2011 LEGISLATIVE CHANGES TO THE KANSAS SENTENCING GUIDELINES ACT AND RELATED CRIMINAL LAW

Changes affecting the Kansas Sentencing Guidelines Act (K.S.A. 21-4701 et seq.,) and other related criminal statutes were made by the Kansas Legislature during the 2011 Legislative Session. These changes are summarized below under the headings of the Bills which the changes were included.

House Substitute for 2011 Senate Bill 6 - DUI & Domestic Violence Diversions

House Substitute for SB 6 primarily amends various administrative and criminal statutes relating to driving under the influence (DUI) as follows:

DUI Evaluation (Section 19)

Prior to sentencing, all offenders shall be required to participate in an alcohol and drug evaluation conducted by a provider in accordance with the amended provisions of K.S.A. 8-1008 and shall follow any recommendation made by the provider, unless otherwise ordered by the court.

DUI Fines (Section 19)

On and after July 1, 2011, an amount of $250 from each fine shall be remitted to the state treasurer for the Community Corrections Supervision Fund.

- The fine for a first offense shall be *$750* - $1000.
- The fine for a second offense shall be *$1250 - $1750*.
- The fine for a third offense shall be *$1750 - $2500*
- The fine for a fourth or subsequent offense shall be $2500.

DUI First Conviction (Section 19)

For a first conviction of DUI, the court shall be allowed to place the offender under house arrest to serve the remainder of the minimum sentence only after the offender has served 48 consecutive hours imprisonment.

DUI Second Conviction (Section 19)

For a second conviction of DUI, offenders may be placed on work release after serving 48 consecutive hours imprisonment. *If so placed, the offender shall serve a minimum of 120 hours of confinement. Such 120 hours shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day.* Offenders may also be placed on house arrest to serve the remainder of the minimum sentence after serving 48 consecutive hours imprisonment. *If so placed, the offender shall be required to serve a minimum of 120 hours of confinement within the boundaries of the residence and shall be electronically monitored. Any exceptions to remaining within the residential boundaries shall not count towards the minimum 120 hours.*

DUI Third or Subsequent Conviction (Section 19)

For a third or subsequent conviction of DUI, offenders may be placed on work release after serving 48 consecutive hours imprisonment. *If so placed, the offender shall serve a minimum of 240 hours of confinement. Such 240 hours shall be a period of at least 48 consecutive hours of imprisonment followed by confinement hours at the end of and continuing to the beginning of the offender's work day.* Offenders may also be placed on house arrest to serve the remainder of the minimum sentence after serving 48 consecutive hours imprisonment. *If so placed, the offender shall be required to serve a minimum of 240 hours of confinement within the boundaries of the residence and shall be electronically monitored. Any exceptions to remaining within the residential boundaries shall not count towards the minimum 240 hours.*

The classification of a third DUI conviction is amended from a nonperson felony to a *Class A, nonperson misdemeanor, unless the offender has a prior conviction which occurred within the preceding 10 years, not including any period of incarceration*.

DUI Fourth or Subsequent Conviction (Section 19)

For a fourth or subsequent conviction of DUI, the court shall be allowed to place the offender on work release or under house arrest to serve the remainder of the minimum sentence only after the offender has served 72 consecutive hours of imprisonment. *The confinement requirements are the same as those for a third conviction*.

DUI Community Supervision (Section 19)

Upon expiration of a term of imprisonment for a third, fourth or subsequent DUI conviction, the offender shall serve a mandatory one-year period of supervision. *The court shall determine whether the offender shall be supervised by community correctional services or court services based upon the risks and needs of the offender. During supervision, the offender shall be required to participate in a multidisciplinary model of services for substance use disorders facilitated by SRS, to include assessment and, if appropriate, treatment.* The bill amends the Community Corrections Act to clarify that DUI offenders may be supervised by Community Correctional Service Programs. (Section 33)

DUI Expungement (Section 35)

The bill amends the expungement statute to allow for expungement of a DUI, (K.S.A. 8-1567 or municipal equivalent) after ten years. Prior to this amendment, expungement for DUI was not allowed.

DUI – Other Provisions (Section 19)

- *Only DUI convictions occurring on or after July 1, 2001*, shall be taken into account when determining the sentence to be imposed for a first, second, third, fourth or subsequent offender.
- *Legal use of drugs shall not be a defense to DUI of drugs*.
- The blood or breath testing window for DUI has been increased from two hours to *three hours*.
- Existing criminal interlock, impound, and immobilization provisions for second or subsequent convictions are removed from the bill in light of the revised administrative penalties.

DUI Saliva Testing (Section 2)

The bill creates a statutory provision requiring the Kansas Bureau of Investigation (KBI) to *adopt rules and regulations establishing criteria for preliminary screening devices as well as a list of approved preliminary screening devices for testing of saliva for law enforcement purposes*.

Commercial DUI (Section 8)

The Commercial DUI statute, K.S.A. 2010 Supp. 8-2,144, is amended to ensure consistency with DUI under K.S.A. 2011 Supp. 8-1567, as follows:

- The definition of Commercial DUI is expanded to include "attempting to operate" such vehicle.
- The blood or breath testing window is increased from two hours to *three hours*.
- Second-time offenders placed in work release shall be required to serve 120 hours of confinement, including an initial minimum of 48 consecutive hours of imprisonment. Third or subsequent offenders placed in work release shall be required to serve 240 hours of confinement, including the same initial minimum imprisonment.
- Second-time offenders on house arrest shall be required to serve 120 hours of confinement within the residence, and third or subsequent offenders on house arrest shall be required to serve 240 hours of confinement within the residence. Such offenders on house arrest shall be required to be electronically monitored. Any exceptions to remaining within the residential boundaries shall not count towards the minimum 120 or 240 hours.
- The fines for first and second offenses are the same as for DUI under K.S.A. 8-1567. However, the fine for third and subsequent offenses is $1750 to $2500. Commercial DUI does not have a fine for fourth and subsequent offenses. On and after July 1, 2011, an

amount of $250 from each fine shall be remitted to the state treasurer for the Community Corrections Supervision Fund.

- Prior to sentencing all offenders shall be required to participate in an alcohol and drug evaluation conducted by a provider in accordance with K.S.A. 8-1008 and shall follow any recommendation made by the provider, unless otherwise ordered by the court.
- The sentence for any conviction for commercial DUI when one or more children under 14 years of age are in the vehicle at the time of the offense shall be enhanced by one month imprisonment which shall be served consecutively to any other minimum mandatory penalty. The judge may order the enhancement be served on house arrest, work release, or other conditional release.
- Legal use of drugs shall not be a defense to commercial DUI drugs.
- In lieu of payment of fine under this section, the court may order the defendant to perform community service. The defendant shall receive credit on the fine imposed in an amount equal to $5 per hour of community service.
- Before filing a complaint alleging commercial DUI, a prosecutor shall be required to obtain motor vehicle violations records from the Division of Vehicles and criminal history from the KBI.
- The court shall be required to electronically report every conviction or diversion agreement for commercial DUI and obtain criminal history information from the KBI before sentencing.
- Upon a conviction, the Division of Vehicles shall be required to suspend, restrict, or suspend and restrict the offender's driving privileges pursuant to K.S.A. 8-1014.
- Any municipal offense that shall constitute a felony shall be required to be referred to the county or district attorney for prosecution.
- No plea bargaining which permits a person charged with commercial DUI to avoid the mandatory penalties established by the section shall be allowed.
- For the purpose of determining whether a conviction is a first, second, third or subsequent convictions, a conviction includes violation of a law or ordinance of another state or an ordinance of any city, or resolution of any county which prohibits the same acts. Any convictions occurring during a person's lifetime shall be taken into account when determining the sentence to be imposed for a first, second, third or subsequent offender. (The lifetime look-back is not in the regular DUI statute.)

