

SENATE BILL No. 256

AN ACT concerning crimes, punishment and criminal procedure; relating to mistreatment of a dependent adult; mistreatment of an elder person; unlawful sexual relations; appearance bonds; Kansas racketeer influenced and corrupt organization act; surety regulation; costs charged in appeals; amending K.S.A. 22-2809a and 22-3612 and K.S.A. 2013 Supp. 21-5417, 21-5512, 21-5703, 21-5709, 21-5710, 21-6316, 21-6328 and 21-6329 and repealing the existing sections.

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

Section 1. K.S.A. 2013 Supp. 21-5417 is hereby amended to read as follows: 21-5417. (a) Mistreatment of a dependent adult is knowingly committing one or more of the following acts:

(1) Infliction of physical injury, unreasonable confinement or unreasonable punishment upon a dependent adult;

(2) ~~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~~ *taking the personal property or financial resources of a dependent adult for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of a dependent adult through:*

(A) *Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such dependent adult;*

(B) *a violation of the Kansas power of attorney act, K.S.A. 58-650 et seq., and amendments thereto; or*

(C) *a violation of the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto; or*

(3) omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of ~~a~~ *such* dependent adult.

(b) *Mistreatment of an elder person is knowingly committing one or more of the following acts:*

(1) *Taking the personal property or financial resources of an elder person for the benefit of the defendant or another person by taking control, title, use or management of the personal property or financial resources of an elder person through:*

(A) *Undue influence, coercion, harassment, duress, deception, false representation, false pretense or without adequate consideration to such elder person;*

(B) *a violation of the Kansas power of attorney act, K.S.A. 58-650 et seq., and amendments thereto; or*

(C) *a violation of the Kansas uniform trust code, K.S.A. 58a-101 et seq., and amendments thereto; or*

(2) *omission or deprivation of treatment, goods or services that are necessary to maintain physical or mental health of such elder person.*

~~(b)(c)~~ *Mistreatment of a dependent adult as defined in:*

(1) Subsection (a)(1) is a severity level 5, person felony;

(2) subsection (a)(2) if the aggregate amount of the value of the *personal property or financial resources* is:

(A) \$1,000,000 or more is a severity level 2, person felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;

(E) at least \$1,000 but less than \$25,000 is a severity level 7, person felony;

(F) less than \$1,000 is a class A person misdemeanor, except as provided in subsection (b)(2)(G); and

(G) less than \$1,000 and committed by a person who has, within five years immediately preceding commission of the crime, ~~the offender has~~ been convicted of mistreatment of a dependent adult two or more times is a severity level 7, person felony; and

(3) subsection (a)(3) is a severity level 8, person felony.

~~(c)(d)~~ *Mistreatment of an elder person as defined in:*

(1) *Subsection (b)(1) if the aggregate amount of the value of the personal property or financial resources is:*

(A) \$1,000,000 or more is a severity level 2, person felony;

(B) at least \$250,000 but less than \$1,000,000 is a severity level 3, person felony;

(C) at least \$100,000 but less than \$250,000 is a severity level 4, person felony;

(D) at least \$25,000 but less than \$100,000 is a severity level 5, person felony;

(E) at least \$5,000 but less than \$25,000 is a severity level 7, person felony;

(F) less than \$5,000 is a class A person misdemeanor, except as provided in subsection (d)(2)(G); and

(G) less than \$5,000 and committed by a person who has, within five years immediately preceding commission of the crime, been convicted of mistreatment of an elder person two or more times is a severity level 7, person felony; and

(3) subsection (b)(2) is a severity level 8, person felony.

(e) It shall be an affirmative defense to any prosecution for mistreatment of a dependent adult or mistreatment of an elder person as described in subsections (a)(2) and (b)(1) that:

(1) The personal property or financial resources were given as a gift consistent with a pattern of gift giving to the person that existed before the dependent adult or elder person became vulnerable;

(2) the personal property or financial resources were given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the dependent adult or elder person became vulnerable;

(3) the personal property or financial resources were conferred as a gift by the dependent adult or elder person to the benefit of a person or class of persons, and such gift was reasonable under the circumstances; or

(4) a court approved the transaction before the transaction occurred.

