to read as follows: 75-52,144. (a) Drug abuse treatment programs certified in accordance with subsection (b) shall provide:

(1) ~~Presentence~~ Drug abuse assessments of any person who is convicted of *or being considered for a diversion agreement in lieu of further criminal proceedings for* a felony violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2020 Supp. 21-5706, and amendments thereto, and meets the requirements of K.S.A. 21-4729, prior to its repeal, ~~or subsection (a) of~~ K.S.A. 2020 Supp. 21-6824*(a) or section 1*, and amendments thereto;

(2) treatment of all persons who are convicted of *or entered into a diversion agreement in lieu of further criminal proceedings for* a felony violation of K.S.A. 65-4160 or 65-4162, prior to such section's repeal, K.S.A. 2010 Supp. 21-36a06, prior to its transfer, or K.S.A. 2020 Supp. 21-5706, and amendments thereto, meet the requirements of K.S.A. 21-4729, prior to its repeal, ~~or~~ K.S.A. 2020 Supp. 21-6824 *or section 1*, and amendments thereto, and whose sentence requires completion of a certified drug abuse treatment program, as provided in this section;

(3) one or more treatment options in the continuum of services needed to reach recovery: Detoxification, rehabilitation, continuing care and aftercare, and relapse prevention;

(4) treatment options to incorporate family and auxiliary support services; and

(5) treatment options for alcohol abuse when indicated by the assessment of the offender or required by the court.

(b) The ~~presentence~~ criminal risk-need assessment shall be conducted by a court services officer or a community corrections officer. The ~~presentence~~ drug abuse treatment program placement assessment shall be conducted by a drug abuse treatment program certified in accordance with the provisions of this subsection to provide assessment and treatment services. A drug abuse treatment program shall be certified by the secretary of corrections. The secretary may establish qualifications for the certification of programs, which may include requirements for supervision and monitoring of clients~~;~~, fee reimbursement procedures~~;~~, handling of conflicts of interest~~;~~, delivery of services to clients unable to pay~~;~~ and other matters relating to quality and delivery of services by the program. Drug abuse treatment may include community based and faith based programs. The certification shall be for a four-year period. Recertification of a program shall be by the secretary. To be eligible for certification under this subsection, the secretary shall determine that a drug abuse treatment program:

(1) Meets the qualifications established by the secretary;

(2) is capable of providing the assessments, supervision and monitoring required under subsection (a);

(3) has employed or contracted with certified treatment providers; and

(4) meets any other functions and duties specified by law.

(c) Any treatment provider who is employed or has contracted with a certified drug abuse treatment program who provides services to offenders shall be certified by the secretary of corrections. The secretary shall require education and training ~~which~~ *that* shall include, but not be limited to, case management and cognitive behavior training. The duties of providers who prepare the presentence drug abuse assessment may also include appearing at sentencing and probation hearings in accordance with the orders of the court, monitoring offenders in the treatment programs, notifying the probation department and the court of any offender failing to meet the conditions of probation or referrals to treatment, appearing at revocation hearings as may be required and providing assistance and data reporting and program evaluation.

(d) *(1)* The cost for all drug abuse assessments performed pursuant

to subsection (a)(1), and the cost for all certified drug abuse treatment programs for any person who meets the requirements of K.S.A. 2020 Supp. 21-6824 *or section 1*, and amendments thereto, shall be paid by the Kansas sentencing commission from funds appropriated for such purpose. The Kansas sentencing commission shall contract for payment for such services with the supervising agency.

(2) The sentencing court shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state. If such financial obligations are not met or cannot be met, the sentencing court shall be notified for the purpose of collection or review and further action on the offender's sentence.

(3) If the person has entered into a diversion agreement in lieu of further criminal proceedings, the county or district attorney shall determine the extent, if any, that such person is able to pay for such assessment and treatment. Such payments shall be used by the supervising agency to offset costs to the state or county. If such financial obligations are not met or cannot be met, the county or district attorney shall be notified for the purpose of collection or review and further action on the person's diversion agreement.

(e) The community corrections staff shall work with the substance abuse treatment staff to ensure effective supervision and monitoring of the offender.

(f) The secretary of corrections is hereby authorized to adopt rules and regulations to carry out the provisions of this section.

Sec. 10. K.S.A. 22-2907, 75-5291 and 75-52,144 and K.S.A. 2020 Supp. 21-6201, 21-6322, 21-6610, 21-6824 and 22-2909 are hereby repealed.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

_____

HOUSE adopted
Conference Committee Report_____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report_____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

Session of 2021

HOUSE BILL No. 2121

By Committee on Corrections and Juvenile Justice

1-22

AN ACT concerning crimes, punishment and criminal procedure; relating to defendants who abscond from supervision; definitions; amending K.S.A. 75-5217 and K.S.A. 2020 Supp. 22-2202 and repealing the existing sections.

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

Section 1. K.S.A. 2020 Supp. 22-2202 is hereby amended to read as follows: 22-2202. (a) *"Absconds from supervision" means intentionally avoiding supervision or intentionally making the defendant's whereabouts unknown to the defendant's supervising court services officer or community correctional services officer.*

(b) "Appellate court" means the supreme court or court of appeals, depending on the context in which the term is used and the respective jurisdiction of those courts over appeals in criminal cases, as provided in K.S.A. 22-3601, and amendments thereto.

~~(b)~~*(c)* "Appearance bond" means an agreement, with or without security, entered into by a person in custody by which the person is bound to comply with the conditions specified in the agreement.

~~(c)~~*(d)* "Arraignment" means the formal act of calling the defendant before a court having jurisdiction to impose sentence for the offense charged, informing the defendant of the offense with which the defendant is charged, and asking the defendant whether the defendant is guilty or not guilty.

~~(d)~~*(e)* "Arrest" means the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime. The giving of a notice to appear is not an arrest.

~~(e)~~*(f)* "Bail" means the security given for the purpose of insuring compliance with the terms of an appearance bond.

~~(f)~~*(g)* "Bind over" means require a defendant to appear and answer before a district judge having jurisdiction to try the defendant for the felony with which the defendant is charged.

~~(g)~~*(h)* "Charge" means a written statement presented to a court accusing a person of the commission of a crime and includes a complaint, information or indictment.

~~(h)~~*(i)* "Complaint" means a written statement under oath of the essential facts constituting a crime, except that a citation or notice to

appear issued by a law enforcement officer pursuant to and in compliance with K.S.A. 8-2106, and amendments thereto, or a citation or notice to appear issued pursuant to and in compliance with K.S.A. 32-1049, and amendments thereto, shall be deemed a valid complaint if it is signed by the law enforcement officer.

~~(i)~~*(j)* "Custody" means the restraint of a person pursuant to an arrest or the order of a court or magistrate.

~~(j)~~*(k)* "Detention" means the temporary restraint of a person by a law enforcement officer.

~~(k)~~*(l)* "Indictment" means a written statement, presented by a grand jury to a court, which charges the commission of a crime.

~~(l)~~*(m)* "Information" means a verified written statement signed by a county attorney or other authorized representative of the state of Kansas presented to a court, which charges the commission of a crime. An information verified upon information and belief by the county attorney or other authorized representative of the state of Kansas shall be sufficient.

~~(m)~~*(n)* "Law enforcement officer" means any person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody or supervision over persons accused or convicted of crime, and includes court services officers, community corrections officers, parole officers and directors, security personnel and keepers of correctional institutions, jails or other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority.

~~(n)~~*(o)* "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a crime and includes justices of the supreme court, judges of the court of appeals and judges of district courts.

~~(o)~~*(p)* "Notice to appear" means a written request, issued by a law enforcement officer, that a person appear before a designated court at a stated time and place.

~~(p)~~*(q)* "Preliminary examination" means a hearing before a magistrate on a complaint or information to determine if a felony has been committed and if there is probable cause to believe that the person charged committed ~~it~~ *such felony.*

~~(q)~~*(r)* "Prosecuting attorney" means any attorney who is authorized by law to appear for and on behalf of the state of Kansas in a criminal case, and includes the attorney general, an assistant attorney general, the county or district attorney, an assistant county or district attorney and any special prosecutor whose appearance is approved by the court. In the case of prosecution for violation of a city ordinance,~~—also,~~ "prosecuting attorney" means the city attorney or any assistant city attorney.

~~(r)~~*(s)* "Search warrant" means a written order made by a magistrate directed to a law enforcement officer commanding the officer to search the premises described in the search warrant and to seize property described or identified in the search warrant.

~~(s)~~*(t)* "Summons" means a written order issued by a magistrate directing that a person appear before a designated court at a stated time and place and answer to a charge pending against the person.

~~(t)~~*(u)* "Warrant" means a written order made by a magistrate directed to any law enforcement officer commanding the officer to arrest the person named or described in the warrant.

Sec. 2. K.S.A. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole, conditional release or postrelease supervision, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (g). Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written or verbal arrest and detain order setting forth that the released inmate, in the judgment of the parole officer, has violated the conditions of the inmate's release. A written arrest and detain order delivered to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending a hearing, as provided in this section, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

(b) Upon such arrest and detention, the parole officer shall notify the secretary of corrections, or the secretary's designee, within five days and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary or the secretary's designee may cause the released inmate to be brought before the prisoner review board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt, or may dismiss the charges that the released inmate has violated the conditions of release and order the released inmate to remain on parole, conditional release or post release

supervision. A dismissal of charges may be conditioned on the released inmate agreeing to the withholding of credit for the period of time from the date of the issuance of the secretary's warrant and the offender's arrest or return to Kansas as provided by subsection (f). ~~It is within the discretion of~~ The board *may determine* whether such hearing requires the released inmate to appear personally before the board when such inmate's violation results from a conviction for a new felony or misdemeanor. An offender under determinant sentencing whose violation does not result from a conviction of a new felony or misdemeanor may waive the right to a final revocation hearing before the board under such conditions and terms as may be prescribed by rules and regulations promulgated by the secretary of corrections. Relevant written statements made under oath shall be admitted and considered by the board, its designee or designees, along with other evidence presented at the hearing. If the violation is established to the satisfaction of the board, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit. The revocation of release of inmates who are on a specified period of postrelease supervision shall be for a six-month period of confinement from the date of the revocation hearing before the board or the effective date of waiver of such hearing by the offender pursuant to rules and regulations promulgated by the board, if the violation does not result from a conviction for a new felony or misdemeanor. Such period of confinement may be reduced by not more than three months based on the inmate's conduct, work and program participation during the incarceration period. The reduction in the incarceration period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(c) If the violation results from a conviction for a new felony, upon revocation, the inmate shall serve a period of confinement, to be determined by the prisoner review board, which shall not exceed the remaining balance of the period of postrelease supervision, even if the new conviction did not result in the imposition of a new term of imprisonment.

(d) If the violation results from a conviction for a new misdemeanor, upon revocation, the inmate shall serve a period of confinement, to be determined by the prisoner review board, which shall not exceed the remaining balance of the period of postrelease supervision.

(e) In the event the released inmate reaches conditional release date as provided by K.S.A. 22-3718, and amendments thereto, after a finding of probable cause, pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release, but prior to a hearing before the prisoner review board, the secretary of corrections shall be authorized to detain the inmate until the hearing by the board. The secretary shall then enforce the order issued by the board.

(f) *(1)* If the secretary of corrections issues a warrant for the arrest of

a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas, either pursuant to the warrant issued by the secretary of corrections or for any other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, except as provided by subsection (i).

(2) If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date of the released inmate's arrest, except as provided by subsection (i). If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas, except as provided by subsection (i). If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision, except as provided by subsection (i).

(3) The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such released inmate be employed including, but not limited to, notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of the released inmate.

(g) Law enforcement officers shall execute warrants issued by the secretary of corrections, and shall deliver the inmate named in the warrant to the jail used by the county where the inmate is arrested unless some

other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

(h) For the purposes of this section, an inmate or released inmate is an individual under the supervision of the secretary of corrections, including, but not limited to, an individual on parole, conditional release, postrelease supervision, probation granted by another state or an individual supervised under any interstate compact in accordance with the provisions of the uniform act for out-of-state parolee supervision, K.S.A. 22-4101 et seq., and amendments thereto.

(i) Time not credited to the released inmate's sentence pursuant to subsection (f) shall be credited if the violation charges are dismissed without an agreement providing otherwise or the violations are not established to the satisfaction of the board.

(j) As used in this section, "absconded from supervision" means intentionally avoiding supervision or intentionally making the defendant's whereabouts unknown to the defendant's supervising parole officer, court services officer or community correctional services officer.

Sec. 3. K.S.A. 75-5217 and K.S.A. 2020 Supp. 22-2202 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE BILL No. 2058

AN ACT concerning crimes, punishment and criminal procedure; relating to firearms; reducing the underlying felonies for the crime of criminal possession of a weapon by a convicted felon; restoration of the right to possess firearms upon expungement of convictions; recognition of licenses under the personal and family protection act issued by other jurisdictions; creating a provisional license for persons under the age of 21; authorizing the issuance of alternative license during certain circumstances; amending K.S.A. 75-7c02, 75-7c03, 75-7c04, 75-7c05, 75-7c08 and 75-7c21 and K.S.A. 2020 Supp. 21-5914, 21-6301, 21-6302, 21-6304, 21-6309, 21-6614 and 32-1002 and repealing the existing sections.