Restructuring of Alcohol and Drug Evaluations and Treatment (Section 10)

The bill removes provisions in K.S.A. 8-1008 regarding evaluation and supervision of DUI offenders under the Alcohol and Drug Safety Action Program (ADSAP). The bill requires SRS to develop a standardized substance use evaluation.

DUI Test Refusals (Sections 9 & 14)

The bill amends the administrative penalties for test refusal as follows:

- For a first and subsequent refusal to submit to and complete any test of breath, blood or urine, driving privileges shall be suspended for one year. (Section 9)

- For a first refusal, driving privileges shall be suspended for one year, followed by a one-year ignition interlock restriction. (Section 14)
- For a second test refusal, driving privileges shall be suspended for *one year, followed by a two-year ignition interlock restriction*. (Section 14)
- For a third test refusal, driving privileges shall be suspended for *one year followed by a three-year ignition interlock restriction*. (Section 14)
- For a fourth test refusal, driving privileges shall be suspended for *one year, followed by a four-year ignition interlock restriction*. (Section 14)
- For a fifth or subsequent test refusal, driving privileges shall be suspended for *one year, followed by a 10-year ignition interlock restriction*. (Section 14)

DUI Test Failure (Sections 9, 14 & 15)

The bill amends the penalties for a test failure or an alcohol or drug-related conviction as follows:

- If the person submits to testing and results show alcohol concentration of .08 or greater, driving privileges shall be suspended for 30 days for the first occurrence *and one year for the second or subsequent occurrence*. If the results show alcohol concentration of .15 or greater, driving privileges shall be suspended for one year *for the first and subsequent occurrence*. (Section 9)
- If the person is less than 21 years of age at the time of the test and the results show alcohol concentration of .08 or greater, driving privileges shall be suspended for one year. The permanent revocation upon a fifth or subsequent occurrence was repealed. (Section 9)
- *Between July 1, 2011, and June 30, 2015, for a first occurrence, driving privileges shall be suspended for 30 days for all offenders, followed by a 180-day ignition interlock restriction, or a one-year ignition interlock restriction for offenders with certain previous violations on their record*. The prior violations that shall trigger the one-year ignition interlock restriction include open container, minor in possession, violations listed in the habitual violator statute, three or more moving violations in a single year or any other suspension or revocation of driving privileges. (Section 14 & 15)
- *On and after July 1, 2015, the penalty for a first occurrence shall be a 30-day suspension followed by a restriction to driving only under circumstances provided by subsections (a)(1), (2), (3) and (4) of K.S.A. 8-292 for a period of 90 days to one year* (i.e. to and from work or school, in the course of employment, for medical emergency, to and from probation or parole meetings, drug or alcohol counseling, or to alcohol and drug safety action program as required and at other times and to other places specified in the order). (Section 14 & 15)
- For a *second occurrence*, driving privileges shall be suspended for one year, followed by a one-year ignition interlock restriction. (Section 14)
- For a *third occurrence, driving privileges shall be suspended for one year, followed by a two-year ignition interlock restriction*. (Section 14)
- For a *fourth occurrence, driving privileges shall be suspended for one year, followed by a three-year ignition interlock restriction*. (Section 14)

- For a fifth or subsequent occurrence, driving privileges shall be suspended for *one year, followed by a 10-year ignition interlock restriction*. (Section 14)

DUI Blood or Breath Alcohol Concentration of .15 or Greater (Section 14)

The administrative penalties for test failure with a blood or breath alcohol concentration of .15 or greater is amended to provide that for a fifth or subsequent occurrence, driving privileges shall be suspended for *one year, followed by a 10-year ignition interlock restriction*.

Relief from Restriction to Ignition Interlock Device (Section 14)

A person subject to a 10-year ignition interlock restriction shall be permitted to petition the district court for relief from this restriction after five years of the restriction has been served.

Relief from Suspension (Section 15)

A person whose driving privileges have been suspended for one year shall be allowed, after 45 days of such suspension, to apply to the Division of Vehicles for an ignition interlock restriction for the remainder of the suspension period for the purposes of getting to and from work, school, an alcohol treatment program, and the ignition interlock provider for maintenance purposes. A violation of the restrictions shall add an additional year of suspension.

Tampering with an Ignition Interlock Device (Section 16)

The criminal penalty for tampering with an ignition interlock device remains a class A nonperson misdemeanor. However, administrative penalties for tampering with or requesting another to blow into an ignition interlock device are amended as follows:

- *On a first conviction, the ignition interlock restriction shall be extended for an additional 90 days*; and
- *On a second or subsequent conviction, the original interlock restriction period shall be restarted*.

For any violation involving operation of a vehicle not equipped with an ignition interlock device while such person's driving privileges have been restricted to driving only a motor vehicle equipped with such device, *the original interlock restriction period shall be restarted*.

KBI Central Repository (Section 27)

The bill requires the KBI director to adopt rules and regulations on or before July 1, 2012, requiring district courts to report to the central repository the filing of all cases alleging a DUI or commercial DUI. The Director shall adopt rules and regulations on or before July1, 2013, requiring such reporting to be electronic.

Domestic Violence Diversions (Section 26)

The bill amends K.S.A. 2010 Supp. 22-2909 to provide that *if a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging domestic violence, the 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. The defendant shall also pay for the assessment and for completion of all recommendations unless otherwise agreed to with the prosecutor*.

Culpability (Section 34)

The bill also clarifies that a violation of K.S.A. 8-2,144 (Commercial DUI) is a strict liability crime.

This bill was approved by the Governor and became effective July 1, 2011.

House Substitute for Senate Bill 23 - Juvenile Offenders

Juvenile Jury Trials (Sections 3 – 5)

House Substitute for SB 23 amends K.S.A. 2010 Supp. 38-2357 by establishing a statutory right to jury trial for juvenile offenders and provides a jury trial procedure within the revised Kansas Juvenile Justice Code. The procedural provisions are borrowed from the statutes governing adult jury trials, with some modifications. The principal differences from the adult jury trial provisions are:

- A juvenile shall request a jury trial in every case, within 30 days from the entry of plea of not guilty. In adult felony cases, trial by jury is automatic unless waived.
- A juvenile shall not have the right to personally participate in *voir dire*. Adult defendants have this right.

This bill was approved by the Governor and became effective July 1, 2011.

House Substitute for Senate Bill 36 - Abortion

Licensing of Abortion Clinics (Section 8)

House Substitute for SB 36 pertains to abortions and licensure of abortion clinics. The bill provides that it shall be unlawful to operate a facility within Kansas without possessing a valid license issued annually by the secretary. It shall also be unlawful for a person to perform or induce an abortion in a facility unless such person is a physician, with clinical privileges at a

hospital located within 30 miles of the facility. *Violation of either provision is a class A nonperson misdemeanor and shall constitute unprofessional conduct under K.S.A. 65-2837.*

The bill was approved by the Governor and became effective July 1, 2011.

