SENATE BILL No. 310

By Committee on Judiciary

1-23

AN ACT concerning crimes, punishment and criminal procedure; relating to escape and aggravated escape from custody; definition of escape; amending K.S.A. 2017 Supp. 21-5911 and repealing the existing section.

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35 36 Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2017 Supp. 21-5911 is hereby amended to read as follows: 21-5911. (a) Escape from custody is escaping while held in custody on a:

- (1) Charge, conviction of or arrest for a misdemeanor;
- (2) charge, adjudication or arrest as a juvenile offender where the act, if committed by an adult, would constitute a misdemeanor; or
- (3) commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a misdemeanor or by a person 18 years of age or over who is being held in custody on an adjudication of a misdemeanor.
 - (b) Aggravated escape from custody is:
 - (1) Escaping while held in custody:
 - (A) Upon a charge, conviction of or arrest for a felony;
- (B) upon a charge, adjudication or arrest as a juvenile offender where the act, if committed by an adult, would constitute a felony;
- (C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;
- (D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seg., and amendments thereto;
- 28 (E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting a felony;
 - (F) by a person 18 years of age or over who is being held on an adjudication of a felony; or
 - (G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.
 - (2) Escaping effected or facilitated by the use of violence or the threat of violence against any person while held in custody:

SB 310 2

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- (A) On a charge or conviction of any crime;
- (B) on a charge or adjudication as a juvenile offender where the act, if committed by an adult, would constitute a felony;
- (C) prior to or upon a finding of probable cause for evaluation as a sexually violent predator as provided in K.S.A. 59-29a05, and amendments thereto;
- (D) upon commitment to a treatment facility as a sexually violent predator as provided in K.S.A. 59-29a01 et seq., and amendments thereto;
- (E) upon a commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto, based on a finding that the person committed an act constituting any crime;
- (F) by a person 18 years of age or over who is being held on a charge or adjudication of a misdemeanor or felony; or
- (G) upon incarceration at a state correctional institution while in the custody of the secretary of corrections.
 - (c) (1) Escape from custody is a class A nonperson misdemeanor.
 - (2) Aggravated escape from custody as defined in:
- (A) Subsection (b)(1)(A), (b)(1)(C), (b)(1)(D), (b)(1)(E) or (b)(1)(F) is a severity level 8, nonperson felony;
- (B) subsection (b)(1)(B) or (b)(1)(G) is a severity level 5, nonperson felony;
- (C) subsection (b)(2)(A), (b)(2)(C), (b)(2)(D), (b)(2)(E) or (b)(2)(F) is a severity level 6, person felony; and
- (D) subsection (b)(2)(B) or (b)(2)(G) is a severity level 5, person felony.
- (d) As used in this section and K.S.A. 2017 Supp. 21-5912, and amendments thereto:
- (1) "Custody" means arrest; detention in a facility for holding persons charged with or convicted of crimes or charged or adjudicated as a juvenile offender; detention for extradition or deportation; detention in a hospital or other facility pursuant to court order, imposed as a specific condition of probation or parole or imposed as a specific condition of assignment to a community correctional services program; commitment to the state security hospital as provided in K.S.A. 22-3428, and amendments thereto; or any other detention for law enforcement purposes. "Custody" does not include general supervision of a person on probation or parole or constraint incidental to release on bail;
- (2) "escape" means departure from custody without lawful authority or failure to return to custody following temporary leave lawfully granted pursuant to express authorization of law—or, order of a court or by a custodial official authorized to grant such leave;
- 42 (3) "juvenile offender" means the same as in K.S.A. 2017 Supp. 38-43 2302, and amendments thereto; and

SB 310 3

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1 (4) "state correctional institution" means the same as in K.S.A. 75-2 5202, and amendments thereto.

- (e) As used in this section, the term "charge" shall not require that the offender was held on a written charge contained in a complaint, information or indictment, if such offender was arrested prior to such offender's escape from custody.
 - Sec. 2. K.S.A. 2017 Supp. 21-5911 is hereby repealed.
- 8 Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.