(f) No dependent adult or elder person is considered to be mistreated under subsection (a)(1), (a)(3) or (b)(2) for the sole reason that such dependent adult or elder person relies upon or is being furnished treatment by spiritual means through prayer in lieu of medical treatment in accordance with the tenets and practices of a recognized church or religious denomination of which such dependent adult or elder person is a member or adherent.

~~(d)~~(g) As used in this section:

(1) “Adequate consideration” means the personal property or financial resources were given to the person as payment for bona fide goods or services provided by such person and the payment was at a rate customary for similar goods or services in the community that the dependent adult or elder person resided in at the time of the transaction.

(2) “Dependent adult” means an individual 18 years of age or older who is unable to protect the individual’s own interest. Such term shall include, but is not limited to, any:

~~(1)~~(A) Resident of an adult care home including, but not limited to, those facilities defined by K.S.A. 39-923, and amendments thereto;

~~(2)~~(B) adult cared for in a private residence;

~~(3)~~(C) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a medical care facility;

~~(4)~~(D) individual with intellectual disability or a developmental disability receiving services through a community facility for people with intellectual disability or residential facility licensed under K.S.A. 75-3307b, and amendments thereto;

~~(5)~~(E) individual with a developmental disability receiving services provided by a community service provider as provided in the developmental disability reform act; or

~~(6)~~(F) individual kept, cared for, treated, boarded, confined or otherwise accommodated in a state psychiatric hospital or state institution for people with intellectual disability.

(3) “Elder person” means a person 70 years of age or older.

~~(e)~~(h) An offender who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any other offense in article 54, 55, 56 or 58 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2013 Supp. 21-6418, and amendments thereto.

Sec. 2. K.S.A. 2013 Supp. 21-5512 is hereby amended to read as follows: 21-5512. (a) Unlawful sexual relations is engaging in consensual

sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for a correctional institution, and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate;

(2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole, conditional release or postrelease supervision and 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;

(3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail;

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house;

(5) the offender is an employee of the ~~juvenile justice authority~~ *department of corrections* 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 consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility;

(6) the offender is an employee of the ~~juvenile justice authority~~ *department of corrections* or the employee of a contractor who is under contract to provide direct supervision and offender control services to the ~~juvenile justice authority~~ *department of corrections* and:

(A) The person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been:

(i) Released on conditional release from a juvenile correctional facility under the supervision and control of the ~~juvenile justice authority~~ *department of corrections* or juvenile community supervision agency; or

(ii) placed in the custody of the ~~juvenile justice authority~~ *department of corrections* under the supervision and control of the ~~juvenile justice authority~~ *department of corrections* or juvenile community supervision agency; and

(B) the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under supervision;

(7) the offender is an employee of the ~~department of social and rehabilitation services~~ *Kansas department for aging and disability services* or the *Kansas department for children and families* or the employee of a contractor who is under contract to provide services in a ~~social and rehabilitation services~~ *an aging and disability or children and families* institution or to the ~~department of social and rehabilitation services~~ *Kansas department for aging and disability services* or the *Kansas department for children and families* and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a patient in such institution or in the custody of the secretary of ~~social and rehabilitation services~~ *for aging and disability services* or the *secretary for children and families*;

(8) the offender is a worker, volunteer or other person in a position

of authority in a family foster home licensed by the department of health and environment and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a foster child placed in the care of such family foster home;

(9) the offender is a teacher or other person in a position of authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of subsection (b) of K.S.A. 2013 Supp. 21-5604, and amendments thereto, shall apply, not this subsection;

(10) the offender is a court services officer or the employee of a contractor who is under contract to provide supervision services for persons under court services supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been placed on probation under the supervision and control of court services and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of court services; ~~or~~

(11) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections; *or*

(12) *the offender is a surety or an employee of a surety and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is the subject of a surety or bail bond agreement with such surety and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is the subject of a surety or bail bond agreement with such surety.*

(b) Unlawful sexual relations as defined in:

(1) Subsection (a)(5) is a severity level 4, person felony; and

(2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10) ~~or~~, (a)(11) *or (a)(12)* is a severity level 5, person felony.