WHEREAS, The amendments made to the provisions of K.S.A. 2020 Supp. 21-6304 and 21-6614 by this act shall be known as the Kansas protection of firearms rights act.

Now, therefore:

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

Section 1. K.S.A. 2020 Supp. 21-5914 is hereby amended to read as follows: 21-5914. (a) Traffic in contraband in a correctional institution or care and treatment facility is, without the consent of the administrator of the correctional institution or care and treatment facility:

(1) Introducing or attempting to introduce any item into or upon the grounds of any correctional institution or care and treatment facility;

(2) taking, sending, attempting to take or attempting to send any item from any correctional institution or care and treatment facility;

(3) any unauthorized possession of any item while in any correctional institution or care and treatment facility;

(4) distributing any item within any correctional institution or care and treatment facility;

(5) supplying to another who is in lawful custody any object or thing adapted or designed for use in making an escape; or

(6) introducing into an institution in which a person is confined any object or thing adapted or designed for use in making any escape.

(b) Traffic in contraband in a correctional institution or care and treatment facility is a:

(1) Severity level 6, nonperson felony, except as provided in subsection (b)(2) or (b)(3);

(2) severity level 5, nonperson felony if such items are:

(A) Firearms, ammunition, explosives or a controlled substance ~~which~~ *that* is defined in K.S.A. 2020 Supp. 21-5701, and amendments thereto, except as provided in subsection (b)(3);

(B) defined as contraband by rules and regulations adopted by the secretary of corrections, in a state correctional institution or facility by an employee of a state correctional institution or facility, except as provided in subsection (b)(3);

(C) defined as contraband by rules and regulations adopted by the secretary for aging and disability services, in a care and treatment facility by an employee of a care and treatment facility, except as provided in subsection (b)(3); or

(D) defined as contraband by rules and regulations adopted by the commissioner of the juvenile justice authority, in a juvenile correctional facility by an employee of a juvenile correctional facility, except as provided by subsection (b)(3); and

(3) severity level 4, nonperson felony if:

(A) Such items are firearms, ammunition or explosives, in a correctional institution by an employee of a correctional institution or in a care and treatment facility by an employee of a care and treatment facility; or

(B) a violation of subsection (a)(5) or (a)(6) by an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services to the department of corrections.

(c) The provisions of subsection (b)(2)(A) shall not apply to the possession of a firearm or ammunition in a parking lot open to the public if the firearm or ammunition is carried on the person while in a vehicle or while securing the firearm or ammunition in the vehicle, or

stored out of plain view in a locked but unoccupied vehicle, *and such person is either: (1) 21 years of age or older; or (2) possesses a valid provisional license issued pursuant to K.S.A. 75-7c03, and amendments thereto, or a valid license to carry a concealed handgun issued by another jurisdiction that is recognized in this state pursuant to K.S.A. 75-7c03, and amendments thereto.*

(d) As used in this section:

(1) "Correctional institution" means any state correctional institution or facility, conservation camp, state security hospital, juvenile correctional facility, community correction center or facility for detention or confinement, juvenile detention facility or jail;

(2) "care and treatment facility" means the state security hospital provided for under K.S.A. 76-1305 et seq., and amendments thereto, and a facility operated by the Kansas department for aging and disability services for the purposes provided for under K.S.A. 59-29a02 et seq., and amendments thereto; and

(3) "lawful custody" means the same as in K.S.A. 2020 Supp. 21-5912, and amendments thereto.

Sec. 2. K.S.A. 2020 Supp. 21-6301 is hereby amended to read as follows: 21-6301. (a) Criminal use of weapons is knowingly:

(1) Selling, manufacturing, purchasing or possessing any bludgeon, sand club or metal knuckles;

(2) possessing with intent to use the same unlawfully against another, a dagger, dirk, billy, blackjack, slungshot, dangerous knife, straight-edged razor, throwing star, stiletto or any other dangerous or deadly weapon or instrument of like character;

(3) setting a spring gun;

(4) possessing any device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm;

(5) selling, manufacturing, purchasing or possessing a shotgun with a barrel less than 18 inches in length, or any firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger, whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically;

(6) possessing, manufacturing, causing to be manufactured, selling, offering for sale, lending, purchasing or giving away any cartridge which can be fired by a handgun and which has a plastic-coated bullet that has a core of less than 60% lead by weight, whether the person knows or has reason to know that the plastic-coated bullet has a core of less than 60% lead by weight;

(7) selling, giving or otherwise transferring any firearm with a barrel less than 12 inches long to any person under 18 years of age whether the person knows or has reason to know the length of the barrel;

(8) selling, giving or otherwise transferring any firearms to any person who is both addicted to and an unlawful user of a controlled substance;

(9) selling, giving or otherwise transferring any firearm to any person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

(10) possessing any firearm by a person who is both addicted to and an unlawful user of a controlled substance;

(11) possessing any firearm by any person, other than a law enforcement officer, in or on any school property or grounds upon which is located a building or structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 or at any regularly scheduled school sponsored activity or event whether the person knows or has reason to know that such person was in or on any such property or grounds;

(12) refusing to surrender or immediately remove from school property or grounds or at any regularly scheduled school sponsored activity or event any firearm in the possession of any person, other than a law enforcement officer, when so requested or directed by any duly authorized school employee or any law enforcement officer;

(13) possessing any firearm by a person who is or has been a mentally ill person subject to involuntary commitment for care and treatment, as defined in K.S.A. 59-2946, and amendments thereto, or persons with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment as defined in K.S.A. 59-29b46, and amendments thereto;

(14) possessing a firearm with a barrel less than 12 inches long by any person less than 18 years of age;

(15) possessing any firearm while a fugitive from justice;

(16) possessing any firearm by a person who is an alien illegally or unlawfully in the United States;

(17) possessing any firearm by a person while such person is subject to a court order that:

(A) Was issued after a hearing, of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking or threatening an intimate partner of such person or a child of such person or such intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or the child; and

(C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(18) possessing any firearm by a person who, within the preceding five years, has been convicted of a misdemeanor for a domestic violence offense, or a misdemeanor under a law of another jurisdiction which is substantially the same as such misdemeanor offense.

(b) Criminal use of weapons as defined in:

(1) Subsection (a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9) or (a)(12) is a class A nonperson misdemeanor;

(2) subsection (a)(4), (a)(5) or (a)(6) is a severity level 9, nonperson felony;

(3) subsection (a)(10) or (a)(11) is a class B nonperson select misdemeanor;

(4) subsection (a)(13), (a)(15), (a)(16), (a)(17) or (a)(18) is a severity level 8, nonperson felony; and

(5) subsection (a)(14) is a:

(A) Class A nonperson misdemeanor except as provided in subsection (b)(5)(B);

(B) severity level 8, nonperson felony upon a second or subsequent conviction.

(c) Subsections (a)(1), (a)(2) and (a)(5) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsections (a)(4) and (a)(5) shall not apply to any person who

sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.

(e) Subsection (a)(6) shall not apply to a governmental laboratory or solid plastic bullets.

(f) Subsection (a)(4) shall not apply to a law enforcement officer who is:

(1) Assigned by the head of such officer's law enforcement agency to a tactical unit which receives specialized, regular training;

(2) designated by the head of such officer's law enforcement agency to possess devices described in subsection (a)(4); and

(3) in possession of commercially manufactured devices which are:

(A) Owned by the law enforcement agency;

(B) in such officer's possession only during specific operations; and

(C) approved by the bureau of alcohol, tobacco, firearms and explosives of the United States department of justice.

(g) Subsections (a)(4), (a)(5) and (a)(6) shall not apply to any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsections (a)(4), (a)(5) and (a)(6) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory.

(h) Subsections (a)(4) and (a)(5) shall not apply to or affect any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.

(i) (1) Subsection (a)(4) shall not apply to or affect any person in possession of a device or attachment designed, used or intended for use in suppressing the report of any firearm, if such device or attachment satisfies the description of a Kansas-made firearm accessory as set forth in K.S.A. 2020 Supp. 50-1204, and amendments thereto.

(2) The provisions of this subsection shall apply to any violation of subsection (a)(4) that occurred on or after April 25, 2013.

(j) Subsection (a)(11) shall not apply to:

(1) Possession of any firearm in connection with a firearms safety course of instruction or firearms education course approved and authorized by the school;

(2) possession of any firearm specifically authorized in writing by the superintendent of any unified school district or the chief administrator of any accredited nonpublic school;

(3) possession of a firearm secured in a motor vehicle by a parent, guardian, custodian or someone authorized to act in such person's behalf who is delivering or collecting a student; ~~or~~

(4) possession of a firearm secured in a motor vehicle by a registered voter who is on the school grounds, which contain a polling place for the purpose of voting during polling hours on an election day; or

(5) possession of a concealed handgun by an individual who is not prohibited from possessing a firearm under either federal or state law, *and who is either: (A) 21 years of age or older; or (B) possesses a valid provisional license issued pursuant to K.S.A. 75-7c03, and amendments thereto, or a valid license to carry a concealed handgun issued by another jurisdiction that is recognized in this state pursuant to K.S.A. 75-7c03, and amendments thereto.*

(k) Subsections (a)(9) and (a)(13) shall not apply to a person who has received a certificate of restoration pursuant to K.S.A. 75-7c26, and amendments thereto.

(l) Subsection (a)(14) shall not apply if such person, less than 18 years of age, was:

(1) In attendance at a hunter's safety course or a firearms safety course;

(2) engaging in practice in the use of such firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located, or at another private range with permission of such person's parent or legal guardian;

(3) engaging in an organized competition involving the use of such firearm, or participating in or practicing for a performance by an organization exempt from federal income tax pursuant to section 501(c)(3) of the internal revenue code of 1986 which uses firearms as a part of such performance;

(4) hunting or trapping pursuant to a valid license issued to such person pursuant to article 9 of chapter 32 of the Kansas Statutes Annotated, and amendments thereto;

(5) traveling with any such firearm in such person's possession being unloaded to or from any activity described in subsections (l)(1) through (l)(4), only if such firearm is secured, unloaded and outside the immediate access of such person;

(6) on real property under the control of such person's parent, legal guardian or grandparent and who has the permission of such parent, legal guardian or grandparent to possess such firearm; or

(7) at such person's residence and who, with the permission of such person's parent or legal guardian, possesses such firearm for the purpose of exercising the rights contained in K.S.A. 2020 Supp. 21-5222, 21-5223 or 21-5225, and amendments thereto.

(m) As used in this section:

(1) "Domestic violence" means the use or attempted use of physical force, or the threatened use of a deadly weapon, committed against a person with whom the offender is involved or has been involved in a dating relationship or is a family or household member.

(2) "Fugitive from justice" means any person having knowledge that a warrant for the commission of a felony has been issued for the apprehension of such person under K.S.A. 22-2713, and amendments thereto.

(3) "Intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person or an individual who cohabitates or has cohabitated with the person.

(4) "Throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

Sec. 3. K.S.A. 2020 Supp. 21-6302 is hereby amended to read as follows: 21-6302. (a) Criminal carrying of a weapon is knowingly carrying:

(1) Any bludgeon, sandclub, metal knuckles or throwing star;

(2) concealed on one's person, a billy, blackjack, slungshot or any other dangerous or deadly weapon or instrument of like character;

(3) on one's person or in any land, water or air vehicle, with intent to use the same unlawfully, a tear gas or smoke bomb or projector or any object containing a noxious liquid, gas or substance; ~~or~~

(4) any pistol, revolver or other firearm concealed on one's person if such person is under 21 years of age, except when on such person's land or in such person's abode or fixed place of business; or

(5) a shotgun with a barrel less than 18 inches in length or any other firearm designed to discharge or capable of discharging automatically more than once by a single function of the trigger whether the person knows or has reason to know the length of the barrel or that the firearm is designed or capable of discharging automatically.

(b) Criminal carrying of a weapon as defined in:

(1) Subsections (a)(1), (a)(2), (a)(3) or (a)(4) is a class A nonperson misdemeanor; and

(2) subsection (a)(5) is a severity level 9, nonperson felony.

(c) Subsection (a) shall not apply to:

(1) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;

(2) wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime, while acting within the scope of their authority;

(3) members of the armed services or reserve forces of the United States or the Kansas national guard while in the performance of their official duty; or

(4) the manufacture of, transportation to, or sale of weapons to a person authorized under subsections (c)(1), (c)(2) and (c)(3) to possess such weapons.

(d) Subsection (a)(4) shall not apply to any person who is carrying a handgun, as defined in K.S.A. 75-7c02, and amendments thereto, and who possesses a valid provisional license issued pursuant to K.S.A. 75-7c03, and amendments thereto, or a valid license or permit to carry a concealed firearm that was issued by another jurisdiction and is recognized in this state pursuant to K.S.A. 75-7c03, and amendments thereto.

~~(d)~~*(e)* Subsection (a)(5) shall not apply to:

(1) Any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. § 5841 et seq. in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor;

(2) any person employed by a laboratory which is certified by the United States department of justice, national institute of justice, while actually engaged in the duties of their employment and on the premises of such certified laboratory. Subsection (a)(5) shall not affect the manufacture of, transportation to or sale of weapons to such certified laboratory; or

(3) any person or entity in compliance with the national firearms act, 26 U.S.C. § 5801 et seq.