House Substitute for Senate Bill 37 - Kansas Offender Registration Act

Offender Classification (Section 2)

House Substitute for SB 37 amends the Kansas Offender Registration Act (KORA) (K.S.A. 22-4901 et seq.) to bring it into substantial compliance with the federal Adam Walsh/Sex Offender Registration and Notification Act. The bill classifies all offenders subject to registration into three groups as follows:

I. **"Sex offender"** includes any person who:
- Is convicted of a sexually violent crime;
- Is adjudicated as a juvenile offender for an act which if committed by an adult would be considered 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;
- Has been determined to be a sexually violent predator;
- Is convicted of any of the following acts when one of the parties is less than 18 years of age: adultery, criminal sodomy, promoting prostitution, patronizing a prostitute, or lewd and lascivious behavior;
- Is convicted of sexual battery;
- Is convicted of attempt, conspiracy or criminal solicitation of any of the above offenses;
- Has been convicted of a substantially similar offense in effect prior to July 1, 2011 or any out of state conviction for an offense that would be an offense defined above.

II. **"Violent offender"** includes any person who is convicted of any of the following:
- Capital murder, murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; kidnapping; aggravated kidnapping; criminal restraint, except by a parent and only when the victim is less than 18 years of age; aggravated human trafficking; attempt, conspiracy or criminal solicitation of any of these offenses; a substantially similar offense in effect prior to July 1, 2011; or any out of state conviction for an offense that would be an offense in this section; or,
- Any person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such felony.

III. **"Drug offender"** includes any person who is convicted of any of the following:
- Unlawful manufacture or attempted unlawful manufacture of a controlled substance; possession of methamphetamine precursors; distribution or possession with intent to

distribute amphetamine, methamphetamine or precursors; a substantially similar offense in effect prior to July 1, 2011; any out of state conviction for an offense that would be an offense in this section or any attempt, conspiracy or criminal solicitation of any of these offenses.

Registration Terms (Section 6)

House Substitute for SB 37 redefines registration periods into three broad groups as follows:

I. Offenses requiring registration for **15 years**:

- Any of the following when one of the parties involved is less than 18 years of age: sexual battery, adultery, patronizing a prostitute, and lewd and lascivious behavior;
- Capital murder, murder in the first degree; murder in the second degree; voluntary manslaughter; involuntary manslaughter; criminal restraint, except by a parent and only when the victim is less than 18 years of age; any act which at the time of the sentencing for the offense 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; a person felony and the court makes a finding on the record that a deadly weapon was used in the commission of such felony; unlawful manufacture or attempted unlawful manufacture of a controlled substance; possession of methamphetamine precursors; distribution or possession with intent to distribute amphetamine, methamphetamine or precursors; or any attempt, conspiracy or criminal solicitation of any of these offenses.

II. Offenses requiring registration for **25 years**:

Criminal sodomy as defined in subsection (a)(1) or (a)(2) of K.S.A. 21-5504 (formerly subsection (a)(1) of K.S.A. 21-3505) when one of the parties is less than 18 years of age; indecent solicitation of a child as defined in subsection (a) of K.S.A. 21-5508 (formerly K.S.A. 21-3510); electronic solicitation; aggravated incest as defined in subsection (b) of K.S.A. 21-5604 (formerly K.S.A. 21-3603); indecent liberties with a child as defined in subsection (a) of 21-5506 (formerly K.S.A. 21-3503); unlawful sexual relations; sexual exploitation of a child 14 or more years of age but less than 18 years of age; aggravated sexual battery as defined in subsection (b) of K.S.A. 21-5505 (formerly K.S.A. 21-3518); promoting prostitution if the prostitute is 14 or more years of age but less than 18 years of age; or any attempt, conspiracy or criminal solicitation of any of these offenses.

III. **Lifetime** registration shall be required for:

- Second or subsequent conviction of any offense requiring registration;
- Rape; aggravated indecent solicitation of a child as defined in subsection (b) of K.S.A. 21-5508 (formerly K.S.A. 21-3511); aggravated indecent liberties with a child as defined in subsection (b) of K.S.A. 21-5506 (formerly K.S.A. 21-3504); criminal sodomy as defined in subsection (a)(3) or (a)(4) of K.S.A. 21-5504 (formerly subsection (a)(2) or (a)(3) of K.S.A. 21-3505); aggravated criminal sodomy as defined in subsection (b) of K.S.A. 21-5504 (formerly K.S.A. 21-3506); aggravated human trafficking as defined in subsection (b) of K.S.A. 21-5426 (formerly K.S.A. 21-3447) if the victim is less than 18

years of age; sexual exploitation of a child less than 14 years of age; promoting prostitution if the prostitute is less than 14 years of age; kidnapping as defined in subsection (a) of K.S.A. 21-5408 (formerly K.S.A. 21-3420); aggravated kidnapping as defined in subsection (b) of K.S.A. 21-5408 (formerly K.S.A. 21-3421); or any attempt, conspiracy or criminal solicitation of any of these offenses;

- Any person who has been declared a sexually violent predator.

IV. **Juvenile** registration:

- For juveniles less than 14 years of age who are adjudicated for an act which if committed by an adult would be considered a sexually violent crime, the court shall:
  1. Require registration until the offender turns 18, at the expiration of five years from the date of adjudication, or, if confined, from release from confinement, whichever date occurs later, or
  2. Not require registration if the court, on the record, finds substantial and compelling reasons therefor; or
  3. Require registration but such registration shall not be open to inspection by the public or posted on any internet website.

- For juveniles 14 or more years of age who are adjudicated for an act which if committed by an adult would be considered a sexually violent crime, and such crime is **not** an off-grid felony or a nondrug severity level 1 felony, the court shall:
  1. Require registration until the offender turns 18, at the expiration of five years from the date of adjudication, or, if confined, from release from confinement, whichever date occurs later, or
  2. Not require registration if the court, on the record, finds substantial and compelling reasons therefor; or
  3. Require registration but such registration shall not be open to inspection by the public or posted on any internet website.

- Juveniles 14 or more years of age who are adjudicated for an act which if committed by an adult would be considered a sexually violent crime, and such crime **is** an off-grid felony or a nondrug severity level 1 felony, shall register for such offender's lifetime.

Offender Responsibilities (Section 5)

The bill amends existing law by requiring offenders to register *within 3 business days* of coming into a county in which the offender intends to reside, maintain employment or attend school. *Sex offenders are required to report in person four times per year*. *Violent offenders and drug offenders are required to report in person four times per year*, except that, at the discretion of the registering law enforcement agency, *one of the four required reports may be by conducted by certified letter*.

Penalty for Failure to Register (Section 3)

The bill also amends penalties for violations of KORA as follows:

- First failure to register is a *severity level 6, person felony*;
- *Second failure to register is a severity level 5, person felony*;
- *Third or subsequent failure to register is a severity level 3, person felony*;
- Creates the new felony of aggravated failure to register, defined as a failure to register for more than 180 consecutive days. *Aggravated failure to register is a severity level 3, person felony*.
- Each violation that continues for more than 30 or 180 consecutive days shall, upon the 31st or 181st consecutive day, constitute a separate and new offense, and shall continue to constitute a separate offense every 30 or 180 days thereafter.

Expungement (Section 13)

Finally, House Substitute for SB 37 amends the expungement statute to provide that for any offender required to register as provided in the Kansas Offender Registration Act, there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register.

The bill was approved by the Governor and became effective July 1, 2011.