(c) (1) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of K.S.A. 2013 Supp. 21-5503, and amendments thereto, the provisions of K.S.A. 2013 Supp. 21-5503, and amendments thereto, shall apply, not this section.

(2) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of subsection (b)(1) of K.S.A. 2013 Supp. 21-5506, and amendments thereto, the provisions of subsection (b)(1) of K.S.A. 2013 Supp. 21-5506, and amendments thereto, shall apply, not this section.

(3) If an offender violates the provisions of this section by engaging in sodomy which would constitute a violation of subsection (a)(3), (a)(4) or (b) of K.S.A. 2013 Supp. 21-5504, and amendments thereto, the provisions of subsection (a)(3), (a)(4) or (b) of K.S.A. 2013 Supp. 21-5504, and amendments thereto, shall apply, not this section.

(4) If an offender violates the provisions of this section by engaging in lewd fondling or touching which would constitute a violation of subsection (b)(2) of K.S.A. 2013 Supp. 21-5506, and amendments thereto, the provisions of subsection (b)(2) of K.S.A. 2013 Supp. 21-5506, and amendments thereto, shall apply, not this section.

(d) As used in this section:

(1) “Correctional institution” means the same as in K.S.A. 75-5202, and amendments thereto;

(2) “inmate” means the same as in K.S.A. 75-5202, and amendments thereto;

- (3) “parole officer” means the same as in K.S.A. 75-5202, and amendments thereto;
- (4) “postrelease supervision” means the same as in K.S.A. 2013 Supp. 21-6803, and amendments thereto;
- (5) “juvenile detention facility” means the same as in K.S.A. 2013 Supp. 38-2302, and amendments thereto;
- (6) “juvenile correctional facility” means the same as in K.S.A. 2013 Supp. 38-2302, and amendments thereto;
- (7) “sanctions house” means the same as in K.S.A. 2013 Supp. 38-2302, and amendments thereto;
- (8) “institution” means the same as in K.S.A. 76-12a01, and amendments thereto;
- (9) “teacher” means and includes teachers, coaches, supervisors, principals, superintendents and any other professional employee in any public or private school offering any of grades kindergarten through 12;
- (10) “community corrections” means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the revised Kansas juvenile justice code, K.S.A. 2013 Supp. 38-2301 et seq., and amendments thereto;
- (11) “court services” means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state; ~~and~~
- (12) “juvenile community supervision agency” means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the ~~juvenile justice authority~~ *department of corrections*; ~~and~~
- (13) “surety” means the same as in K.S.A. 22-2809a, and amendments thereto.

Sec. 3. K.S.A. 2013 Supp. 21-5703 is hereby amended to read as follows: 21-5703. (a) It shall be unlawful for any person to manufacture any controlled substance or controlled substance analog.

(b) Violation or attempted violation of subsection (a) is a:

(1) Drug severity level 2 felony, except as provided in subsections (b)(2) and (b)(3);

(2) drug severity level 1 felony if:

(A) The controlled substance is not methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof; and

(B) the offender has a prior conviction for unlawful manufacturing of a controlled substance under this section, K.S.A. 65-4159, prior to its repeal, K.S.A. 2010 Supp. 21-36a03, prior to its transfer, or a substantially similar offense from another jurisdiction and the substance was not methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof, in any such prior conviction; and

(3) drug severity level 1 felony if the controlled substance is methamphetamine, as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto, or an analog thereof.

(c) The provisions of subsection (d) of K.S.A. 2013 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to unlawfully manufacture any controlled substance or controlled substance analog pursuant to this section.

(d) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, *and such person shall not be released upon the person’s own recognizance pursuant to K.S.A. 22-2802, and amendments thereto*, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision, or the defendant agrees to participate in a licensed or certified drug treatment program.

(e) The sentence of a person who violates this section shall not be subject to statutory provisions for suspended sentence, community service work or probation.

(f) The sentence of a person who violates this section, K.S.A. 65-4159, prior to its repeal or K.S.A. 2010 Supp. 21-36a03, prior to its transfer, shall not be reduced because these sections prohibit conduct identical to

that prohibited by K.S.A. 65-4161 or 65-4163, prior to their repeal, K.S.A. 2010 Supp. 21-36a05, prior to its transfer, or K.S.A. 2013 Supp. 21-5705, and amendments thereto.