~~(e)~~*(f)* As used in this section, "throwing star" means the same as prescribed by K.S.A. 2020 Supp. 21-6301, and amendments thereto.

Sec. 4. K.S.A. 2020 Supp. 21-6304 is hereby amended to read as follows: 21-6304. (a) Criminal possession of a weapon by a convicted felon is possession of any weapon by a person who:

(1) Has been convicted of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, or a crime under a law of another jurisdiction ~~which~~ *that* is substantially the same as such felony or violation, or was adjudicated a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony or a violation of article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer, or any violation of any provision of the uniform controlled substances act prior to July 1, 2009, and was found *by the convicting court* to have ~~been in possession of~~ *used* a firearm ~~at the time of~~ *in* the commission of the crime;

(2) ~~within the preceding five years has been convicted of a felony, other than those specified in subsection (a)(3)(A), under the laws of Kansas or a crime under a law of another jurisdiction which is~~

~~substantially the same as such felony, has been released from imprisonment for a felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a felony, and was not found to have been in possession of a firearm at the time of the commission of the crime; or~~

~~(3) within the preceding 10 years, has been~~

(A) *(i) Has been convicted of a person felony, other than those specified in subsection (a)(3)(A)(i), under the laws of Kansas or a crime under the law of another jurisdiction which is substantially the same as such person felony; or*

(ii) was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a person felony;

(B) was not found by the convicting court to have used a firearm in the commission of such crime; and

(C) less than three years have elapsed since such person satisfied the sentence imposed or the terms of any diversion agreement for such crime, or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence;

(3) (A) (i) has been convicted of a:

~~(A)~~ felony under:

(a) K.S.A. 2020 Supp. 21-5402, 21-5403, 21-5404, 21-5405, 21-5408, ~~subsection (b) or (d) of~~ 21-5412 *(b) or (d)*, ~~subsection (b) or (d) of~~ 21-5413*(b) or (d)*, ~~subsection (a) of~~ 21-5415*(a)*, ~~subsection (b) of~~ 21-5420*(b)*, 21-5503, ~~subsection (b) of~~ 21-5504*(b)*, ~~subsection (b) of~~ 21-5505*(b)*, and ~~subsection (b) of~~ 21-5807*(b)*, and amendments thereto;

(b) article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto;

(c) K.S.A. 2010 Supp. 21-36a01 through 21-36a17, prior to their transfer;

(d) K.S.A. 21-3401, 21-3402, 21-3403, 21-3404, 21-3410, 21-3411, 21-3414, 21-3415, 21-3419, 21-3420, 21-3421, 21-3427, 21-3442, 21-3502, 21-3506, 21-3518, 21-3716, 65-4127a, 65-4127b, 65-4159 through 65-4165 or 65-7006, prior to their repeal;

(e) an attempt, conspiracy or criminal solicitation as defined in K.S.A. 21-3301, 21-3302 or 21-3303, prior to their repeal, or K.S.A. 2020 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of any such felony; or

(f) a crime under a law of another jurisdiction ~~which~~ *that* is substantially the same as such felony~~, has been~~*; or*

(ii) has been released from imprisonment for such felony, or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of such felony~~, was not found to have been in possession of a firearm at the time of the commission of the crime, and has not had the conviction of such crime expunged or been pardoned for such crime. The provisions of subsection (j)(2) of K.S.A. 2020 Supp. 21-6614, and amendments thereto, shall not apply to an individual who has had a conviction under this paragraph expunged; or~~

~~(B) nonperson felony under the laws of Kansas or a crime under the laws of another jurisdiction which is substantially the same as such nonperson felony, has been released from imprisonment for such nonperson felony or was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony, and was found to have been in possession of a firearm at the time of the commission of the crime~~*; and*

(B) less than eight years have elapsed since such person satisfied the sentence imposed or the terms of any diversion agreement for such crime, or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence; or

(4) (A) (i) has been convicted of any other nonperson felony, other

than those specified in subsections (a)(1) through (a)(3), under the laws of Kansas or a crime under the law of another jurisdiction which is substantially the same as such nonperson felony; or

(ii) was adjudicated as a juvenile offender because of the commission of an act which if done by an adult would constitute the commission of a nonperson felony; and

(B) less than three months have elapsed since such person satisfied the sentence imposed or the terms of any diversion agreement for such crime, or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(b) Criminal possession of a weapon by a convicted felon is a severity level 8, nonperson felony.

(c) *The provisions of subsections (a)(1), (a)(2) and (a)(4) shall not apply to a person who has been convicted of a crime and has had the conviction of such crime expunged or has been pardoned for such crime.*

(d) As used in this section:

(1) "Knife" means a dagger, dirk, switchblade, stiletto, straight-edged razor or any other dangerous or deadly cutting instrument of like character; and

(2) "weapon" means a firearm or a knife.

Sec. 5. K.S.A. 2020 Supp. 21-6309 is hereby amended to read as follows: 21-6309. (a) It shall be unlawful to possess, with no requirement of a culpable mental state, a firearm:

(1) Within any building located within the capitol complex;

(2) within the governor's residence;

(3) on the grounds of or in any building on the grounds of the governor's residence;

(4) within any other state-owned or leased building if the secretary of administration has so designated by rules and regulations and conspicuously placed signs clearly stating that firearms are prohibited within such building; or

(5) within any county courthouse, unless, by county resolution, the board of county commissioners authorize the possession of a firearm within such courthouse.

(b) Violation of this section is a class A misdemeanor.

(c) This section shall not apply to:

(1) A commissioned law enforcement officer;

(2) a full-time salaried law enforcement officer of another state or the federal government who is carrying out official duties while in this state;

(3) any person summoned by any such officer to assist in making arrests or preserving the peace while actually engaged in assisting such officer; or

(4) a member of the military of this state or the United States engaged in the performance of duties.

(d) It is not a violation of this section for:

(1) The governor, the governor's immediate family, or specifically authorized guest of the governor to possess a firearm within the governor's residence or on the grounds of or in any building on the grounds of the governor's residence;

(2) the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a firearm within any county courthouse and court-related facility, subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district;

(3) law enforcement officers, as that term is defined in K.S.A. 75-7c22, and amendments thereto, who satisfy the requirements of either

K.S.A. 75-7c22(a) or (b), and amendments thereto, to possess a firearm; or

(4) an individual to possess a concealed handgun ~~provided~~ *if* such individual is not prohibited from possessing a firearm under either federal or state law, *and such individual is either: (A) 21 years of age or older; or (B) possesses a valid provisional license issued pursuant to K.S.A. 75-7c03, and amendments thereto, or a valid license to carry a concealed handgun issued by another jurisdiction that is recognized in this state pursuant to K.S.A. 75-7c03, and amendments thereto.*

(e) Notwithstanding the provisions of this section, any county may elect by passage of a resolution that the provisions of subsection (d)(2) shall not apply to such county's courthouse or court-related facilities if such:

(1) Buildings have adequate security measures to ensure that no weapons are permitted to be carried into such buildings;

(2) county also has a policy or regulation requiring all law enforcement officers to secure and store such officer's firearm upon entering the courthouse or court-related facility. Such policy or regulation may provide that it does not apply to court security or sheriff's office personnel for such county; and

(3) buildings have a sign conspicuously posted at each entryway into such building stating that the provisions of subsection (d)(2) do not apply to such building.

(f) As used in this section:

(1) "Adequate security measures" shall have the same meaning as the term is defined in K.S.A. 75-7c20, and amendments thereto;

(2) "possession" means having joint or exclusive control over a firearm or having a firearm in a place where the person has some measure of access and right of control; and

(3) "capitol complex" means the same as in K.S.A. 75-4514, and amendments thereto.

(g) For the purposes of subsections (a)(1), (a)(4) and (a)(5), "building" and "courthouse" shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

Sec. 6. K.S.A. 2020 Supp. 21-6614 is hereby amended to read as follows: 21-6614. (a) (1) Except as provided in subsections (b), (c), (d), (e) and (f), any person convicted in this state of a traffic infraction, cigarette or tobacco infraction, misdemeanor or a class D or E felony, or for crimes committed on or after July 1, 1993, any nongrid felony or felony ranked in severity levels 6 through 10 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity level 4 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity level 5 of the drug grid may petition the convicting court for the expungement of such conviction or related arrest records if three or more years have elapsed since the person: (A) Satisfied the sentence imposed; or (B) was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence.

(2) Except as provided in subsections (b), (c), (d), (e) and (f), any person who has fulfilled the terms of a diversion agreement may petition the district court for the expungement of such diversion agreement and related arrest records if three or more years have elapsed since the terms of the diversion agreement were fulfilled.

(b) Any person convicted of prostitution, as defined in K.S.A. 21-3512, prior to its repeal, convicted of a violation of K.S.A. 2020 Supp. 21-6419, and amendments thereto, or who entered into a diversion agreement in lieu of further criminal proceedings for such violation, may petition the convicting court for the expungement of such conviction or diversion agreement and related arrest records if:

(1) One or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended

sentence; and

(2) such person can prove they were acting under coercion caused by the act of another. For purposes of this subsection, "coercion" means: Threats of harm or physical restraint against any person; a scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in bodily harm or physical restraint against any person; or the abuse or threatened abuse of the legal process.

(c) Except as provided in subsections (e) and (f), no person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a class A, B or C felony, or for crimes committed on or after July 1, 1993, if convicted of an off-grid felony or any felony ranked in severity levels 1 through 5 of the nondrug grid, or for crimes committed on or after July 1, 1993, but prior to July 1, 2012, any felony ranked in severity levels 1 through 3 of the drug grid, or for crimes committed on or after July 1, 2012, any felony ranked in severity levels 1 through 4 of the drug grid, or:

(1) Vehicular homicide, as defined in K.S.A. 21-3405, prior to its repeal, or K.S.A. 2020 Supp. 21-5406, and amendments thereto, or as prohibited by any law of another state ~~which~~ *that* is in substantial conformity with that statute;

(2) driving while the privilege to operate a motor vehicle on the public highways of this state has been canceled, suspended or revoked, as prohibited by K.S.A. 8-262, and amendments thereto, or as prohibited by any law of another state ~~which~~ *that* is in substantial conformity with that statute;

(3) perjury resulting from a violation of K.S.A. 8-261a, and amendments thereto, or resulting from the violation of a law of another state ~~which~~ *that* is in substantial conformity with that statute;

(4) violating the provisions of K.S.A. 8-142 *Fifth*, and amendments thereto, relating to fraudulent applications or violating the provisions of a law of another state ~~which~~ *that* is in substantial conformity with that statute;

(5) any crime punishable as a felony wherein a motor vehicle was used in the perpetration of such crime;

(6) failing to stop at the scene of an accident and perform the duties required by K.S.A. 8-1603, prior to its repeal, or K.S.A. 8-1602 or 8-1604, and amendments thereto, or required by a law of another state ~~which~~ *that* is in substantial conformity with those statutes;

(7) violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; or

(8) a violation of K.S.A. 21-3405b, prior to its repeal.

(d) (1) No person may petition for expungement until five or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion agreement or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a first violation of K.S.A. 8-1567, and amendments thereto, including any diversion for such violation.

(2) No person may petition for expungement until 10 or more years have elapsed since the person satisfied the sentence imposed or was discharged from probation, a community correctional services program, parole, postrelease supervision, conditional release or a suspended sentence, if such person was convicted of a second or subsequent violation of K.S.A. 8-1567, and amendments thereto.

(3) Except as provided further, the provisions of this subsection shall apply to all violations committed on or after July 1, 2006. The provisions of subsection (d)(2) shall not apply to violations committed on or after July 1, 2014, but prior to July 1, 2015.

(e) There shall be no expungement of convictions for the following offenses or of convictions for an attempt to commit any of

the following offenses:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child or aggravated indecent liberties with a child, as defined in K.S.A. 21-3503 or 21-3504, prior to their repeal, or K.S.A. 2020 Supp. 21-5506, and amendments thereto;

(3) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) or (a)(3), prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(3) or (a)(4), and amendments thereto;

(4) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2020 Supp. 21-5504, and amendments thereto;

(5) indecent solicitation of a child or aggravated indecent solicitation of a child, as defined in K.S.A. 21-3510 or 21-3511, prior to their repeal, or K.S.A. 2020 Supp. 21-5508, and amendments thereto;

(6) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto;

(7) internet trading in child pornography or aggravated internet trading in child pornography, as defined in K.S.A. 2020 Supp. 21-5514, and amendments thereto;

(8) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2020 Supp. 21-5604, and amendments thereto;

(9) endangering a child or aggravated endangering a child, as defined in K.S.A. 21-3608 or 21-3608a, prior to their repeal, or K.S.A. 2020 Supp. 21-5601, and amendments thereto;

(10) abuse of a child, as defined in K.S.A. 21-3609, prior to its repeal, or K.S.A. 2020 Supp. 21-5602, and amendments thereto;

(11) capital murder, as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2020 Supp. 21-5401, and amendments thereto;

(12) murder in the first degree, as defined in K.S.A. 21-3401, prior to its repeal, or K.S.A. 2020 Supp. 21-5402, and amendments thereto;

(13) murder in the second degree, as defined in K.S.A. 21-3402, prior to its repeal, or K.S.A. 2020 Supp. 21-5403, and amendments thereto;

(14) voluntary manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or K.S.A. 2020 Supp. 21-5404, and amendments thereto;

(15) involuntary manslaughter, as defined in K.S.A. 21-3404, prior to its repeal, or K.S.A. 2020 Supp. 21-5405, and amendments thereto;

(16) sexual battery, as defined in K.S.A. 21-3517, prior to its repeal, or K.S.A. 2020 Supp. 21-5505, and amendments thereto, when the victim was less than 18 years of age at the time the crime was committed;

(17) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2020 Supp. 21-5505, and amendments thereto;

(18) a violation of K.S.A. 8-2,144, and amendments thereto, including any diversion for such violation; or

(19) any conviction for any offense in effect at any time prior to July 1, 2011, that is comparable to any offense as provided in this subsection.