House Substitute for Senate Bill 55 - Reconciliation Bill

House Arrest (Sections 2, 19 & 21)

The bill amends K.S.A. 2010 Supp. 12-4509 to allow municipal judges to sentence a defendant convicted of violating an ordinance to house arrest. (Section 2)

The bill amends K.S.A. 21-6609 (formerly K.S.A. 21-4603b) to provide that house arrest may be imposed as a sanction for offenders who fail to comply with conditions of probation, parole or postrelease supervision unless the offender has been convicted of any of the disqualifying crimes listed. House arrest is not authorized if the offender was convicted of any off-grid felony, any nondrug crime ranked in severity levels 1 through 5, or any drug felony ranked in severity levels 1 through 3, unless the offender was sentenced to probation. (Section 19)

In addition, the bill sets out the specific requirements for placing someone on house arrest including that the offender must remain within the property boundaries of the residence and be electronically monitored. Second-time DUI offenders placed on house arrest must serve 120 hours of confinement within the boundaries of the residence. Third-or-subsequent DUI offenders placed on house arrest must serve 240 hours of confinement within the residential boundaries. Any exceptions to remaining within the residential boundaries shall not be counted towards the 120 or 240 minimum hours of confinement. (Section 19)

The bill also amends K.S.A. 21-6804 (formerly K.S.A. 21-4704) to allow a court to consider assigning a defendant to a house arrest program prior to imposing a sentence for nondrug-grid crimes. (Section 21)

Expungement of Arrest Records (Section 4)

The bill amends K.S.A. 2010 Supp. 22-2410 to add that there shall be no fee imposed for filing for expungement of arrest records if the person is one who has *had criminal charges dismissed because a court has found that there was no probable cause for the arrest, the petitioner was found not guilty in court proceedings, or the charges have been dismissed*.

Expungements (Sections 3, 4, 13, & 20)

All expungement statutes are amended to provide that the court *shall make all expunged records and related information created prior to, on and after July 1, 2011, available to the KBI for the purposes of completing a person's criminal history record information within the central repository or for the purposes of providing information or documentation to the FBI in connection with the national instant background check system, to determine a person's qualification to possess a firearm*.

Juvenile expungement pursuant to K.S.A. 2010 Supp. 38-2312, as well as adult expungement pursuant to K.S.A. 21-6614 (formerly K.S.A. 21-4619), are amended to provide that for any offender required to register as provided in the Kansas Offender Registration Act, *there shall be no expungement of any conviction or any part of the offender's criminal record while the offender is required to register*. (Sections 13 & 20)

Grand Juries (Section 8)

The bill amends K.S.A. 22-3001 concerning grand juries, to allow the district or county attorney in such attorney's county to petition the chief judge or the chief judge's designee in such district court to order a grand jury to be summoned in the designated county in the district to investigate alleged violations of an off-grid felony, a severity level 1, 2, 3 or 4 felony or a drug severity level 1 or 2 felony. The chief judge or the chief judge's designee in the district court of the county shall then consider the petition and, if it is found that the petition is in proper form, shall order a grand jury to be summoned.

Direct Appeals for Certain Off-Grid Offenses (Section 9)

The bill amends K.S.A. 22-3601 to clarify which cases shall be appealed directly to the Kansas Supreme Court, rather than to the Court of Appeals. Those cases are:

- Any case in which a statute of this state or of the United States has been held unconstitutional;
- Any case in which the defendant has been convicted of a class A felony;
- Any case in which a maximum sentence of life imprisonment has been imposed, unless the maximum sentence has been imposed pursuant to K.S.A. 21-4643, prior to its repeal, or K.S.A. 21-6627; and
- Except as provided further, any case in which the crime was committed on or after July 1, 1993, and the defendant has been convicted of an off-grid crime;

- Direct appeal to the Kansas Supreme Court shall not apply if the off-grid crime was any of the following, when committed by an offender 18 years of age or older and the victim was under 14 years of age:
    - Aggravated Human Trafficking;
    - Rape;
    - Aggravated Criminal Sodomy;
    - Aggravated Indecent Liberties with a Child;
    - Sexual Exploitation of a Child;
    - Promoting Prostitution;
    - An Attempt, Conspiracy, or criminal Solicitation of any of the above.

Community Corrections (Section 14)

The bill amends K.S.A. 2010 Supp. 75-5291(a)(3), which requires adult offenders sentenced to community supervision in Johnson County for certain felonies to be placed under court services or community corrections supervision, to extend the sunset provision to *July 1, 2013*.

Sexual Exploitation of a Child (Section 16)

The bill amends K.S.A. 21-5510 (formerly K.S.A. 21-3516), the crime of Sexual Exploitation of a Child to allow punishment if the offender believes a child to be under 18 years of age as listed below:

- Subsection (a)(1); Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, *or a person whom the offender believes to be under 18 years of age,* to engage in sexually explicit conduct with the intent to promote any performance; or
- Subsection (a)(4); Promoting any performance that includes sexually explicit conduct by a child under 18 years of age, *or a person whom the offender believes to be under 18 years of age,* knowing the character and content of the performance.

In addition, the penalty section incorporates amendments from section 32 of 2011 HB 2339 which clarify that a violation of subsections (a)(1) or (a)(4), *or an attempt, conspiracy or solicitation to commit such violations*, when committed by one 18 years of age or older and the victim is under 14 years of age, are off-grid person felonies. Furthermore, if the offender is 18 years of age or more and the victim is under 14 years of age, the provisions of attempt, conspiracy or solicitation shall not apply to reduce the severity level or length of sentence imposed.

Harrassment by Telecommunication Device (Section 17)

The bill amends K.S.A. 21-6206 (formerly K.S.A. 21-4113) to expand its application to include the use of a telecommunication device to transmit an obscene, lewd, lascivious, or indecent *image or text*. The bill also makes it illegal to use a telecommunication device to *transmit any comment, request, suggestion, proposal, image, or text with intent to abuse, threaten, or harass any person at the receiving end*. In addition, it is illegal to cause a telecommunication device to

repeatedly *ring or activate* with the intent to harass any person at the receiving end. The penalty remains a Class A misdemeanor.

A person charged with Harassment by Telecommunication Device may also be charged with and convicted of indecent solicitation of a child, aggravated indecent solicitation of a child, electronic solicitation, sexual exploitation of a child, or promoting obscenity.

Work Release for DUI (Section 18)

The bill incorporates amendments made in section 66 of 2011 HB 2339 and further amends K.S.A. 21-6604 (formerly K.S.A. 21-4603d) to specify that if an offender is placed in a work release program, other than one at a correctional institution under the control of the secretary of corrections, *such program shall require that the offender to return to confinement at the end of each day in the program*. It also specifies that *second-time DUI offenders* placed in work release *must serve 120 hours of confinement*, including an initial minimum of 48 consecutive hours of imprisonment. *Third-or-subsequent DUI offenders* placed in work *release must serve 240 hours of confinement*, including the initial minimum of 48 consecutive hours' imprisonment.

Domestic Violence Assessment (Section 18)

The bill incorporates amendments made in section 66 of 2011 HB 2339 to provide that for any criminal offense that includes a domestic violence designation, the court shall require the defendant to undergo a domestic violence offender assessment and follow all recommendations unless otherwise ordered by the court or the department of corrections. The court may order such assessment or any other evaluation prior to sentencing if it would assist in determining an appropriate sentence. The defendant is required to pay for any of these assessments and for completion of the recommendations unless otherwise ordered.

Community Service in Lieu of Fines (Section 18)

The bill also adds a subsection to allow the court to authorize payment of fines imposed by performance of community service as specified by the court. The fine shall be credited at an amount of $5 for each full hour of community service performed. Such community service shall be required to be completed by the later of one year after the fine is imposed or one year after release from imprisonment or jail, or by an earlier date specified by the court. If by the required date, the person has not completed sufficient community service to reduce the fine to zero, the remaining balance shall become due on that date.