Sec. 4. K.S.A. 2013 Supp. 21-5709 is hereby amended to read as follows: 21-5709. (a) It shall be unlawful for any person to possess ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine, or their salts, isomers or salts of isomers with an intent to use the product to manufacture a controlled substance.

(b) It shall be unlawful for any person to use or possess with intent to use any drug paraphernalia to:

(1) Manufacture, cultivate, plant, propagate, harvest, test, analyze or distribute a controlled substance; or

(2) store, contain, conceal, inject, ingest, inhale or otherwise introduce a controlled substance into the human body.

(c) It shall be unlawful for any person to use or possess with intent to use anhydrous ammonia or pressurized ammonia in a container not approved for that chemical by the Kansas department of agriculture.

(d) It shall be unlawful for any person to purchase, receive or otherwise acquire at retail any compound, mixture or preparation containing more than 3.6 grams of pseudoephedrine base or ephedrine base in any single transaction or any compound, mixture or preparation containing more than nine grams of pseudoephedrine base or ephedrine base within any 30-day period.

(e) (1) Violation of subsection (a) is a drug severity level 3 felony;

(2) violation of subsection (b)(1) is a:

(A) Drug severity level 5 felony, except as provided in subsection (e)(2)(B); and

(B) class A nonperson misdemeanor if the drug paraphernalia was used to cultivate fewer than five marijuana plants;

(3) violation of subsection (b)(2) is a class A nonperson misdemeanor;

(4) violation of subsection (c) is a drug severity level 5 felony; and

(5) violation of subsection (d) is a class A nonperson misdemeanor.

(f) For persons arrested and charged under subsection (a) or (c), bail shall be at least \$50,000 cash or surety, *and such person shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto*, unless the court determines, on the record, that the defendant is not likely to reoffend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

Sec. 5. K.S.A. 2013 Supp. 21-5710 is hereby amended to read as follows: 21-5710. (a) It shall be unlawful for any person to advertise, market, label, distribute or possess with the intent to distribute:

(1) Any product containing ephedrine, pseudoephedrine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, pressurized ammonia or phenylpropanolamine or their salts, isomers or salts of isomers if the person knows or reasonably should know that the purchaser will use the product to manufacture a controlled substance or controlled substance analog; or

(2) any product containing ephedrine, pseudoephedrine or phenylpropanolamine, or their salts, isomers or salts of isomers for indication of stimulation, mental alertness, weight loss, appetite control, energy or other indications not approved pursuant to the pertinent federal over-the-counter drug final monograph or tentative final monograph or approved new drug application.

(b) It shall be unlawful for any person to distribute, possess with the intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to manufacture or distribute a controlled substance or controlled substance analog in violation of K.S.A. 2013 Supp. 21-5701 through 21-5717, and amendments thereto.

(c) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing or under circumstances where one reasonably should know, that it will be used as such in violation of K.S.A. 2013 Supp. 21-5701 through 21-5717, and amendments thereto, except subsection (b) of K.S.A. 2013 Supp. 21-5706, and amendments thereto.

(d) It shall be unlawful for any person to distribute, possess with intent to distribute or manufacture with intent to distribute any drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used as such in violation of subsection (b) of K.S.A. 2013 Supp. 21-5706, and amendments thereto.

(e) (1) Violation of subsection (a) is a drug severity level 3 felony;

(2) violation of subsection (b) is a:

(A) Drug severity level 5 felony, except as provided in subsection (e)(2)(B); and

(B) drug severity level 4 felony if the trier of fact makes a finding that the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property;

(3) violation of subsection (c) is a:

(A) Nondrug severity level 9, nonperson felony, except as provided in subsection (e)(3)(B); and

(B) drug severity level 5 felony if the trier of fact makes a finding that the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property; and

(4) violation of subsection (d) is a:

(A) Class A nonperson misdemeanor, except as provided in subsection (e)(4)(B); and

(B) nondrug severity level 9, nonperson felony if the trier of fact makes a finding that the offender distributed or caused drug paraphernalia to be distributed to a minor or on or within 1,000 feet of any school property.