(f) Notwithstanding any other law to the contrary, for any offender who is required to register as provided in the Kansas offender registration act, K.S.A. 22-4901 et seq., and amendments thereto, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register as provided in the Kansas offender registration act.

(g) (1) When a petition for expungement is filed, the court shall set a date for a hearing of such petition and shall cause notice of such hearing to be given to the prosecutor and the arresting law enforcement agency. The petition shall state the:

(A) Defendant's full name;

(B) full name of the defendant at the time of arrest, conviction or diversion, if different than the defendant's current name;

(C) defendant's sex, race and date of birth;

(D) crime for which the defendant was arrested, convicted or diverted;

(E) date of the defendant's arrest, conviction or diversion; and

(F) identity of the convicting court, arresting law enforcement authority or diverting authority.

(2) Except as otherwise provided by law, a petition for expungement shall be accompanied by a docket fee in the amount of $176. On and after July 1, 2019, through June 30, 2025, the supreme court may impose a charge, not to exceed $19 per case, to fund the costs of non-judicial personnel. The charge established in this section shall be the only fee collected or moneys in the nature of a fee collected for the case. Such charge shall only be established by an act of the legislature and no other authority is established by law or otherwise to collect a fee.

(3) All petitions for expungement shall be docketed in the original criminal action. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the secretary of corrections or the prisoner review board.

(h) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction or diversion expunged if the court finds that:

(1) The petitioner has not been convicted of a felony in the past two years and no proceeding involving any such crime is presently pending or being instituted against the petitioner;

(2) the circumstances and behavior of the petitioner warrant the expungement; ~~and~~

(3) the expungement is consistent with the public welfare; *and*

(4) with respect to petitions seeking expungement of a felony conviction, possession of a firearm by the petitioner is not likely to pose a threat to the safety of the public.

(i) When the court has ordered an arrest record, conviction or diversion expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas bureau of investigation ~~which~~ *that* shall notify the federal bureau of investigation, the secretary of corrections and any other criminal justice agency ~~which~~ *that* may have a record of the arrest, conviction or diversion. If the case was appealed from municipal court, the clerk of the district court shall send a certified copy of the order of expungement to the municipal court. The municipal court shall order the case expunged once the certified copy of the order of expungement is received. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) Upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed;

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions or diversions:

(A) In any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01, and amendments thereto; or with an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services;

(B) in any application for admission, or for an order of reinstatement, to the practice of law in this state;

(C) to aid in determining the petitioner's qualifications for

employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission, or to aid in determining qualifications for licensure or renewal of licensure by the commission;

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act: (i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager, licensee or certificate holder; or (ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact;

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-12a102, and amendments thereto;

(J) in any application for employment as a law enforcement officer as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; *or*

(K) ~~to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 75-7c01 et seq., and amendments thereto; or~~

~~(L)~~ to aid in determining the petitioner's qualifications for a license to act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09, *and amendments thereto,* and K.S.A. 2020 Supp. 50-6,141, and amendments thereto;

(3) the court, in the order of expungement, may specify other circumstances under which the conviction is to be disclosed;

(4) the conviction may be disclosed in a subsequent prosecution for an offense ~~which~~ *that* requires as an element of such offense a prior conviction of the type expunged; and

(5) upon commitment to the custody of the secretary of corrections, any previously expunged record in the possession of the secretary of corrections may be reinstated and the expungement disregarded, and the record continued for the purpose of the new commitment.

(j) Whenever a person is convicted of a crime, pleads guilty and pays a fine for a crime, is placed on parole, postrelease supervision or probation, is assigned to a community correctional services program, is granted a suspended sentence or is released on conditional release, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion agreement, the person shall be informed of the ability to expunge the diversion.

(k) (1) Subject to the disclosures required pursuant to subsection (i), in any application for employment, license or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction or diversion of a crime has been expunged under this statute may state that such person has never been arrested, convicted or diverted of such crime.

(2) ~~Notwithstanding the provisions of subsection (k)(1), and except as provided in K.S.A. 2020 Supp. 21-6304(a)(3)(A), and amendments thereto, the expungement of a prior felony conviction does not relieve the individual of complying with any state or federal law relating to the use, shipment, transportation, receipt or possession of firearms by persons previously convicted of a felony~~ *A person whose arrest record, conviction or diversion of a crime that resulted in such person being prohibited by state or federal law from possessing a*

firearm has been expunged under this statute shall be deemed to have had such person's right to keep and bear arms fully restored. This restoration of rights shall include, but not be limited to, the right to use, transport, receive, purchase, transfer and possess firearms. The provisions of this paragraph shall apply to all orders of expungement, including any orders issued prior to July 1, 2021.

(l) Whenever the record of any arrest, conviction or diversion has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, diversion and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) The person whose record was expunged;

(2) a private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon a showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary for aging and disability services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an institution, as defined in K.S.A. 76-12a01, and amendments thereto, of the Kansas department for aging and disability services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecutor, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the supreme court, the clerk or disciplinary administrator thereof, the state board for admission of attorneys or the state board for discipline of attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission, or for an order of reinstatement, to the practice of law in this state by the person whose record has been expunged;

(8) the Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in parimutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the Kansas racing and gaming commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications of the following under the Kansas expanded lottery act: (A) Lottery gaming facility managers and prospective managers, racetrack gaming facility managers and prospective managers, licensees and certificate holders; and (B) their officers, directors, employees, owners, agents and contractors;

(11) the Kansas sentencing commission;

(12) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications: (A) To be an employee of the state gaming agency; or (B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-gaming compact;

(13) the Kansas securities commissioner or a designee of the

commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative by such agency and the application was submitted by the person whose record has been expunged;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601 et seq., and amendments thereto;

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto;

(16) *(A)* the attorney general and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to~~:~~

~~(A) Carry a concealed weapon pursuant to the personal and family protection act; or~~

~~(B)~~ act as a bail enforcement agent pursuant to K.S.A. 75-7e01 through 75-7e09, *and amendments thereto,* and K.S.A. 2020 Supp. 50-6,141, and amendments thereto; or

(B) the attorney general for any other purpose authorized by law, except that an expungement record shall not be the basis for denial of a license to carry a concealed handgun under the personal and family protection act; or

(17) the Kansas bureau of investigation, for the ~~purposes~~ *purpose* of~~:~~

~~(A)~~ completing a person's criminal history record information within the central repository, in accordance with K.S.A. 22-4701 et seq., and amendments thereto~~; or~~

~~(B) providing information or documentation to the federal bureau of investigation, in connection with the national instant criminal background check system, to determine a person's qualification to possess a firearm~~.

(m) *(1)* The provisions of subsection (l)(17) shall apply to records created prior to, on and after July 1, 2011.

(2) Upon the issuance of an order of expungement that resulted in the restoration of a person's right to keep and bear arms, the Kansas bureau of investigation shall report to the federal bureau of investigation that such expunged record be withdrawn from the national instant criminal background check system. The Kansas bureau of investigation shall include such order of expungement in the person's criminal history record for purposes of documenting the restoration of such person's right to keep and bear arms.

Sec. 7. K.S.A. 2020 Supp. 32-1002 is hereby amended to read as follows: 32-1002. (a) Unless and except as permitted by law or rules and regulations adopted by the secretary in accordance with K.S.A. 32-805, and amendments thereto, it is unlawful for any person to:

(1) Hunt, fish, furharvest or take any wildlife in this state by any means or manner;

(2) possess any wildlife, dead or alive, at any time or in any number, in this state;

(3) purchase, sell, exchange, ship or offer for sale, exchange or shipment any wildlife in this state;

(4) take any wildlife in this state for sale, exchange or other commercial purposes;

(5) possess any seine, trammel net, hoop net, fyke net, fish gig, fish spear, fish trap or other device, contrivance or material for the purpose of taking wildlife; or

(6) take or use, at any time or in any manner, any game bird, game animal, coyote or furbearing animal, whether pen-raised or wild, in any field trial or for training dogs.

(b) The provisions of subsections (a)(2) and (a)(3) do not apply to

animals sold in surplus property disposal sales of department exhibit herds or animals legally taken outside this state, except the provisions of subsection (a)(3) shall apply to:

(1) The meat of game animals legally taken outside this state; and

(2) other restrictions as provided by rule and regulation of the secretary.

(c) The provisions of this section shall not be construed to prevent:

(1) Any person from taking starlings or English and European sparrows;

(2) owners or legal occupants of land from killing any animals when found in or near buildings on their premises or when destroying property, subject to the following: (A) The provisions of all federal laws and regulations governing protected species and the provisions of K.S.A. 32-957 through 32-963, and amendments thereto, and rules and regulations adopted thereunder; (B) it is unlawful to use, or possess with intent to use, any such animal so killed unless authorized by rules and regulations of the secretary; and (C) such owners or legal occupants shall make reasonable efforts to alleviate their problems with any such animals before killing them;

(3) any person who lawfully possesses a handgun from carrying such handgun, whether concealed or openly carried, while lawfully hunting, fishing or furharvesting, *if such person is either: (A) 21 years of age or older; or (B) possesses a valid provisional license issued pursuant to K.S.A. 75-7c03, and amendments thereto, or a valid license to carry a concealed handgun issued by another jurisdiction that is recognized in this state pursuant to K.S.A. 75-7c03, and amendments thereto*; or

(4) any person who lawfully possesses a device or attachment of any kind designed, used or intended for use in suppressing the report of any firearm from using such device or attachment in conjunction with lawful hunting, fishing or furharvesting.

(d) Any person convicted of violating provisions of this section shall be subject to the penalties prescribed in K.S.A. 32-1031, and amendments thereto, except as provided in K.S.A. 32-1032, and amendments thereto, relating to big game and wild turkey.

Sec. 8. K.S.A. 75-7c02 is hereby amended to read as follows: 75-7c02. As used in the personal and family protection act, *except as otherwise provided*:

(a) "Attorney general" means the attorney general of the state of Kansas.

(b) "Handgun" means a "firearm," as defined in K.S.A. 75-7b01, and amendments thereto.

(c) "Athletic event" means athletic instruction, practice or competition held at any location and including any number of athletes.

(d) "Dependent" means a resident of the household of an active duty member of any branch of the armed forces of the United States who depends in whole or in substantial part upon the member for financial support.

(e) "License" means a provisional or standard license issued by the attorney general pursuant to K.S.A. 75-7c03, and amendments thereto.

Sec. 9. K.S.A. 75-7c03 is hereby amended to read as follows: 75-7c03. (a) The attorney general shall issue licenses to carry concealed handguns to persons who comply with the application and training requirements of this act and who are not disqualified under K.S.A. 75-7c04, and amendments thereto. Such licenses shall be valid throughout the state for a period of four years from the date of issuance. The availability of licenses to carry concealed handguns under this act shall not be construed to impose a general prohibition on the carrying of handguns without such license, whether carried openly or concealed, or loaded or unloaded.

(b) *Except as otherwise provided in subsection (d),* the license shall be a separate card, in a form prescribed by the attorney general, that is approximately the size of a Kansas driver's license, *shall*

indicate whether the license is a provisional or standard license and shall bear the licensee's signature, name, address, date of birth and driver's license number or nondriver's identification card number except that the attorney general shall assign a unique number for military applicants or their dependents described in K.S.A. 75-7c05(a)(1)(B), and amendments thereto.

(c) (1) Subject to the provisions of subsection (c)(2), a valid license or permit to carry a concealed firearm issued by another jurisdiction shall be recognized in this state, but only while the holder is not a resident of Kansas.

(2) A valid license or permit that is recognized pursuant to this subsection shall only entitle the lawful holder thereof to carry concealed handguns, as defined by K.S.A. 75-7c02, and amendments thereto, in accordance with the laws of this state while such holder is present in this state. The recognition of a license or permit pursuant to this subsection shall not be construed to impose a general prohibition on the carrying of handguns without such license, whether carried openly or concealed, or loaded or unloaded.

(3) As used in this subsection, the terms "jurisdiction" and "license or permit" shall have the same meanings as provided in K.S.A. 75-7c04, and amendments thereto.

(d) If at any time it becomes impractical for the division of vehicles of the department of revenue to issue physical cards consistent with the requirements of this act and the attorney general determines that the conditions for such impracticality have existed for at least 30 days, the attorney general shall issue an authorization document to each licensee that authorizes the licensee to exercise the rights and privileges to carry a concealed handgun as set forth in this act. Such document shall include the licensee information required under subsection (b) and state that the document is proof that the licensee holds a valid license to carry concealed handguns. All such documents issued during any such period that it is impractical for the division of vehicles of the department of revenue to issue a physical card shall expire 90 days after such conditions have ceased and it is practical for the division of vehicles to resume issuing physical cards.

