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300 SW TENTH AVENUE ■ SUITE 24-E ■ TOPEKA, KS 66612 ■ (785) 296-2321

MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: May 18, 2020

Subject: Bill Brief for SB 497

Senate Bill 497 would require restitution to be due immediately unless the court orders a payment plan. The bill was requested in response to a recent Kansas Court of Appeals opinion in State v. Roberts (Case No. 120,377, Feb. 21, 2020), which held that K.S.A. 21-6604 requires the court to establish a payment plan when it orders restitution and failure to do so renders the sentence illegal.

Section 1 amends K.S.A. 21-6604, the statute in the Kansas criminal code that lists the authorized dispositions a court may order after a criminal conviction. Current law in subsection (b)(1) requires the court to “order the defendant to pay restitution, which shall include, but not be limited to, damage or loss caused by the defendant's crime, unless the court finds compelling circumstances that would render a plan of restitution unworkable.” The bill would require the court to order restitution and require restitution to be due immediately unless: (1) The court orders that the defendant be given a specified time to pay or be allowed to pay in specified installments; or (B) the court finds compelling circumstances that would render a plan of restitution unworkable, either in whole or in part.

To address restitution orders entered under K.S.A. 21-6604 prior to the effective date of the act, new subsection (b)(3) provides that if the order does not give the defendant a specified time to pay or set payment in specified installments, the defendant may file a motion with the court prior to December 31, 2020, proposing payment of restitution in specified installments. Subsection (b)(3) also provides that the restitution shall be due immediately if the court does not order payment in specified installments or if the defendant does not file a motion prior to

December 31, 2020. New subsection (v) provides that the amendments are procedural in nature and shall be construed and applied retroactively.

Section 2 amends K.S.A. 21-6607, the statute in the Kansas criminal code that concerns conditions of probation, suspension of sentence or assignment to a community correctional services program. Current law in subsection (c)(2) requires the court to order the defendant to “make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant’s crime, in an amount and manner determined by the court and to the person specified by the court, unless the court finds compelling circumstances which would render a plan of restitution unworkable.” The bill would require the court to order the defendant to make reparation or restitution to the aggrieved party for the damage or loss caused by the defendant’s crime in accordance with K.S.A. 21-6604(b).

The bill would take effect upon publication in the Kansas Register.