(f) For persons arrested and charged under subsection (a), bail shall be at least \$50,000 cash or surety, *and such person shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto*, unless the court determines, on the record, that the defendant is not likely to re-offend, the court imposes pretrial supervision or the defendant agrees to participate in a licensed or certified drug treatment program.

(g) As used in this section, “or under circumstances where one reasonably should know” that an item will be used in violation of this section, shall include, but not be limited to, the following:

(1) Actual knowledge from prior experience or statements by customers;

(2) inappropriate or impractical design for alleged legitimate use;

(3) receipt of packaging material, advertising information or other manufacturer supplied information regarding the item's use as drug paraphernalia; or

(4) receipt of a written warning from a law enforcement or prosecutorial agency having jurisdiction that the item has been previously determined to have been designed specifically for use as drug paraphernalia.

Sec. 6. K.S.A. 2013 Supp. 21-6316 is hereby amended to read as follows: 21-6316. When a criminal street gang member is arrested for a person felony, bail shall be at least \$50,000 cash or surety, *and such person shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto*, unless the court determines on the record that the defendant is not likely to reoffend, an appropriate intensive pre-trial supervision program is available and the defendant agrees to comply with the mandate of such pre-trial supervision.

Sec. 7. K.S.A. 2013 Supp. 21-6328 is hereby amended to read as follows: 21-6328. As used in the Kansas racketeer influenced and corrupt organization act:

(a) “Beneficial interest” means:

(1) The interest of a person as a beneficiary under any trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(2) the interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term “beneficial interest” does not include the interest of a stock holder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.

(b) “Covered person” means any person who:

(1) Is a criminal street gang member or criminal street gang associate, as defined in K.S.A. 2013 Supp. 21-6313, and amendments thereto;

(2) has engaged in or is engaging in any conduct prohibited by K.S.A. 2013 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking; or

(3) has engaged in or is engaging in any conduct prohibited by K.S.A. 2013 Supp. 21-5703, and amendments thereto, unlawful manufacturing of controlled substances, or K.S.A. 2013 Supp. 21-5705, and amendments thereto, unlawful cultivation or distribution of controlled substances.

(c) “Documentary material” means any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(d) “Enterprise” means any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal street gang, as defined in K.S.A. 2013 Supp. 21-6313, and amendments thereto, constitutes an enterprise.

(e) “Pattern of racketeering activity” means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within 5 years, excluding any period of imprisonment, after a prior incident of racketeering activity.

(f) “Racketeering activity” means to commit, attempt to commit, conspire to commit or to solicit, coerce or intimidate another person to commit:

(1) Any felony or misdemeanor violation of: The felony provisions of K.S.A. 8-1568, and amendments thereto, fleeing or attempting to elude a police officer; K.S.A. 9-508 et seq., and amendments thereto, Kansas money transmitter act; article 12a of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, Kansas uniform securities act; K.S.A. 2013 Supp. 21-5401, and amendments thereto, capital murder; K.S.A. 2013 Supp. 21-5402, and amendments thereto, murder in the first degree; K.S.A. 2013 Supp. 21-5403, and amendments thereto, murder in the second degree; K.S.A. 2013 Supp. 21-5408, and amendments thereto, kidnapping or aggravated kidnapping; K.S.A. 2013 Supp. 21-5412, and amendments thereto; K.S.A. 2013 Supp. 21-5413, and amendments thereto; K.S.A. 2013 Supp. 21-5414, and amendments thereto, domestic battery; K.S.A. 2013 Supp. 21-5415, and amendments thereto, criminal threat or aggravated criminal threat; K.S.A. 2013 Supp. 21-5420, and amendments thereto, robbery or aggravated robbery; K.S.A. 2013 Supp. 21-5421, and amendments thereto, terrorism; K.S.A. 2013 Supp. 21-5422, and amendments thereto, illegal use of weapons of mass destruction; K.S.A. 2013 Supp. 21-5423, and amendments thereto; K.S.A. 2013 Supp. 21-5426, and amendments thereto, human trafficking or aggravated human trafficking; K.S.A. 2013 Supp. 21-5428, and amendments thereto, blackmail; K.S.A. 2013 Supp. 21-5510, and amendments thereto, sexual exploitation of a child; K.S.A. 2013 Supp. 21-5601, and amendments thereto, endangering a child or aggravated endangering a child; K.S.A. 2013 Supp. 21-5602, and amendments thereto, abuse of a child; K.S.A. 2013 Supp. 21-5603, and amendments thereto, contributing to a child’s misconduct or deprivation; subsection (b) of K.S.A. 2013 Supp. 21-5607, and amendments thereto, furnishing alcoholic beverages to a minor for illicit purposes; article 57 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, crimes involving controlled substances; K.S.A. 2013 Supp. 21-5801, and amendments thereto, theft; K.S.A. 2013 Supp. 21-5803, and amendments thereto, criminal deprivation of property; K.S.A. 2013 Supp. 21-5805, and amendments thereto; K.S.A. 2013 Supp. 21-5807, and amendments thereto, burglary or aggravated burglary; K.S.A. 2013 Supp. 21-5812, and amendments thereto, arson or aggravated arson; K.S.A. 2013 Supp. 21-5813, and amendments thereto, criminal damage to property; K.S.A. 2013 Supp. 21-5814, and amendments