Sec. 10. K.S.A. 75-7c04 is hereby amended to read as follows: 75-7c04. (a) The attorney general shall not issue a license pursuant to this act if the applicant:

(1) Is not a resident of the county where application for licensure is made or is not a resident of the state;

(2) is prohibited from shipping, transporting, possessing or receiving a firearm or ammunition under 18 U.S.C. § 922(g) or (n), and amendments thereto, or K.S.A. 21-4204, prior to its repeal, or K.S.A. 2020 Supp. 21-6301(a)(10) through (a)(13) or K.S.A. 2020 Supp. 21-6304(a)(1) through (a)(3), and amendments thereto; or

(3) *(A) For a provisional license,* is less than ~~21~~ *18* years of age*; or*

(B) for a standard license, is less than 21 years of age.

(b) (1) The attorney general shall adopt rules and regulations establishing procedures and standards as authorized by this act for an eight-hour handgun safety and training course required by this section. Such standards shall include: (A) A requirement that trainees receive training in the safe storage of handguns, actual firing of handguns and instruction in the laws of this state governing the carrying of concealed handguns and the use of deadly force; (B) general guidelines for courses which are compatible with the industry standard for basic handgun training for civilians; (C) qualifications of instructors; and (D) a requirement that the course be: (i) A handgun course certified or sponsored by the attorney general; or (ii) a handgun course certified or sponsored by the national rifle association or by a law enforcement agency, college, private or public institution or organization or handgun training school, if the attorney general determines that such course meets or exceeds the standards required by rules and regulations adopted by the attorney general and is taught by instructors certified by

the attorney general or by the national rifle association, if the attorney general determines that the requirements for certification of instructors by such association meet or exceed the standards required by rules and regulations adopted by the attorney general. Any person wanting to be certified by the attorney general as an instructor shall submit to the attorney general an application in the form required by the attorney general and a fee not to exceed $150.

(2) The cost of the handgun safety and training course required by this section shall be paid by the applicant. The following shall constitute satisfactory evidence of satisfactory completion of an approved handgun safety and training course:

(A) Evidence of completion of a course that satisfies the requirements of subsection (b)(1), in the form provided by rules and regulations adopted by the attorney general;

(B) an affidavit from the instructor, school, club, organization or group that conducted or taught such course attesting to the completion of the course by the applicant;

(C) evidence of completion of a course offered in another jurisdiction which is determined by the attorney general to have training requirements that are equal to or greater than those required by this act; or

(D) a determination by the attorney general pursuant to subsection (c).

(c) *(1)* The attorney general may:

~~(1)~~*(A)* Create a list of concealed carry handgun licenses or permits issued by other jurisdictions ~~which~~ *that* the attorney general finds have training requirements that are equal to or greater than those of this state; and

~~(2)~~*(B)* review each application received pursuant to K.S.A. 75-7c05, and amendments thereto, to determine if the applicant's previous training qualifications were equal to or greater than those of this state.

~~(d)~~*(2)* For the purposes of this ~~section~~ *subsection*:

~~(1)~~*(A)* "Equal to or greater than" means the applicant's prior training meets or exceeds the training established in this section by having required, at a minimum, the applicant to: ~~(A)~~*(i)* Receive instruction on the laws of self-defense; and ~~(B)~~*(ii)* demonstrate training and competency in the safe handling, storage and actual firing of handguns.

~~(2)~~*(B)* "Jurisdiction" means another state or the District of Columbia.

~~(3)~~*(C)* "License or permit" means a concealed carry handgun license or permit from another jurisdiction ~~which~~ *that* has not expired and, except for any residency requirement of the issuing jurisdiction, is currently in good standing.

Sec. 11. K.S.A. 75-7c05 is hereby amended to read as follows: 75-7c05. (a) The application for a license pursuant to this act shall be completed, under oath, on a form prescribed by the attorney general and shall only include:

(1) (A) Subject to the provisions of subsection (a)(1)(B), the name, address, social security number, Kansas driver's license number or Kansas nondriver's license identification number, place and date of birth, a photocopy of the applicant's driver's license or nondriver's identification card and a photocopy of the applicant's certificate of training course completion; (B) in the case of an applicant who presents proof that such person is on active duty with any branch of the armed forces of the United States, or is the dependent of such a person, and who does not possess a Kansas driver's license or Kansas nondriver's license identification, the number of such license or identification shall not be required;

(2) a statement that the applicant is in compliance with criteria contained within K.S.A. 75-7c04, and amendments thereto;

(3) a statement that the applicant has been furnished a copy of this act and is knowledgeable of its provisions;

(4) a conspicuous warning that the application is executed under

oath and that a false answer to any question, or the submission of any false document by the applicant, subjects the applicant to criminal prosecution under K.S.A. 2020 Supp. 21-5903, and amendments thereto; and

(5) a statement that the applicant desires a concealed handgun license as a means of lawful self-defense.

(b) Except as otherwise provided in subsection (i), the applicant shall submit to the sheriff of the county where the applicant resides, during any normal business hours:

(1) A completed application described in subsection (a);

(2) a nonrefundable license fee of $132.50, if the applicant has not previously been issued a statewide license or if the applicant's license has permanently expired, which fee shall be in the form of two cashier's checks, personal checks or money orders of $32.50 payable to the sheriff of the county where the applicant resides and $100 payable to the attorney general;

(3) if applicable, a photocopy of the proof of training required by K.S.A. 75-7c04(b)(1), and amendments thereto; and

(4) a full frontal view photograph of the applicant taken within the preceding 30 days.

(c) (1) Except as otherwise provided in subsection (i), the sheriff, upon receipt of the items listed in subsection (b), shall provide for the full set of fingerprints of the applicant to be taken and forwarded to the attorney general for purposes of a criminal history records check as provided by subsection (d). In addition, the sheriff shall forward to the attorney general the application and the portion of the original license fee which is payable to the attorney general. The cost of taking such fingerprints shall be included in the portion of the fee retained by the sheriff. Notwithstanding anything in this section to the contrary, an applicant shall not be required to submit fingerprints for a renewal application under K.S.A. 75-7c08, and amendments thereto.

(2) The sheriff of the applicant's county of residence or the chief law enforcement officer of any law enforcement agency, at the sheriff's or chief law enforcement officer's discretion, may participate in the process by submitting a voluntary report to the attorney general containing readily discoverable information, corroborated through public records, which, when combined with another enumerated factor, establishes that the applicant poses a significantly greater threat to law enforcement or the public at large than the average citizen. Any such voluntary reporting shall be made within 45 days after the date the sheriff receives the application. Any sheriff or chief law enforcement officer submitting a voluntary report shall not incur any civil or criminal liability as the result of the good faith submission of such report.

(3) All funds retained by the sheriff pursuant to the provisions of this section shall be credited to a special fund of the sheriff's office which shall be used solely for the purpose of administering this act.

(d) Each applicant shall be subject to a state and national criminal history records check which conforms to applicable federal standards, including an inquiry of the national instant criminal background check system for the purpose of verifying the identity of the applicant and whether the applicant has been convicted of any crime or has been the subject of any restraining order or any mental health related finding that would disqualify the applicant from holding a license under this act. The attorney general is authorized to use the information obtained from the state or national criminal history record check to determine the applicant's eligibility for such license.

(e) Within 90 days after the date of receipt of the items listed in subsection (b), the attorney general shall:

(1) *(A)* Issue the license and certify the issuance to the department of revenue; *and*

(B) if it is impractical for the division of vehicles of the department of revenue to issue physical cards consistent with the requirements of this act and the attorney general has determined that

the conditions for such impracticality have existed for at least 30 days, the attorney general shall issue an authorization document in accordance with K.S.A. 75-7c03(d), and amendments thereto; or

(2) deny the application based solely on: (A) The report submitted by the sheriff or other chief law enforcement officer under subsection (c)(2) for good cause shown therein; or (B) the ground that the applicant is disqualified under the criteria listed in K.S.A. 75-7c04, and amendments thereto. If the attorney general denies the application, the attorney general shall notify the applicant in writing, stating the ground for denial and informing the applicant the opportunity for a hearing pursuant to the Kansas administrative procedure act.

(f) Each person issued a license shall pay to the department of revenue a fee for the cost of the license which shall be in amounts equal to the fee required pursuant to K.S.A. 8-243 and 8-246, and amendments thereto, for replacement of a driver's license.

(g) (1) A person who is a retired law enforcement officer, as defined in K.S.A. 2020 Supp. 21-5111, and amendments thereto, shall be: (A) Required to pay an original license fee as provided in subsection (b)(2), to be forwarded by the sheriff to the attorney general; (B) exempt from the required completion of a handgun safety and training course if such person was certified by the Kansas commission on peace officer's standards and training, or similar body from another jurisdiction, not more than eight years prior to submission of the application; (C) required to pay the license renewal fee; (D) required to pay to the department of revenue the fees required by subsection (f); and (E) required to comply with the criminal history records check requirement of this section.

(2) Proof of retirement as a law enforcement officer shall be required and provided to the attorney general in the form of a letter from the agency head, or their designee, of the officer's retiring agency that attests to the officer having retired in good standing from that agency as a law enforcement officer for reasons other than mental instability and that the officer has a nonforfeitable right to benefits under a retirement plan of the agency.

(h) A person who is a corrections officer, a parole officer or a corrections officer employed by the federal bureau of prisons, as defined by K.S.A. 75-5202, and amendments thereto, shall be: (1) Required to pay an original license fee as provided in subsection (b)(2); (2) exempt from the required completion of a handgun safety and training course if such person was issued a certificate of firearms training by the department of corrections or the federal bureau of prisons or similar body not more than one year prior to submission of the application; (3) required to pay the license renewal fee; (4) required to pay to the department of revenue the fees required by subsection (f); and (5) required to comply with the criminal history records check requirement of this section.

(i) A person who presents proof that such person is on active duty with any branch of the armed forces of the United States and is stationed at a United States military installation located outside this state, may submit by mail an application described in subsection (a) and the other materials required by subsection (b) to the sheriff of the county where the applicant resides. Provided the applicant is fingerprinted at a United States military installation, the applicant may submit a full set of fingerprints of such applicant along with the application. Upon receipt of such items, the sheriff shall forward to the attorney general the application and the portion of the original license fee which is payable to the attorney general.

Sec. 12. K.S.A. 75-7c08 is hereby amended to read as follows: 75-7c08. (a) Not less than 90 days prior to the expiration date of the license, the attorney general shall mail to the licensee a written notice of the expiration and a renewal form prescribed by the attorney general. The licensee shall renew the license on or before the expiration date by filing with the attorney general the renewal form, a notarized affidavit, either in person or by certified mail, stating that the licensee remains

qualified pursuant to the criteria specified in K.S.A. 75-7c04, and amendments thereto, a full frontal view photograph of the applicant taken within the preceding 30 days and a nonrefundable license renewal fee of $25 payable to the attorney general. The attorney general shall complete a name-based background check, including a search of the national instant criminal background check system database. A licensee who fails to file a renewal application on or before the expiration date of the license must pay an additional late fee of $15. A renewal application is considered filed on the date the renewal form, affidavit, and required fees are delivered in person to the attorney general's office or on the date a certified mailing to the attorney general's office containing these items is postmarked.

(b) Upon receipt of a renewal application as specified in subsection (a), a background check in accordance with ~~subsection (d) of~~ K.S.A. 75-7c05*(d)*, and amendments thereto, shall be completed. Fingerprints shall not be required for renewal applications. If the licensee is not disqualified as provided by this act, the license shall be renewed upon receipt by the attorney general of the items listed in subsection (a) and the completion of the background check. *If the licensee holds a valid provisional license at the time the renewal application is submitted, then the attorney general shall issue a standard license to the licensee if the licensee is not disqualified as provided by this act.*

(c) No license shall be renewed if the renewal application is filed six months or more after the expiration date of the license, and such license shall be deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure but an application for licensure and fees pursuant to K.S.A. 75-7c05, and amendments thereto, shall be submitted, and a background investigation including the submission of fingerprints, shall be conducted pursuant to the provisions of that section.

Sec. 13. K.S.A. 75-7c21 is hereby amended to read as follows: 75-7c21. (a) An individual may carry a concealed handgun in the state capitol~~, provided~~ *if* such individual is not prohibited from possessing a firearm under either federal or state law, *and is either: (A) 21 years of age or older; or (B) possesses a valid provisional license issued pursuant to K.S.A. 75-7c03, and amendments thereto, or a valid license to carry a concealed handgun issued by another jurisdiction that is recognized in this state pursuant to K.S.A. 75-7c03, and amendments thereto.*

(b) This section shall be a part of and supplemental to the personal and family protection act.