Sentencing Rules (Section 21)

The bill incorporates several new sentencing rules as amended in section 1 of 2011 HB 2008. First, the special rule pertaining to burglary is amended to expand its application. If an offender is convicted of burglary of a dwelling, *or any attempt, conspiracy or solicitation to commit such burglary*, and the offender has a prior conviction for burglary of any building, aggravated burglary *or any attempt, conspiracy or solicitation to commit such*, the sentence shall be presumptive imprisonment.

Second, subsection (s) is added to provide that *the sentence for unlawful sexual relations shall be presumptive imprisonment. Such shall not be considered a departure and shall not be subject to appeal.*

Third, subsection (t) is added to provide that *if the trier of fact makes a finding that an offender wore or used ballistic resistant material in the commission of, or attempt to commit, or flight from any felony, in addition to the sentence imposed pursuant to the Kansas sentencing guidelines, the offender shall be sentenced to an additional 30 months' imprisonment and such additional term shall be served consecutively to any other term or terms of imprisonment imposed. Such shall not be considered a departure and shall not be subject to appeal.*

Finally, subsection (u) is added to provide that *the sentence for identity theft or identity fraud or any attempt or conspiracy to commit such, when the offender has a prior conviction for identity theft or identity fraud or any attempt or conspiracy to commit such, shall be presumptive imprisonment. Such shall not be considered a departure and shall not be subject to appeal.*

This bill was approved by the Governor and became effective July 1, 2011.

House Substitute for Senate Bill 63 - Civil Procedure

Duties of a Court Clerk (Section 3)

The bill amends K.S.A. 60-2601, the duties of a court clerk, by removing the requirements that the clerk keep the papers in each case in a wrapper or folder and that the clerk initial the date and time stamp on each paper. Instead, it provides that the date and time of receipt of filings received by the clerk shall be recorded.

Kansas Supreme Court (Section 4)

The bill amends K.S.A. 60-2601a to provide that the Kansas Supreme Court, rather than the chief judge of a district court, has the authority to order that records and information of the district court be kept in a computer information storage and retrieval system.

Asset Seizure and Forfeiture Act (Section 6)

The bill amends K.S.A. 2010 Supp. 60-4107 to clarify that court costs may be assessed under the Asset Seizure and Forfeiture Act.

This bill was approved by the Governor and became effective July 1, 2011.

Senate Bill 97 - Court Fees and Costs

Court Fees and Judicial Branch Surcharge (Sections 3, 4 & 11)

Senate Bill 97 pertains primarily to court fees and amends expungement statutes to consistently provide that a petition fee for expungement shall be accompanied by a docket fee in the amount of $100. Prior to this amendment, no docket fee was charged for petitions for expungement pursuant to K.S.A. 21-6614 (formerly K.S.A. 21-4619). On and after July 1, 2011, through *June 30, 2012*, the Kansas Supreme Court may impose a charge not to exceed *$19* per case.

This bill was approved by the Governor and became effective July 1, 2011.

Senate Bill 112 - County Surveyors

Interference with Surveyors (Section 6)

Senate Bill 112 amends K.S.A. 19-1413(b) to provide that *threatening or improperly interfering with any county surveyor or such surveyor's deputy, during the performance of official duties is a Class A nonperson misdemeanor*.

This bill was approved by the Governor and became effective July 1, 2011.

Senate Bill 227 - Anemometer Towers

Failure to Mark Anemometer Towers (Section 1)

Senate Bill 227 establishes daylight marking requirements for anemometer towers which measure and record wind speed.

Subsection (b) requires specific daylight visibility markings for any anemometer tower that is at least 50 feet in height and that is located outside the corporate boundaries of a city, provided the appearance of the tower is not otherwise mandated by state or federal law.

Subsection (c) provides that *failure by an owner of an anemometer tower to properly mark the tower is a Class C nonperson misdemeanor*.

This bill was approved by the Governor and became effective July 1, 2011.

Senate Bill 247 - Reconciliation Bill

Mistreatment of Dependent Adults (Section 33)

Senate Bill 247 amends K.S.A. 21-5417 (formerly 21-3437), Mistreatment of dependant adults, to increase penalties and adjust values involved as follows:

- Infliction of physical injury, unreasonable confinement or *unreasonable* punishment upon a dependent adult is changed from a severity level 6, person felony, to a *severity level 5, person felony*;
- Taking unfair advantage of a dependent adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense is penalized based on the aggregate amount of the value of the resources as listed below:
    - *$1,000,000 or more is a severity level 2, person felony;*
    - *At least $250,000 but less than $1,000,000 is a severity level 3, person felony;*
    - *At least $100,000 but less than $250,000 is a severity level 4, person felony;*
    - *At least $25,000 but less than $100,000 is a severity level 5, person felony;*
    - *At least $1,000 but less than $25,000 is a severity level 7, person felony;*
    - *Less than $1,000 is a class A person misdemeanor;*
    - *Less than $1,000 is a severity level 7, person felony if committed by a person who has been convicted of mistreatment of a dependent adult two or more times within five years immediately preceding commission of the current crime*;
- *Omission or deprivation of* treatment, goods or services *that* are necessary to maintain physical or mental health of a dependent adult is increased from a class A person misdemeanor to a *severity level 8, person felony*.

Aggravated Habitual Sex Offender (Section 37)

In addition, Senate Bill 247 amends K.S.A. 21-6607 (formerly 21-4642) to change the definition of "Aggravated habitual sex offender" to mean a person who, on and after July 1, 2006: (A) Has been convicted in this state of a sexually violent crime, as described in subsection (c)*(2)*(A) through (c)*(2)(H)* or (c)*(2)(J)*; and (B) prior to the conviction of the felony under subparagraph (A), has been convicted *of two or more sexually violent crimes.*

Penalty for Partial Birth Abortion (Section 30)

The bill incorporates the amendment to K.S.A. 65-6721(g) in section 8 of 2011 House Bill 2035 to increase the penalty regarding prohibitions on performing unlawful partial birth abortions from a severity level 10 to a *severity level 8,* person felony.

The bill was approved by the Governor and became effective July 1, 2011.

House Bill 2010 – Civil Forfeiture

Forfeiture (Section 1)

House Bill 2010 adds the following to the list of offenses giving rise to civil forfeiture pursuant to K.S.A. 2010 Supp. 60-4104, the Kansas Asset Seizure and Forfeiture Act:

- Embezzlement;
- Mistreatment of a Dependant Adult;
- Giving a Worthless Check;
- Forgery;
- Making False Information;
- Criminal use of a Financial Card;
- Unlawful Acts Concerning Computers;
- Identity Theft and Fraud; and
- Electronic Solicitation.

The bill removes theft of livestock from the Kansas Asset Seizure and Forfeiture Act; however, theft as defined in K.S.A. 21-5801 (formerly K.S.A. 21-3701), remains listed.

This bill was approved by the Governor and became effective July 1, 2011.

House Bill 2023 – Controlled Substances

Schedules of Controlled Substances (Sections 1-5)

House Bill 2023 amends K.S.A. 65-4107, 65-4109, 65-4111 and K.S.A. 2010 Supp. 65-4105 and 65-4113, by adding to the scheduling of controlled substances, to bring Kansas' law into agreement with the federal schedule.

This bill was approved by the Governor and became effective July 1, 2011.

House Bill 2035 – Child Abuse

Reporting Child Abuse (Section 1)

House Bill 2035 amends K.S.A. 2010 Supp. 38-2223 to provide that *any person employed by or who works as a volunteer for any organization, whether for profit or not-for-profit, that provides social services to pregnant teenagers, including but not limited to, counseling, adoption services and pregnancy education and maintenance* is required to report any suspected child abuse.

Willful and knowing failure to make a report; intentionally preventing or interfering with the making of a report; and willfully and knowingly making a false report are still class B misdemeanors.