thereto, criminal use of an explosive; K.S.A. 2013 Supp. 21-5818, and amendments thereto, tampering with a pipeline; K.S.A. 2013 Supp. 21-5821, and amendments thereto, giving a worthless check; K.S.A. 2013 Supp. 21-5823, and amendments thereto, forgery; K.S.A. 2013 Supp. 21-5824, and amendments thereto, making false information; K.S.A. 2013 Supp. 21-5825, and amendments thereto, counterfeiting; K.S.A. 2013 Supp. 21-5826, and amendments thereto, destroying written instrument; K.S.A. 2013 Supp. 21-5828, and amendments thereto, criminal use of a financial card; K.S.A. 2013 Supp. 21-5838, and amendments thereto, conducting a pyramid promotional scheme; K.S.A. 2013 Supp. 21-5839, and amendments thereto; K.S.A. 2013 Supp. 21-5903, and amendments thereto, perjury; K.S.A. 2013 Supp. 21-5904, and amendments thereto, interference with law enforcement; K.S.A. 2013 Supp. 21-5905, and amendments thereto, interference with the judicial process; K.S.A. 2013 Supp. 21-5909, and amendments thereto, intimidation of a witness or victim or aggravated intimidation of a witness or victim; K.S.A. 2013 Supp. 21-5912, and amendments thereto, aiding escape; K.S.A. 2013 Supp. 21-5913, and amendments thereto, obstructing apprehension or prosecution; K.S.A. 2013 Supp. 21-5918, and amendments thereto; K.S.A. 2013 Supp. 21-6001, and amendments thereto, bribery; K.S.A. 2013 Supp. 21-6002, and amendments thereto, official misconduct; K.S.A. 2013 Supp. 21-6301, and amendments thereto, criminal use of weapons; K.S.A. 2013 Supp. 21-6302, and amendments thereto, criminal carrying of a weapon; K.S.A. 2013 Supp. 21-6303, and amendments thereto, criminal distribution of firearms to a felon; K.S.A. 2013 Supp. 21-6304, and amendments thereto, criminal possession of a firearm by a convicted felon; K.S.A. 2013 Supp. 21-6305, and amendments thereto, aggravated weapons violation by a convicted felon; K.S.A. 2013 Supp. 21-6306, and amendments thereto, defacing identification marks of a firearm; K.S.A. 2013 Supp. 21-6308, and amendments thereto, criminal discharge of a firearm; K.S.A. 2013 Supp. 21-6310, and amendments thereto, unlawful endangerment; K.S.A. 2013 Supp. 21-6312, and amendments thereto; K.S.A. 2013 Supp. 21-6313 through 21-6316, and amendments thereto; K.S.A. 2013 Supp. 21-6401, and amendments thereto; K.S.A. 2013 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2013 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2013 Supp. 21-6406, and amendments thereto, commercial gambling; K.S.A. 2013 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2013 Supp. 21-6408, and amendments thereto; K.S.A. 2013 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; subsections (a) or (b) of K.S.A. 2013 Supp. 21-6414, and amendments thereto, unlawful conduct of dog fighting or unlawful possession of dog fighting paraphernalia; subsections (a) or (b) of K.S.A. 2013 Supp. 21-6417, and amendments thereto, unlawful conduct of cockfighting or unlawful possession of cockfighting paraphernalia; K.S.A. 2013 Supp. 21-6419, and amendments thereto, ~~prostitution—selling sexual relations~~; K.S.A. 2013 Supp. 21-6420, and amendments thereto, promoting ~~prostitution~~ *the sale of sexual relations*; K.S.A. 2013 Supp. 21-6422, and amendments thereto, *commercial sexual exploitation of a child*; K.S.A. 2013 Supp. 21-6501, and amendments thereto, extortion; K.S.A. 2013 Supp. 21-6502, and amendments thereto, debt adjusting; K.S.A. 2013 Supp. 21-6504, and amendments thereto, equity skimming; K.S.A. 2013 Supp. 21-6506, and amendments thereto, commercial bribery; K.S.A. 2013 Supp. 21-6507, and amendments thereto, sports bribery; K.S.A. 2013 Supp. 21-6508, and amendments thereto, tampering with a sports contest; K.S.A. 39-720, and amendments thereto, social welfare service fraud; K.S.A. 40-2,118, and amendments thereto, fraudulent insurance acts; K.S.A. 41-101 et seq., and amendments thereto, Kansas liquor control act; K.S.A. 44-5,125, and amendments thereto, workers' compensation act; K.S.A. 65-1657, and amendments thereto, nonresident pharmacy registration; K.S.A. 65-3441, and amendments thereto, hazardous waste; K.S.A. 65-4167, and amendments thereto, trafficking in counterfeit drugs; article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; or K.S.A. 79-3321, and amendments thereto, Kansas cigarette and tobacco products act; or