Sec. 14. K.S.A. 75-7c02, 75-7c03, 75-7c04, 75-7c05, 75-7c08 and 75-7c21 and K.S.A. 2020 Supp. 21-5914, 21-6301, 21-6302, 21-6304, 21-6309, 21-6614 and 32-1002 are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

_____

HOUSE concurred in
SENATE amendments _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

Passed the SENATE
as amended _____

_____
President of the Senate.

_____
Secretary of the Senate.

APPROVED _____

_____
Governor.

Session of 2021

HOUSE BILL No. 2071

By Representatives Lynn, Arnberger, Croft, Esau, Finch, Hawkins, Helmer, Hoheisel, Landwehr, Long, Owens, Resman, Ryckman, Samsel, Tarwater, Thomas, Toplikar, Waggoner, Wasinger, Williams and Woodard

1-14

AN ACT concerning crimes, punishment and criminal procedure; relating to crimes against persons; increasing criminal penalties for stalking a minor; amending K.S.A. 2020 Supp. 21-5427 and repealing the existing section.

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

Section 1. K.S.A. 2020 Supp. 21-5427 is hereby amended to read as follows: 21-5427. (a) Stalking is:

(1) Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear;

(2) engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family;~~ or~~

(3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, prior to its repeal or K.S.A. 2020 Supp. 21-5924, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear*; or*

(4) intentionally engaging in a course of conduct targeted at a specific child under the age of 14 that would cause a reasonable person in the circumstances of the targeted child, or a reasonable person in the circumstances of an immediate family member of such child, to fear for such child's safety.

(b) Stalking as defined in:

(1) Subsection (a)(1) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(1)(B); and

(B) severity level 7, person felony upon a second or subsequent conviction;

(2) subsection (a)(2) is a:

(A) Class A person misdemeanor, except as provided in subsection (b)(2)(B); and

(B) severity level 5, person felony upon a second or subsequent conviction;~~and~~

(3) subsection (a)(3) is a:

(A) Severity level 9, person felony, except as provided in subsection (b)(3)(B); and

(B) severity level 5, person felony, upon a second or subsequent conviction*; and*

(4) subsection (a)(4) is a:

(A) Severity level 7, person felony, except as provided in subsection (b)(4)(B); and

(B) severity level 4, person felony, upon a second or subsequent conviction.

(c) For the purposes of this section, a person served with a protective order as defined by K.S.A. 21-3843, prior to its repeal or K.S.A. 2020 Supp. 21-5924, and amendments thereto, or a person who engaged in acts which would constitute stalking, after having been advised by a law enforcement officer, that such person's actions were in violation of this section, shall be presumed to have acted knowingly as to any like future act targeted at the specific person or persons named in the order or as advised by the officer.

(d) In a criminal proceeding under this section, a person claiming an exemption, exception or exclusion has the burden of going forward with evidence of the claim.

(e) The present incarceration of a person alleged to be violating this section shall not be a bar to prosecution under this section.

(f) As used in this section:

(1) "Course of conduct" means two or more acts over a period of time, however short, which evidence a continuity of purpose. A course of conduct shall not include constitutionally protected activity nor conduct that was necessary to accomplish a legitimate purpose independent of making contact with the targeted person. A course of conduct shall include, but not be limited to, any of the following acts or a combination thereof:

(A) Threatening the safety of the targeted person or a member of such person's immediate family;

(B) following, approaching or confronting the targeted person or a member of such person's immediate family;

(C) appearing in close proximity to, or entering the targeted person's residence, place of employment, school or other place where such person

can be found, or the residence, place of employment or school of a member of such person's immediate family;

(D) causing damage to the targeted person's residence or property or that of a member of such person's immediate family;

(E) placing an object on the targeted person's property or the property of a member of such person's immediate family, either directly or through a third person;

(F) causing injury to the targeted person's pet or a pet belonging to a member of such person's immediate family;

(G) any act of communication;

(2) "communication" means to impart a message by any method of transmission, including, but not limited to: Telephoning, personally delivering, sending or having delivered, any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer;

(3) "computer" means a programmable, electronic device capable of accepting and processing data;

(4) "conviction" includes being convicted of a violation of K.S.A. 21-3438, prior to its repeal, this section or a law of another state which prohibits the acts that this section prohibits; and

(5) "immediate family" means father, mother, stepparent, child, stepchild, sibling, spouse or grandparent of the targeted person; any person residing in the household of the targeted person; or any person involved in an intimate relationship with the targeted person.

Sec. 2. K.S.A. 2020 Supp. 21-5427 is hereby repealed.

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

Session of 2021

HOUSE BILL No. 2366

By Committee on Judiciary

2-11

AN ACT concerning crimes, punishment and criminal procedure; relating to jailhouse witness testimony; requiring prosecutors to disclose their intent to introduce testimony from a jailhouse witness and to forward related information to the Kansas bureau of investigation.

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

Section 1. (a) (1) In any criminal prosecution, the prosecuting attorney shall disclose its intent to introduce testimony of a jailhouse witness regarding statements made by a suspect or defendant, while such witness and suspect or defendant were both incarcerated, within the time provided by K.S.A. 22-3212, and amendments thereto. The prosecuting attorney shall provide to the defense:

(A) The criminal history of the jailhouse witness, including any pending or dismissed criminal charges;

(B) the jailhouse witness's cooperation agreement and any benefit that has been requested by, provided to, or will be provided in the future to the jailhouse witness;

(C) the contents of any statement allegedly given by the suspect or defendant to the jailhouse witness and the contents of any statement given by the jailhouse witness to law enforcement regarding the statements allegedly made by the suspect or defendant, including the time and place such statements were given;

(D) any information regarding the jailhouse witness recanting testimony or statements, including the time and place of the recantation, the nature of the recantation and the names of the people present at the recantation; and

(E) any information concerning other criminal cases in which the testimony of the jailhouse witness was introduced or was intended to be introduced by a prosecuting attorney regarding statements made by a suspect or defendant, including any cooperation agreement and any benefit that the jailhouse witness received in such case.

(2) The court may permit the prosecuting attorney to comply with the provisions of this section after the time period provided in paragraph (1) if the court finds that the jailhouse witness was not known or the information described in paragraph (1) could not be discovered or obtained by the prosecuting attorney exercising due diligence within such time period.

(3) If the court finds that disclosing the information described in paragraph (1) is likely to cause bodily harm to the jailhouse witness, the court may:

(A) Order that such evidence be viewed only by the defense counsel and not by the defendant or others; or

(B) issue a protective order.

(b)(1) In a criminal prosecution for any murder or rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2020 Supp. 21-5503, and amendments thereto, in which the prosecuting attorney intends to introduce the testimony of a jailhouse witness, upon motion of the defendant, the court shall conduct a pre-trial hearing to determine whether the jailhouse witness's testimony exhibits reliability and is admissible based on the following factors:

(A) The extent to which the jailhouse witness's testimony is confirmed by other evidence;

(B) the specificity of the testimony;

(C) the extent to which the testimony contains details that would be known only by the perpetrator of the offense;

(D) the extent to which the details of the testimony could be obtained from a source other than the suspect or defendant; and

(E) the circumstances under which the jailhouse witness provided the information to the prosecuting attorney or a law enforcement officer, including whether the jailhouse witness was responding to leading questions.

(2) If the prosecuting attorney fails to show by a preponderance of the evidence that a jailhouse witness's testimony is reliable, the court shall exclude the testimony at trial.

(c)(1) Each prosecuting attorney's office shall maintain a central record containing information regarding:

(A) Any case in which testimony by a jailhouse witness is introduced or is intended to be introduced by a prosecuting attorney regarding statements made by a suspect or defendant and the substance of such testimony; and

(B) any benefit that has been requested by, provided to, or will be provided in the future to a jailhouse witness in connection with testimony provided by such witness.

(2) Each prosecuting attorney's office shall forward the information described in paragraph (1) to the Kansas bureau of investigation. The bureau shall maintain a statewide database containing the information forwarded pursuant to this section. Such database shall be accessible only to prosecuting attorneys and shall otherwise remain confidential and not subject to the open records act, K.S.A. 45-215 et seq., and amendments thereto. The provision regarding confidentiality shall expire on July 1,

2026, unless the legislature reviews and reenacts such provision pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2026.

(d) If a jailhouse witness receives any benefit in connection with offering or providing testimony against a defendant, the prosecuting attorney shall notify any victim connected to the criminal prosecution.

(e) If the testimony of a jailhouse witness is admitted into evidence, the jury shall be instructed that such testimony was provided by a jailhouse witness and informed of any benefit that has been requested by, provided to, or will be provided in the future to the jailhouse witness in connection with providing such testimony.

(f) As used in this section:

(1) "Benefit" means any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, immunity, financial payment, reward or amelioration of current or future conditions of sentence that is requested, provided or will be provided in the future in connection with, or in exchange for, testimony of a jailhouse witness.

(2) "Jailhouse witness" means a person who provides testimony, or is intended to provide testimony during a criminal prosecution regarding statements made by a suspect or defendant while both the witness and the suspect or defendant were incarcerated, and who has requested, has been offered, or may in the future receive a benefit in connection with such testimony. "Jailhouse witness" does not mean a person who is a confidential informant, an accomplice or a co-defendant.

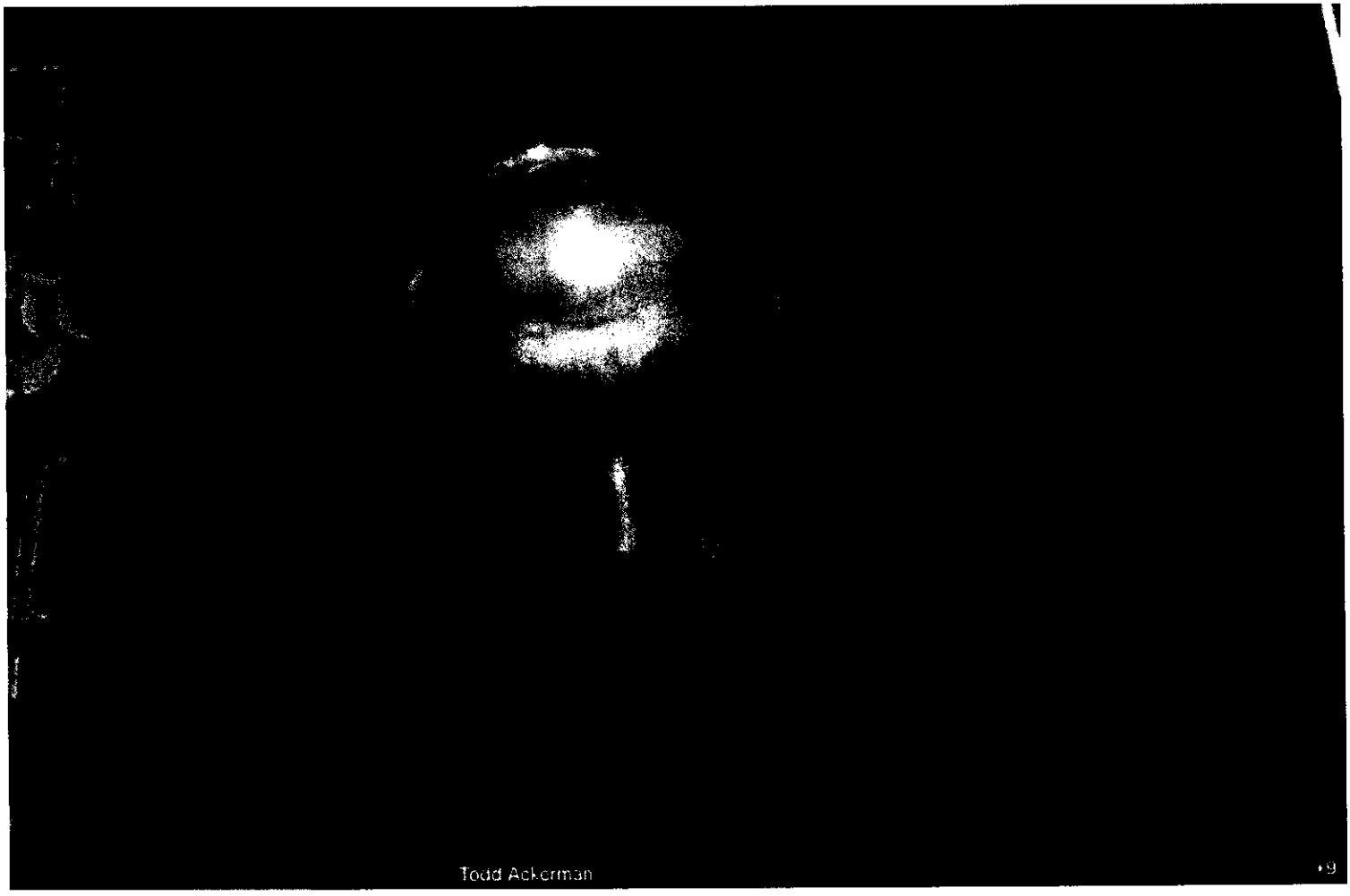
(g) This section shall be a part of and supplemental to the Kansas code of criminal procedure.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Courts and Crime
Politics + Government

Criminal justice panel hashes out potential changes to Kansas offender registry

By: Noah Taborda - September 20, 2021 2:30 pm



A subcommittee of the Kansas Criminal Justice Reform Commission debated potential modifications to the Kansas Public Offender Registry. The full commission will review suggestions from the group and incorporate them in a final report to the Legislature (Screen Capture of Kansas Legislature YouTube)

TOPEKA — Criminal justice advocates, experts and law enforcement are debating potential changes to the Kansas drug and sex offender registry, including whether registries should be made public and an exit mechanism for some offenders.