The bill was approved by the Governor and became effective July 1, 2011.

House Bill 2044 – Requirements after Motor Vehicle Accident

Failure to Remain at the Scene of an Accident (Section 1)

House Bill 2044 amends K.S.A. 2010 Supp. 8-1602 to add accidents resulting in damage to an attended vehicle or property to the list of vehicle accidents requiring a person to immediately stop and remain at the scene. Further, the bill amends penalties for leaving the scene of an accident as follows:

- *Total property damage of less than $1,000 shall be a misdemeanor, and upon conviction, shall be punished as provided in K.S.A. 8-2116.*
    - K.S.A. 8-2116 provides that a first conviction shall be a Class C misdemeanor, a second committed within one year of the first shall be a Class B misdemeanor, and a third or subsequent committed within one year of the first shall be a Class A misdemeanor.
- Injury to any person *or total property damages in excess of $1,000 or more* shall be a class A person misdemeanor.
- Great bodily harm to a person is increased from a severity level 10 to a *severity level 8*, person felony.
- Death of a person is increased from a severity level 9 to a *severity level 6*, person felony; except when a person involved in an accident *knew or should have known that the accident resulted in injury or death*, the penalty shall be a *severity level 5, person felony*.

Failure to Contact Owner (Section 3)

The bill amends K.S.A. 2010 Supp. 8-1605 to require the driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended, resulting in damage to such vehicle or property, to stop immediately and locate the owner to provide the owner with required information or attach securely in a conspicuous place in or on the vehicle or property the required information. Violation shall be punished as provided in K.S.A. 8-2116 which provides that a first conviction for a violation shall be a Class C

misdemeanor, a second committed within one year of the first shall be a Class B misdemeanor, and third or subsequent committed within one year of the first shall be a Class A misdemeanor.

Criminal History (Section 4)

The bill amends K.S.A. 21-6811 (formerly K.S.A. 21-4711) to provide that if a person is convicted of leaving the scene of an accident resulting in damage $1000 or greater, injury to any person, great bodily harm to any person, or death of any person, each of the following prior convictions committed on or after July 1, 2011, shall count as a person felony for criminal history purposes:

- 8-235, driving a vehicle without a license;
- 8-262, driving while license is canceled, suspended, or revoked;
- 8-287, driving while one's privileges are revoked for being a habitual violator;
- 8-291, violating restrictions on driver's license or permit;
- 8-1566, reckless driving;
- 8-1567, driving under the influence of alcohol or drugs;
- 8-1568, fleeing or attempting to elude a police officer;
- 8-1602, leaving the scene of an accident resulting in injury, great bodily harm, or death;
- 8-1605, failing to contact the owner of vehicle following an accident causing damage to unattended property;
- 40-3104, failing to obtain motor vehicle liability insurance coverage;
- Subsection (a)(3) of K.S.A. 21-5405 (formerly K.S.A. 21-3442), involuntary manslaughter committed while DUI; and
- K.S.A. 21-5406 (formerly K.S.A. 21-3405), vehicular homicide
- Or a violation of a city ordinance or law of another state which would also constitute a violation of such sections.

This bill was approved by the Governor and became effective July 1, 2011.

Senate Substitute for House Bill 2049 – Controlled Substances

Distribution or Possession with Intent to Distribute (Sections 1 & 2)

Senate Substitute for HB 2049 amends K.S.A. 2010 Supp. 21-36a05 and 21-36a06, crimes involving controlled substances, by adding the substances in 65-4105(h) to the lists of substances that are illegal to cultivate, distribute, possess, or possess with intent to distribute. The penalty for distribution of or possession with intent to distribute these substances is a drug severity level 3 felony. The penalty for possession of these substances is a class A nonperson misdemeanor, unless such person has a prior conviction for possession, then it becomes a drug severity level 4 felony.

Controlled Substances Schedules (Section 3)

The bill amends K.S.A. 2010 Supp. 65-4105 concerning controlled substances included in Schedule I by creating new subsection (h) to include a type of synthetic marijuana commonly referred to as K-3. It also adds to subsection (e) a section that includes a class of substituted cathinones, commonly known as bath salts.

This bill was approved by the Governor and became effective May 26, 2011.

House Bill 2067 – Elections

Advanced Voting (Section 6)

The bill amends K.S.A. 2010 Supp. 25-1128, to clarify that the standard of culpability for advance voting crimes is "knowingly".

The bill amends K.S.A. 2010 Supp. 25-1128 by creating new subsection (d) providing that *no person shall knowingly sign an application for an advance voting ballot for another person. This provision shall not apply if a voter has a disability preventing the voter from signing or if an immediate family member signs an application on behalf of another immediate family member with proper authorization*.

The bill also amends K.S.A. 2010 Supp. 25-1128 by adding subsection (g) providing that *upon written designation by the voter, a person other than the voter may return the advance voting ballot by personal delivery or mail. Any such person designated by the voter shall sign a statement that such person has not exercised undue influence on the voting decisions and agrees to deliver the ballot as directed by the voter*.

Violation of an advance voting crime is a Class C misdemeanor.

This bill was approved by the Governor and shall be effective January 1, 2012.

House Bill 2076 – Fraudulent Insurance Act

Penalty for Fraudulent Insurance Act (Section 3)

House Bill 2076 defines a "fraudulent insurance act" as *an act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance*

which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto. Except as otherwise specifically provided in K.S.A. 21-5812 (formerly K.S.A. 21-3718) and K.S.A. 44-5,125, *the penalties for a fraudulent insurance act shall be*:

- *A severity level 6, nonperson felony if the amount involved is $25,000 or more;*
- *A severity level 7, nonperson felony if the amount involved is at least $5,000 but less than $25,000;*
- *A severity level 8, nonperson felony if the amount involved is at least $1,000 but less than $5,000; and*
- *A class C nonperson misdemeanor if the amount involved is less than $1,000*.
- *Any combination of fraudulent acts which occur in a period of six consecutive months which involves $25,000 or more shall have a presumptive sentence of imprisonment regardless of its location on the sentencing grid block.*

The bill was approved by the Governor and became effective July 1, 2011.

Senate Substitute for House Bill 2134 – Workers Compensation

Exempt Status (Section 27)

Senate Substitute for HB 2134, authorizes the Commissioner of Insurance to establish an affidavit form by which a person or company may establish a rebuttable presumption that the executor is not an employee for purposes of the workers compensation act and that an individual or company possessing the affidavit is in compliance and therefore shall not be responsible for workers compensation claims made by the executor.

Knowingly providing false information on a notarized affidavit of exempt status is an unclassified misdemeanor, punishable with a fine up to $1,000.

This bill was approved by the Governor and became effective April 28, 2011.

Senate Substitute for House Bill 2135 – Employees

Misclassification of Employees (Section 4)

The bill amends K.S.A. 2010 Supp. 44-766 relating to the penalties for misclassification of employees to avoid tax withholding, contributions and reporting requirements.

- *A first violation shall be subject to a civil penalty computed pursuant to K.S.A. 79-3228*;

- *A second violation shall be subject to a civil penalty and upon conviction, shall be guilty of a class C nonperson misdemeanor*;
- *A third and subsequent violation shall be subject to a civil penalty and upon conviction, shall be guilty of a class A nonperson misdemeanor*.

This bill was approved by the Governor and became effective July 1, 2011.