(2) any conduct defined as “racketeering activity” under 18 U.S.C. § 1961(1).

(g) “Real property” means any real property or any interest in such

real property, including, but not limited to, any lease of or mortgage upon such real property.

(h) “Trustee” means:

(1) Any person acting as trustee pursuant to a trust in which the trustee holds legal or record title to real property;

(2) any person who holds legal or record title to real property in which any other person has a beneficial interest; or

(3) any successor trustee or trustees to any or all of the foregoing persons.

The term “trustee” does not include any person appointed or acting as a personal representative as defined in K.S.A. 59-102, and amendments thereto, or appointed or acting as a trustee of any testamentary trust or as a trustee of any indenture of trust under which any bonds have been or are to be issued.

(i) “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted:

(1) In violation of any of the following provisions of law: Article 88 of chapter 74 of the Kansas Statutes Annotated, and amendments thereto, Kansas parimutuel racing act; K.S.A. 2013 Supp. 21-6404, and amendments thereto, gambling; K.S.A. 2013 Supp. 21-6405, and amendments thereto, illegal bingo operation; K.S.A. 2013 Supp. 21-6406, and amendments thereto, commercial gambling; K.S.A. 2013 Supp. 21-6407, and amendments thereto, dealing in gambling devices; K.S.A. 2013 Supp. 21-6408, and amendments thereto; or K.S.A. 2013 Supp. 21-6409, and amendments thereto, installing communication facilities for gamblers; or

(2) in gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

Sec. 8. K.S.A. 2013 Supp. 21-6329 is hereby amended to read as follows: 21-6329. (a) *Except as provided in subsection (b)*, it is unlawful for any covered person:

(1) Who has ~~with criminal intent~~ received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use *recklessly* or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;

(2) through a pattern of racketeering activity or through the collection of an unlawful debt, to *recklessly* acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property; or

(3) employed by, or associated with, any enterprise to *recklessly* conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.

(b) It is not unlawful for a covered person to violate subsection (a) through the collection of an unlawful debt if such person was not a participant in a violation described in subsection (i) of K.S.A. 2013 Supp. 21-6328, and amendments thereto, which created such unlawful debt.

~~(b)~~(c) Violation of this section or conspiracy to commit a violation of this section is a severity level 2, person felony.

~~(c)~~(d) The provisions of subsection (d) of K.S.A. 2013 Supp. 21-5302, and amendments thereto, shall not apply to conspiracy to commit a violation of this section.