Of primary concern for the Kansas Criminal Justice Reform Commission Subcommittee on Proportionality and Sentencing is whether drug offenders should be included on a public registry or if that information should be available only to law enforcement. Under Kansas law, those with a drug conviction are required to register on the same public list as more than 10,000 convicted sex offenders.

As of March 1, 2021, the Kansas Public Offender Registry contained the names and addresses of 5,777 drug offenders. The full registry, which includes other offenders, is approaching 1% of the state population, leading many critics to argue the list has become bloated.

"I don't think it should, especially the drug side, keep somebody from getting a decent job if you don't have a job. That's just plain common sense," said former Marysville Police Chief Todd Ackerman. He said information put together by the Council of State Governments indicated requiring an offender to register for the list did not reduce recidivism.

Ackerman oversees the subcommittee, which met Thursday to prepare a report for the full commission to discuss. Any final recommendations to the Legislature on the public registry will be determined when the commission approves a full report.

The Kansas Supreme Court issued a ruling on the registry issue Friday, stating mandatory lifetime post release registration under the Kansas Offender Registration Act is not meant as punishment. The decision reaffirmed the court's 2016 holding from *State v. Petersen-Beard* that this is not punishment for the purpose of applying the ex post facto clause of the U.S. Constitution — which prohibits legislatures from passing laws that retroactively criminalize behavior.

Justice Eric Rosen dissented from the majority, reiterating a long-standing opinion that KORA's registration requirement is a punishment.

In a separate case, the state's highest court ruled that mandatory lifetime registration for juvenile sex offenders are also not a punishment for the purpose of applying the ex post facto clause, the Eighth Amendment — prohibiting cruel or unusual punishment — or the Kansas Constitution Bill of Rights.

While Ackerman suggested drug offenders' information should no longer be made public, he said law enforcement would likely be unwilling to accept no longer including them on a private registry for police or other investigating agencies.

Ackerman, who was removed as chief of police for Marysville earlier this month, will be replaced on the full commission and as chair of the subcommittee as soon as the office of the Attorney General approves a new chief of police member. He may continue to serve as an Ad Hoc member.

Panel members, said changes to the sexual offender section of the registry required more nuance. Jonathan Ogletree, chair of the Prison Review Board for the Kansas Department of Corrections, argued this information was of import to the public.

"People want to know about that, and I think the general public, outside of law enforcement, go to that site frequently more than they do to look up drug offenders," Ogletree said, adding one avenue would be to allow people who exhibit good behavior to have an avenue off the registry, depending on the crime.

Other subcommittee members worried the penalty for failing to register is much too strong, depending on the severity of the offense committed. Patrick Armstrong, of the Council of State Governments, said in some instances the penalty can result in a sentence that exceeds the crime committed.

He said failing to register could incur a penalty equal to someone who committed arson.

"That is a little bit more severe and extreme, and everyone agrees that they don't quite align," Armstrong said. "I feel like if you just mentioned a couple of those pretty explicitly in the report that gets the job done for the Legislature to see what the actual issue is."

Jennifer Roth, of the Kansas Association of Criminal Defense Lawyers, said there are about 423 people currently in prison for failing to register. Not only are penalties too severe, she said, but they are also causing bed space to be unnecessarily occupied in correctional facilities.

"If nothing else, this committee would just be willing to say that the current penalties are disproportionate to the offense and they should be lowered, I'd be thrilled with just that notion," Roth said.

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 119,759

STATE OF KANSAS,
Appellee,

v.

LONNIE A. DAVIDSON,
Appellant.

SYLLABUS BY THE COURT

Mandatory lifetime postrelease registration under the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., does not constitute punishment for purposes of applying provisions of the Ex Post Facto Clause of the United States Constitution.

Review of the judgment of the Court of Appeals in an unpublished opinion filed August 2, 2019. Appeal from Sedgwick District Court; JEFFREY SYRIOS, judge. Opinion filed September 17, 2021. Judgment of the Court of Appeals affirming the district court is affirmed. Judgment of the district court is affirmed.

Peter Maharry, of Kansas Appellate Defender Office, was on the briefs for appellant.

Matt J. Maloney, assistant district attorney, *Marc Bennett*, district attorney, and *Derek Schmidt*, attorney general, were with him on the brief for appellee.

PER CURIAM: Lonnie A. Davidson was convicted of aggravated criminal sodomy in 2002. As a result of this conviction, he was required to register as a sex offender for life under the Kansas Offender Registration Act (KORA). See K.S.A. 2002 Supp. 22-4906(c).

After he failed to register in April 2017, the State charged Davidson with violating KORA, a severity level 5 person felony. Davidson moved to dismiss the charge, alleging that he was told at the time of his aggravated criminal sodomy conviction that he would be required to register under KORA for 10 years but the registration requirement was later increased to life. Davidson argued that retroactive application of KORA's registration requirements violated ex post facto and due process provisions and constituted cruel and unusual punishment under the United States Constitution. Relying on our decisions in *State v. Petersen-Beard*, 304 Kan. 192, 377 P.3d 1127 (2016), and *State v. Reed*, 306 Kan. 899, 399 P.3d 865 (2017), holding that KORA registration requirements are not punitive, the district court denied the motion. A jury later convicted Davidson of failing to register. The district court denied Davidson's request for a departure sentence and imposed a 32-month prison term followed by 24 months of postrelease supervision.

Davidson appealed his conviction to the Court of Appeals, arguing that retroactive application of KORA violates the federal constitutional prohibition against ex post facto punishment, infringes on his right to due process, and constitutes cruel and unusual punishment. The panel deemed Davidson's due process and cruel and unusual punishment claims to be waived and abandoned for failing to brief the issues. Bound by our decisions in *Petersen-Beard* and *Reed*, the panel held the sex offender registration scheme was not punitive in intent or effect for purposes of an ex post facto analysis and affirmed Davidson's conviction. *State v. Davidson*, No. 119,759, 2019 WL 3519064, at *1-2 (Kan. App. 2019) (unpublished opinion). Davidson filed a petition for review, which we granted under K.S.A. 20-3018(b). We exercise jurisdiction pursuant to K.S.A. 60-2101(b).

ANALYSIS

Due process and cruel and unusual punishment

As he did with the panel below, Davidson generally asserts that KORA's retroactive application violates due process and constitutes cruel and unusual punishment. But aside from a single line in the introductory paragraph of his petition for review, Davidson provides no argument in support of these additional claims. Accordingly, we deem the due process and cruel and unusual punishment arguments waived and abandoned. See *State v. Lowery*, 308 Kan. 1183, 1231, 427 P.3d 865 (2018) (a point raised incidentally but not argued is deemed abandoned).

Ex post facto

Davidson argues the KORA statutory scheme is punitive and, as a result, its retroactive application violates the Ex Post Facto Clause. "The constitutionality of a statute is a question of law over which this court exercises plenary review." *Petersen-Beard*, 304 Kan. at 194. We begin with the presumption that KORA is constitutional. As we stated in *Petersen-Beard*:

> "'We presume statutes are constitutional and must resolve all doubts in favor of a statute's validity.' *State v. Soto*, 299 Kan. 102, 121, 322 P.3d 334 (2014). 'It is not the duty of this court to criticize the legislature or to substitute its view on economic or social policy; it is the duty of this court to safeguard the constitution.' *State ex rel. Six v. Kansas Lottery*, 286 Kan. 557, 562, 186 P.3d 183 (2008)." 304 Kan. at 194.

Article I, §10 of the United States Constitution states: "No State shall . . . pass any . . . ex post facto Law." Any statute "'which imposes a punishment for an act which was

not punishable at the time it was committed; or imposes additional punishment to that then prescribed'" is prohibited as ex post facto. *Weaver v. Graham*, 450 U.S. 24, 28, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981) (quoting *Cummings v. Missouri*, 71 U.S. [4 Wall.] 277, 325-26, 18 L. Ed. 356 [1866]).

A plaintiff may raise either a facial or an as-applied challenge under the Ex Post Facto Clause. *Garner v. Jones*, 529 U.S. 244, 255, 120 S. Ct. 1362, 146 L. Ed. 2d 236 (2000). Davidson challenges the retroactive application of KORA's registration requirements to him, which he claims increased his period of registration from 10 years to life.

We apply an "intent-effects" test to analyze whether a statutory provision violates the Ex Post Facto Clause. Under this test, the court first determines whether the Legislature intended the statute to establish a civil proceeding. *Smith v. Doe*, 538 U.S. 84, 92, 123 S. Ct. 1140, 155 L. Ed. 2d 164 (2003); *Petersen-Beard*, 304 Kan. at 194. If the Legislature intended to impose punishment, the inquiry ends, and the provision is deemed an ex post facto law. But if the Legislature intended to enact a civil and nonpunitive regulatory scheme, the court then must examine whether the statutory scheme is so punitive–either in purpose or effect–as to negate the Legislature's civil intent. *Smith*, 538 U.S. at 92; *Petersen-Beard*, 304 Kan. at 194.

In 2003, the United States Supreme Court applied the "intent-effects" test in an ex post facto challenge to the Alaska Sex Offender Registration Act (ASORA). The Court ultimately held ASORA was nonpunitive and therefore its retroactive application did not violate the Ex Post Facto Clause. *Smith*, 538 U.S. at 105-06. The Court first concluded that the Alaska Legislature's intent "was to create a civil, nonpunitive regime." 538 U.S. at 96. The Court then determined that the statute's registration and notification requirements were not sufficiently punitive to overcome this legislative intent. As a

result, the Court held that ASORA's retroactive application did not violate the Ex Post Facto Clause of the United States Constitution. 538 U.S. at 105-06. Interestingly, the Alaska Supreme Court later used the same intent-effects test utilized by the *Smith* Court to find ASORA violated the Ex Post Facto Clause of the *Alaska state constitution*. See *Petersen-Beard*, 304 Kan. at 224 (Johnson, J., dissenting). The Alaska Supreme Court concluded:

> "Because ASORA compels (under threat of conviction) intrusive affirmative conduct, because this conduct is equivalent to that required by criminal judgments, because ASORA makes the disclosed information public and requires its broad dissemination without limitation, because ASORA applies only to those convicted of crime, and because ASORA neither meaningfully distinguishes between classes of sex offenses on the basis of risk nor gives offenders any opportunity to demonstrate their lack of risk, ASORA's effects are punitive. We therefore conclude that the statute violates Alaska's ex post facto clause." *Doe v. State*, 189 P.3d 999, 1019 (Alaska 2008).

Other states similarly have relied on their state constitutions to prohibit retroactive application of sex offender registration statutes. See *Wallace v. State*, 905 N.E.2d 371, 377-78, 384 (Ind. 2009); *Doe v. Dept. of Public Safety and Correctional Services*, 430 Md. 535, 547-48, 553, 62 A.3d 123 (2013); *State v. Williams*, 129 Ohio St. 3d 344, 347-49, 952 N.E.2d 1108 (2011); *Starkey v. Oklahoma Dept. of Corrections*, 305 P.3d 1004, 1030 (2013).

But Kansas does not have a specific Ex Post Facto Clause in our state Constitution. *State v. Todd*, 299 Kan. 263, 276, 323 P.3d 829 (2014). As a result, this court is bound by the United States Supreme Court's interpretation of the United States Constitution. See *Howlett v. Rose*, 496 U.S. 356, 367-69 n.16, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990) (The Supremacy Clause declares federal law the "supreme law of the land," and state courts must enforce it "in the absence of a valid excuse."). Accordingly,

our inquiry becomes whether KORA, as amended in 2011, is sufficiently distinct from ASORA that it mandates a different result under the federal Constitution.

As Davidson acknowledges, this court addressed the punitive nature of KORA in four opinions filed on the same day in 2016. In three of the opinions, a majority of the court held that KORA, as amended in 2011, was punitive in effect and that its retroactive application to any sex offender who committed a registerable offense before July 1, 2011, violated the Ex Post Facto Clause. *Doe v. Thompson*, 304 Kan. 291, 327-28, 373 P.3d 750 (2016); *State v. Redmond*, 304 Kan. 283, 289-90, 371 P.3d 900 (2016); and *State v. Buser*, 304 Kan. 181, 190, 371 P.3d 886 (2016).

The fourth opinion, *Petersen-Beard*, considered whether KORA, as amended in 2011, constituted cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. To resolve this issue, the majority performed a traditional ex post facto analysis because the first step of an Eighth Amendment inquiry is to determine whether the practice at issue constitutes punishment. 304 Kan. at 196. A different majority—due to a change in the court's composition since *Thompson*, *Redmond*, and *Buser* were argued—ultimately ruled that KORA was nonpunitive. The majority first found that the Legislature did not intend for KORA's lifetime sex offender registration scheme to be punitive. 304 Kan. at 195. The majority then determined that the burdens imposed by KORA's registration requirements were not so onerous as to constitute punishment for purposes of applying the federal Constitution and therefore could not violate federal or state constitutional prohibitions against cruel and unusual punishment. 304 Kan. at 208-09. In so holding, the majority overruled *Thompson*, *Redmond*, and *Buser*, adopting the reasoning behind the dissent in *Thompson* "in toto" and "quot[ing] liberally" from it in reaching its decision. 304 Kan. at 197-209. This same majority later "explicitly extend[ed] the holding of *Petersen-Beard* to apply to ex post facto challenges." *Reed*, 306 Kan. at 904.