House Bill 2151 – Breach of Privacy & Blackmail

Breach of Privacy (Section 1)

House Bill 2151 amends K.S.A. 21-6101 which combines breach of privacy and eavesdropping as formerly defined in K.S.A. 21-4001 and 21-4002. It expands the definition of the crime of breach of privacy and increases certain penalties for the crimes. The following are Class A nonperson misdemeanors, knowingly and without lawful authority:

- (a)(1) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communication. (Formerly K.S.A. 21-4002(a)(1)).
- (a)(2) Divulging, without consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted. (Formerly K.S.A. 21-4002(a)(2)).
- (a)(3) Entering into a private place with intent to listen surreptitiously to private conversations or to observe the personal conduct of another person or persons entitled to privacy therein. (Formerly K.S.A. 21-4001(a)(1)).
- (a)(4) Installing or using outside or inside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in such place, which sounds would not ordinarily be audible or comprehensible without the use of such device, without the consent of the persons entitled to privacy. (Formerly K.S.A. 21-4001(a)(2)).
- (a)(5) Installing or using any device or equipment for the interception of any telephone, telegraph or other wire or wireless communication without the consent of the person in possession or control of facilities for such communication. (Formerly K.S.A. 21-4001(a)(2)).

The bill further amends K.S.A. 21-6101(a)(6) (formerly K.S.A. 21-4002) to increase the penalty from a Class A misdemeanor to a *severity level 8, person felony* for installing or using a concealed camcorder, motion picture camera or a photographic camera of any type, to secretly videotape, film, photograph or record by electronic *or other* means, another, identifiable person under or through the clothing being worn by that other person or another, identifiable person who is nude or in the state of undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to invade the privacy of that person, under circumstances in which the other person has a reasonable expectation of privacy.

The bill also adds subsection (a)(7) to create a crime of breach of privacy by *disseminating or permitting the dissemination of any videotape, photograph, film or image obtained in violation subsection (a)(6)* as provided above. The penalty is a *severity level 5, person felony*.

Blackmail (Section 2)

The bill amends K.S.A. 21-5428 (formerly K.S.A. 21-3428) to expand the definition of blackmail by adding subsection (a)(2). Blackmail is gaining or attempting to gain anything of value or compelling or attempting to compel another to act against such person's will, by threatening to:

- (a)(1) Communicate accusations or statements about any person that would subject such person or any other person to public ridicule, contempt or degradation. The penalty for this violation is a severity level 7, nonperson felony.
- *(a)(2) Disseminate any videotape, photograph, film, or image obtained in violation of subsection (a)(6) of* K.S.A. 21-6101 (formerly K.S.A. 21-4002) as listed above under Breach of Privacy. The penalty for this violation is a *severity level 4, person felony*.

Note: Section 28 of HB 2339 also adds the culpability term "intentionally" to the definition of blackmail so that it reads, "Blackmail is *intentionally* gaining or attempting to gain. . ."

This bill was approved by the Governor and became effective July 1, 2011.

House Bill 2218 - Abortion

Restrictions on Late Term Abortions (Sections 1 - 3)

House Bill 2218 enacts new statutory restrictions on certain late term abortions. The bill defines a "pain-capable" child as an unborn child that has reached the gestational age of 22 weeks or more.

Penalty for Late Term Abortion (Section 3)

New Section 3 of the bill prohibits performing abortions on a "pain-capable" child. *The first violation shall be a class A person misdemeanor*. *A second or subsequent conviction of this offense shall be a severity level 10, person felony*.

The bill was approved by the Governor and became effective July 1, 2011.

House Bill 2240 – Cemetery Corporations

Misuse of Cemetery Merchandise Trust Fund (Section 8)

House Bill 2240 amends K.S.A. 16-323 to specifically define the crime of *misuse of the cemetery merchandise trust fund or any money belonging thereto* as *knowingly using, investing, lending or permitting another to use moneys in the fund in a manner not authorized by law*.

The bill increases the penalty from a class A misdemeanor to a *severity level 7, nonperson felony*.

Misuse of Permanent Maintenance Fund (Section 17)

The bill also amends K.S.A. 17-1311a pertaining to misuse of the permanent maintenance fund to clarify that the culpability standard shall be "knowingly". The penalty for violation remains a severity level 7, nonperson felony.

This bill was approved by the Governor and shall be effective January 1, 2012.

House Bill 2312 – Regulated Scrap Metal

Business Registration Required (Section 1)

House Bill 2312 provides that, effective January 1, 2012, in order to purchase regulated scrap metal, each place of business must first register as required in the bill. If the place of business is located within the corporate limits of a city, the registration shall be made to the governing body of such city. In all other cases, the registration shall be made to the board of county commissioners. Violation of this act is a *class A nonperson misdemeanor*.

Theft Definitions (Section 4)

The bill amends K.S.A. 21-5801 (formerly K.S.A. 21-3701) to change the property damage value, which would include either restoration costs or property value, whichever is greater. "Value" would be defined under the bill as the value of the property or the cost to restore the site of the theft. *The penalties for theft of regulated scrap metal are equivalent to theft of property crimes*.

This bill was approved by the Governor and became effective July 1, 2011.

House Bill 2339 – Reconciliation Bill

House Bill 2339 reconciles all of the changes to Kansas Criminal Code that were not made during the regular session of the 2010 Legislature in 2010 House Bill 2668. This includes the recodification, all new crimes created, and other amendments to existing crimes.

Maintenance of Common Nuisance (Section 1)

The bill creates a new crime and penalty pertaining to common nuisances. *Maintaining or assisting in the maintenance of a common nuisance as described by K.S.A. 22-3901 is a class A nonperson misdemeanor*. In addition to the sentence authorized by law, the offender may be fined in an amount not to exceed $25,000.

Attempt, Conspiracy and Solicitation (Sections 14, 15 & 16)

K.S.A. 21-5301 (formerly K.S.A. 21-3301), K.S.A. 21-5302 (formerly K.S.A. 21-3302) and K.S.A. 21-5303 (formerly K.S.A. 21-3303) are amended to add a list of offenses that are excluded from the reduction in severity level or sentence term as provided by these statutes.

Domestic Battery (Section 20)

K.S.A. 21-5414 (formerly K.S.A. 21-3412a) is amended to add the culpability term "knowingly" to the subsection defining domestic battery. In addition, the bill amends subsection (d) to provide that one may apply for a diversion only twice during any *5-year* period.

Terrorism (Section 23)

K.S.A. 21-5421 (formerly K.S.A. 21-3449) is amended to expand the criminal application to include convictions of *attempt, conspiracy or solicitation to commit terrorism* as off-grid felonies.

Human Trafficking and Aggravated Human Trafficking (Section 26)

The bill amends K.S.A. 21-5426 (formerly K.S.A. 21-3446) to redefine subsection (a)(1) as *intentional recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjecting the person to involuntary servitude or forced labor*. Subsection (a)(2) is amended to add the culpability term "intentionally".

The bill also expands application of the statute by adding two additional subsections. Subsection (a)(3) provides that human trafficking includes *knowingly coercing employment by obtaining or maintaining labor or services that are performed or provided by another person through any of the following:*

- *(A) causing or threatening to cause physical injury to any person;*
- *(B) physically restraining or threatening to physically restrain another person;*
- *(C) abusing or threatening to abuse the law or legal process;*
- *(D) threatening to withhold food, lodging or clothing; or,*
- *(E) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported government identification document of another person.*

Subsection (a)(4) is added and provides that human trafficking includes *knowingly holding another person in a condition of peonage in satisfaction of a debt owed the person who is holding such other person*.

Aggravated Human Trafficking

Aggravated human trafficking is amended to expand the criminal application to include convictions of *attempt, conspiracy or solicitation to commit aggravated human trafficking* as an off-grid person felony when the offender is 18 years of age or older and the victim is less than 14 years of age.