~~(d)~~(e) (1) Notwithstanding the provisions of K.S.A. 2013 Supp. 21-6611, and amendments thereto, any person convicted of engaging in conduct in violation of this section, through which the person derived pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(2) The court shall hold a hearing to determine the amount of the fine authorized by this subsection.

(3) For the purposes of this subsection, “pecuniary value” means:

(A) Anything of value in the form of money, a negotiable instrument, or a commercial interest or anything else the primary significance of which is economic advantage; and

(B) any other property or service that has a value in excess of \$100.

~~(e)(f) For persons arrested and charged under this section, bail shall be at least \$50,000 cash or surety, and such person shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto, unless the court determines on the record that the defendant is not likely to re-offend, an appropriate intensive pretrial supervision program is available and the defendant agrees to comply with the mandate of such pretrial supervision. Notwithstanding any other provision of law, any person arrested and charged under this section shall not be released upon the person's own recognizance pursuant to K.S.A. 22-2802, and amendments thereto.~~

Sec. 9. K.S.A. 22-2809a is hereby amended to read as follows: 22-2809a. (a) As used in this section: (1) "Surety" means a person or commercial surety, other than a defendant in a criminal proceeding, that guarantees the appearance of a defendant in a criminal proceeding, by executing an appearance bond;

(2) "agent of a surety" means a person not performing the duties of a law enforcement officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a surety or bail bond agreement.

(b) Any surety or agent of a surety, commonly referred to as a bounty hunter, who intends to apprehend any person in this state pursuant to K.S.A. 22-2809, and amendments thereto, or under similar authority from any other state, shall inform law enforcement authorities in the city or county in which such surety or agent of a surety intends such apprehension, before attempting such apprehension. The surety or agent of a surety shall present to the local law enforcement authorities a certified copy of the bond, a valid government-issued photo identification, written appointment of agency, if not the actual surety, and all other appropriate paperwork identifying the principal and the person to be apprehended. Local law enforcement may accompany the surety or agent.

(c) No person who, ~~within the past 10 years,~~ has been convicted, in this or any other jurisdiction, of a ~~person~~ felony, ~~may~~ shall act as a surety or as an agent of a surety.

(d) ~~An out-of-state surety or agent of a surety who intends to apprehend any person in this state pursuant to K.S.A. 22-2809, and amendments thereto, or under similar authority from any other state, shall contract with an individual that has been authorized by any court in this state to act as a surety or agent of a surety, before attempting such apprehension, and be accompanied by such individual during such apprehension.~~

(e) Violation of this section is a class A nonperson misdemeanor for the first conviction of a violation and a severity level 9, nonperson felony upon a second or subsequent conviction of a violation.

Sec. 10. K.S.A. 22-3612 is hereby amended to read as follows: 22-3612. (a) In representing the interests of the state in appeals from criminal actions in the district courts of this state to the supreme court or court of appeals or in other post-conviction actions arising from criminal prosecutions, the attorney general shall invoke the assistance of the county or district attorney of the county in which the action originally commenced. The reasonable costs of such ~~assistance~~ representation shall be allowed and paid by the board of county commissioners from the county general fund for any services rendered by such county's county or district attorney pursuant to this section or by the attorney general pursuant to ~~this section~~ an agreement under subsection (b).

(b) The attorney general may publish a schedule of such costs to be charged by the office of attorney general for services rendered by the attorney general, not to exceed the hourly rate provided in K.S.A. 22-4507, and amendments thereto. The attorney general may enter into agreements with any county or district attorney for the payment of such costs and any such agreement shall supersede, in whole or in part as such agreement may provide, the schedule of costs published pursuant to this section.

(c) All moneys paid to the attorney general pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state

treasury to the credit of the criminal appeals cost fund, which is hereby created. Moneys in the criminal appeals cost fund may be expended by the attorney general for the purpose of representing the interests of the state in criminal appeals and post-conviction proceedings. All expenditures from the criminal appeals cost fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.

Sec. 11. K.S.A. 22-2809a and 22-3612 and K.S.A. 2013 Supp. 21-5417, 21-5512, 21-5703, 21-5709, 21-5710, 21-6316, 21-6328 and 21-6329 are hereby repealed.

Sec. 12. 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.