Davidson asks this court to overturn *Petersen-Beard* to find that KORA is punitive and therefore its retroactive application violates the Ex Post Facto Clause. In arguing that *Petersen-Beard* was wrongly decided, Davidson relies mainly on the majority analysis and holding in *Thompson*, 304 Kan. at 306-28. Davidson, like the *Thompson* majority did, points out several differences between the Alaska registration scheme analyzed in *Smith* and the stricter requirements of KORA. Davidson generally suggests that the *Petersen-Beard* majority failed to fully examine the effects of KORA's entire statutory scheme. See *Thompson*, 304 Kan. at 317-20.

But Davidson presents essentially the same arguments this court considered and rejected in *Petersen-Beard*. He presents no new evidence or analysis. Though not discussed by Davidson, the only change that has occurred since *Petersen-Beard* is that three new justices have replaced three retired justices on the court. But "we should be highly skeptical of reversing an earlier decision where nothing has changed except the composition of the court." *State v. Marsh*, 278 Kan. 520, 577, 102 P.3d 445 (2004) (McFarland, C.J., dissenting).

In considering Davidson's request, we keep in mind that "[w]e do not overrule precedent lightly and must give full consideration to the doctrine of stare decisis." *State v. Sherman*, 305 Kan. 88, 107, 378 P.3d 1060 (2016). "'The application of stare decisis ensures stability and continuity—demonstrating a continuing legitimacy of judicial review. Judicial adherence to constitutional precedent ensures that all branches of government, including the judicial branch, are bound by law.'" *Crist v. Hunan Palace, Inc.*, 277 Kan. 706, 715, 89 P.3d 573 (2004) (quoting *Samsel v. Wheeler Transp. Servs., Inc.*, 246 Kan. 336, 356, 789 P.2d 541 [1990], *overruled on other grounds by Bair v. Peck*, 248 Kan. 824, 844, 811 P.2d 1176 [1991]). True, stare decisis "is not a rigid inevitability but a prudent governor on the pace of legal change." *State v. Jordan*, 303

Kan. 1017, 1021, 370 P.3d 417 (2016). But this court generally will follow its precedent unless "'clearly convinced [that the rule] was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent.'" *Sherman*, 305 Kan. at 108 (quoting *Simmons v. Porter*, 298 Kan. 299, 304, 312 P.3d 345 [2013]).

The determinative factor in deciding whether to overturn *Petersen-Beard* is whether KORA is punitive. *Petersen-Beard* held that it was not. 304 Kan. at 197. Davidson's reiteration of the majority analysis and holding in *Thompson* fails to clearly convince us that the holding in *Petersen-Beard* was "originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent." *Sherman*, 305 Kan. at 108. Accordingly, we reaffirm our holding in *Petersen-Beard* that KORA registration requirements are not punitive in purpose or effect. Accordingly, retroactive application of KORA provisions to Davidson does not violate the Ex Post Facto Clause of the United States Constitution.

Affirmed.

* * *

STANDRIDGE, J., concurring: Based on principles of stare decisis as applied to the circumstances of this case, I join the majority's decision not to disturb *State v. Petersen-Beard*, 304 Kan. 192, 377 P.3d 1127 (2016), which held that KORA registration requirements are not punitive. In my opinion, reversing a decision solely because of a change in composition of the court would cause the people we serve to raise legitimate concerns about the court's integrity and the rule of law in the state of Kansas.

The legal principles supporting the doctrine of stare decisis are well established. "[S]tare decisis is a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon 'an arbitrary discretion.'" *Patterson v. McLean Credit Union*, 491 U.S. 164, 172, 109 S. Ct. 2363, 105 L. Ed. 2d 132 (1989). Stare decisis ensures that "the law will not merely change erratically," which in turn "permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals." *Vasquez v. Hillery*, 474 U.S. 254, 265, 106 S. Ct. 617, 88 L. Ed. 2d 598 (1986).

In Kansas, "'once a point of law has been established by a court, that point of law will generally be followed by the same court and all courts of lower rank in subsequent cases where the same legal issue is raised.'" *Crist v. Hunan Palace, Inc.*, 277 Kan. 706, 715, 89 P.3d 573 (2004) (quoting *Samsel v. Wheeler Transp. Servs., Inc.* 246 Kan. 336, 356, 789 P.2d 541 [1990], *overruled on other grounds by Bair v. Peck*, 248 Kan. 824, 844, 811 P.2d 1176 [1991]). While this court is not inexorably bound by its own precedent, we should follow the law of earlier cases unless "'clearly convinced that the rule was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent.'" *Crist*, 277 Kan. at 715.

The only change that has occurred here is the replacement of former members of the court. I believe that a change in the membership of this court cannot, in and of itself, justify a departure from the basic principle of stare decisis. See *Payne v. Tennessee*, 501 U.S. 808, 850, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991) (Marshall, J., dissenting) (change in court's personnel "has been almost universally understood *not* to be sufficient to warrant overruling a precedent"); *State v. Marsh*, 278 Kan. 520, 577, 102 P.3d 445

(2004) (McFarland, C.J., dissenting) ("[W]e should be highly skeptical of reversing an earlier decision where nothing has changed except the composition of the court."). Any other conclusion would send the message that, whenever there is a hotly contested issue in this court that results in a closely divided decision, anyone who disagrees with the decision and has standing to challenge it need only wait until a member of the original majority leaves the court to bring another challenge. In my view, that would be a very dangerous message to send. Stability in the law and respect for the decisions of the court as an institution, rather than a collection of individuals, is of critical importance in our legal system.

Indeed, even if the majority decision in *Petersen-Beard* were flawed, overruling it under these circumstances—where the only factor that has changed is the composition of the court—would inflict far greater damage on the public perception of the rule of law and the stability and predictability of this court's decisions than would abiding by the decision. See *Planned Parenthood of Southeastern Pa., v. Casey*, 505 U.S. 833, 854, 864, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992) (quoting *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 636, 94 S. Ct. 1895, 40 L. Ed. 2d 406 [1974] [Stewart, J., dissenting]) ("'A basic change in the law upon a ground no firmer than a change in our membership invites the popular misconception that this institution is little different from the two political branches of the [g]overnment. No misconception could do more lasting injury to this Court and to the system of law which it is our abiding mission to serve.'").

Based on principles of stare decisis as applied to the circumstances presented here—where the only change is in this court's composition—I join in the judgment of the court.

* * *

ROSEN, J., dissenting: Consistent with my longstanding opinion that the Kansas offender registration requirements are punitive, I dissent from today's decision. My observations regarding the punitive aspects of KORA are once again explained, this time in greater detail, in my dissent in *State v. N.R.*, 314 Kan. __ (No. 119,796, this day decided).

As I pointed out in my dissent in *State v. Stoll*, 312 Kan. 726, 737-38, 480 P.3d 158 (2021), I stood with the majority of this court and its position that the registration requirements constitute punishment in *State v. Redmond*, 304 Kan. 283, 371 P.3d 909 (2016), *State v. Buser*, 304 Kan. 181, 371 P.3d 886 (2016), *Doe v. Thompson*, 304 Kan. 291, 373 P.3d 750 (2016), and *State v. Charles*, 304 Kan. 158, 372 P.3d 1109 (2016). When this holding was overturned, I joined two of my colleagues in dissent in *State v. Petersen-Beard*, 304 Kan. 192, 377 P.3d 1127 (2016). In *State v. Shaylor*, 306 Kan. 1049, 1053, 400 P.3d 177 (2017), *State v. Meredith*, 306 Kan. 906, 914, 399 P.3d 859 (2017), and *State v. Huey*, 306 Kan. 1005, 1010, 399 P.3d 211 (2017), my colleagues and I reiterated our fervent opinion that these requirements are punitive. See also *State v. Perez-Medina*, 310 Kan. 525, 541, 448 P.3d 446 (2019) (Johnson, J., concurring and dissenting); *State v. Marinelli*, 307 Kan. 768, 796, 415 P.3d 405 (2018) (Rosen, J., dissenting); *State v. Rocheleau*, 307 Kan. 761, 767, 415 P.3d 422 (2018) (Beier, J., dissenting).

I opine in *N.R.* and emphasize it here, that it is time for this court to join the ranks of the many other courts that have rightfully recognized the punitive nature of registration requirements. Slip op. at 38 (citing *Does #1-5 v. Snyder*, 834 F.3d 696, 705 [6th Cir. 2016]; *People v. Betts*, No. 148981, 2021 WL 3161828, at *12 [Mich. 2021]; *Starkey v. Oklahoma Dep't of Corr.*, 305 P.3d 1004 [Okla. 2013]; *Doe v. Dep't of Pub. Safety &*

Corr. Servs., 430 Md. 535, 568, 62 A.3d 123 [2013]; *Wallace v. State*, 905 N.E.2d 371, 379-84 [Ind. 2009]).

Today, I dissent alone. But I stand firm in my belief that the oppressive and onerous requirements of offender registration are punitive. This case presents just another prime example. Consequently, I conclude the retroactive application of the registration requirements to Davidson violated the Ex Post Facto Clause. See *Shaylor*, 306 Kan. at 1053 (Beier, J., dissenting). I would reverse Davidson's conviction.

APPELLATE UPDATE*

- In a case where the defendant pled no contest to charges connected to a high risk investment scheme, the Kansas Supreme Court held that that acceptance of responsibility by itself was not a substantial and compelling reason for a dispositional departure because the defendant pled no contest in exchange for the dismissal of 10 other counts, minimized his involvement, and was reluctant to pay restitution for the victims' entire loss. See *State v. Morley*, 479 P.3d 928, 936 (Kan. January 29, 2021).

- In a case where the defendant was sentenced to two consecutive hard 50 sentences, the Kansas Supreme Court ruled that the district court did not abuse its discretion when it found the defendant's mitigating evidence, including evidence of remorse and good character, were not substantial and compelling reasons to depart from the presumptive sentence because the sentencing judge listened to all of the evidence and considered it when denying the departure. See *State v. McNabb*, 478 P.3d 769, 772 (Kan. January 8, 2021).

- Where the evidence was insufficient to show that a defendant possessed drugs, his conviction for distribution of controlled substances was reversed because the Kansas Supreme Court found that possession is an element of the crime of distribution of a controlled substance under K.S.A. 2019 Supp. 21-5705(a). See *State v. Crosby*, 479 P.3d 167, 174 (Kan. January 15, 2021).

- Where a judge departed an off-grid, indeterminate life sentence to an on-grid, determinate sentence, the Kansas Supreme Court recently reversed and remanded for the district court to impose a legal sentence because the judge departed more than 50% of the standard grid sentence which is allowed for convictions of a crime of extreme sexual violence. See *State v. Dunn*, No. 119,866, 2021 WL 1045457 (Kan. March 19, 2021).

- Where Special Rule 10 (defendant commits a new felony while on felony bond) applied, the Court of Appeals recently remanded the case back to the district court for the judge to use his discretion in deciding whether to send a defendant to prison or probation because the special rule allows for a court to use its discretion when granting probation or prison. See *State v. Parker*, No. 122,300, 2021 WL 219885 at *3(Kan. App. January 22, 2021) (unpublished opinion).

- In a case where the defendant's probation was revoked, the Court of Appeals found that the defendant's assaultive behavior constituted a danger to public safety and her attitude and behavioral problems amounted to a threat to her own welfare, thereby allowing the court to impose defendant's prison sentence without the intermediate sanction. See *State v. Nelson*, No. 122,029, 2021 WL 137400 at *2 (Kan. App. January 15, 2021) (unpublished opinion).

- The Court of Appeals recently held that Kansas statutes do not require a district court to include jail credit time in a probation violation journal entry unless the district court revokes probation and orders confinement. See *State v. Moss-Barrett*, No. 122,360, 2021 WL 401955 at *2 (Kan. App. February 5, 2021) (unpublished opinion).

- In a recent decision the Court of Appeals found that a defendant's prior criminal threat conviction was properly scored as a person felony because when the defendant's sentence became final, both intentional and reckless criminal threat were constitutional. See *State v. McCullough*, No. 122,167, 2021 WL 646111 at *4 (Kan. App. February 19, 2021) (unpublished opinion). The Court also applied *Keel* and found that the defendant's prior second marijuana conviction should be scored as a nonperson misdemeanor as this was the classification of the offense at the time of the defendant's current crime. See *id.* at *5.

- Where a defendant was convicted of criminal threat, among other crimes, the Court of Appeals reversed the criminal threat conviction because the district court instructed the jury on both intentional and reckless criminal threat, neither the jury instructions nor the state's argument steered the jury towards one mental state or the other, the jury was not instructed that it had to unanimously agree on the mental state, the verdict form did not require the jury make a specific finding, and based on the evidence presented at trial it was reasonable that the defendant acted with reckless disregard for whether his statements caused the victim fear. See *State v. Cardillo*, No. 120,606, 2021 WL 1149145 at *5 (March 26, 2021) (unpublished opinion). Additionally, the Court of Appeals vacated the defendant's controlling sentence for his drug conviction to determine if a criminal threat conviction was properly included in his criminal history because the PSI did not state which subsection for his prior criminal threat conviction. See *id.* at *3.

*This is not an exhaustive list of all cases affecting sentencing. To review all recent cases, click here.

Kansas Sentencing Commission