Subsection (d) is added to clarify that *the provisions of attempt, conspiracy or solicitation* that reduce the severity level or the length of sentence *shall not apply to a violation of attempt, conspiracy or solicitation to commit aggravated human trafficking when the offender is 18 years of age or older and the victim is less than 14*.

Blackmail (Section 28)

K.S.A. 21-5428 (formerly K.S.A. 21-3428) is amended to add the culpability term "intentionally" to the definition of the offense. **Note:** HB 2151, Section 2, also amended this statute as set out above.

Rape (Section 29)

K.S.A. 21-5503 (formerly K.S.A. 21-3502) is amended to expand the criminal application to include convictions of *attempt, conspiracy or solicitation to commit rape* as an off-grid person felony when the offender is 18 years of age or older.

Subsection (c) is added to clarify that *the provisions of attempt, conspiracy or solicitation* that reduce the severity level or the length of sentence *shall not apply to a violation of attempt, conspiracy or solicitation to commit rape as defined in subsection (a)(3) when the offender is 18 years of age or older*.

Aggravated Criminal Sodomy (Section 30)

K.S.A. 21-5504 (formerly K.S.A. 21-3506) is amended to expand the criminal application to include convictions of *attempt, conspiracy or solicitation to commit aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2)* as an off-grid person felony when the offender is 18 years of age or older.

Subsection (d) is added to clarify that *the provisions of attempt, conspiracy or solicitation* that reduce the severity level or the length of sentence *shall not apply to a violation of attempt, conspiracy or solicitation to commit aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) when the offender is 18 years of age or older*.

Aggravated Indecent Liberties (Section 31)

K.S.A. 21-5506 (formerly K.S.A. 21-3504) is amended to expand the criminal application to include conviction of *attempt, conspiracy or solicitation to commit aggravated indecent liberties with a child as defined in subsection (b)(3)* as an off-grid person felony when the offender is 18 years of age or older.

Subsection (d) is added to clarify that *the provisions of attempt, conspiracy or solicitation* that reduce the severity level or the length of sentence *shall not apply to a violation of attempt, conspiracy or solicitation to commit aggravated indecent liberties with a child as defined in subsection (b)(3) when the offender is 18 years of age or older*.

Unlawful Sexual Relations (Section 33)

K.S.A. 21-5512 (formerly K.S.A. 21-3520) is amended to add culpability language to subsection (a)(2) which makes it a requirement that *the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate who has been released and is currently on parole, conditional release or postrelease supervision.*

In addition, subsection (b) is amended to increase the penalties to a severity level 4 or 5, person felony from a severity level 10, person felony. Specifically, a violation of subsection (a)(5), unlawful sexual relations when the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in such relations is a person 16 year of age or older and confined to such facility or sanctions house, is a *severity level 4 person felony* and all other violations are *severity level 5, person felonies*.

Aggravated Endangering a Child (Section 34)

K.S.A. 21-5601 (formerly K.S.A. 21-3608a) is amended to provide that *the sentence for a violation of aggravated endangering a child shall be served consecutively to any other term or terms of imprisonment imposed. Such shall not be considered a departure and shall not be subject to appeal*.

Aggravated Escape from Custody (Section 39)

K.S.A. 21-5911 (formerly K.S.A. 21-3810) amends the penalty for aggravated escape from custody effected or facilitated by the use of violence or the threat of violence while held in custody on a charge or adjudication as a juvenile offender for a felony, or upon incarceration at a state correctional institution while in custody of the secretary of corrections, to make it a severity level 5 *person* felony rather than a severity level 5, nonperson felony.

Traffic in Contraband (Section 40)

K.S.A. 21-5914 (formerly K.S.A. 21-3826) is amended to clarify and provide increasing penalty levels for certain violations as follows:

- In general, traffic in contraband is a severity level 6, nonperson felony;
- If the contraband consists of firearms, ammunition, explosives or controlled substance, or is defined as contraband by the rules and regulations of the secretary of corrections, the secretary of social and rehabilitative services or the commissioner of the juvenile justice authority, the penalty is a severity level 5, nonperson felony;
- If the contraband consists of firearms, ammunition, explosives or controlled substance which is brought into a correctional institution or care and treatment facility by an employee of such institution or facility, the penalty is a severity level 4, nonperson felony; and,
- If the violation consists of supplying or introducing any object or thing adapted or designed for use in making an escape and is committed 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, the penalty is a severity level 4, nonperson felony.

Unlawful Possession of a Traffic Control Preemption Device (Section 56)

K.S.A. 21-6324 (formerly K.S.A. 21-4223) is amended to change the penalty levels for violations as follows:

- Unlawful possession of such device remains a class B misdemeanor.
- Unlawful purchase of or selling of a traffic control preemption device is a *severity level 9, nonperson felony*.
- Unlawful use of such device is a *severity level 9, nonperson felony* unless such use causes a traffic accident.
- Unlawful use of such device, *which results in a traffic accident causing injury to any person or damage to any vehicle, is a severity level 7, person felony*.
- Unlawful use of such device, *which results in a traffic accident causing the death of any person, is a severity level 5, person felony*.

Dog Fighting (Section 59)

K.S.A. 21-6414 (formerly K.S.A. 21-4315) is amended to clarify that causing, for amusement or gain, any dog to fight with or injure another dog is a strict liability offense, *with no requirement of culpable mental state*.

Sentencing (Section 65)

K.S.A. 21-6608 (formerly K.S.A. 21-4611), subsection (c)(3), is amended to remove the provision allowing for assignment to community corrections in felony cases sentenced at nondrug severity levels 9 and 10 and drug severity level 4, if a nonprison sanction is imposed.

Subsection (c)(4) is also amended to provide that in felony cases sentenced pursuant to K.S.A. 21-6824 (formerly K.S.A. 21-4729, SB 123 cases), if a nonprison sanction is imposed, the court shall order the defendant to serve a period of probation, or assignment to community corrections, of up to 18 months in length.

Child Sex Offense Mandatory Sentence (Section 73)

K.S.A. 21-6627 (formerly K.S.A. 21-4643) is amended to clarify that the provision of attempt, conspiracy and solicitation which serve to reduce the severity level or length of sentence shall not apply to defendants sentenced pursuant to this statute.

Criminal History (Section 78)

K.S.A. 21-6810 (formerly K.S.A. 21-4710) is amended in subsection (d)(9) to narrow its application by striking the phrase "applicable penalties". This change allows prior convictions to be counted when determining criminal history even if they would enhance the applicable penalties.

Perjury (Section 189)

K.S.A. 44-1039 is amended to replace the terms "willfully and knowingly" with the culpability term "intentionally".

Child Abuse (Section 285)

K.S.A. 21-5602 (formerly K.S.A. 21-3609) is amended to clarify the potential violations by removing the violation of "shaking any child under the age of 18 years which results in great bodily harm to the child" from subsection (a)(1) and placing it alone in subsection (a)(2). Subsection (a)(1) now provides that any "torturing or cruelly beating any child under the age of 18 years" is a violation. Abuse of a child is a severity level 5, person felony.

Cockfighting (Section 286)

K.S.A. 21-6417 (formerly K.S.A. 21-4319) is amended to clarify that causing, for amusement or gain, any gamecock to fight with or injure or kill another gamecock is a strict liability offense, *with no requirement of culpable mental state.* In addition the statute is amended to provide that unlawful possession of cockfighting paraphernalia requires *intent to use such in the unlawful conduct of cockfighting.*

This bill was approved by the Governor and became effective July 1, 2011.